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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

NEQUASHA POTTS individually, and on behalf of other members of the general public similarly situated; MARQUIS BERRY, individually, and on behalf of other members of the general public similarly situated; TATIANA BENJAMIN individually, and on behalf of members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act.

Plaintiffs,

vs.

DOLLS KILL, INC., an unknown business entity; TRINET GROUP, INC., an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC19580228

Honorable Ethan P. Schulman
Department 302

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT PAYMENTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Class Counsel (Edwin Aiwazian); Declarations of Class Representatives (Nequasha Potts, Marquis Berry, and Tatiana Benjamin); Declaration of Settlement Administrator (Taylor Mitzner); and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Date: July 1, 2021
Time: 9:30 a.m.
Department: 302

Complaint Filed: October 23, 2019
FAC Filed: February 22, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 1, 2021 at 9:30 a.m., in Department 302 of the above-
2 entitled Court, located at San Francisco County Superior Court, 400 McAllister Street, San
3 Francisco, California 94102, Plaintiffs Nequasha Potts, Marquis Berry, and Tatiana
4 Benjamin (“Plaintiffs”) will and hereby do move for an order granting final approval of:

5 1. The Joint Stipulation of Class and PAGA Settlement and Amendment No. 1 to
6 Stipulation of Class and PAGA Settlement Amendment No. 1 to Stipulation of Class and PAGA
7 Settlement(together, “Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds
8 that the Settlement is fair, adequate, and reasonable because:

- 9 • A Net Settlement Amount of approximately **\$156,250.00** will be fully distributed to
10 the Settlement Class Members who did not timely opt out of the Settlement
11 (“Participating Class Member”);
12 • **No Objections** were submitted to the settlement administrator, Phoenix Settlement
13 Administrators (“Settlement Administrator”);
14 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

15 2. Payment in the amount of **\$140,000.00** to Lawyers for Justice, PC (“Class
16 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for
17 attorneys’ fees, which is reasonable and justified on a percentage-basis;

18 3. Payment in the amount of **\$15,000.00** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$10,000.00** to the Settlement Administrator, Phoenix
21 Settlement Administrators (“Phoenix”), for Administration Costs; and

22 5. Payments in the amount of **\$7,500.00** each to Plaintiffs Nequasha Potts, Marquis
23 Berry, and Tatiana Benjamin, as Enhancement Payment , for their time and effort in representing
24 the Settlement Class Members.

25 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.*, in the amount of **\$75,000.00**, of which seventy-five
27 percent (75%), or \$56,250.00, will be paid to the California Labor and Workforce Development
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Agency and twenty-five percent (25%), or \$18,750.00, will be part of the Net Settlement Amount for distribution to the Participating Class Members.

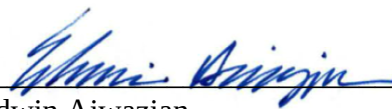
This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Edwin Aiwanian), Class Representatives (Nequasha Potts, Marquis Berry, and Tatiana Benjamin), and Settlement Administrator (Taylor Mitzner of Phoenix) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: June 9, 2021

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian

Attorneys for Plaintiffs and the Settlement Class Members

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Nequasha Potts, Marquis Berry, and Tatiana Benjamin (“Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$400,000.00; (2) attorneys’ fees in the amount of \$140,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$15,000.00 (together, “Attorneys’ Fees and Litigation Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Administration Costs in the amount of \$10,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); and (4) Enhancement Payments in the amount of \$7,500.00 each to Plaintiffs Nequasha Potts, Marquis Berry, and Tatiana Benjamin, for a combined amount of \$20,000; and (5) allocation of \$75,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiffs seek relief on behalf of the following Settlement Class Members:

All current and former hourly-paid or non-exempt employees who were employed by Dolls Kill, Inc. within the State of California during the time period from October 23, 2015 to October 1, 2020 (“Settlement Class Members” or “Settlement Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Marc J. Feder, Esq., and extensive settlement negotiations. This matter has required 461.1 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiffs move for final approval of the Enhancement Payments in the amount of \$7,500.00 to each of them, to compensate Plaintiffs for the time and effort that they expended

¹ Joint Stipulation of Class and PAGA Settlement (“Original Agreement”), § I.Y.

spearheading this lawsuit on behalf of the Settlement Class Members. Plaintiffs also move for final approval of the payment to the Settlement Administrator in the amount of \$10,000.00 for Administration Costs. Plaintiffs also move for final approval of the allocation of \$75,000.00 for the PAGA Penalties, of which \$56,250.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and \$18,750.00 will be part of the Net Settlement Amount that will be distributed to Settlement Class Members who did not submit a timely and valid request to be excluded from the Settlement (“Participating Class Members”).

The requests for Attorneys’ Fees and Litigation Costs, Enhancement Payments, and Administration Costs, and allocation for the PAGA Penalties were fully disclosed in the Notice of Class Action Settlement (“Notice”) that was mailed to the Settlement Class Members. Most importantly, as of the date of this Motion, *not a single Settlement Class Member has objected to any aspect of the Settlement, including the requested Attorneys’ Fees and Litigation Costs, Enhancement Payments, or Administration Costs, or allocation for PAGA Penalties.*

The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length, good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should grant final approval of the Settlement, and award Attorneys’ Fees and Litigation Costs, Enhancement Payments, and Administration Costs, and PAGA Penalties in the amounts as fully disclosed to the Settlement Class Members and as requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Attorneys’ Fees and Litigation Costs, Enhancement Payments, and Administration Costs, and PAGA Penalties, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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1 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2 Defendant Dolls Kill, Inc. is a global online retailer and apparel brand featuring
3 Hawaiian, punk, goth, streetwear and festival styles. Defendant TriNet Group, Inc. is a cloud-
4 based professional employer organization that administers payroll and health benefits. Plaintiffs
5 Nequasha Potts, Marquis Berry, and Tatiana Benjamin are former employees of Defendant Dolls
6 Kill, Inc. Defendant TriNet Group, Inc., provided the outsourced payroll and administrative
7 benefits services to Defendant Doll Kill including processing the payroll for Plaintiffs Nequasha
8 Potts, Marquis Berry, and Tatiana Benjamin.

9 On October 23, 2019, Plaintiffs Nequasha Potts and Marquis Berry, individually, and on
10 behalf of all current and former hourly-paid or non-exempt employees who worked for
11 Defendants within the State of California at any time since October 23, 2015, filed a Class
12 Action Complaint for Damages, thereby commencing the action. The action was filed in the
13 Superior Court of California for the County of San Francisco, Case No. CGC19580228 (the
14 “Action”).

15 Plaintiffs’ core allegation is that Defendants have violated the California Labor Code by
16 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Settlement Class
17 Members, of, *inter alia*, failing to pay minimum and overtime wages, failing to provide
18 compliant meal and rest periods and associated premium pay, failing to timely pay wages and
19 associated waiting time penalties, failing to maintain accurate payroll records, failing to provide
20 compliant wage statements, and failing to reimburse necessary business-related expenses, and
21 thereby engaged in unfair business practices under the California Business and Professions
22 Code.

23 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
24 associated with any of the allegations in the case, and further deny that the case is appropriate
25 for class treatment for any purpose other than for settlement purposes only.

26 The parties have actively litigated the matter since it was commenced October 23, 2019.
27 The parties conducted significant informal discovery, and exchanged a large volume of
28 documents and data. On June 8, 2020, the parties participated in a formal, full-day mediation

1 conducted by Marc J. Feder, Esq., a well-regarded mediator experienced in mediating complex
2 labor and employment matters. After conducting significant informal discovery and
3 investigation into the facts of the case and with the aid of the mediator's evaluation, the parties
4 ultimately reached the Settlement described herein to resolve the case in its entirety.

5 On December 29, 2020, Plaintiffs Potts and Berry filed a Motion for Preliminary
6 Approval of Class Action Settlement and supporting documents. On January 25, 2021, a hearing
7 was held on Plaintiffs' Motion for Preliminary Approval, during which the Court raised certain
8 points of inquiry. On February 16, 2021, Plaintiffs Potts and Berry filed supplemental papers
9 in support of the Motion for Preliminary Approval. On February 22, 2021, the Court entered
10 an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement
11 ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement,
12 the Notice, and the proposed administration procedures and associated deadlines. Pursuant to
13 the Court's Preliminary Approval Order granting leave thereon, Plaintiffs filed a First Amended
14 Class Action and Representative Action Complaint for Damages, adding Tatiana Benjamin as a
15 Plaintiff.

16 Plaintiffs now move for final approval of the Settlement, Attorneys' Fees and Litigation
17 Costs, Enhancement Payments, and Administration Costs, and allocation for PAGA Penalties.

18 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

19 Under the terms of the Settlement Agreement, Defendants have agreed to pay a Gross
20 Settlement Amount of \$400,000.00 on a non-reversionary basis.² Subject to approval by the
21 Court, the Net Settlement Amount will be calculated by deducting the following amounts from
22 the Gross Settlement Amount: (1) Attorneys' Fees and Litigation Costs, consisting of attorneys'
23 fees in the amount of \$140,000.00 and reimbursement of litigation costs and expenses in the
24 amount of \$15,000.00, to Class Counsel; (2) Enhancement Payments in the amount of \$7,500.00
25 each to Plaintiffs Nequasha Potts, Marquis Berry, and Tatiana Benjamin, for a combined amount
26 of \$22,500; and (3) Administration Costs in the amount of \$10,000.00 to Phoenix; and (4)

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² Original Agreement; § I.O.

LWDA Payment in the amount of \$56,250.00.³ The Net Settlement Amount, which is estimated to be \$156,250.00, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.

The Settlement Administrator will calculate each Participating Class Member's share of the Net Settlement Amount ("Individual Settlement Payment"), by calculating the number of weeks each Participating Class Member was credited to have worked for Defendants in California as an hourly-paid or non-exempt employee during the Class Period (excluding leaves of absences and other gaps in employment) ("Eligible Workweeks"), dividing the Net Settlement Amount by the total number of Eligible Workweeks worked by all Participating Class Members during the Class Period ("Weekly Amount") and then multiplying the Weekly Amount by the Participating Class Member's individual number of Eligible Workweeks.⁴

Settlement Class Members had sixty (60) calendar days after the initial mailing of the Notice to Settlement Class Members to dispute the number of Eligible Workweeks credited to each of them, opt out of the Settlement, and/or object to the Settlement ("Response Deadline").⁵ The Response Deadline was May 24, 2021.⁶ The Settlement Administrator has not received any written requests for exclusion from the Settlement ("Requests for Exclusion") or objections to the Settlement ("Objections") from Settlement Class Members.⁷

Individual Settlement Payments will be allocated as twenty-five percent (25%) wages, to be reported on IRS Form W-2; and seventy-five percent (75%) interest and penalties, to be reported on IRS Form 1099 (if applicable).⁸ Individual Settlement Payments will be paid out to Participating Class Members subject to reduction for the employee's and employer's share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Payments, and the net payment is referred to as "Individual Settlement Payment".⁹ Defendants will pay the employer's share of taxes and contributions with respect to the wage

³ *Id.*, §§ I.A, I.C, I.I, I.P, I.Q, & I.R.

⁴ Original Agreement, § I.H, I.Q, I.S & XI.A.

⁵ *Id.*, §§ IV, IX.B, IX.C, & X.

⁶ Phoenix Decl., ¶ 9, Exh. A.

⁷ *Id.*, ¶¶ 9 & 10.

⁸ Original Agreement, § XV.

⁹ *Id.*, § XI.A.

portion (“Employer Taxes”) separately and in addition to the Gross Settlement Amount.¹⁰

Any and all Individual Settlement Payment checks issued to Participating Class Members will remain valid for 180 calendar days from the date of mailing.¹¹ Thereafter, Individual Settlement Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such voided checks will be distributed to the Unclaimed Property Fund maintained by the California State Controller’s Office, in the name of the Participating Class Member to whom the check was issued.¹²

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court’s February 22, 2021 Preliminary Approval Order.

On March 2, 2021, Phoenix received the Court-approved text for the Notice.

On March 9, 2021, Phoenix received a mailing list from Defendants’ counsel that contained the names, last known addresses, Social Security numbers, telephone numbers, and dates of employment as non-exempt employees in California from October 23, 2015 through October 1, 2020 for individuals identified as Settlement Class Members (“Class Data List”).¹³ The Class Data List contained information for 897 individuals identified as Settlement Class Members.¹⁴ Phoenix processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class Data List with any updated addresses located.¹⁵

On March 23, 2021, Phoenix mailed the Notice via first class mail to 897 individuals identified as Settlement Class Members in the Class Data List.¹⁶

As of the date of this Motion, sixty-one (61) Notices were returned as undeliverable without forwarding addresses.¹⁷ Phoenix performed a skip-trace search on the sixty-one (61)

¹⁰ *Id.*, §§ I.J & XI.B.

¹¹ Original Agreement, § XI.C.

¹² *Ibid.*

¹³ Phoenix Decl., ¶ 3.

¹⁴ *Ibid.*

¹⁵ *Id.*, ¶ 5.

¹⁶ Phoenix Decl., ¶ 6.

¹⁷ *Id.*, ¶ 7.

1 Notices that were returned to Phoenix without forwarding addresses, located an updated address
2 for fifty-eight (58) Settlement Class Members, and promptly re-mailed the Notice to the updated
3 addresses.¹⁸ Zero (0) Notices were returned to Phoenix as undeliverable a second time.¹⁹
4 Ultimately, three (3) Notices remain undeliverable because an updated address was not located
5 through skip-tracing or the Notice was returned as undeliverable a second time.²⁰

6 As of the date of this Motion, the Settlement Administrator has not received any
7 Objections or Requests for Exclusion from Settlement Class Members.²¹

8 To date, there are 897 Settlement Class Members who did not submit a timely and valid
9 Request for Exclusion, and are therefore, deemed to be Participating Class Members.²² Pursuant
10 to the terms of the Settlement, the Net Settlement Amount of approximately \$156,250.00 will
11 be distributed to Participating Class Members in accordance with the terms of the Settlement.²³
12 The highest Individual Settlement Payment is currently estimated to be \$1,074.99 and the
13 average Individual Settlement Payment is currently estimated to be \$174.19.

14 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION**
15 **SETTLEMENT.**

16 The trial court has broad discretion to determine whether a class action settlement is fair
17 and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether
18 the settlement is fair and reasonable, courts consider relevant factors such as:

19 the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
20 further litigation, the risk of maintaining class action status through trial, the
21 amount offered in settlement, the extent of discovery completed and the stage of
22 the proceedings, the experience and views of counsel, the presence of a
23 governmental participant, and the reaction of the class members to the proposed
24 settlement.

25 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive
26 and the court is free to engage in a balancing and weighing of the factors depending on the
27 circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

28 ¹⁸ Phoenix Decl., ¶ 7.

¹⁹ *Ibid.*

²⁰ Phoenix Decl., ¶ 9.

²¹ *Id.*, ¶¶ 9 & 10.

²² *Id.*, ¶ 9.

²³ *Id.*, ¶ 12.

“Due regard should be given to what is otherwise a private consensual agreement between the parties.” *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The parties actively litigated the case since it was commenced on October 23, 2019. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification and trial.²⁴ The parties conducted significant informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.²⁵ Class Counsel

²⁴ Declaration of Edwin Aiwazian (“Aiwaizian Decl.”), ¶ 6.

²⁵ Aiwaizian Decl., ¶ 6.

also interviewed and obtained information from Plaintiffs and Settlement Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed a large volume of documents and data produced by Defendants and obtained through other sources.²⁶ The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, employment records of Plaintiffs and other Settlement Class Members, sampling of time records and earning statements, Employee Handbook, Employee Attendance Policy, IWC Wage Order postings, employment agreements, including arbitration agreement exemplars, and Defendants' operations and employment practices, procedures, and policies, among other documents and data.²⁷ Class Counsel researched applicable law, developed damages/valuation models in preparation for mediation, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and production of documents and data prior to mediation.²⁸

After conducting significant informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Marc J. Feder, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.²⁹ Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification and trial, the law relating to off-the-clock theory, meal and rest periods, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁰ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³¹ Arriving at a settlement that was acceptable to the parties was not easy.³² Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to obtain a denial of class certification, while Plaintiffs and Class

²⁶ Aiwazian Decl., ¶ 6.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Id.*, ¶ 8.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

Counsel believed that class certification would be obtained and Plaintiffs would prevail at trial.³³ After conducting significant informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.³⁴

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiffs and other Settlement Class Members.³⁵ Class Counsel also reviewed and analyzed a large volume of documents produced by Defendants and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses, as well as facts discovered.³⁶ The Settlement was based on this large volume of facts, evidence, and investigation.³⁷ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.³⁸

B. The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.

The Settlement, which provides for a Gross Settlement Amount of \$400,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class claims through certification proceedings, trial, and/or appeals.³⁹ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.⁴⁰ Had the action not settled, Defendants would have vigorously challenged class certification and liability. Defendants contended that individualized questions of fact predominate over any common

³³ Aiwazian Decl., ¶ 8.

³⁴ *Ibid.*

³⁵ *Id.*, ¶ 6.

³⁶ *Ibid.*

³⁷ *Id.*, ¶¶ 6 & 8.

³⁸ *Id.*, ¶¶ 15-18.

³⁹ *Id.*, ¶¶ 8 & 21.

⁴⁰ *Id.*, ¶¶ 5-8.

1 issues, and these issues would pose challenges to certification. Defendants would have likely
2 argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide
3 adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class
4 and allowing a jury to decide Plaintiffs' claims on a class-wide basis. Additionally, preparation
5 for trial would have been expensive for all parties.

6 It is preferable to reach an early resolution of a dispute because such resolutions save
7 time and money that would otherwise go to litigation. If this matter had settled after further
8 litigation, the settlement amount would have taken into account the additional costs incurred,
9 and there might have been less money available for Settlement Class Members after all was said
10 and done. This is not just an abstract contention. The risks and expenses of further litigation
11 outweighed any benefit that might have been gained otherwise. These risks of further litigation
12 include a determination that the claims were unsuitable for class treatment, failure to obtain
13 certification, class de-certification after certification of a class, allowing a jury to decide the
14 claims asserted in the case, and the real possibility of no recovery after years of litigation.
15 Additionally, the parties were moving into the phase of the litigation where they would have to
16 conduct a significant amount of additional discovery, including and not limited to, depositions
17 of Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient
18 witnesses, such as managers, supervisors, and other current and former employees throughout
19 the State of California. Discovery disputes would have certainly arisen, which would have cost
20 the parties additional time and money. In contrast, the Settlement provides real and significant
21 benefits for the Settlement Class Members here and now, while avoiding the further expenses,
22 risks, and delay of prolonged litigation with only the possibility of recovery.

23 It would be grossly inefficient for such a large class of current and former employees to
24 bring individual actions to recover from Defendants for the alleged violations of wage-and-hour
25 laws. Moreover, the potential individual recovery that could be obtained by a Settlement Class
26 Member would not be significant enough to provide him or her with the incentive to sue. By
27 granting final approval of the Settlement, the Court can approve a resolution that provides a
28 certain and substantial recovery for Settlement Class Members.

1 **C. The Settlement Is Fair, Reasonable, and Adequate.**

2 The Settlement, which provides for a Gross Settlement Amount of \$400,000.00,
3 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
4 using information and data uncovered through extensive case investigation, informal discovery,
5 and the exchange of information in the context of mediation. The Settlement takes into account
6 the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
7 considering all of the facts in the case, the Gross Settlement Amount represents a considerable
8 recovery.

9 Even after deducting attorneys' fees in the amount of \$140,000.00, litigation costs and
10 expenses in the amount of \$15,000.00, Enhancement Payments in the combined amount of
11 \$22,500.00, and Administration Costs in the amount of \$10,000.00, and LWDA Payment in the
12 amount of \$56,250.00 from the Gross Settlement Amount of \$400,000.00, the Net Settlement
13 Amount is currently estimated to be \$156,250.00.⁴¹ Under the Settlement Agreement, the Gross
14 Settlement Amount will be fully paid out without any reversion to Defendants, in accordance
15 with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class
16 Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of
17 Eligible Workweeks credited to him or her. To date, there are 897 Participating Class Members,
18 representing 100% of the Settlement Class Members.⁴² The highest Individual Settlement
19 Payment to a Participating Class Member is currently estimated to be \$1,074.99 and the average
20 Individual Settlement Payment is currently estimated to be \$174.19.⁴³ These are significant
21 individual recoveries, particularly in light of the risks of litigation.

22 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
23 basis [to warrant approval], particularly if recommended by experienced and competent class
24 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
25 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to
26 distribute the Net Settlement Amount. In light of the above considerations, Class Counsel

27
28 ⁴¹ Phoenix Decl., ¶ 12.

⁴² *Id.*, ¶ 9.

⁴³ *Id.*, ¶ 13.

believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Settlement Class Members.⁴⁴ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁴⁵ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁴⁶ Both parties' counsel were capable of assessing the strengths and weaknesses of the Settlement Class Members' claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Settlement Class—***not a single Settlement Class Member objected to or opted out of the Settlement.***⁴⁷ Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys' Fees and Litigation Costs, Enhancement Payments, or Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair,

⁴⁴ Aiwazian Decl., ¶ 21.

⁴⁵ *Id.*, ¶¶ 15-18.

⁴⁶ *Ibid.*

⁴⁷ Phoenix Decl., ¶¶ 9 & 10.

reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

VI. THE ATTORNEYS' FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

A. Legal Standard for Attorneys' Fees in a Class Action Settlement.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao, supra*, 82 Cal.App.4th at 49.

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao, supra*, 82 Cal.App.4th at 53.

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175

Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

B. A Fee Award of a Percentage of the Entire Fund Is Appropriate.

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁴⁸ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, *supra*, 557 F.2d at 769.

⁴⁸ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 When a litigant's efforts result in a settlement from which others may derive benefits,
2 the litigant may require the passive beneficiaries to compensate those whose efforts brought
3 about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-
4 7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of
5 the other parties enjoying the benefit of the settlement). Both state and federal courts have
6 embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17
7 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

8 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
9 settlement that has, by litigation, been preserved or recovered for the benefit of others, has been
10 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The
11 California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a
12 lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar
13 cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]"
14 and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted).

15 Courts have consistently recognized that class and representative action litigation is
16 increasingly necessary to protect the rights of individuals whose injuries and/or damages are too
17 small to economically justify legal action on an individual basis. Accordingly, in determining
18 a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to
19 pursue such litigation in order to achieve increased access to the judicial system for meritorious
20 claims and to enhance deterrents to wrongdoing. This is especially true in situations where
21 multiple similar alleged wrongs would not be economically feasible to pursue individually, such
22 as here. See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

23 When the case was originally filed, not only was it inescapably contingent, but the
24 prospect of a long, drawn-out battle with defendants represented by experienced counsel, was
25 almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked
26 substantial economic loss if the results were not successful. This substantial risk is the reason
27 that the courts approve the use of the percentage method when a settlement is obtained by the
28

1 efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49
2 (discussing the risks of engaging in litigation without certainty of compensation).

3 Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement
4 Amount of \$400,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-
5 five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's
6 successful prosecution and resolution of the case, the requested attorneys' fees are appropriate
7 and reasonable.

8 Compensating class counsel in class litigation on a percentage basis makes good sense
9 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
10 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
11 class members in achieving the maximum possible resolution of the case; and (3) it encourages
12 the most efficient and expeditious resolution of the litigation by providing an incentive for early,
13 yet reasonable, settlement. The requested attorneys' fees in this matter satisfy all of those factors
14 and should be approved on a percentage basis.

15 The percentage method is consistent with, and is intended to mirror, the practice in the
16 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
17 arrangements with their clients. Named plaintiffs' agreement to pay a contingent fee is powerful
18 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work
19 to the class is to review the consideration agreed to be paid by the named plaintiffs. If the named
20 plaintiffs' have employed counsel on a contingency-fee basis, it would indeed be inequitable for
21 the members of the class, who will enjoy the benefits of the settlement without incurring the
22 risks of bringing the claim, to pay less than the named plaintiffs. In this case, Plaintiffs have
23 agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁴⁹

24 Furthermore, a percentage-fee award is not dependent on a determination of the actual
25 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
26 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
27 equitable that [the attorney’s] compensation and expenses should come from the entire fund
28

⁴⁹ Aiwazian Decl., ¶ 9.

1 saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.*
2 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may
3 be calculated on the basis of the total fund made available rather than the actual payments made
4 to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a
5 litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or
6 his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

7 In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining
8 reasonable attorneys’ fees, the Court of Appeal valued a settlement based on the total value of
9 the settlement made available to class members by the efforts of counsel, decided in favor of
10 granting fees as a percentage of the total value of the settlement, and rejected an objection that
11 the fees be awarded based on the exact amount claimed by class members. *Id.* at 247.

12 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and the
13 Settlement Class Members, and the results achieved justify an attorneys’ fees award that is the
14 equivalent of the standard market fee and that is consistent with the contingency-fee agreement
15 entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorneys’ fees
16 are appropriate.

17 **C. The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based**
18 **on the Factors Considered in Determination of Fee Awards.**

19 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve
20 factors to be considered in determining whether fee awards are reasonable: (1) the time and labor
21 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
22 the legal services properly; (4) the preclusion of other employment by the attorney due to the
23 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
24 limitation imposed by the client or the circumstances; (8) the amount involved and results
25 obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the
26 case; (11) the nature and length of the professional relationship with the client; and (12) awards
27 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
28 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$140,000.00 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Settlement Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Settlement Class Members. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁰

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of this case.⁵¹ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and their operations and employment policies, practices, and procedures.⁵² During the litigation of the action, Class Counsel interviewed Plaintiffs and other Settlement Class Members; reviewed and analyzed a large volume of pages of documents and data produced by Defendants and obtained through other sources; and prepared damages/valuation calculations.⁵³ Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, case management, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendants' counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁵⁴

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the

⁵⁰ Aiwasian Decl., ¶¶ 15-18.

⁵¹ Aiwasian Decl., Exh. A.

⁵² Aiwasian Decl., ¶ 6 & Exh. A.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwasian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiffs and the Settlement Class Members.⁵⁵ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **461.1** hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Settlement Class Members.⁵⁶ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendants retained well-respected counsel to represent their defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwasian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁵⁷

⁵⁵ Aiwasian Decl., Exh. A.

⁵⁶ Aiwasian Decl., ¶ 11.

⁵⁷ *Id.*, ¶¶ 15-18.

1 **3. *The Value of the Settlement for the Settlement Class Members.***

2 The Settlement represents an excellent resolution of the action, given the risks inherent
3 in litigating the case through certification proceedings, trial, and/or appeals. Had the case not
4 settled, Defendants would have vigorously challenged certifiability and liability. Defendants,
5 however, faced risks if the Court certified a class and allowed a jury to decide the claims.
6 Additionally, preparing the case for trial would have been expensive for the parties.

7 The Settlement at this stage is preferred over continued litigation because such
8 resolutions save time and money that would otherwise go to litigation. The risks and expenses
9 of further litigation outweighed any benefit that might have been gained otherwise. The
10 Settlement provides an immediate recovery, as opposed to an uncertain result in the future after
11 prolonged litigation involving expert discovery, trial preparation, class certification
12 proceedings, and appellate review of those proceedings. The Settlement offers present relief
13 and/or recovery to Participating Class Members while avoiding the further expense, risk, and
14 delay in obtaining possible recovery at an unknown time in the future.

15 As a result of this litigation and extensive settlement negotiations, Defendants agreed to
16 pay a Gross Settlement Amount of \$400,000.00 to settle the matter. After deducting the
17 attorneys' fees (\$140,000.00), litigation costs and expenses (\$15,000.00), Enhancement
18 Payments (combined, \$22,500.00), and Administration Costs (\$10,000.00), and LWDA
19 Payment (\$56,250.00) from the Gross Settlement Amount, it is currently estimated that the Net
20 Settlement Amount is approximately \$156,250.00.⁵⁸ The Net Settlement Amount will be fully
21 distributed in accordance with the terms of the Settlement. The highest Individual Settlement
22 Payment to a Participating Class Member is currently estimated to be \$1,074.99 and the average
23 Individual Settlement Payment is currently estimated to be \$174.19.⁵⁹ The Settlement offers
24 significant monetary relief to the Participating Class Members.

25 **4. *Whether the Fee Is Fixed or Contingent.***

26 Plaintiffs entered into contingency fee agreements with Class Counsel, and the
27

28 ⁵⁸ Phoenix Decl., ¶ 12.

⁵⁹ *Id.*, ¶ 13.

representation of the Settlement Class Members provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 461.1 hours of time to obtain relief on behalf of Plaintiffs and the Settlement Class.⁶⁰ Class Counsel has also incurred litigation costs and expenses in the amount of \$15,000.00.⁶¹

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶² Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶³ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Litigation Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

In determining the reasonableness of a fee award in a class action settlement, whether or not representation is provided on a contingency basis is an important factor:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel has devoted to litigating the case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response

⁶⁰ Aiwasian Decl., ¶ 11, Exh. A.

⁶¹ See Part VII, *infra*.

⁶² Aiwasian Decl., ¶ 19.

⁶³ See *id.*, ¶¶ 15-18.

from the Settlement Class Members—no Settlement Class Members objected to or opted out of the Settlement.⁶⁴

The court in *Camden* noted that, “a key element of the common fund case is that fees are [...] taken from the fund [...] and a common fund is itself the measure of success ... [and] represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

Here, the results achieved and obtained on behalf of Plaintiffs and the Settlement Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$400,000.00.⁶⁵ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$1,074.99 and the average Individual Settlement Payment is currently estimated to be \$174.19.⁶⁶

6. *The Reputation and Ability of the Attorneys.*

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’ knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁶⁷

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining

⁶⁴ Phoenix Decl., ¶¶ 9 & 10.

⁶⁵ Aiwasian Decl., ¶¶ 5-8.

⁶⁶ Phoenix Decl., ¶ 13.

⁶⁷ Aiwasian Decl., ¶¶ 15-18.

that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, *supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum*, *supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1. The Number of Hours Spent on the Litigation was Reasonable.

The reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that they disputed all of the allegations of the case and disputed that the matter was appropriate for class treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendants but also from the Settlement Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendants’ Person Most Knowledgeable designees, percipient witnesses, and experts, propounding discovery requests and conducting additional document production, and engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through mediation.

Class Counsel had to bring together a large volume of data and documents that were produced by Defendants and obtained from Plaintiffs and Settlement Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the action and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Settlement Class Members, and the time required for completing those tasks.⁶⁸ The chart demonstrates that Class Counsel has spent a total of 461.1 hours litigating the case and finalizing the Settlement.⁶⁹ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiffs and the Settlement Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel's Efforts and Experience.

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum*, *supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id.*

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of

⁶⁸ See Aiwasian Decl., Exh. A.

⁶⁹ Aiwasian Decl., ¶ 11.

its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$400,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$550 per hour for services provided by Class Counsel.⁷⁰ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$550 for legal service performed, by courts of this state.⁷¹ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Settlement Class Members justify the requested attorneys' fees.

Applying the rate of \$550 per hour to 461.1 hours would place a reasonable value of \$253,605.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$140,000.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the

⁷⁰ Aiwazian Decl., ¶ 12.

⁷¹ For example, final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; approval of the Private Attorneys General Act settlement in *Roberta Robles v. Altamed Health Services Corporation* (Los Angeles County Superior Court Case No. BC639623) was granted on October 31, 2018, and the award of attorneys' fees involved a higher hourly rate of \$602.22; final approval of the class and representative action settlement in *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved a higher hourly rate of \$600; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; final approval of the class and representative action settlement in *Elizabeth Ortiz, et al. v. Ghirardelli Chocolate Company* (Alameda County Superior Court Case No. RG15764300) was granted on July 19, 2017; final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64; and final approval of the class and representative action settlement in *Kevin Coonce v. Ferguson Enterprises, Inc.* (Sacramento County Superior Court Case No. 34-2021-00136285) was granted on May 22, 2014, and the award of attorneys' fees involved a higher hourly rate of \$625. Aiwazian Decl., ¶ 12.

established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys’ fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$140,000.00 to Class Counsel.

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for reimbursement of litigation costs and expenses of up to \$15,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$15,000.00 in litigation costs and expenses.⁷² This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁷³ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$15,000.00 to Class Counsel.

VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$10,000.00.⁷⁴ The

⁷² Aiwazian Decl., ¶ 19.

⁷³ *Ibid.*

⁷⁴ Phoenix Decl., ¶ 14.

costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing/e-mailing the Notice to the Settlement Class Members; performing skip-trace searches on Notices returned as undeliverable; re-mailing the Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Eligible Workweeks disputes (if any); handling inquiries from Settlement Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁷⁵

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$10,000.00.

IX. THE REQUESTED ENHANCEMENT PAYMENTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for Enhancement Payments in the amount of \$7,500.00 each to Plaintiffs Nequasha Potts, Marquis Berry, and Tatiana Benjamin to compensate Plaintiffs for the time and effort that they expended on behalf of the Settlement Class Members. The requested Enhancement Payments are both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Enhancement Payments are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the

⁷⁵ *Id.*, ¶ 3.

allegations.⁷⁶ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Settlement Class.⁷⁷ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendants, and gathering and reviewing documents.⁷⁸ These services merit the requested Enhancement Payments to Plaintiffs, who have not received any compensation for their efforts on behalf of the Settlement Class Members to date.⁷⁹

The requested Enhancement Payments were fully disclosed in the Notice that was mailed to the Settlement Class Members. No objections were made with regards to the requested Enhancement Payments. Accordingly, it is appropriate and just for Plaintiffs Nequasha Potts, Marquis Berry, and Tatiana Benjamin to each receive \$7,500.00 as reasonable Enhancement Payments, in addition to their Individual Settlement Payments, for their services on behalf of the Settlement Class Members.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Attorneys' Fees and Litigation Costs, Enhancement Award, Settlement Administration Fees, and allocation for the PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: June 9, 2021

LAWYERS for JUSTICE, PC

By:


Edwin Aiwarzian
Attorneys for Plaintiff and the Class

⁷⁶ Aiwarzian Decl., ¶ 20; Declaration of Nequasha Potts in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Potts Decl."), ¶ 4; Declaration of Marquis Berry in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Berry Decl."), ¶ 4; and Declaration of Tatiana Benjamin in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Benjamin Decl."), ¶ 4.

⁷⁷ Aiwarzian Decl., ¶ 20; Potts Decl., ¶¶ 3-6; Berry Decl., ¶¶ 3-6; and Benjamin Decl., ¶¶ 3-6.

⁷⁸ Aiwarzian Decl., ¶ 20; Potts Decl., ¶¶ 2-6; Berry Decl., ¶¶ 2-6; and Benjamin Decl., ¶¶ 2-6.

⁷⁹ Potts Decl., ¶ 8; Berry Decl., ¶ 8; and Benjamin Decl., ¶ 8.