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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO

IGNACIO PEREZ, and LISZANDRA
PADILLA, individually, and on behalf of other
members of the general public similarly
situated; and KAREN RIOS, individually, and
on behalf of other members of the general
public similarly situated, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

vs.

COMMUNICARE HEALTH CENTERS, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CV-2019-469

Honorable Timothy Fall
Department 11

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Ignacio Perez, Liszandra
Padilla, and Karen Rios); Declaration of
Settlement Administrator (Jarrod Salinas);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: May 17, 2023
Time: 9:00 a.m.
Department: 11

Complaint Filed: March 7, 2019
FAC Filed: June 4, 2019
SAC Filed: September 5, 2019
TAC Filed: December 12, 2019
FAC Filed: June 28, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 17, 2023, at 9:00 a.m., in Department 11 of the
2 above-entitled Court, located at 1000 Main Street, Woodland, California 95695, Plaintiffs Ignacio
3 Perez, Liszandra Padilla, and Karen Rios (“Plaintiffs”) will and hereby do move for an order
4 granting final approval of:

5 1. The Amended Joint Stipulation of Class Action and PAGA Settlement
6 (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is
7 fair, adequate, and reasonable because:

- 8 • A Net Settlement Fund of approximately **\$197,138.14** will be fully distributed to the
9 Class Members who do not opt out of the Settlement (“Settlement Class Members”);
- 10 • **No Objections** were submitted to the settlement administrator, Phoenix Settlement
11 Administrators (“Settlement Administrator”);
- 12 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$262,500.00** to Lawyers for Justice, PC (“Class
14 Counsel”), representing approximately thirty-four percent (34.20%) of the Maximum Settlement
15 Amount, for attorneys’ fees, which is reasonable and justified on a percentage-basis;

16 3. Payment in the amount of **\$17,361.86** to Class Counsel for reimbursement of
17 litigation costs and expenses;

18 4. Payment in the amount of **\$8,000.00** to the Settlement Administrator, Phoenix
19 Settlement Administrators (“Phoenix”), for Administration Costs;

20 5. Payments in the amount of **\$7,500.00** each to Plaintiffs Ignacio Perez and Karen
21 Rios, and **\$2,500.00** to Plaintiff Liszandra Padilla, as Enhancement Payments, for their time and
22 effort in representing the Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of \$65,000.00, of which seventy-five
25 percent (75%), or **\$48,750.00**, will be paid to the California Labor and Workforce Development
26 Agency (“LWDA”) and twenty-five percent (25%), or **\$16,250.00**, will be part of the Net
27 Settlement Fund for distribution to the Settlement Class Members who worked for Defendant
28 during the PAGA Period.

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declaration of Class Counsel (Edwin Aiwasian), Class Representatives (Ignacio Perez, Liszandra
6 Padilla, and Karen Rios), and Settlement Administrator (Jarrod Salinas of Phoenix) in support
7 thereof; the pleadings and other records on file with the Court in this matter; and such evidence
8 and oral argument as may be presented at the hearing on this Motion.

9 Dated: April 25, 2023

LAWYERS for JUSTICE, PC

10
11 By:



Annabel Blanchard
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Ignacio Perez, Lizardra Padilla, and Karen Rios (“Plaintiffs”) seek final approval of: (1) the Maximum Settlement Amount of \$767,500.00; (2) attorneys’ fees in the amount of \$262,500.00, which is approximately thirty-four percent (34.20%) of the Maximum Settlement Amount (“Attorneys’ Fees”), and reimbursement of litigation costs and expenses in the amount of \$17,361.86 (“Litigation Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Administration Costs in the amount of \$8,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payments in the amount of \$7,500.00 each to Plaintiffs Ignacio Perez and Karen Rios, and \$2,500.00 to Plaintiff Lizardra Padilla, for a combined amount of \$17,500.00; and (5) allocation of \$65,000.00 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 Class:

All current and former hourly-paid or non-exempt employees (excluding licensed clinicians) who worked for Defendant within the State of California at any time during the Class Period (“Class” or “Class Members”).¹

This case involved ongoing investigations, significant motion practice, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Lynn S. Frank, Esq., and extensive follow-up discussions and settlement negotiations thereafter. This matter has required 566.30 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents approximately thirty-four and two-tenths percent (34.20%) of the Maximum 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.

¹ Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), ¶ I.D. “Class Period,” means the period from March 7, 2015 through January 1, 2021. *See id.*, ¶ I.E.

1 Plaintiffs move for final approval of the Enhancement Payments in the amount of
2 \$7,500.00 each to Plaintiffs Ignacio Perez and Karen Rios, and \$2,500.00 to Plaintiff Liszandra
3 Padilla, to compensate Plaintiffs for the time and effort that they expended spearheading this
4 lawsuit on behalf of the Class. Plaintiffs also move for final approval of the payment to the
5 Settlement Administrator in the amount of \$8,000.00 for Administration Costs. Plaintiffs also
6 move for final approval of the allocation of \$65,000.00 for the PAGA Penalties, of which
7 \$48,750.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its
8 portion of the PAGA Penalties (“LWDA Payment”), and \$16,250.00 will be part of the Net
9 Settlement Fund that will be distributed to Class Members who do not opt out of the Settlement
10 (“Settlement Class Members”) who worked for Defendant during the period from September 29,
11 2019 through January 1, 2021 (“PAGA Period”).²

12 The requests for Attorneys’ Fees, Litigation Costs, Enhancement Payments,
13 Administration Costs, and allocation for the PAGA Penalties were fully disclosed in the Notice of
14 Proposed Class Action Settlement and Workweeks Dispute Form (together, “Notice Packet”) that
15 was mailed to the Class Members. Most importantly, as of the date of this Motion, *not a single*
16 *Class Member has objected to or requested exclusion from any aspect of the Settlement, including*
17 *the requested Attorneys’ Fees, Litigation Costs, Enhancement Payments, Administration Costs, or*
18 *allocation for PAGA Penalties.*

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

25 In order to efficiently present the Court with adequate information to determine whether to
26 grant final approval of the Settlement and award Attorneys’ Fees, Litigation Costs, Enhancement
27 Payments, Administration Costs, and PAGA Penalties, Plaintiffs also move for an order permitting

28 ² Settlement Agreement, ¶ I.R.

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.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Communicare Health Centers (“Defendant”) is a Federally Qualified Health Center headquartered in Davis, California. Defendant’s services include primary medical and dental health care, and behavioral health services, among other health services. Plaintiffs Ignacio Perez, Lyszandra Padilla, and Karen Rios are former employees of Defendant.

On March 7, 2019, Plaintiff Ignacio Perez (“Plaintiff Perez”) filed a Class Action Complaint for Damages in the Yolo County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“*Perez Action*”). The Complaint alleged: (1) failure to pay overtime pursuant to Labor Code sections 510 and 1198; (2) failure to provide meal period premiums in violation of sections 226.7 and 512(a); (3) failure to provide rest period premiums in violation of section 226.7; (4) failure to pay minimum wages pursuant to sections 1194, 1197, and 1197.1; (5) failure to timely pay wages upon termination in violation of sections 201 and 202; (6) failure to timely pay wages during employment in violation of section 204; (7) failure to provide accurate and itemized wage statements in violation of section 226(a); (8) failure to keep requisite payroll records in violation of section 1174(d); (9) failure to reimburse business expenses in violation of sections 2800 and 2802; and (10) violations of California Business and Professions Code §§ 17200 *et seq.*

On June 4, 2019, Plaintiff Perez filed a First Amended Class Action Complaint for Damages. On July 9, 2019, Defendant filed a Demurrer, arguing that Plaintiff Perez’s First Amended Complaint failed to state a cause of action against Communicare Health Centers. Defendant’s Demurrer was sustained with leave to amend on August 8, 2019.

On September 5, 2019, Plaintiff Perez filed a Second Amended Class Action Complaint for Damages. On November 12, 2019, Defendant filed a Motion to Strike portions of Plaintiff Perez’s Second Amended Class Action Complaint for Damages and filed a Demurrer arguing that the Complaint failed to state facts sufficient to constitute a cause of action for any of its claims. On November 26, 2019, the Court granted Defendant’s Motion to Strike in part, including granting

1 the motion to strike the seventh cause of action without leave to amend. The Court overruled
2 Defendant's Demurrer as to the first, second, third, fourth, fifth, sixth, ninth, and tenth causes of
3 action.

4 On December 12, 2019, Plaintiff Perez filed a Third Amended Class Action Complaint for
5 Damages, which removed claims for: (1) failure to provide accurate and itemized wage statements
6 in violation of section 226(a); and (2) failure to keep requisite payroll records in violation of section
7 1174(d). Defendant filed an answer to Plaintiff Ignacio Perez's Third Amended Complaint on
8 January 10, 2020.

9 On December 7, 2020, Plaintiff Karen Rios filed her Complaint for Enforcement Under the
10 Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* alleging violations of the
11 California Labor Code for: failure to pay overtime wages; failure to provide meal and rest periods;
12 failure to pay minimum wages; failure to timely pay wages during employment and upon
13 termination; failure to provide complete and accurate wage statements; failure to keep requisite
14 payroll records; and failure to reimburse business expenses ("Rios Action").

15 On December 8, 2021, the Court ordered the *Perez* Action and *Rios* Action consolidated
16 for purposes of settlement approval and entry of judgment thereon, and designated the *Perez*
17 Action, Yolo County case number CV-2019-469, as the lead case.

18 On June 17, 2022 Plaintiffs Ignacio Perez and Karen Rios sought leave of the Court to file
19 a Fourth Amended Class Action Complaint for Damages & Enforcement Under the Private
20 Attorneys General Act, California Labor Code § 2698 *Et Seq.* and, having been granted leave to
21 amend the complaint, on June 28, 2022 Plaintiffs Ignacio Perez, Lizardra Padilla and Karen Rios
22 filed a Fourth Amended Class Action Complaint for Damages & Enforcement Under the Private
23 Attorneys General Act, California Labor Code § 2698 *Et Seq.*

24 Plaintiffs' core allegation is that Defendant has violated the California Labor Code by
25 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
26 of, *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant meal and
27 rest periods and associated premium pay, failing to timely pay wages during employment and upon
28 termination of employment, and failing to reimburse necessary business-related expenses, and

thereby engaged in unfair business practices under the California Business and Professions Code section 17200, *et seq.*, and conduct that gives to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties, (including but not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the case, and further denies that the case is appropriate for class or representative treatment for any purpose other than for settlement purposes only.

The Parties have actively litigated the matter since the *Perez* Action was commenced March 7, 2019. The parties conducted significant formal and informal discovery and exchanged a large volume of information, documents, and data. Class Counsel served multiple sets of formal written discovery requests which were propounded on Defendant (including and not limited to Requests for Production of Documents, Special Interrogatories, and Form Interrogatories), and served Notices of Deposition of Defendant's Person Most Knowledgeable Designees, along with requests for production of documents. On June 23, 2020, the parties participated in a formal, full-day mediation conducted by Lynn S. Frank, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. After conducting significant formal and informal discovery and investigation into the facts of the case and with the aid of the mediator's evaluation, the parties ultimately reached the Settlement described herein to resolve the case in its entirety.

On October 18, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On November 30, 2022, a hearing was held on Plaintiffs' Motion for Preliminary Approval and, on November 30, 2022, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice, and the proposed administration procedures and associated deadlines.

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

///

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$767,500.00. Subject to approval by the Court, the Net Settlement Fund will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees, in the amount of \$262,500.00; (2) and reimbursement of litigation costs and expenses in the amount of \$17,361.86, to Class Counsel; (3) Enhancement Payments in the amount of \$7,500.00 each to Plaintiffs Ignacio Perez and Karen Rios, and \$2,500.00 to Plaintiff Liszandra Padilla, for a combined amount of \$17,500.00; (4) Administration Costs in the amount of \$8,000.00 to Phoenix; (5) PAGA Penalties in the amount of \$65,000.00; and (6) the amount of Two Hundred Thousand Dollars (\$200,000.00) that Defendant has already paid to certain Class Members ("Prior Payment Credit").³ The Net Settlement Fund, which is estimated to be \$197,138.14, will be distributed in accordance with the Settlement Agreement.⁴

The Settlement Administrator will calculate each Settlement Class Member's share of the available Net Settlement Fund ("Individual Class Share") as follows: 61.85% of the Net Settlement Fund will be allocated to all Settlement Class Members who have not previously signed a settlement agreement with Defendant or cashed a settlement check from Defendant to release claims in either or both the *Rios* Action and/or the *Perez* Action ("Unpaid Settlement Class Members"), based on the number of weeks that an Unpaid Settlement Class Member worked for Defendant as an hourly-paid or non-exempt employee (excluding time as a licensed clinician), as determined by the dates of employment in the Class List that Defendant provides to the Settlement Administrator ("Workweeks") during the Class Period.⁵ This 61.85% portion of the Net Settlement Fund shall be divided by the total number of Workweeks worked by all Unpaid Settlement Class Members during the Class Period in order to establish the "Unpaid Workweek Point Value." Each

³ Settlement Agreement, ¶¶ I.B, I.H, I.A, I.Q and I.V.

⁴ This amount is higher than the amount stated in Paragraph 13 of the accompanying Declaration of Jarrod Salinas of Phoenix Settlement Administrators Regarding Notice and Settlement Administration ("Phoenix Declaration" or "Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$17,361.86 for reimbursement of litigation costs and expenses, and the difference of \$7,638.14 will remain part of the Net Settlement Fund.

⁵ Settlement Agreement, ¶¶ I.BB and XIV.4.i.

Unpaid Settlement Class Member's Workweeks during the Class Period will then be multiplied by the Unpaid Workweek Point Value to derive his or her Individual Class Share.⁶

Additionally, 38.15% of the Net Settlement Fund will be allocated to all Settlement Class Members who have previously signed a settlement agreement with Defendant or cashed a settlement check from Defendant to release claims in either or both the *Rios* Action and/or the *Perez* Action ("Paid Settlement Class Members"), based on their Workweeks during the Class Period.⁷ Specifically this portion of the Net Settlement fund shall be divided by the total number of Workweeks worked by all Paid Settlement Class Members during the Class Period in order to establish the "Paid Workweek Point Value." Each Paid Settlement Class Member's Workweeks during the Class Period will then be multiplied by the Paid Workweeks Point Value to derive his or her Individual Class Share.⁸

The 25% portion of the PAGA Penalties (i.e., \$16,250.00) dedicated to aggrieved employees shall be distributed to all Settlement Class Members who worked for Defendant during the PAGA Period, regardless of whether they have received a prior settlement check from Defendant, based on Workweeks during the PAGA Period. Specifically, the 25% of the PAGA Penalties shall be divided by the total number of Workweeks worked by all Settlement Class Members during the PAGA Period in order to establish the "PAGA Workweek Point Value."⁹ Each Settlement Class Member's Workweeks during the PAGA Period will then be multiplied by the PAGA Workweek Point Value to derive his or her Individual PAGA Share.¹⁰

Class Members had sixty (60) calendar days after the initial mailing of the Notice Packet to Class Members to submit a Request to be Excluded, Objection, and/or Workweeks Dispute ("Response Deadline").¹¹ The Response Deadline was April 10, 2023.¹² The Settlement

⁶ Settlement Agreement, ¶¶ I.BB and XIV.4.i.

⁷ *Id.*, ¶ XIV.4.ii.

⁸ *Ibid.*

⁹ *Id.*, ¶ XIV.3.

¹⁰ *Ibid.*

¹¹ *Id.*, ¶ I.W.

¹² Phoenix Decl., ¶¶ 8, 9, 10, Exh. A.

1 Administrator has not received any written requests for exclusion from the Settlement (“Request
2 to be Excluded”) or objections to the Settlement (“Objections”) from Class Members.¹³

3 The Individual Class Shares shall be deemed thirty-three percent (33%) as wages to be
4 reported on IRS Form W-2; and sixty-seven percent (67%) as penalties and interest to be reported
5 on IRS Form 1099 (if applicable).¹⁴ Settlement Class Members will be issued payment of their
6 Individual Class Share subject to reduction for the employee’s share of taxes and withholding with
7 respect to the wage portion of Individual Class Share.¹⁵ Individual PAGA Shares will be allocated
8 as one hundred percent (100%) penalties (to be reported on IRS Form 1099).¹⁶ The combined net
9 payment of each Settlement Class Member’s Individual Class Share (after reduction for the
10 employee’s share of taxes on the wage portion) and Individual PAGA Share (if applicable) is
11 referred to as their “Individual Settlement Payment.”¹⁷

12 Individual Settlement Payment checks issued to Settlement Class Members will remain
13 valid and negotiable for 180 calendar days from the date the checks are issued, and thereafter, shall
14 be cancelled.¹⁸ The funds associated with any Individual Settlement Payment checks remaining
15 uncashed after one hundred and eighty (180) calendar days of mailing shall be paid to Legal
16 Services of Northern California.¹⁹

17 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

18 The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to
19 effectuate the notice and settlement administration process, as set forth in the Court’s November
20 30, 2022 Preliminary Approval Order.

21 On January 31, 2023, Phoenix received a mailing list from Defendant’s counsel that
22 contained the following information for each Class Member: (1) full name; (2) last known home
23 address; (3) last known telephone number; (4) dates of employment with Defendant as an hourly-
24 paid or non-exempt employee; (5) Social Security number; (6) the number of Workweeks worked

25 ¹³ Phoenix Decl., ¶¶ 8 & 9.

26 ¹⁴ Settlement Agreement, ¶ XV.C.

27 ¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

28 ¹⁸ *Id.*, ¶ XIV.C.2.

¹⁹ Ibid.

1 during the Class Period; (7) the number of Workweeks worked during the PAGA Period; and (8)
2 whether or not the Class Member signed a settlement agreement or cashed a settlement check from
3 Defendant (“Class List”).²⁰ The Class List contained information for 454 individuals identified as
4 Class Members.²¹ Phoenix processed the names and addresses through the National Change of
5 Address Database (“NCOA”) and updated the Class List with any updated addresses located.²²

6 On February 9, 2023, Phoenix mailed the Notice Packet via first class mail to 454
7 individuals identified as Class Members in the Class List.²³

8 As of the date of this Motion, nineteen (19) Notices were returned as undeliverable without
9 forwarding addresses.²⁴ Phoenix performed a skip-trace search on the nineteen (19) Notices that
10 were returned to Phoenix without forwarding addresses, located an updated address for eighteen
11 (18) Class Members, and promptly re-mailed the Notice to the updated addresses.²⁵ None of the
12 re-mailed Notices were returned to Phoenix as undeliverable a second time.²⁶ Ultimately, one (1)
13 Notice remains undeliverable because an updated address was not located through skip-tracing.²⁷

14 One individual who was included in the Class List submitted a Workweeks Dispute form,
15 but the Class Member was not disputing the number of Workweeks to which she had been credited,
16 she was instead clarifying that she had not signed any prior Settlement Agreement with
17 Defendant..²⁸

18 As of the date of this Motion, the Settlement Administrator has not received any Objections
19 or Requests to be Excluded from Class Members.²⁹

20 To date, there are 454 Class Members who did not submit a timely and valid Request to be
21 Excluded, and are therefore, deemed to be Settlement Class Members.³⁰ Pursuant to the terms of
22 the Settlement, the Net Settlement Fund of approximately \$197,138.14 will be distributed to
23

24 ²⁰ Phoenix Decl., ¶ 3, Settlement Agreement, ¶ XII. A. 2.

²¹ Phoenix Decl., ¶ 3.

²² *Id.*, ¶ 4.

²³ *Id.*, ¶ 5.

²⁴ *Id.*, ¶ 6.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.*, ¶ 7.

²⁸ *Id.*, ¶ 10.

²⁹ *Id.*, ¶¶ 8 & 9.

³⁰ *Id.*, ¶ 11.

Settlement Class Members in accordance with the terms of the Settlement.³¹ The highest Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$501.43 and the average Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$198.07.³² The highest Individual Class Share to an Unpaid Settlement Class Member is currently estimated to be \$6,667.33 and the average Individual Class Share to an Unaid Settlement Class Member is currently estimated to be \$1,316.92.³³ The highest Individual PAGA Share to a Settlement Class Member is currently estimated to be \$99.33 and the average Individual PAGA Share is currently estimated to be \$67.99.³⁴

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

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

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

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

³¹ Phoenix Decl., ¶ 13; see also, n.4, *supra*.

³² *Id.*, ¶ 14. The actual average and highest Individual Class Share to a Paid Settlement Class Member will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Fund is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, \$7638.14, will be part of the Net Settlement Fund). See n.4, *supra*.

³³ Phoenix Decl., ¶ 15. The actual average and highest Individual Class Share to an Unpaid Settlement Class Member will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Fund is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, \$7638.14, will be part of the Net Settlement Fund). See n.4, *supra*.

³⁴ *Id.*, ¶ 16

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 Action since it was commenced on March 7, 2019. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification, representative adjudication, and trial, prior to reaching Settlement.³⁵ The parties conducted significant formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.³⁶ Class Counsel served multiple sets of written discovery requests which were propounded on Defendant (including but not limited to requests for production of documents, special interrogatories, and form interrogatories), and several notices of deposition of Defendant’s

³⁵ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³⁶ Aiwazian Decl., ¶ 6.

1 person most knowledgeable designees, along with request for production of documents; reviewed
2 Defendant's responses and supplemental responses thereto; and prepared and served numerous
3 deposition notices.³⁷ Class Counsel also had the opportunity to interview and obtain information
4 from Plaintiffs and other Class Members, and reviewed and analyzed a large volume of
5 information, documents and data obtained from Plaintiffs, Defendant, and other sources.³⁸ The
6 documents and data reviewed and analyzed by Class Counsel included, and were not limited to,
7 employment records of Plaintiffs and other Class Members, a detailed sampling of Class Members'
8 time and pay data, company policy acknowledgments, job descriptions, new hire information
9 checklists, termination checklists, employee evaluations, Defendant's confidential financial
10 information (including but not limited to operating budgets, financial statements, and balance
11 sheets), agreements (including but not limited to, multiple signed Arbitration Agreements and prior
12 Settlement and Release Agreements with individual employees, along with check stubs evidencing
13 payment under prior settlement agreements), Defendant's operations and employment practices,
14 policies, and procedures documents, among other information, documents and data.³⁹ Class
15 Counsel researched applicable law, developed liability, damages, and penalties valuation models
16 in connection with mediation and settlement negotiations, and met and conferred with Defendant's
17 counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, motion
18 practice, and production of information, documents and data in the course of litigation and in
19 connection with mediation and settlement negotiations. Class Counsel also drafted pleadings,
20 extensive motion-related papers, and the mediation brief, prepared for and attended court
21 proceedings, and prepared for and attended the June 23, 2020, mediation and settlement
22 negotiations, among other tasks.⁴⁰

23 After conducting significant formal and informal discovery and investigation into the facts
24 of the case, a formal, full-day mediation was conducted by Lynn S. Frank, Esq., a well-regarded
25 mediator experienced in mediating complex labor and employment matters.⁴¹ In the course of

26 ³⁷ Aiwasian Decl., ¶ 6.

27 ³⁸ Ibid.

28 ³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Aiwasian Decl., ¶ 8.

mediation and settlement discussions, the Parties exchanged information and documents, 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/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, Plaintiffs' claims and allegations, arbitration agreements, *Pick Up Stix* agreements/releases, and wage-and-hour law and enforcement, the evidence produced and analyzed, Defendant's financial circumstances, and the possibility of appeals, among other things.⁴² During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴³ Arriving at a settlement that was acceptable to the parties was not easy.⁴⁴ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification and representative adjudication. Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁵ After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case 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.⁴⁶

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 had the opportunity to interview, and obtain information from Plaintiffs and other Class Members.⁴⁷ Class Counsel also reviewed and analyzed a large volume of information, documents and data obtained from Defendant (including, but not limited to, Defendant's financial documents), Plaintiffs, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, arbitration agreements, *Pick-Up Stix* agreements/releases, PAGA representative claims, wage-and-

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ *Id.*, ¶ 6.

hour law and enforcement, Plaintiffs' claims and damages, and Defendant's defenses, as well as facts discovered.⁴⁸ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁹ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁵⁰

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

The Settlement, which provides for a Maximum Settlement Amount of \$767,500.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁵¹ The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations.⁵² Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this case had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might

⁴⁸ Aiwazian Decl., ¶ 6.

⁴⁹ *Id.*, ¶¶ 6 & 8.

⁵⁰ *Id.*, ¶¶ 15-18.

⁵¹ Aiwazian Decl., ¶¶ 8 & 21.

⁵² *Id.*, ¶¶ 5-8.

1 have been gained otherwise. These risks of further litigation include a determination that the claims
2 were unsuitable for class treatment and/or representative adjudication, failure to obtain
3 certification, class de-certification after certification of a class, allowing a jury to decide the claims
4 asserted in the case, and the real possibility of no recovery after years of litigation. Additionally,
5 the Parties were moving into the phase of the litigation where they would have to conduct a
6 significant amount of additional discovery, including and not limited to, depositions of
7 Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses,
8 such as managers, supervisors, and other current and former employees throughout the State of
9 California. Discovery would have certainly arisen, which would have cost the Parties additional
10 time and money. In contrast, the Settlement provides real and significant benefits for the Class
11 here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with
12 only the possibility of recovery.

13 It would be grossly inefficient for such a large class of current and former employees to
14 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
15 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would
16 not be significant enough to provide him or her with the incentive to sue. By granting final approval
17 of the Settlement, the Court can approve a resolution that provides a certain and substantial
18 recovery for Class Members and the State of California.

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

20 The Settlement, which provides for a Maximum Settlement Amount of \$767,500.00,
21 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
22 using information and data uncovered through extensive case investigation, formal and informal
23 discovery, and the exchange of information in the context of preparing for mediation and
24 conducting ongoing settlement negotiations. The Settlement takes into account the potential risks
25 and rewards inherent in any case and, in particular, in this case. Moreover, considering all of the
26 facts in the case, the Maximum Settlement Amount represents a considerable recovery.

27 Even after deducting attorneys' fees in the amount of \$262,500.00, litigation costs and
28 expenses in the amount of \$17,361.86, Enhancement Payments in the combined amount of

1 \$17,500.00, Administration Costs in the amount of \$8,000.00, the Prior Payment Credit of
2 \$200,000.00, and PAGA Penalties in the amount of \$65,000.00 from the Maximum Settlement
3 Amount of \$767,500.00, the Net Settlement Fund is currently estimated to be \$197,138.14.⁵³
4 Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out, in
5 accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement
6 Class Member will be paid a *pro rata* share of the Net Settlement Fund, based on the number of
7 Workweeks credited to him or her and whether the Class Member has received a prior payment
8 from Defendant related to settling the claims in the Litigation, and a *pro rata* share of the 25%
9 portion of the PAGA Penalties based on their Workweeks during the PAGA Period. To date, there
10 are 454 Settlement Class Members, representing 100% of the Class Members.⁵⁴ The highest
11 Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$501.43
12 and the average Individual Class Share is currently estimated to be \$198.07.⁵⁵ The highest
13 Individual Class Share to an Unpaid Settlement Class Member is currently estimated to be
14 \$6,667.33 and the average Individual Class Share to an Unpaid Settlement Class Member is
15 currently estimated to be \$1,316.92.⁵⁶ The highest Individual PAGA Share to a Settlement Class
16 Member is currently estimated to be \$99.33 and the average Individual PAGA Share is currently
17 estimated to be \$67.99.⁵⁷ These are significant individual recoveries, particularly in light of the
18 risks of litigation.

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

26 ⁵³ Phoenix Decl., ¶ 13; see n.4, *supra*.

27 ⁵⁴ Phoenix Decl., ¶ 11.

28 ⁵⁵ *Id.*, ¶ 43; see n.32, *supra*.

⁵⁶ *Id.*, ¶ 15; see n.32, *supra*.

⁵⁷ *Id.*, ¶ 16

Members.⁵⁸ 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.⁵⁹ 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.⁶⁰ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant 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 Class – *not a single Class Member objected to or opted out of the Settlement.*⁶¹ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Attorneys' Fees, Litigation Costs, Enhancement Payments, Administration Costs, the Prior Payment Credit, 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, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

⁵⁸ Aiwazian Decl., ¶ 21.

⁵⁹ *Id.*, ¶¶ 15-18.

⁶⁰ Aiwazian Decl., ¶¶ 15-18.

⁶¹ Phoenix Decl., ¶¶ 8 & 9.

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. Gaulty* (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, 34.⁶² 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.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. *See, R. Pearle, California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting

⁶² 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.

attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. See *Serrano*, *supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent*, *supra*, 557 F.2d at 769.

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

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

When the case was originally filed, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that the courts approve the use of the percentage method when a settlement is obtained by the efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks of engaging in litigation without certainty of compensation).

Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement Amount of \$767,500.00. The requested attorneys' fees are \$262,500.00, which is approximately

thirty-four percent (34.20%) of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. Named plaintiffs' agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiffs. If the named plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiffs. In this case, each of the Plaintiffs have agreed to a contingency fee of at least thirty-four percent (34%) of the recovery.⁶³

Furthermore, a percentage-fee award is not dependent on a determination of the actual amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be calculated on the basis of the total fund made available rather than the actual payments made to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant

⁶³ Aiwazian Decl., ¶ 9.

1 or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client
2 is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

8 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs, the Class, and the
9 State of California, and the results achieved justify an attorneys’ fees award that is the equivalent
10 of the standard market fee and that is consistent with the contingency-fee agreement entered into
11 by and between Plaintiffs and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

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

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

23 Each and every one of these factors favors the attorneys’ fees sought here; however, some
24 of the most relevant factors to this Court’s fee determination will be addressed herein. The award
25 of attorneys’ fees in the amount of \$262,500.00 (which is approximately 34.20% of the Maximum
26 Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the
27 contingent nature of Class Counsel’s fee and the risks taken in commencing the case, the skill and
28

determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this case to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁶⁴

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of this case.⁶⁵ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶⁶ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; served multiple formal written discovery requests and reviewed Defendant's responses thereto; reviewed and analyzed a large volume of information, documents and data obtained from Defendant, Plaintiffs, and other sources; engaged in significant motion practice; and prepared damages, penalties, and valuation calculations.⁶⁷ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, discovery, motion practice, arbitration agreements and *Pick-Up Stix* agreements/releases Defendant had executed with individual employees, and the production of information, documents and data in the course of litigation and mediation and settlement negotiations. Class Counsel also drafted pleadings and the mediation brief, prepared for and attended court proceedings, and prepared for and attended the June 23, 2020, mediation and settlement negotiations, among other tasks.⁶⁸

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this case diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the

⁶⁴ Aiwasian Decl., ¶¶ 15-18.

⁶⁵ Aiwasian Decl., Exh. A.

⁶⁶ *Id.*, ¶ 6 & Exh. A.

⁶⁷ *Id.*, ¶ 6.

⁶⁸ *Ibid.*

1 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
2 has spent performing tasks on behalf of Plaintiffs, the Class, and the State of California.⁶⁹ The
3 Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can
4 peruse it without having to set forth each and every task in the body of this Motion. The Court is
5 respectfully referred to the chart, which sets forth the history of the work performed by Class
6 Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement
7 and final approval. Attorneys at Lawyers for Justice, PC have spent 566.30 hours performing tasks
8 and to obtain a significant recovery in the case.⁷⁰ These hours were required to bring this matter
9 to its successful conclusion. In light of the value of time expended and the carrying of costs
10 involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

11 **2. The Skill Required to Perform Legal Services Properly.**

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

17 Class Counsel undertook significant investigation, analysis, and research prior to filing this
18 case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter
19 for class certification and representative adjudication and had every intention of taking the case to
20 trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite
21 all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian,
22 Class Counsel used its extensive experience in the handling of class actions and complex wage-
23 and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁷¹

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

25 The Settlement represents an excellent resolution of the action, given the risks inherent in
26 litigating the case through certification proceedings, trial, and/or appeals. Had the case not settled,

27 ⁶⁹ *Id.*, Exh. A.

28 ⁷⁰ Aiwarzian Decl., ¶ 11.

⁷¹ *Id.*, ¶¶ 15-18.

Defendant would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendant, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the case for trial would have been expensive for the parties.

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Maximum Settlement Amount of \$767,500.00 to settle the matter. After deducting the attorneys' fees (\$262,500.00), litigation costs and expenses (\$17,361.86), Enhancement Payments (combined, \$17,500.00), Administration Costs (\$8,000.00), PAGA Penalties (\$65,000.00), and Defendant's Prior Payment Credit (\$200,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Fund is approximately \$197,138.14.⁷² The Net Settlement Fund will be fully distributed in accordance with the terms of the Settlement. The highest Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$501.43 and the average Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$198.07.⁷³ The highest Individual Class Share to an Unaid Settlement Class Member is currently estimated to be \$6,667.33 and the average Individual Class Share to an Unpaid Settlement Class Member is currently estimated to be \$1,316.92.⁷⁴ The highest Individual PAGA Share to a Settlement Class Member is currently estimated to be \$99.33 and the average

⁷² Phoenix Decl., ¶ 12; see n.4, *supra*.

⁷³ *Id.*, ¶ 14; see n.32, *supra*.

⁷⁴ *Id.*, ¶ 15; see n.32, *supra*.

Individual PAGA Share is currently estimated to be \$67.99.⁷⁵ The Settlement offers significant monetary relief to the Settlement Class Members and the State of California.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class 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 566.30 hours of time to obtain relief on behalf of Plaintiffs, the Class, and the State of California.⁷⁶ Class Counsel has also incurred litigation costs and expenses in the amount of \$17,361.86.⁷⁷

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁸ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁹ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees, 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

⁷⁵ *Id.* ¶16,

⁷⁶ Aiwazian Decl., ¶ 11, Exh. A.

⁷⁷ See Part VII, *infra*.

⁷⁸ Aiwazian Decl., ¶ 19.

⁷⁹ See *id.*, ¶¶ 15-18.

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 from the Class Members—no Class Members objected to or opted out of the Settlement.⁸⁰

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 Class are reasonable in light of the risks inherent in further litigating this case. Class Counsel’s efforts have resulted in a settlement that provides for a Maximum Settlement Amount of \$767,500.00.⁸¹ The Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$501.43 and the average Individual Class Share to a Paid Settlement Class Member is currently estimated to be \$198.07.⁸² The highest Individual Class Share to an Unpaid Settlement Class Member is currently estimated to be \$6,667.33 and the average Individual Class Share to an Unpaid Settlement Class Member is currently estimated to be \$1,316.92.⁸³ The highest Individual PAGA Share to a Settlement Class Member is currently estimated to be \$99.33 and the average Individual PAGA Share is currently estimated to be \$67.99.⁸⁴

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

⁸⁰ Phoenix Decl., ¶¶ 8 & 9.

⁸¹ Aiwasian Decl., ¶¶ 5-8.

⁸² Phoenix Decl., ¶ 14; see n.32, *supra*.

⁸³ Phoenix Decl., ¶ 15; see n.32, *supra*.

⁸⁴ *Id.*, ¶ 16

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.⁸⁵

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 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. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the case was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and

⁸⁵ Aiwazian Decl., ¶¶ 15-18.

analyzing data not only from Defendant but also from the 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 Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional discovery requests and conducting additional document production, and engaging in additional, extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire case through mediation.

Class Counsel had to bring together a large volume of information, documents and data that were obtained from Defendant, Plaintiffs, and through other sources. Class Counsel conducted extensive review and analysis of the information, documents and data to strategize the action and to prepare for mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁸⁶ The chart demonstrates that Class Counsel has spent a total of 566.30 hours litigating the case and finalizing the Settlement.⁸⁷ 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 Class Members, Class Counsel has spent a reasonable number of hours on this case. In addition, Class Counsel will continue to perform work on this case 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

⁸⁶ See Aiwazian Decl., Exh. A.

⁸⁷ Aiwazian Decl., ¶ 11.

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 case has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$767,500.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$600.00 per hour for services provided by Class Counsel.⁸⁸ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$600.00 for legal service performed, by courts of this state.⁸⁹ While the circumstances of every case is unique, the fact

⁸⁸ *Id.*, ¶ 12.

⁸⁹ For example, final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; 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 an 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 an 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 an 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 an 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 an hourly rate of \$780.77; 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 an 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 an hourly rate of \$625. Aiwarzian Decl., ¶ 12.

1 remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class
2 Members justify the requested attorneys' fees.

3 Applying the rate of \$600.00 per hour to 566.30 hours would place a reasonable value of
4 \$399,780.00, based on lodestar, for the work performed by Class Counsel. However, Class
5 Counsel only seeks attorneys' fees in the amount of \$262,500.00, which is approximately thirty-
6 four percent (34.20%) of the total recovery, as provided for by the Settlement Agreement.

7 It also bears noting that a court may apply a multiplier in consideration for risk, efficiency,
8 and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See
9 *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate
10 contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established
11 practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by
12 paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*,
13 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves
14 to bring the financial incentives for enforcing important rights "into line with incentives [attorneys]
15 have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th
16 at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g.,
17 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without
18 remand); *Wershba, supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even
19 higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a
20 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5
21 multiplier in a consumer class action).

22 The lodestar method as a cross-check to the percentage figure sought strongly supports the
23 reasonableness of the requested attorneys' fees. Accordingly, Plaintiffs respectfully request that
24 the Court grant final approval of, and award, attorneys' fees in the amount of \$262,500.00 to Class
25 Counsel.

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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 \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of \$17,361.86 in litigation costs and expenses incurred in this case.⁹⁰ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁹¹ The cost savings of \$7,638.14 will be part of the Net Settlement Fund, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁹² Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$17,361.86 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 \$8,000.00.⁹³ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Notice to the 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 Workweeks disputes; handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁹⁴

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$8,000.00.

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⁹⁰ Aiwazian Decl., ¶ 19.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Phoenix Decl., ¶ 16.

⁹⁴ Aiwazian Decl., ¶ 3.

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 Ignacio Perez and Karen Rios, and in the amount of \$2,500.00 to Plaintiff Liszandra Padilla (for a combined total of \$17,500.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class and the State of California. 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 allegations.⁹⁵ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁶ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁹⁷ These services merit the requested Enhancement Payments to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁹⁸

The requested Enhancement Payments were fully disclosed in the Notice Packet that was mailed to the Class Members. No objections were made with regards to the requested Enhancement

⁹⁵ Aiwazian Decl., ¶ 20; Declaration of Ignacio Perez (“Perez Decl.”), ¶¶ 3-5; Declaration of Karen Rios (“Rios Decl.”), ¶¶ 3-5; Declaration of Liszandra Padilla (“Padilla Decl.”), ¶¶ 3-5.

⁹⁶ Aiwazian Decl., ¶ 20; Perez Decl., ¶¶ 3-5; Rios Decl., ¶¶ 3-5; Padilla Decl., ¶¶ 3-5.

⁹⁷ Aiwazian Decl., ¶ 20; Perez Decl., ¶¶ 2-6; Rios Decl., ¶¶ 2-6; Padilla Decl., ¶¶ 2-6.

⁹⁸ Perez Decl., ¶ 9; Rios Decl., ¶ 9; Padilla Decl., ¶ 9.

1 Payments. Accordingly, it is appropriate and just for Plaintiffs Ignacio Perez and Karen Rios to
2 each receive \$7,500.00, and for Plaintiff Liszandra Padilla to receive \$2,500.00 as reasonable
3 Enhancement Payments, for their services on behalf of the Class and the State of California, in
4 addition to their individual settlement payments.

5 **X. CONCLUSION**

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

10 Dated: April 25, 2023

LAWYERS for JUSTICE, PC

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12 By:



13 Annabel Blanchard
14 Attorneys for Plaintiffs and the Class
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