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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

LAIJAYNA CASEY, 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;

Plaintiff,

vs.

CAINE & WEINER COMPANY, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 20STCV36086

Honorable Carolyn B. Kuhl
Department SSC-12

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Laijayna Casey);
Declaration of Settlement Administrator
(Taylor Mitzner); and [Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: March 7, 2023
Time: 10:30 a.m.
Department: SSC-12

Complaint Filed: September 22, 2020
FAC Filed: April 27, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 7, 2023, at 10:30 a.m., in Department SSC-12
2 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012,
3 Plaintiff Laijayna Casey (“Plaintiff”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • A Net Settlement Amount of approximately **\$377,581.98** will be fully distributed to the
9 Class Members who did not timely opt out of the Class Settlement (“Settlement Class
10 Member”);
- 11 • **No Objections** were submitted to the settlement administrator, Phoenix Class Action
12 Administration Solutions (“Settlement Administrator”);
- 13 • **Only One (1) Request for Exclusion** was submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$318,370.54** to Lawyers *for* Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Total Settlement Amount, for attorneys’
16 fees, which is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$18,177.60** to Class Counsel for reimbursement of
18 litigation costs and expenses;

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

21 5. Payment in the amount of **\$7,500.00** to Plaintiff Laijayna Casey, as Enhancement
22 Payment, for her time and 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 \$180,000.00, of which seventy-five
25 percent (75%), or **\$135,000.00**, will be paid to the California Labor and Workforce Development
26 Agency (“LWDA Payment”) and twenty-five percent (25%), or **\$45,000.00**, will be distributed to
27 PAGA Members.

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 Aiwanian), Class Representative (Laijayna Casey), and
6 Settlement Administrator (Taylor Mitzner of Phoenix Class Action Administration Solutions) in
7 support thereof; the pleadings and other records on file with the Court in this matter; and such
8 evidence and oral argument as may be presented at the hearing on this Motion.

9
10 Dated: February 9, 2023

LAWYERS for JUSTICE, PC

11
12 By:



Edwin Aiwanian

Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Laijayna Casey (“Plaintiff”) seeks final approval of: (1) the Total Settlement Amount of \$909,630.12¹; (2) attorneys’ fees in the amount of \$318,370.54, which is thirty-five percent (35%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$18,177.60 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$8,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Laijayna Casey; and (5) allocation of \$180,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees employed by Defendant who worked in the office in California at any time from September 22, 2016, through January 1, 2022 (“Class” or “Class Members”).²

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 Paul Grossman, Esq., and settlement negotiations. This matter has required 440.00 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 Total 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 Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 37. The Escalator Clause indicates that if the actual number of Workweeks for the time period of September 22, 2016 to October 27, 2021 exceeds twenty-three thousand three hundred fifty-four (23,354) by more than 10%, the Total Settlement Amount will be increased proportionally. The Settlement Administrator’s declaration confirms that the total number of Workweeks during this period was twenty-five thousand nine hundred sixty-four (25,964), which exceeds the threshold by 11.07%. As such, it was determined that the Escalator Clause in the Settlement Agreement was triggered, and the Total Settlement Amount has increased from \$900,000.00 to \$909,630.12. Class Members were provided notice of this increased Total Settlement Amount by way of the Class Notice that was distributed to them.

² *Id.*, ¶ 6.d. “Class Period” is defined as the timed period from September 22, 2016, through January 1, 2022. *See id.*, ¶ 6.f.

1 Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00,
2 to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on
3 behalf of the Class, PAGA Members, and the State of California. Plaintiff also moves for final
4 approval of the payment to the Settlement Administrator in the amount of \$8,000.00 for Settlement
5 Administration Costs. Plaintiff also moves for final approval of the allocation of \$180,000.00 for
6 the PAGA Payment, of which \$135,000.00 will be paid to the California Labor Workforce and
7 Development Agency (“LWDA”) for its portion of the PAGA Payment (“LWDA Payment”), and
8 \$45,000.00 will be distributed to PAGA Members.

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

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

21 In order to efficiently present the Court with adequate information to determine whether to
22 grant final approval of the Settlement and award Attorneys’ Fees and Costs, Enhancement
23 Payment, Settlement Administration Costs, and PAGA Payment, Plaintiff also moves for an order
24 permitting the filing of this single consolidated memorandum, although it exceeds the page limit
25 established by California Rules of Court, Rule 3.1113(d), instead of filing several separate
26 motions.

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

2 Defendant Caine & Weiner Company (“Defendant”) contracts with companies to provide
3 credit and collection services. Plaintiff Laijayna Casey is a former employee of Defendant.

4 On September 18, 2020, Plaintiff provided written notice by certified mail to the Labor and
5 Workforce Development Agency and Defendant, on the specific provisions of the California Labor
6 Code that were violated and her intent to pursue civil penalties against Defendant (“LWDA
7 Notice”).

8 On September 22, 2020, Plaintiff filed a Class Action Complaint for Damages against
9 Defendant in the Superior Court of California for the County of Los Angeles, Case No.
10 20STCV36086 (the “Action”).

11 On November 23, 2020, Plaintiff filed a Complaint for Enforcement Under the Private
12 Attorneys’ General Act, California Labor Code § 2698, Et Seq. against Defendant in the Superior
13 Court of California for the County of Los Angeles, Case No. 20VECV01380 (“Casey PAGA
14 Action”).

15 On June 3, 2021, Defendant filed an Answer to Plaintiff’s Complaint for Enforcement
16 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.

17 On April 27, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages
18 and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
19 in the Action, consolidating the Casey PAGA Action with the Action (“Operative Complaint”).

20 On June 24, 2022, the Casey PAGA Action was dismissed without prejudice.

21 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
22 engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA
23 Members of, *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant
24 meal and rest periods and associated premium pay, failing to timely pay wages and associated
25 waiting time penalties, failing to maintain accurate payroll records, failing to provide compliant
26 wage statements, and failing to reimburse necessary business-related expenses, and thereby
27 engaged in unfair business practices under the California Business and Professions Code and
28 conduct that gives rise to civil penalties recoverable under PAGA. Plaintiff contends that she,

1 Class Members, and PAGA Members, are entitled to, *inter alia*, unpaid wages, penalties (including
2 and not limited to, penalties pursuant to PAGA), and attorneys' fees.

3 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
4 associated with any of the allegations in the Action, and further denies that the cases are
5 appropriate for class or representative treatment for any purpose other than for settlement purposes
6 only.

7 The Parties have actively litigated the matter since it was commenced September 22, 2020.
8 The Parties conducted significant informal discovery and investigation into the facts of the cases,
9 and informally exchanged a large volume of information, documents, and data throughout the
10 course of the litigation and in connection with mediation and settlement negotiations. On October
11 27, 2021, the parties participated in a formal, full-day mediation conducted by Paul Grossman,
12 Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.
13 After conducting significant informal discovery and investigation into the facts of the cases and
14 with the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described
15 herein to resolve the Action in its entirety.

16 On May 31, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action
17 Settlement and supporting documents. On July 12, 2022, a hearing was held on Plaintiff's Motion
18 for Preliminary Approval, during which the Court raised certain points of inquiry. On July 25,
19 2022, Plaintiff filed a Supplemental Declaration of Yasmin Hosseini in Support of the Motion for
20 Preliminary Approval and a Revised Proposed Order. On September 12, 2022, the Court entered
21 an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement
22 ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement,
23 the Class Notice, and the proposed administration procedures and associated deadlines.

24 Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs,
25 Enhancement Payment, Settlement Administration Costs, and allocation for PAGA Payment.

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount of \$909,630.12.³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$318,370.54 and reimbursement of litigation costs and expenses in the amount of \$18,177.60, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Laijayna Casey; (3) Settlement Administration Costs in the amount of \$8,000.00 to Phoenix; and (4) PAGA Payment in the amount of \$180,000.00.⁴ The Net Settlement Amount, which is estimated to be \$377,581.98⁵, will be distributed in accordance with the Settlement Agreement.

The Settlement Administrator will calculate each Class Member's share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁶

The Settlement Administrator will calculate each PAGA Member's share of the available 25% portion of the PAGA Payment (i.e., Individual PAGA Payment), by dividing the 25% portion of the PAGA Payment attributed to PAGA Members, i.e., \$45,000.00, by the PAGA Workweeks worked by all PAGA Members during the PAGA Period ("Total PAGA Workweeks") resulting in the PAGA Workweek Value and then multiplying the PAGA Workweek Value by the number of PAGA Workweeks worked by each Individual PAGA Member during the PAGA Period.⁷

³ Settlement Agreement, ¶¶ 6.11, 9 and 37; see also, n.1, *supra*.

⁴ *Id.*, ¶¶ 10, 11, 12, and 13.

⁵ This amount is higher than the amount stated in Paragraph 13 of the accompanying Declaration of Taylor Mitzner with Respect to Notice and Settlement Administration ("Phoenix Class Action Administration Solutions 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 \$26,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$18,177.60 for reimbursement of litigation costs and expenses, and the difference of \$7,822.40 will remain part of the Net Settlement Amount.

⁶ Settlement Agreement, ¶¶ 6.q and 14.b.

⁷ *Id.*, ¶¶ 6.p and 15.

Class Members had sixty (60) calendar days after the initial mailing of the Class Notice to Class Members to submit a Request for Exclusion, Notice of Objection, and/or dispute the number of Workweeks and/or PAGA Workweeks credited to each of them (“Response Deadline”).⁸ The Response Deadline was December 5, 2022.⁹ The Settlement Administrator has received one (1) written request for exclusion from the Class Settlement (“Requests for Exclusion”) and no written objections to the Class Settlement (“Notice of Objection”) from Class Members.¹⁰

Each Individual Settlement Share will be allocated as follows: one-third (1/3) wages, which will be reported on IRS Form W-2; and two-thirds (2/3) non-wage damages, penalties, and interest, to be reported on IRS Form 1099 (if applicable).¹¹ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as “Individual Settlement Payment”).¹² The Parties agree that the Individual PAGA Payment distributed to each PAGA Member will be allocated as one hundred percent (100%) penalties, will be paid without reduction for taxes and withholdings, and will be reported on an IRS Form 1099, if necessary. Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares in addition to the Total Settlement Amount.¹³

The Individual Settlement Payments checks issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance, and thereafter, shall be cancelled.¹⁴ All funds associated with such cancelled checks will be distributed by the Settlement Administrator, in accordance with California Codes of Civil Procedure section 384, to Legal Aid at Work.¹⁵ Settlement Class Members whose Individual Settlement Payment checks are uncashed

⁸ Settlement Agreement, ¶¶ 6.hh, 19, 21 and 23.

⁹ Phoenix Decl., ¶¶ 8, 9, and 10.

¹⁰ *Id.*, ¶¶ 8 and 9.

¹¹ Settlement Agreement, ¶ 26.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Id.*, ¶ 20.

¹⁵ *Ibid.*

shall, nevertheless, be bound to the Class Settlement, and PAGA Members whose Individual PAGA Payment checks are uncashed shall, nevertheless, be bound by the PAGA Settlement.

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix Class Action Administration Solutions, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's September 12, 2022, Preliminary Approval Order.

On September 20, 2022, Phoenix received a data filed from Defense Counsel that contained full names, last known mailing addresses, Social Security Numbers, and start and end dates worked for Defendant in the office as an hourly-paid or non-exempt employee for each Class Member ("Class Data and List").¹⁶ The Class Data and List contained information for five hundred six (506) individuals identified as Class Members and one hundred ninety-one (191) individuals identified as PAGA Members.¹⁷ Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data and List with any updated addresses located.¹⁸

On October 4, 2022, Phoenix mailed the Class Notice via U.S. first class mail to all five hundred six (506) Class Members and one hundred ninety-one (191) PAGA Members on the Class Data and List.¹⁹

As of the date of this Motion, zero (0) Class Notices were returned as undeliverable with forwarding addresses.²⁰ Sixty-two (62) Class Notices were returned as undeliverable without forwarding addresses.²¹ Phoenix performed a skip-trace search on the sixty-two (62) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for fifty-two (52) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²² Three (3) Class Notices were returned to Phoenix as undeliverable a second time.²³ Ultimately,

¹⁶ Phoenix Decl., ¶ 3.

¹⁷ Ibid.

¹⁸ *Id.*, ¶ 4.

¹⁹ *Id.*, ¶ 5.

²⁰ *Id.*, ¶ 6.

²¹ Ibid.

²² Ibid.

²³ Phoenix Decl., ¶ 7.

thirteen (13) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.²⁴

As of the date of this Motion, the Settlement Administrator has not received any Notice of Objection.²⁵ As of the date of this Motion, the Settlement Administrator has received one (1) Request for Exclusion from Class Member.²⁶

To date, there are five hundred five (505) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁷ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$377,581.98 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁸ The highest Individual Settlement Share is currently estimated to be \$3,859.65 and the average Individual Settlement Share is currently estimated to be \$732.20.²⁹ The highest Individual PAGA Payment is currently estimated to be \$791.83 and the average Individual PAGA Payment is currently estimated to be \$235.60.³⁰

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.

²⁴ Phoenix Decl., ¶ 7.

²⁵ *Id.*, ¶ 9.

²⁶ *Id.*, ¶ 8.

²⁷ *Id.*, ¶ 11.

²⁸ *Id.*, ¶ 13; see also, n.1 and n.6, *supra*.

²⁹ *Id.*, ¶ 14. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Phoenix Class Action Administration Solutions Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$26,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$7,822.40, will be part of the Net Settlement Amount). See n.5, *supra*.

³⁰ *Id.*, ¶ 15.

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.

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 cases 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 cases since it was commenced on September 22, 2020. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the cases for class certification and trial, prior to reaching the Settlement.³¹ The parties conducted significant informal discovery and

³¹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

1 investigation into the facts of the cases, and also informally exchanged a large volume of
2 information, documents, and data throughout the course of the litigation and in connection with
3 mediation and settlement negotiations.³² Class Counsel also interviewed and obtained information
4 from Plaintiff and Class Members, including and not limited to the names of potential witnesses,
5 and reviewed and analyzed a large volume of information, data, and documents obtained from
6 Plaintiff, Defendant, and other sources.³³ The information, documents, and data reviewed and
7 analyzed by Class Counsel included, and were not limited to: Plaintiff's employment records, a
8 detailed sampling of Class Members' time and pay data, redacted class list, meal premium payment
9 details, multiple iterations of Defendant's Employee Handbook, company policy
10 acknowledgments (e.g., Handbook Acknowledgement, At-Will Acknowledgement,
11 Discrimination, Harassment, Bullying and Retaliation Acknowledgment, Duty-Free Meal and Rest
12 Period Acknowledgement, Communications Acknowledgment, National Labor Relations Act
13 Acknowledgement, and Internet/Company Property Acknowledgment), internal memoranda, job
14 descriptions, and Defendant's operations and employment practices, procedures, and policies
15 documents (including but not limited to, Employment-At-Will Statement , Policy Against
16 Harassment, Authorization for Background Checks Employee Non-Disclosure Agreement,
17 Software Code of Ethics, Defendant's ID Badge Policy, Company Dress Code Reminder
18 memoranda, California Confidential Information Agreement, and Confidentiality and Invention
19 Assignment Agreement), among other information and documents.³⁴ Class Counsel researched
20 applicable law, developed damages/valuation models in preparation for mediation and settlement
21 negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to
22 discuss issues relating to the pleadings, case management, and production of information,
23 documents, and data in the course of litigation and in connection with mediation and settlement
24 negotiations.³⁵

27 ³² Aiwazian Decl., ¶ 6.

28 ³³ Ibid.

³⁴ *Id.*, ¶ 6.

³⁵ Ibid.

After conducting significant informal discovery and investigation into the facts of the cases, the parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³⁶ Prior to and during mediation and settlement discussions, the parties exchanged information, documents, 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, representative adjudication, and trial, the law relating to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁷ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁸ Arriving at a settlement that was acceptable to the parties was not easy.³⁹ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.⁴⁰ After conducting significant informal discovery and investigations, 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 Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴¹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.⁴² Class Counsel also reviewed and analyzed a large volume of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-

³⁶ Aiwazian Decl., ¶ 8.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Id.*, ¶ 8.

⁴¹ Ibid.

⁴² *Id.*, ¶ 6.

hour enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁴³ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁴ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁴⁵

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

The Settlement, which provides for a Total Settlement Amount of \$909,630.12, 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.⁴⁶ 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.⁴⁷ 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 predominate 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 Plaintiff's 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 Plaintiff's 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 matter 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 and PAGA 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 have been gained otherwise. These risks of further litigation

⁴³ Aiwasian Decl., ¶ 7.

⁴⁴ Ibid.

⁴⁵ *Id.*, ¶¶ 16-19.

⁴⁶ *Id.*, ¶¶ 8 & 22.

⁴⁷ *Id.*, ¶¶ 5-8.

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

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

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

19 The Settlement, which provides for a Total Settlement Amount of \$909,630.12, represents
20 a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using
21 information and data uncovered through extensive case investigation, informal discovery, and the
22 exchange of information in the context of mediation. The Settlement takes into account the
23 potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
24 considering all of the facts in the cases, the Total Settlement Amount represents a considerable
25 recovery.

26 Even after deducting attorneys' fees in the amount of \$318,370.54, litigation costs and
27 expenses in the amount of \$18,177.60, Enhancement Payment in the amount of \$7,500.00,
28 Settlement Administration Costs in the amount of \$8,000.00, and PAGA Payment in the amount

of \$180,000.00 from the Total Settlement Amount of \$909,630.12, the Net Settlement Amount is currently estimated to be \$377,581.98.⁴⁸ Under the Settlement Agreement, the Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her. To date, there are five hundred five (505) Settlement Class Members, representing 99.80% of the Class Members.⁴⁹ The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$3,859.65 and the average Individual Settlement Share is currently estimated to be \$732.20.⁵⁰ The highest Individual PAGA Payment to PAGA Members is currently estimated to be \$791.83 and the average Individual PAGA Payment is currently estimated to be \$235.60.⁵¹ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and PAGA Members.⁵² 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.

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⁴⁸ Phoenix Decl., ¶ 13.

⁴⁹ *Id.*, ¶ 5.

⁵⁰ *Id.*, ¶ 14.

⁵¹ *Id.*, ¶ 15.

⁵² Aiwasian Decl., ¶ 22.

1 **D. The Class Was Represented by Competent Counsel.**

2 Class Counsel has extensive experience in employment class action law and complex
3 wage-and-hour litigation.⁵³ Lawyers for Justice, PC has been appointed class counsel in numerous
4 complex wage-and-hour cases, and has recovered millions of dollars for individuals in
5 California.⁵⁴ Both parties' counsel were capable of assessing the strengths and weaknesses of the
6 Class Members' claims against Defendant and the benefits of the Settlement under the
7 circumstances of the cases and in the context of a private, consensual settlement agreement.

8 **E. There Are No Objections to the Settlement.**

9 The Settlement has been well received by the Class – *not a single Class Member objected*
10 *to the Class Settlement.*⁵⁵ Specifically, no objections have been made as to the Total Settlement
11 Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement
12 Administration Costs, or the allocation for PAGA Payment. California courts have consistently
13 found that a small number of objectors indicates the class' support for a settlement and strongly
14 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite
15 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite
16 9 objectors).

17 Here, the lack of any objections speaks volumes about the fairness, reasonableness, and
18 adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair,
19 reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety.
20 *Dunk, supra*, 48 Cal.App.4th at 1802.

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

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

24 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
25 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
26 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,

27 ⁵³ Aiwasian Decl., ¶¶ 16-19.

28 ⁵⁴ Ibid.

⁵⁵ Phoenix Decl., ¶¶ 8 and 9.

1 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
2 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where
3 the amount of a settlement is a “certain easily calculable sum of money,” California courts may
4 calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, California
5 Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert*
6 *Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-
7 of-the-benefit approach is preferred in class and representative actions because “it better
8 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
9 Cal.App.4th at 49.

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

19 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
20 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
21 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
22 at 1270). It is not an abuse of discretion to choose one method over another as long as the method
23 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
24 marketplace. In cases where class members present claims against a settlement amount and the
25 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
26 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

27 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
28 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, 34.⁵⁶ 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 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

⁵⁶ 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.

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 cases were 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 Total Settlement Amount of \$909,630.12. The requested attorneys’ fees are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s successful prosecution and resolution of the cases, 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 cases; and (3) it encourages

1 the most efficient and expeditious resolution of the litigation by providing an incentive for early,
2 yet reasonable, settlement. The requested attorneys' fees in this matter satisfy all of those factors
3 such and should be approved on a percentage basis.

4 The percentage method is consistent with, and is intended to mirror, the practice in the
5 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
6 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful
7 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to
8 the class is to review the consideration agreed to be paid by the named plaintiff. If the named
9 plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the
10 members of the class, who will enjoy the benefits of the settlement without incurring the risks of
11 bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a
12 contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁷

13 Furthermore, a percentage-fee award is not dependent on a determination of the actual
14 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
15 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
16 equitable that [the attorney's] compensation and expenses should come from the entire fund saved
17 for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944)
18 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
19 calculated on the basis of the total fund made available rather than the actual payments made to
20 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant
21 or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client
22 is entitled to a reasonable attorneys' fee from the fund as a whole”).

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

28 ⁵⁷ Aiwazian Decl., ¶ 10.

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

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the cases; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the cases; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 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 \$318,370.54 (which is 35% of the Total Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, 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 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 Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling

1 of class actions and complex litigation actions.⁵⁸

2 As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively
3 participated in litigation of these cases.⁵⁹ Prior to commencing the lawsuit, Class Counsel had
4 conducted a significant amount of investigation into the factual and legal issues, Defendant's
5 business, and its operations and employment policies, practices, and procedures.⁶⁰ During the
6 litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; reviewed
7 and analyzed a large volume of pages of documents and data produced by Defendant and obtained
8 through other sources; and prepared damages/valuation calculations.⁶¹ Class Counsel also met and
9 conferred with Defendant's counsel over the issues relating to pleadings, case management, and
10 production of information, documents, and data, among other things; engaged in settlement
11 negotiations with Defendant's counsel; and prepared for and attended court proceedings,
12 mediation, and settlement negotiations.⁶²

13 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
14 matter diligently and with maximum efficiency and has fully and actively participated in the
15 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
16 accompanying Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class Counsel
17 has spent performing tasks on behalf of Plaintiff and the Class.⁶³ The Task and Time Chart is
18 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
19 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
20 chart, which sets forth the history of the work performed by Class Counsel, commencing with the
21 pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel
22 has spent 440 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff
23 and the Class.⁶⁴ These hours were required to bring this matter to its successful conclusion. In
24 light of the value of time expended and the carrying of costs involved in litigating these cases, the

25 ⁵⁸ Aiwarzian Decl., ¶¶ 16-19.

26 ⁵⁹ *Id.*, Exh. A.

27 ⁶⁰ *Id.*, ¶ 6 & Exh. A.

28 ⁶¹ *Id.*, ¶ 6.

⁶² *Ibid.*

⁶³ *Id.*, Exh. A.

⁶⁴ *Id.*, ¶ 12.

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. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff 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 these cases, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the cases to trial on a class-wide basis if Defendant 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 Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation actions in order to obtain the Settlement with maximum efficiency.⁶⁵

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

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

⁶⁵ Aiwazian Decl., ¶¶ 16-19.

of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class Members, the State of California, and PAGA Members 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 of settlement negotiations, Defendant agreed to pay a Total Settlement Amount of \$909,630.12 to settle the matter. After deducting the attorneys' fees (\$318,370.54), litigation costs and expenses (\$18,177.60), Enhancement Payment (\$7,500.00), Settlement Administration Costs (\$8,000.00), and PAGA Payment (\$180,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$377,581.98.⁶⁶ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$3,859.65 and the average Individual Settlement Share is currently estimated to be \$732.20.⁶⁷ The highest Individual PAGA Payment is currently estimated to be \$791.83 and the average Individual PAGA Payment is currently estimated to be \$235.60.⁶⁸ The Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and PAGA Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the cases without knowing whether any recovery would be obtained. Class Counsel has invested 440 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and PAGA Members.⁶⁹ Class Counsel has also incurred litigation costs and expenses in the amount of \$18,177.60.⁷⁰

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹ Class Counsel is well-experienced in wage-and-hour

⁶⁶ Phoenix Decl., ¶ 13.

⁶⁷ *Id.*, ¶ 14.

⁶⁸ *Id.*, ¶ 15.

⁶⁹ Aiwasian Decl., ¶ 11, Exh. A

⁷⁰ See Part VII, *infra*.

⁷¹ Aiwasian Decl., ¶ 20.

class action and complex litigation and used that experience to obtain a great result.⁷² The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and 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 cases 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 cases 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 the Class Settlement.⁷³

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 Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted

⁷² Aiwasian Decl., ¶¶ 16-19.

⁷³ Phoenix Decl., ¶¶ 8 and 9.

1 in a settlement that provides for a Total Settlement Amount of \$909,630.12.⁷⁴ The Total Settlement
2 Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The
3 highest Individual Settlement Share to a Settlement Class Member is currently estimated to be
4 \$3,859.65 and the average Individual Settlement Share is currently estimated to be \$732.20.⁷⁵ The
5 highest Individual PAGA Payment is currently estimated to be \$791.83 and the average Individual
6 PAGA Payment is currently estimated to be \$235.60.⁷⁶

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

8 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys'
9 knowledge, skills, and experience in bringing these cases to a successful conclusion. Class
10 Counsel has years of complex and class action litigation experience, has recovered millions of
11 dollars on behalf of thousands of individuals in California, and has successfully handled numerous
12 significant wage-and-hour class action and complex cases.⁷⁷

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

16 While the percentage-of-the-benefit approach is endorsed as the better approximation of
17 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
18 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
19 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
20 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290
21 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the
22 lodestar may provide a useful perspective on the reasonableness of a given percentage award.”).
23 Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination
24 of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum
25 or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

26
27 ⁷⁴ Aiwazian Decl., ¶¶ 5-8.

28 ⁷⁵ *Id.*, ¶ 15.

⁷⁶ *Id.*, ¶ 16.

⁷⁷ *Id.*, ¶¶ 16-19.

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 cases were 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 cases and disputed that the matter was appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the cases 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 cases moved toward certification and trial, including taking and defending depositions of Defendant’s 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 Defendant and obtained from Plaintiff and 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 Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁸ The chart

⁷⁸ See Aiwazian Decl., Exh. A.

demonstrates that Class Counsel has spent a total of 440 hours litigating the cases and finalizing the Settlement.⁷⁹ In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved in these cases, 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 these cases, 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 its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$909,630.12.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$750 per hour for services provided by Class Counsel.⁸⁰ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$750 for legal service performed, by courts of this state.⁸¹ While the circumstances of every case is unique, the fact remains that the

⁷⁹ Aiwasian Decl., ¶ 12.

⁸⁰ *Id.*, ¶ 13.

⁸¹ For example, final approval of the class action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement

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

Applying the rate of \$750 per hour to 440 hours would place a reasonable value of \$330,000.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$318,370.54, 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 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

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 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; 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; and 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. Aiwazian Decl., ¶ 12.

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, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$318,370.54 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 \$26,000.00. As set forth in the Declaration of Edwin Aiwasian, Class Counsel has incurred a total of \$18,177.60 in litigation costs and expenses.⁸² This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement.⁸³ The cost savings of \$7,822.40 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁴ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$18,177.60 to Class Counsel.

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

As set forth in the accompanying Phoenix Class Action Administration Solutions Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$8,000.00.⁸⁵ The costs incurred and to be incurred include, but are not limited to, (i) preparing, printing, and mailing the Notice of Class Notice Action Settlement ("Class Notice"); (ii) responding to inquiries from Class Members; (ii) calculating the number of weeks each Class Member worked during the period from September 22, 2016 to January 1, 2022 ("Class Period") and the number of workweeks that each PAGA Member worked during the time period from September 18, 2019 to January 1, 2022 ("PAGA Period"); (iv) determining the validity of

⁸² Aiwasian Decl., ¶ 20.

⁸³ Ibid.

⁸⁴ Aiwasian Decl., ¶ 20.

⁸⁵ Phoenix Decl., ¶ 17.

1 letters indicating a request to be excluded from the Class Settlement (“Request for Exclusion”),
2 written objections to the Class Settlement (“Notice of Objection”), and/or dispute regarding the
3 number of Workweeks and/or PAGA Workweeks submitted by Class Members and/or PAGA
4 Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to Class
5 Member; (vi) calculating and issuing the Individual Settlement Payments and distributing them to
6 Settlement Class Members and Individual PAGA Payments to PAGA Members; (vii) issuing the
7 payment to Class Counsel for Attorneys’ Fees and Costs, the Enhancement Payment to Plaintiff,
8 Settlement Administration Costs to itself, and the employer/employee payroll taxes to the
9 appropriate taxing authorities; and (viii) such other task as set forth in the Settlement Agreement
10 or as the Parties mutually agree or as the Court orders.⁸⁶

11 The total costs requested are less than the maximum amount allocated under the Settlement
12 Agreement.⁸⁷ The cost savings of \$2,000.00 will be part of the Net Settlement Amount, which will
13 be distributed to the Settlement Class Members in accordance with the Settlement. Accordingly,
14 the Court should grant final approval of payment to Phoenix, a necessary third-party for handling
15 of the notice and settlement process, in the amount of \$8,000.00.

16 **IX. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE,**
17 **AND SHOULD BE APPROVED.**

18 The Settlement provides for an Enhancement Payment in the amount of \$7,500.00 to
19 Plaintiff Laijayna Casey to compensate Plaintiff for the time and effort that she expended on behalf
20 of the Class. The requested Enhancement Payment is both common and reasonable and should be
21 awarded.

22 In determining whether to make service payments, courts consider the following factors:
23 (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the
24 notoriety and personal difficulties encountered by the class representatives; (3) the amount of time
25 and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal
26 benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken*

27
28 ⁸⁶ Phoenix Decl., ¶ 2.

⁸⁷ Settlement Agreement, ¶ 12.

1 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation
2 award to a single class representative).

3 The requested Enhancement Payment is fair and appropriate because Plaintiff spent a
4 substantial amount of time and effort producing relevant documents and past employment records,
5 as well as providing the facts and evidence necessary to attempt to prove the allegations.⁸⁸ Plaintiff
6 was available whenever Class Counsel needed her and actively tried to obtain, and gave,
7 information that would benefit the Class.⁸⁹ Plaintiff spent numerous hours speaking with Class
8 Counsel about her claims, describing her work experiences with Defendant, and gathering and
9 reviewing documents.⁹⁰ These services merit the requested Enhancement Payment to Plaintiff,
10 who has not received any compensation for her efforts on behalf of the Class Members to date.⁹¹

11 The requested Enhancement Payment was fully disclosed in the Class Notice that was
12 mailed to the Class Members. No objections were made with regards to the requested Enhancement
13 Payment. Accordingly, it is appropriate and just for Plaintiff Laijayna Casey to receive \$7,500.00
14 as a reasonable Enhancement Payment, for her services on behalf of the Class, PAGA Members,
15 and the State of California, in addition to her Individual Settlement Payment and Individual PAGA
16 Payment.

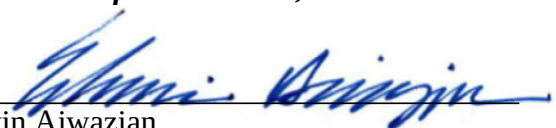
17 **X. CONCLUSION**

18 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
19 of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payment, Settlement
20 Administration Costs, and allocation for the PAGA Payment, in their entirety, as sought herein;
21 and permit the filing of a memorandum that exceeds the page limit.

22 Dated: February 9, 2023

LAWYERS for JUSTICE, PC

23
24 By:


Edwin Aiwanian
Attorneys for Plaintiff and the Class

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26
27 ⁸⁸ Aiwanian Decl., ¶ 20; Declaration of Laijayna Casey ("Casey Decl."), ¶¶ 3-5.

28 ⁸⁹ Aiwanian Decl., ¶ 20; Casey Decl., ¶¶ 3-5.

⁹⁰ Aiwanian Decl., ¶ 20; Casey Decl., ¶¶ 2-6.

⁹¹ Casey Decl., ¶ 8.