Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Tara Zabehi (SBN 314706)
Yasmin Hosseini (SBN 326399)
LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff Robert Harlow, Jr. and the Class

[Additional Counsel listed on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ROBERT HARLOW, JR., individually, and on behalf of other members of the general public similarly situated; Plaintiff, vs. COVENANT AVIATION SECURITY, LLC, an unknown business entity; and DOES 1 through 100, inclusive, Defendants. _______ MARY ALFARDI, individually, and on behalf of other members of the general public similarly situated; Plaintiff, vs. COVENANT AVIATION SECURITY, LLC, an Illinois limited liability company; and DOES 1 through 100, inclusive, Defendants. _______ ROBERT HARLOW, JR., individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs.	Case No.: 20-CIV-03986 *(Consolidated with Case Nos. 23-CIV-05656 and 20-CIV05141)* Honorable Nancy L. Fineman Department 4 **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND COSTS, SETTLEMENT ADMINISTRATION COSTS, AND ENHANCEMENT AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** [Notice of Motion and Motion for Final Approval of Class Action Settlement; Declaration of Class Counsel (Tara Zabehi and Ronald H. Bae); Declaration of Class Representatives (Robert Harlow, Jr., and Mary Alfardi); Declaration of Settlement Administrator (Taylor Mitzner); [Proposed] Final Approval Order and Judgment; and [Proposed] Order Awarding Attorneys' Fees and Costs, Settlement Administration Costs, and Enhancement Awards filed concurrently herein] Date: September 17, 2024 Time: 2:00 p.m. Department: 4 Complaint Filed: September 16, 2020 Trial Date: None Set

COVENANT AVIATION SECURITY, LLC, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Ronald H. Bae (SBN 186826)
Olivia Scharrer (SBN 291470)
Carson M. Turner (SBN 345992)
AEQUITAS LEGAL GROUP
A Professional Law Corporation
1156 E. Green Street, Suite 200
Pasadena, California 91106
Tel.: (213) 674-6080 / Fax: (213) 674-6081

Attorneys for Plaintiff Mary Alfardi and the Class

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

PLEASE TAKE NOTICE that on September 17, 2024, at 2:00 p.m., in Department 4 of the above-entitled Court, located at 800 N. Humboldt Street, San Mateo, California 94401, Plaintiff Robert Harlow, Jr., ("Plaintiff Harlow") and Plaintiff Mary Alfardi ("Plaintiff Alfardi") (together, "Plaintiffs" or "Class Representatives") will and hereby do move for an order awarding the following pursuant to the Class Action and PAGA Settlement Agreement and Stipulation to Amend and Modify the Class Action and PAGA Settlement Agreement (together, "Settlement," "Agreement," or "Settlement Agreement"):

1. Payment in the amount of **$2,000,000.00** to Lawyers *for* Justice, PC and Aequitas Legal Group, APC (together, "Class Counsel"), representing forty percent (40%) of the Total Settlement Amount, for the Attorneys' Fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check;
2. Payment in the amount of **$28,047.02** to Class Counsel for litigation costs;
3. Payment in the amount of **$28,894.10** to the Settlement Administrator for Settlement Administration Costs;
4. Payment in the amount of **$12,500.00** each to Plaintiffs as Enhancement Awards, for their time and effort in representing the Class; and

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

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410 West Arden Avenue, Suite 203
Glendale, California 91203

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Tara Zabehi and Ronald H. Bae), Class Representatives (Robert Harlow, Jr., and Mary Alfardi), and the Settlement Administrator (Taylor Mitzner of Phoenix Settlement Administrators) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: August 23, 2024

LAWYERS *for* JUSTICE, PC

By: Tara Zabehi

Tara Zabehi
Attorneys for Plaintiff Robert Harlow Jr., and the Class

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Robert Harlow, Jr., ("Plaintiff Harlow") and Plaintiff Mary Alfardi ("Plaintiff Alfardi") (together, "Plaintiffs" or "Class Representatives") seek an award of (1) attorneys' fees in the amount of $2,000,000.00 which is forty percent (40%) of the Total Settlement Amount of $5,000,000.00[1], and reimbursement of litigation costs and expenses in the amount of $28,047.02 (together, referred to as the "Attorneys' Fees and Costs") to Lawyers *for* Justice, PC and Aequitas Legal Group, APC (together "Class Counsel"); (3) Settlement Administration Costs in the amount of $28,894.10 to Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"); and (3) Enhancement Awards in the amount of $12,500.00 each to Plaintiff Harlow and Plaintiff Alfardi (combined, $25,000.00), as provided for by the Class Action and PAGA Settlement Agreement and Stipulation to Amend and Modify the Class Action and PAGA Settlement Agreement (together, "Settlement," "Agreement," or "Settlement Agreement"), entered into by and between Plaintiffs and Defendant Covenant Aviation Security, LLC ("Defendant") (collectively, the "Parties").

This matter involved ongoing investigations, extensive formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the mediation conducted by Paul Grossman, Esq., and settlement negotiations thereafter. This matter has required 1,324.70 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents forty percent (40%) 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.[2]

Plaintiffs also move for payment of the Enhancement Awards in the amount of $12,500.00 each to Plaintiff Harlow and Plaintiff Alfardi (combined amount of $25,000.00), to compensate

[1] Class Action and PAGA Settlement Agreement and Stipulation to Amend and Modify the Class Action and PAGA Settlement Agreement (together, "Settlement Agreement"), ¶ 13.d.

[2] Applying a modest multiplier of 1.75, the total enhanced lodestar fees are $2,006,768.75, and Class Counsel seeks an attorneys' fees award of $2,000,000.00 (equal to 40% of the Total Settlement Amount)

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410 West Arden Avenue, Suite 203
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Plaintiffs for the time and effort that they expended spearheading the lawsuit on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiffs also move for final approval of the payment to the Settlement Administrator in the amount of $28,894.10 for Settlement Administration Costs.

The requests for Attorneys' Fees and Costs, Enhancement Awards, and Settlement Administration Costs were fully disclosed in the Notice of Class Action Settlement ("Class Notice") that was mailed to the Class Members. Most importantly, as of the date of this Motion, *not a single Class Member has objected to any aspect of the Class Settlement, including the requested Attorneys' Fees and Costs, Enhancement Awards, or Settlement Administration Costs.* Accordingly, the Court should award Attorneys' Fees and Costs, Enhancement Awards, and Settlement Administration Costs in the amounts as fully disclosed to the Class and as requested herein.

II. <u>PROCEDURAL HISTORY AND FACTUAL BACKGROUND</u>

Defendant is an industry leader, providing legally compliant security and screening services for Airport Authorities, TSA, and airlines. In fact, Defendant is the largest private contractor providing Screening Partnership Program (SPP) services to TSA. Plaintiffs are former employees of Defendant.

On September 15, 2020, Plaintiff Harlow submitted notice to the California Labor & Workforce Development Agency ("LWDA") and Defendant of his intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, *et seq*.

On September 16, 2020, Plaintiff Harlow filed a Class Action Complaint for Damages, in the San Mateo County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("*Harlow* Class Action").

On October 5, 2020, Plaintiff Alfardi filed a Class Action Complaint for Damages, in the San Francisco County Superior Court ("*Alfardi* Class Action").

On November 19, 2020, Plaintiff Harlow filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *et seq*., in the San Mateo Court ("*Harlow* PAGA Action").

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410 West Arden Avenue, Suite 203
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Plaintiffs' core allegations are that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members and Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and 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 Actions, and further denies that the Actions is appropriate for class treatment or representative adjudication for any purpose other than settlement.

The Parties have actively litigated the Actions since the *Harlow* Class Action was commenced on September 16, 2020. On September 14, 2022, 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. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

On November 29, 2023, the *Alfardi* Class Action was transferred to the San Mateo Superior Court.

On December 12, 2023, the *Alfardi* Class Action, the *Harlow* Class Action and the *Harlow* PAGA Action (together, the "Actions") were consolidated, with the *Harlow* Class Action designated as the lead case.

On December 29, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On January 30, 2024, the Court issued a Minute Order raising certain points of inquiry regarding the Motion for Preliminary Approval and continuing the hearing the Motion for Preliminary Approval. On

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410 West Arden Avenue, Suite 203
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February 9, 2024, Plaintiffs submitted supplemental briefing in support of the Motion for Preliminary Approval. On April 3, 2024, the Court issued an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for approval of the requested Attorneys' Fees and Costs, Enhancement Awards, and Settlement Administration Costs, and for final approval of the Settlement and allocation for the PAGA Penalty Amount, as set forth in the concurrently filed Motion for Final Approval of Class Action and PAGA Settlement.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount of $5,000,000.00 by making a one-time deposit, into a settlement account to be established by the Settlement Administrator.[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 $2,000,000.00 and reimbursement of litigation costs and expenses in the amount of $28,047.02, to Class Counsel; (2) Enhancement Awards in the amount of $12,500.00 each to Plaintiff Harlow and Plaintiff Alfardi (combined amount $25,000.00); (3) Settlement Administration Costs in the amount of $28,894.10 to Phoenix; and (4) PAGA Penalty Amount in the amount of $500,000.00.[4] The Net Settlement Amount, which is estimated to be $2,418,058.88, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.[5]

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix Settlement Administrators has taken all necessary steps to effectuate the notice and settlement administration process, as set forth

[3] Settlement Agreement, ¶ 13.
[4] *Id.*, ¶¶ 13.a, 13.b, 13.c and 13.d.
[5] This amount is higher than the amount stated in Paragraph 15 of the accompanying Declaration of Taylor Mitzner of Phoenix Settlement Administrator Regarding Notice and Settlement Administration ("Phoenix Declaration" or Phoenix Decl.") because the Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $75,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $28,047.02 for reimbursement of litigation costs and expenses, and the total difference of $46,952.98 will remain part of the Net Settlement Amount.

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in the Court's Preliminary Approval Order.

On April 24, 2024, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to all three thousand four hundred six (3,406) Class Members on the Class List.[6] The Response Deadline was June 24, 2024.[7] As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection.[8] As of the date of this Motion, the Settlement Administrator has received three (3) Requests for Exclusion from Class Members.[9] To date, three thousand four hundred three (3,403) Class Members who did not submit timely and valid Requests for Exclusion ("Settlement Class Members"), and who will be paid their portion of the Net Settlement Amount.[10] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $2,418,058.88 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.[11] The highest Individual Settlement Share is currently estimated to be $2,023.06 and the average Individual Settlement Share is currently estimated to be $696.77.[12] The highest Individual PAGA Payment is currently estimated to be $144.68 and the average Individual PAGA Payment is currently estimated to be $48.52.[13]

V. <u>THE ATTORNEYS' FEES REQUESTED IS FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

A. <u>Legal Standard for Attorneys' Fees in a Class Action Settlement.</u>

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 Case*s (2009) 180 Cal.App.4th 1110, 1118. Where

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[6] Phoenix Decl., ¶ 5.
[7] *Id.*, ¶¶ 8, 9 and 10.
[8] *Id.*, ¶ 9.
[9] *Id.*, ¶ 8.
[10] *Id.*, ¶ 11.
[11] *Id.*, ¶ 13.
[12] *Id.*, ¶ 14. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses is less than $75,000 (the difference between the amount sought and the amount authorized under the Settlement, $46,952.98, will be part of the Net Settlement Amount). See n.5, *supra*.
[13] *Id.*, ¶ 15.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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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*

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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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. <u>A Fee Award of a Percentage of the Entire Fund Is Appropriate.</u>

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. Graulty* (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.[14] 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 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

[14] 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.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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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 $5,000,000.00 on a non-reversionary basis. The requested attorneys' fees are forty percent (40%) 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 case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early,

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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. The 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 plaintiff. If the named plaintiff has 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 plaintiff. In this case, Plaintiff Harlow has agreed to a contingency fee of at least forty percent (40%) of the recovery, and Plaintiff Alfardi has agreed that her counsel may apply for an award of fees based upon the time expended, the difficulty of the litigation, and the results achieved, among other things.[15]

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

In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining reasonable attorneys' fees, the Court of Appeal valued a settlement based on the total value of the settlement made available to class members by the efforts of counsel, decided in favor of granting fees as a

[15] Declaration of Tara Zabehi ("Zabehi Decl."), ¶ 9; Declaration of Ronald H. Bae ("Bae Decl."), ¶ 49.

percentage of the total value of the settlement, and rejected an objection that the fees be awarded based on the exact amount claimed by class members. *Id.* at 247.

Class Counsel have obtained a substantial recovery on behalf of Plaintiffs, the Class, Aggrieved Employees, 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 agreements entered into by and between Plaintiffs and their counsel. Thus, the requested attorneys' fees are appropriate.

C. <u>The Attorneys' Fees Requested Is Reasonable Based on the Factors Considered in Determination of Fee Awards.</u>

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 case; (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 case; (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 Attorneys' Fees in the amount of $2,000,000.00 (which is 40% of the Total Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel combined their 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.

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410 West Arden Avenue, Suite 203
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Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.[16]

As outlined in the Declarations of Tara Zabehi and Ronald H. Bae, Class Counsel have fully and actively participated in litigation of the cases.[17] Prior to commencing the lawsuits, 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.[18] During the litigation of the actions, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; reviewed and analyzed a large volume of pages of information, documents and data obtained from Defendant, Plaintiffs, and other sources; and prepared liability, damages, penalties, and valuation calculations.[19] Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, discovery, and the production of information, documents and data, among other things; engaged in settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.[20]

Class Counsel have dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The task and time charts and records, which is attached as exhibits to the accompanying declarations of Tara Zabehi and Ronald H. Bae, set forth in detail the hours that Lawyers *for* Justice, PC and Aequitas Legal Group, APC have spent performing tasks on behalf of Plaintiffs and the Class.[21] The time and task charts are thorough and comprehensive, and were prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the charts, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Collectively, Class Counsel have spent 1,324.70 hours, with 808.20 spent by Lawyers *for* Justice, PC and 516.50 hours spent by Aequitas Legal

[16] Zabehi Decl., ¶¶ 13-18; Bae Decl., ¶¶ 39-44.
[17] Zabehi Decl., Exh. A.; Bae Decl., Exh. A.
[18] Zabehi Decl.., ¶ 7; Bae Decl., ¶ 37.
[19] Zabehi Decl., ¶¶ 6-8; Bae Decl., ¶¶ 18-29.
[20] Ibid.
[21] Zabehi Decl., Exh. A.; Bae Decl., ¶ 50, Exh. A.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
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Group, APC performing tasks and to obtain a significant recovery on behalf of Plaintiffs, the Class, the Aggrieved Employees, and the State of California.[22] These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this matter, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the cases is evident not only in the results achieved, but in the steps necessary to reach those results. 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. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and 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 declarations of Tara Zabehi and Ronald H. Bae, Class Counsel used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.[23]

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.

[22] Zabehi Decl., ¶¶ 11-12; Bae Decl., ¶¶ 50-51.
[23] Zabehi Decl., ¶¶ 13-18; Bae Decl., ¶¶ 39-44.

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410 West Arden Avenue, Suite 203
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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, the State of California, and Aggrieved Employees 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 settlement negotiations, Defendant agreed to pay a Total Settlement Amount of $5,000,000.00 to settle the matter. After deducting the Attorneys' Fees ($2,000,000.00), costs and expenses ($28,047.02), Enhancement Awards ($25,000.00), Settlement Administration Costs ($28,894.10), and the allocation PAGA Penalty Amount ($500,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $2,418,058.88.[24] The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share is currently estimated to be $2,023.06 and the average Individual Settlement Share is currently estimated to be $696.77.[25] The highest Individual PAGA Payment is currently estimated to be $144.68 and the average Individual PAGA Payment is currently estimated to be $48.52.[26] The Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and Aggrieved Employees.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel have been wholly contingent. Class Counsel took on the cases without knowing whether any recovery would be obtained. Class Counsel have collectively invested 1,324.70 hours of time to obtain relief on behalf of Plaintiffs, Class Members,

[24] Phoenix Decl., ¶ 13.
[25] *Id.*, ¶ 14.
[26] *Id.*, ¶ 15.

the State of California, and Aggrieved Employees.[27] Class Counsel have also collectively incurred litigation costs and expenses in the amount of $28,047.02.[28]

Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[29] Class Counsel are well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.[30] The skill and determination that Class Counsel have 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 have 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.[31]

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]

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[27] Zabehi Decl., ¶¶ 11 & Exh. A; Bae Decl., ¶¶ 50-51 and Exh. A.
[28] Zabehi Decl., ¶ 19; Bae Decl., ¶ 52.
[29] Ibid.
[30] Zabehi Decl., ¶¶ 13-18; Bae Decl., ¶¶ 39-44.
[31] Phoenix Decl., ¶ 9.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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 matter. Class Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of $5,000,000.00.[32] The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share is currently estimated to be $2,023.06 and the average Individual Settlement Share is currently estimated to be $696.77.[33] The highest Individual PAGA Payment is currently estimated to be $144.68 and the average Individual PAGA Payment is currently estimated to be $48.52.[34]

6. The Reputation and Ability of the Attorneys.

Both Lawyers *for* Justice, PC and Aequitas Legal Group, APC are recognized class action law firms that employed their attorneys' knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel have years of complex and class action litigation experience, have recovered millions of dollars on behalf of thousands of individuals in California, and have successfully handled numerous significant wage-and-hour class action and complex cases.[35]

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

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

[32] Zabehi Decl., ¶ 9.
[33] Phoenix Decl., ¶ 14.
[34] *Id.*, ¶ 15; See n.5 & 12, *supra*.
[35] Zabehi Decl., ¶¶ 13-18; Bae Decl., ¶¶ 39-44.

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 matter 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 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 case 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 have 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 additional 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 mediations.

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, attached to the declarations of Tara Zabehi and Ronald H. Bae are task and time charts that set 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.[36] The charts demonstrate that Class Counsel have spent a total of 1,324.70 hours litigating the cases and finalizing the Settlement.[37] In light of the facts and circumstances of the cases, as well as the results that Class Counsel have achieved in these cases, Class Counsel have 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 have been actively involved in this matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases 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 were successful in reaching a settlement of $5,000,000.00.

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[36] Zabehi Decl., Exh. A; Bae Decl., Exh. A.
[37] Zabehi Decl., ¶¶ 11 & Exh. A; Bae Decl., ¶¶ 50-51 and Exh. A.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

As set forth in the Declaration of Tara Zabehi, the professional backgrounds and experience of Lawyers *for* Justice, PC support reasonable rates of compensation at least $850 per hour for services provided by Lawyers *for* Justice, PC.[38] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least $850 per hour for legal service performed, by courts of this state.[39] While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees. [40]

3. The Risks Involved, Skill Required, Complexity of the Matter, and Results Obtained Warrant Upward Enhancement of the Lodestar.

Even when courts have opted to award fees in Total Settlement Amount cases based on time reasonably expended on the action, courts have generally awarded these fees based on the actual time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this case.

Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). 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*, 24 Cal.4th at 1132-33. 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.

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-823. Multiple factors warrant enhancement in this case, including the following:

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[38] Ibid.
[39] Zabehi Decl., ¶¶ 11 & Exh. A; Bae Decl., ¶¶ 50-51 and Exh. A.
[40] The hourly rates for each lawyer used for calculating the lodestar are comparable to those charged by California law firms that specialize in wage and hour class action defense. *See* Bae Decl., Exh. B.

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- The time and labor required
- The skill requisite to perform the legal services properly
- The preclusion of other employment by the attorney due to the acceptance of the case
- The contingent nature of the fee
- The amount involved and results obtained
- The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. *See id.*, at 1135-1136; *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba*, *supra*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra,* 24 Cal.4th at 1131-1132. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-1133 (quotation marks and citation omitted).

As discussed above, this was a highly contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the cases involved gathering and analyzing documents and data not only from Defendant but also from the Settlement Class Members. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which Class Counsel have as a result of extensive experience in employment class actions and wage-and-hour litigation. Class Counsel have been actively involved in the prosecution of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to the representation of the Settlement Class Members has precluded other employment.

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Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino,* 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel were successful in achieving substantial results in the form of a settlement of $2,315,267.75. Also, Class Counsel's efforts throughout the matter demonstrate dedication to the interests of the Settlement Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the declarations of Tara Zabehi and Ronald H. Bae.[41] Class Counsel have collectively worked 1,324.70 hours in the pursuit of this matter. Applying a reasonable blended rate of $850 per hour to 808.20 hours of work performed by Lawyers *for* Justice, PC would place a base lodestar value of $686,970.00 on Lawyer's *for* Justice's services. The hourly rates of its attorneys for the 516.50 hours of work performed by Aequitas Legal Group, APC would place a base lodestar value of $459,755.00 on Aequitas Legal Group, APC's services.[42] The combined base lodestar for Class Counsel is $1,146,725.00 and applying a modest multiplier of 1.75, the total enhanced lodestar fees are $2,006,768.75.[43] Class Counsel seeks an attorneys' fee award of $2,000,000.00 (equal to 40% of the Total Settlement Amount). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher**." *Wershba, supra,* 91 Cal.App.4th at 255 (emphasis added); *see also, e.g.*, *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290

[41] Zabehi Decl., ¶¶ 11 & Exh. A; Bae Decl., ¶¶ 50-51 and Exh. A.
[42] Bae Decl., ¶¶ 50-51 and Exh. A.
[43] Zabehi Decl., ¶ 11; Bae Decl., ¶ 50; see n.2, *supra.*

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410 West Arden Avenue, Suite 203
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F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

The nature of the work performed, skill exercised, and the outcome in this matter support the percentage fee sought and the application of a lodestar multiplier. This matter involves an outstanding monetary recovery involving a Total Settlement Amount ***of $5,000,000.00*** (with a Net Settlement Amount of ***at least $2,418,058.88 to be paid to Settlement Class Members*** with an average payment of approximately $696.77 per Settlement Class Member, a ***payment of $125,000.00 to Aggrieved Employees*** with an average payment of $48.52 per Aggrieved Employee, and ***payment of $375,000 to the State of California***)—support the percentage fee sought and the application of a lodestar multiplier.[44]

Therefore, application of a modest multiplier of 1.75 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of $2,000,000.00 to Class Counsel.

VI. 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 $75,000.00. As set forth in the declarations of Tara Zabehi and Ronald H. Bae, Class Counsel seeks reimbursement of $28,047.02 in litigation costs and expenses collectively incurred in this case.[45] This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement.[46] The cost savings of $46,952.98 will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Settlement.[47] Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of $28,047.02

[44] Phoenix Decl., ¶¶ 14-15. See n.5 & 12, *supra*.
[45] Zabehi Decl., ¶ 19; Bae Decl., ¶ 52.
[46] Ibid.
[47] Ibid.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

to Class Counsel, of which $20,407.99 will be paid to Lawyers *for* Justice, PC and $7,639.03 will be paid to Aequitas Legal Group, APC.

VII. THE SETTLEMENT 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 $28,894.10.[48] The costs incurred and to be incurred include, but are not limited to, (i) preparing, translating, printing, and mailing the *Notice of Class Action Settlement*, *Objection Form*, and *Opt-Out Form* (collectively referred to as the "Notice"); (ii) responding to inquiries from Class Members; (iii) calculating the number of weeks each Class Member worked during the period from September 16, 2016 to April 3, 2024 ("Class Period") and the number of workweeks that each Aggrieved Employee worked during the time period from September 15, 2019 to April 3, 2024 ("PAGA Period"); (iv) determining the validity of letters indicating a request to be excluded from the Class Settlement ("Requests for Exclusion"), written objections to the Class Settlement ("Objections"), and/or dispute regarding the number of Workweeks submitted by Class Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Settlement Class Members and Individual PAGA Payments to Aggrieved Employees; (vii) issuing the payment to Class Counsel for attorneys' fees and costs, the Enhancement Payments to both Plaintiffs, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders.[49]

At the time of preliminary approval, Phoenix estimated that its costs would be $25,950 based on an estimated class size of 2,850 members. December 29, 2023 Motion for Preliminary Approval at 20:19-21. The Notice was mailed to 3,406 individuals, which caused the actual settlement administration costs to be $28,894.10. This is $2,944.10 more than the initial estimate,

[48] Phoenix Decl., ¶ 17.
[49] *Id.*, ¶ 2.

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410 West Arden Avenue, Suite 203
Glendale, California 91203

but still well below the $50,000 cap set by Paragraph 13(b) of the Settlement Agreement. Despite the larger class size, the escalator clause was not triggered because the total number of workweeks is below the agreed-upon threshold. Mitzner Decl., ¶ 12.

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 $28,894.10.

VIII. THE REQUESTED ENHANCEMENT AWARDS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for Enhancement Awards in the amount of $12,500.00 to Plaintiffs (combined amount $25,000.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Enhancement Awards are both common and reasonable and should be awarded.

In determining whether to make enhancement awards, 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 Awards 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 to support the prosecution of the claims.[50] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the cases.[51]

Furthermore, it is not an easy decision for a class representative to put his or her name on a lawsuit, much less on a class action case, especially suing an employer in the industry where he

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[50] Zabehi Decl., ¶ 20; Bae Decl., ¶ 47; Declaration of Robert Harlow, Jr. ("Harlow Decl."), ¶¶ 2-8; Declaration of Mary Alfardi ("Alfardi Decl."), ¶¶ 2-16

[51] Zabehi Decl., ¶ 20; Bae Decl., ¶ 47; Harlow Decl., ¶¶ 2-8; Alfardi Decl., ¶¶ 2-16.

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

or she works to earn a living. Alfardi Decl. ¶ 13; *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009) (service awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputation risk undertaken in bringing the action, and, sometimes to recognize their willingness to act as a private attorney general."). The stigma a plaintiff faces is real in this new digital age where a simple search on Google can reveal one's employment and litigation history. Even without the exposure on the internet, a class representative may be marked as a litigious troublemaker through rumors or lingering memories which would negatively impact the ability to procure employment in the future.

Plaintiffs also took on the financial risk of having to pay for Defendants' litigation costs if they lost the case. In addition, Plaintiffs will be giving Defendant a broad general release, in contrast to the release given by the Class Participants, which is limited to their wage and hour claims that were alleged in the Actions or are based on the factual allegations in the Actions. Sett. Agmt. ¶¶ 16(a), 17. This release will preclude Plaintiffs from pursuing any and all claims they may have against Defendant, and such a broad release warrants significant consideration. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267–68 (N.D. Cal. 2015).

Accordingly, it is appropriate and just for Plaintiffs to receive $12,500.00 each, as reasonable Enhancement Awards, in addition to their individual settlement payments.

IX. CONCLUSION

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

Dated: August 23, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________________
Tara Zabehi
Attorneys for Plaintiff Harlow and the Class

LAWYERS *for* JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203