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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CHRISTINA COCOTIS-ANDRADE, 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, NYCOLE TORRES, individually, and on behalf of members of the general public similarly situated;

Plaintiffs,

vs.

CARL ZEISS MEDITEC, INC., an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG18927500

Honorable Michael Markman
Department 23

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS COUNSEL ATTORNEYS FEES AND EXPENSES, AND INCENTIVE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declaration of Class Counsel (Vartan Madoyan); Declaration of Class Representatives (Christina Cocotis-Andrade and Nycole Torres); Declaration of Settlement Administrator (Lluvia Islas on behalf of Phoenix Settlement Administrators); and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Date:	February 27, 2025
Time:	10:00 a.m.
Department:	23
Complaint Filed:	November 5, 2018
FAC Filed:	December 27, 2018
SAC Filed:	December 22, 2021
TAC Filed:	May 3, 2024
Trial Date:	None Set

PLEASE TAKE NOTICE that on February 27, 2025, at 10:00 a.m., in Department 23 of the above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Christina Cocotis-Andrade and Nycole Torres (together, "Plaintiffs") will and hereby does move for an order granting final approval of:

1. The Settlement Agreement and Release (together, "Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Gross Settlement Amount of approximately **$1,710,000.00** will be fully distributed to all Class Members other than those who have submitted timely and valid Opt Out Requests and thereby excluded themselves from the Class Settlement ("Qualified Class Members");
- **No objections** were submitted to the settlement administrator, Phoenix Settlement Administrators ("Settlement Administrator" or "Phoenix");
- **Only three (3) Requests for Exclusion** were submitted to the Settlement Administrator;

2. Payment in the amount of **$598,500.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing 35% of the Gross Settlement Amount, for attorneys' fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check;

3. Payment in the amount of **$35,000.00** to Class Counsel for reimbursement of Litigation Expenses;

4. Payment in the amount of **$9,000.00** to the Settlement Administrator for Administrative Expenses;

5. Payment in the amount of **$10,000.00** each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres as Incentive Awards, for their time and effort in representing the Class; and

6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, in the amount of $150,000.00, of which 75%, or **$112,500.00**, will be paid to the California Labor and Workforce Development Agency and 25%, or **$37,500.00**, will be distributed to the PAGA Group.

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

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Vartan Madoyan), Class Representatives (Christina Cocotis-Andrade and Nycole Torres), and Settlement Administrator (Lluvia Islas of Phoenix) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: February 3, 2025

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan

Vartan Madoyan
Attorney for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Christina Cocotis-Andrade and Nycole Torres (together, "Plaintiffs") seek final approval of: (1) the Gross Settlement Amount of $1,710,000.00; (2) Class Counsel Attorneys' Fees in the amount of $598,000.00, which is 35% of the Gross Settlement Amount and reimbursement of litigation Expenses in the amount of $35,000.00 ("Class Counsel Attorney Fees and Expenses"), to Lawyers *for* Justice, PC ("Class Counsel")[1]; (3) Settlement Administrative Expenses in the amount of $9,000.00 to Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"); (4) Incentive Award in the amount of $10,000.00 each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres, for a combined amount of $20,000.00; and (5) allocation of $150,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Payment").

Plaintiffs seek relief on behalf of the following Class:

> All current and former hourly-paid or non-exempt employees of Defendant or its wholly-own subsidiary Carl Zeiss Meditec USA, Inc., in California employed during the Class Period. ("Settlement Class").[2]

This matter involved exhaustive and extensive investigations, including but not limited to extensive discovery, numerous depositions (including party, non-party, and expert depositions), the filing of a Motion for Class Certification, and review and analysis of a large volume of documents and data prior to and during two separate private mediation sessions. This matter has required 828.30 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for Class Counsel Attorneys' Fees, which represents 35% of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested Attorneys' Fees are also supported

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[1] In actuality, Lawyers *for* Justice, PC incurred litigation costs of almost $70,000 (as detailed in Exhibit B of the Declaration of Vartan Madoyan), but has agreed to seek reimbursement of only about half that amount to benefit the Class Members.

[2] Settlement Agreement, § I.7. "Class Period" is defined as the time period from November 5, 2014, through the date of Preliminary Approval, unless shortened if the Escalator Provision is triggered. As detailed during the Motion for Preliminary Approval proceedings, due to the operation of the escalator clause, the Class Period ended on July 21, 2023 (as the Class was also advised of in the Class Notice).

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under the lodestar cross-check method, without the need to utilize any multiplier (in fact, a negative multiplier would apply).

Plaintiffs move for final approval of the Service Payments in the amount of $10,000.00 each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres, to compensate Plaintiffs for the time and effort that they expended spearheading the lawsuits on behalf of the Class, the PAGA Group, and the State of California. Plaintiffs also move for final approval of the payment to the Settlement Administrator in the amount of $9,000.00 for Settlement Administrative Expenses. Plaintiffs also move for final approval of the allocation of $150,000.00 for the PAGA Payment, of which 75%, or $112,500.00, will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Payment, and 25%, or $37,500.00, will be distributed to the PAGA Group on a *pro rata* number of pay periods or workweeks worked by each particular PAGA Group member during the PAGA Period as a proportion of all pay periods or workweeks worked by all members of the PAGA Group.[3]

The requests for Class Counsel Attorneys Fees and Litigation Expenses, Incentive Award, Administrative Expenses, and allocation for the PAGA Payment 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 Settlement, including the requested Class Counsel Attorney Fees and Expenses, Incentive Awards, Administrative Expenses, or allocation for PAGA Payment*.

The Settlement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel and was presided over by two highly-regarded mediators who are experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should grant final approval of the Settlement, and award Class Counsel Attorney Fees and Expenses, Incentive Awards, Administrative Expenses, and PAGA Payment in the amounts as fully disclosed to the Class and as requested herein.

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[3] Settlement Agreement, § III. 4. "PAGA Period" is defined as the time period from December 21, 2019 through Preliminary Approval, unless shortened if the Escalator Provision is triggered. Settlement Agreement, § I. 28. As detailed during the Motion for Preliminary Approval proceedings, due to the operation of the escalator clause, the PAGA Period ended on July 21, 2023.

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In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Class Counsel Attorney Fees and Expenses, Incentive Awards, Administrative Expenses, and PAGA Payment, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant was founded in 1995 and is headquartered in Jena, Germany. Defendant is a subsidiary of Carl Zeiss AG. It engages in the development, manufacturing, and marketing of medical devices including tools for eye examinations and medical lasers. Additionally, Defendant offers solutions for neurosurgery, dentistry, gynecology, and oncology. Defendant's products are commonly used by ophthalmologists and optometrists. Within California, Defendant operates two facilities in Dublin, which is the company's largest medical technology site outside of Germany. Plaintiffs Christina Cocotis-Andrade and Nycole Torres are former employees of Defendant.

A. Pleadings

On November 5, 2018, the putative class action entitled *Lori Coleman, et al. v. Carl Zeiss Meditec, Inc.*, Superior Court of the State of California, County of Alameda, Case No. RG18972500 ("Coleman Class Case") was filed by former employee Lori Coleman, alleging that Defendant violated the Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and California Business & Professions Code section 17200, et seq. On December 27, 2018, Lori Coleman filed a First Amended Complaint.

On August 25, 2020, the first mediation session occurred with Honorable Edward A. Infante (retired) mediator, however the case did not resolve and the Parties resumed extensive litigation efforts.

On December 21, 2020, Plaintiff Cocotis-Andrade provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the

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California Labor Code that were alleged to be violated (the "LWDA Notice"), thereby initiating LWDA Case No. LWDA-CM-816131-20.

On February 25, 2021, Plaintiff Cocotis-Andrade filed the case entitled *Christina Cocotis-Andrade v. Carl Zeiss Meditec, Inc.*, Superior Court of the State of California, County of Alameda, Case No. RG21089921 ("Cocotis-Andrade PAGA Case"), alleging claims under PAGA.

On December 22, 2021, Lori Coleman filed a Second Amended Complaint, adding Christina Cocotis-Andrade as a named plaintiff in the Coleman Class Case.

On January 14, 2022, Plaintiff Cocotis-Andrade filed a Motion for Class Certification in the above-captioned action. On March 9, 2022, the hearing for the Motion for Class Certification was continued from March 11, 2022, to May 24, 2022. On May 2, 2022, the Court granted a stipulation staying all proceedings and discovery in the matter and vacating all pending deadlines related to Motion for Class Certification due to the second scheduled mediation session to take place in December 19, 2022.

On December 6, 2022, Plaintiff Nycole Torres filed the case entitled *Nycole Torres v. Carl Zeiss Meditec, Inc.*, Superior Court of the State of California, County of Alameda, Case No. 22CV023237 ("Torres Declaratory Relief Action"), alleging that after the Coleman Class Case was filed with the Court, Defendant solicited and presented its current and former employees with uniform, boilerplate settlement and release agreements.

Since filing the Coleman Class Case, Lori Coleman was dismissed as a Plaintiff in the Coleman Class Case. The operative Third Amended Complaint was filed in the Coleman Class Case on May 3, 2024 by Plaintiffs, and Plaintiffs have dismissed without prejudice their separately filed cases, i.e. the Cocotis-Andrade PAGA Case and the Torres Declaratory Relief Action, in light of the instant global settlement.

B. <u>Extensive Discovery Efforts</u>

On August 7, 2019, Lori Coleman propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Sets One and Two); and Form Interrogatories, (Set One), on Defendant. Lori Coleman also noticed the deposition of

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Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant and accompany request for product of documents. Thereafter, on September 24, 2020, Defendant responded to Lori Coleman's discovery requests and supplemented those requests on December 14, 2020. Defendant further supplemented those responses on April 6, 2021, May 12, 2021, and June 14, 2021.

On November 4, 2021, Lori Coleman re-noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant and accompanying Request for Production of Documents. Defendant objected to the re-noticed deposition on November 9, 2021.

On November 16, 2021, the deposition of Defendant's person most knowledgeable, Joey Lake, was conducted by Class Counsel.

On July 13, 2021, Lori Coleman propounded additional sets of discovery including Requests for Production of Documents, (Set Two); Requests for Admission, (Set One); Special Interrogatories, (Set Three); and Form Interrogatories, (Set Two), on Defendant. Thereafter, on September 13, 2021, Defendant responded to Lori Coleman's discovery requests and supplemented those requests on December 23, 2021.

On June 16, 2021, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One); on Lori Coleman and noticed the deposition of Lori Coleman and accompany request for product of documents.

Thereafter, on August 13, 2021, Lori Coleman responded to Defendant's discovery requests and supplemented those responses on October 1, 2021.

On December 29, 2021, Defendant propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Requests for Admissions, (Set One); Special Interrogatories, (Set One) and Form Interrogatories, (Set One); on Plaintiff Cocotis-Andrade and noticed the deposition of Plaintiff Cocotis-Andrade. Thereafter, on February 1, 2022, Plaintiff Cocotis-Andrade responded to Defendant's discovery requests. Plaintiff Cocotis-Andrade

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objected to the deposition on February 3, 2022. On February 7, 2022, Plaintiff Cocotis-Andrade was deposed.

On February 15, 2022, Defendant noticed the deposition of Dianne Cortinas.

On February 15, 2022, Defendant noticed the deposition of Laura Rocci. On March 2, 2022, Laura Rocci was deposed.

On March 3, 2022, Defendant noticed the deposition of Denise Everett. On March 8, 2022 Plaintiff Cocotis-Andrade and Denise Everett objected to the deposition. On March 15, 2022, Denise Everett was deposed.

On March 7, 2022, Defendant noticed the deposition of Michael Evans. On March 10, 2022, Plaintiff Cocotis-Andrade and Michael Evans objected to the deposition.

On March 10, 2022, Defendant noticed the deposition of Erwin Antonio. On March 25, 2022, Plaintiff Cocotis-Andrade and Erwin Antonio objected to the deposition.

On March 15, 2022, Defendant noticed the deposition of Manuel Solomon. On March 25, 2022, Plaintiff Cocotis-Andrade and Manuel Soloman objected to the deposition. On March 31, 2022, Manuel Solomon was deposed.

On March 30, 2022, Defendant noticed the deposition of expert, Richard Drogin, Ph.D. On April 14, 2022, Richard Drogin, Ph.D. was deposed.

C. <u>Second Mediation Session and Subsequent Events</u>

On December 19, 2022, the Parties attended the second mediation session with Gig Kyriacou, Esq. With the aid of the mediator's evaluation, including a mediator's proposal, the Parties ultimately reached a settlement.

On March 3, 2024, the Third Amended Complaint was filed ("TAC" and/or "Operative Complaint") adding Plaintiff Nycole Torres and her claims alleged in her class action complaint for declaratory relief against Defendant in the Superior Court of California, County of Alameda, Case No. 22CV02327 ("Nycole Declaratory Relief Action").

On July 11, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval").

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On July 30, 2024, the Court issued a tentative ruling in which it raised multiple points of inquiry with regard to the Motion for Preliminary Approval ("July 30, 2024 Tentative Ruling"). On September 5, 2024, Plaintiffs filed the Supplemental Declaration of Vartan Madoyan and Amended Proposed Order in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. On September 6, 2024, Defendant also filed the Declaration of Angela Rafoth in Support of Plaintiffs' Amended Motion for Preliminary Approval of Class Action Settlement. The Court granted the Motion for Preliminary Approval ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

The Parties have actively litigated the Coleman Class Case, Cocotis-Andrade PAGA Case, and Torres Declaratory Relief Action (collectively, the "Action") since they were commenced.

Plaintiffs now move for Final Approval of the Settlement, Class Counsel Attorneys Fees and Expenses, Incentive Award, Administrative Expenses, and allocation for PAGA Payment.

III. <u>SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION</u>

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of $1,710,00.00 and the employer's share of payroll taxes on the Wage Portion of the Individual Settlement Amounts ("Employer Taxes") within 14 days after the Effective Date.[4] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Attorney Fees and Expenses, consisting of Attorneys Fees in the amount of $598,500.00 and litigation Expenses in the amount of $35,000.00, to Class Counsel; (2) Incentive Award in the amount of $10,000.00 each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres, for a combined $20,000.00; (3) Administrative Expenses in the amount of $9,000.00 to the Settlement Administrator Phoenix; (4) and PAGA Payment in the amount of $150,000.00.[5] The Net Settlement Amount, which is estimated to be $897,500.00 will be distributed in accordance with the Settlement Agreement.

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[4] Settlement Agreement, § III. B.2.
[5] *Id.*, § III.D.1.

The Settlement Administrator will determine each Qualified Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Amounts"), according to the following methodology: "The portion of the Net Settlement Amount shall be distributed pro rata based on the proportional number of weeks worked by each Class Member during the Class Period.[6]

The Settlement Administrator will determine each member of the PAGA Group *pro rata* share of the 25% portion of the PAGA Payment, according to the following methodology: "The portion of the PAGA Payment [$150,000.00] allocated to the PAGA Group shall be distributed to the PAGA Group based on the pro rata number of pay periods worked by each member of PAGA Group during the PAGA Period."[7]

Class Members had forty-five (45) calendar days after the Class Notice is mailed to Class Members ("Response Deadline") to submit a Request for Exclusion, objection, and/or disputes regarding Workweeks.[8] The Response Deadline was December 27, 2024.[9] ***As of the date of this Motion, the Settlement Administrator has not received any written objections to the Class Settlement.*** [10]

Each Qualified Class Member's Individual Settlement Amount will be allocated as follows: 33% as wages (the "Wage Portion"), which will be reported on an IRS Form W-2; 67% penalties and interest ("Non-Wage Portion"), which will be reported on an IRS form 1099.[11] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Settlement Shares, and issue checks to Qualified Class Members for their Individual Settlement Amount.[12] Any payment for an Individual PAGA Payment will be allocated as 100% penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Payment.[13]

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[6] *Id.*, § III.D.2.
[7] *Id.*, § III.D.2.
[8] *Id.*, §§ I.35.
[9] Phoenix Decl., ¶ 5.
[10] *Id.*, ¶ 9.
[11] Settlement Agreement, § III.A.5.
[12] *Id.*
[13] *Id.*

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The Employer Taxes will be paid separately and in addition to the Gross Settlement Amount.[14]

Each Individual Settlement Amount and Individual PAGA Group member's payment check will be valid and negotiable for 180 calendar days from the date the checks are issued, and thereafter, shall be canceled.[15] All funds associated with canceled checks will be transmitted to the cy pres, Bay Area Legal Aid, in accordance with California Code of Civil Procedure section 384.[16]

IV. THE SETTLEMENT ADMINISTRATION PROCESS

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

On October 14, 2024, Phoenix received a data file from Defendant's Counsel that contained each Class Member's name, last known mailing address, telephone numbers, Social Security numbers, dates of employment and number of workweeks for each Class Member ("Class List") during the Class Period and PAGA Period.[17] The final mailing list contained four hundred and ninety (490) individuals identified as Class Members.[18] Also on October 14, 2024, Phoenix conducted a National Change of Address ("NCOA") search in an attempt to update the Class List of addresses as accurately as possible.[19] To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice.[20] To the extent that no updated address was found in the NCOA database, the original address provided by Defendant's Counsel was used for the mailing of the Class Notice.[21]

On October 4, 2024, Phoenix mailed the Class Notice via U.S. First Class Mail, in English and Spanish, to all four hundred ninety (490) individuals identified as Class Members.[22] Of the

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[14] *Id.* § I.18.
[15] *Id.*, § III.D.8.
[16] Ibid.
[17] Phoenix Decl., ¶ 3.
[18] *Id.* at ¶ 5.
[19] *Id.* at ¶ 4.
[20] *Ibid.*
[21] *Ibid.*
[22] *Id.*, ¶ 5.

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four hundred (490) individuals, three hundred (334) individuals were identified as pertaining to the PAGA Group.[23]

As of the date of this declaration, twelve (12) Class Notices have been returned to Phoenix.[24] None were returned with a forwarding address.[25] For the fifty-seven (57) Class Notices returned from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address using idiCore, one of the most comprehensive address databases available for skip tracing.[26] Of the twelve (12) Class Notices that were skip traced, nine (9) updated addresses were obtained and the Class Notice was promptly re-mailed to those Class Members via first class mail.[27] There are three (3) Class Notices that remain undeliverable.[28]

As of the date of this Motion, the Settlement Administrator has not received any objections to the Class Settlement.[29]

As of the date of this Motion, the Settlement Administrator has received only three (3) Request for Exclusion and zero (0) Workweeks Dispute.[30]

To date, there are four hundred and eighty seven (487) Class Members who did not submit a valid and timely Requests for Exclusion from the Class Settlement and are therefore deemed Qualified Class Members, representing 99.39% of the Class.[31] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $897,500.00 will be distributed to Qualified Class Members in accordance with the terms of the Settlement.[32] The highest Individual Settlement Share to a Qualified Class Member is currently estimated to be $4,829.94 and the average Individual Settlement Share to a Qualified Class Member is currently estimated to be $1,842.92.[33] The highest Individual PAGA Payment to a member of the PAGA Group is currently

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[23] *Id.*, ¶ 14.
[24] *Id.*, ¶ 6.
[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Id.* at ¶ 7.
[29] *Id.*, ¶ 9.
[30] *Id.*, ¶¶ 8 & 10.
[31] *Id.*, ¶ 13.
[32] *Ibid.;* Settlement Agreement, §§ I.18 & I.23; see also, n.8, *supra*.
[33] Phoenix Decl., ¶ 12.

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estimated to be $233.65 and the average Individual PAGA Payment is currently estimated to be $112.28.[34]

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

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

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

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

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

[34] Phoenix Decl., ¶ 13.

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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. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Informal Discovery.</u>

The claims have been actively and extensively litigated since they were commenced on November 5, 2018. Class Counsel conducted significant investigation and informal and formal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing the matter for class certification and trial prior to reaching the Settlement.[35]

The Parties propounded and responded to numerous and extensive sets of formal discovery, conducted and defended numerous depositions (including party, non-party, and expert depositions), and engaged in extended meet and confer efforts, supplemental responses, and discovery conferences. Such discovery and investigation was critical for Plaintiff's Motion for Class Certification, as well as the two separate private mediation sessions conducted in this matter.[36]

Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery and production of information, documents, and data, party, non-party, and expert depositions, discovery conferences, and motions for class certification, for leave to amend, and for the staying of the case, as well as claims evaluation and analysis.[37] Class Counsel reviewed and analyzed tens of thousands of pages of information, data, and documents obtained

[35] Declaration of Vartan Madoyan ("Madoyan Decl."), ¶ 7.
[36] *Ibid.*
[37] *Ibid.*

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from Plaintiffs, Defendant, and other sources, in the course of litigation and in connection with mediation and settlement negotiations.[38]

In addition to conducting extensive and exhaustive discovery, investigation, and contested motion practice, the Parties participated in two formal mediation sessions: the first mediation was conducted on August 25, 2020, by retired Judge Edward A. Infante Esq., and the second mediation took place on December 19, 2022 by Gig Kyriacou, Esq., both well-regarded mediators experienced in mediating complex labor and employment matters.[39] In the course of mediation and settlement negotiations, the Parties exchanged information, documents, and data, and discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, manageability, off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement, representative PAGA claims as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[40] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[41] Arriving at a settlement that was acceptable to the Parties was not easy.[42] Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to class certification and representative adjudication.[43] Defendant and its counsel felt strongly about Defendant's ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain relief in court, obtain class certification and prevail at trial.[44] After conducting significant informal and formal discovery and investigations, settlement negotiations, and with the aid of the mediators' evaluation, the Parties agreed that the cases were well-suited for settlement given the legal issues

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[38] *Ibid.*
[39] *Id.*, ¶ 9.
[40] *Id.*, ¶ 6.
[41] *Id.*, ¶ 9.
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*

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relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.[45]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel utilized its extensive experience in handling complex wage-and-hour actions,[46] to obtain this very successful resolution.

B. <u>The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.</u>

The Settlement, which provides for a Gross Settlement Amount of $1,710,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.[47] The Settlement was calculated using information and data uncovered through extensive case investigation, informal and formal discovery, and the exchange of information in the context of mediation and ongoing settlement negotiations.[48] Had the action not settled, Defendant would have vigorously challenged the motion for class certification that was already on file, along with manageability, liability, and proof of any damages. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation

[45] *Ibid.*
[46] *Id.*, ¶¶ 14-19.
[47] *Id.*, ¶¶ 9 & 22.
[48] *Id.*, ¶¶ 10-12.

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include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. In contrast, the Settlement provides real and significant benefits for the Class Members, the PAGA Group, and the State of California here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

C. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Gross Settlement Amount of $1,710,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using information and data uncovered through extensive case investigation, informal and formal discovery, depositions, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the cases, the Gross Settlement Amount represents a considerable recovery.

Even after deducting Class Counsel Attorneys' Fees in the amount of $598,500.00, litigation expenses in the amount of $35,000.00 (though Class Counsel actually incurred about double that amount in litigation costs), Incentive Award in the combined amount of $20,000.00, Administrative Expenses in the amount of $9,000.00, and the PAGA Payment of $150,000.00 from the Gross Settlement Amount of $1,710,000.00, the Net Settlement Amount is currently estimated to be $897,500.00.[49] Under the Settlement Agreement, the Gross Settlement Amount

[49] Phoenix Decl., ¶ 12.

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will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Qualified Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of weeks worked by the Qualified Class Member during the Class Period as a proportion of all weeks worked by all Class Members.[50] To date, there are four hundred and eighty seven (487) Qualified Class Members, representing 99.39% of the Class Members.[51] The highest Individual Settlement Share to a Qualified Class Member is currently estimated to be $4,829.94 and the average Individual Settlement Share is currently estimated to be $1,842.92.[52] The highest Individual PAGA Payment to a member of the PAGA Group is currently estimated to be $233.65 and the average Individual PAGA Payment is currently estimated to be $112.28.[53] 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 the PAGA Group.[54] 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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[50] Settlement Agreement, § III.A.3.
[51] Phoenix Decl., ¶ 12.
[52] Ibid.
[53] *Id.*, ¶ 13.
[54] Madoyan Decl., ¶ 22.

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D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.[55] Lawyers *for* Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.[56] Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***[57] Specifically, no objections have been made as to the Gross Settlement Amount or requested Class Counsel Attorneys Fees and Expenses, Incentive Award, Administrative Expenses, or the allocation for PAGA Payment. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, *supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "'not be disturbed on appeal absent a manifest abuse of discretion.'" *Lealao v.*

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[55] *Id.*, ¶¶ 14-19.
[56] *Ibid.*
[57] Phoenix Decl., ¶ 9.

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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 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.

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

B. <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.[58] 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.

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[58] 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.

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

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of $1,710,000.00 on a non-reversionary basis. The requested attorneys' fees are 35% of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

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

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 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 has obtained a substantial recovery on behalf of Plaintiffs, the Class, the PAGA Group, 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 Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

C. <u>The Attorneys' Fees Award Requested by Class Counsel 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 award of Class Counsel Attorneys' Fees in the amount of $598,500.00 (which is 35% of the Gross 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 have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

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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 declarations, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.[59]

As outlined in the Declaration of Vartan Madoyan, Class Counsel has fully and extensively participated in litigation of the Actions.[60] 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.[61] During the litigation of the Actions, Class Counsel interviewed Plaintiffs and other Class Members; engaged in prolonged, extensive, and exhaustive formal written discovery; conducted and defended numerous depositions (including party, non-party, and expert depositions); filed a Motion for Class Certification; opposed motions from Defendant; reviewed and analyzed tens of thousands of pages of information, documents and data obtained from Defendant, Plaintiffs, and other sources; prepared liability, damages, penalties, and valuation calculations; and negotiated settlement through two separate mediation sessions.[62]

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as "**EXHIBIT A"** to the accompanying Declaration of Vartan Madoyan, sets forth in detail the hours that Lawyers *for* Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.[63] The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class

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[59] Madoyan Decl., ¶¶ 14-19.
[60] *Id.*, Exh. A.
[61] *Id.*, ¶ 8.
[62] Madoyan Decl., ¶¶ 7-8.
[63] *Id.*, Exh. A.

Counsel has spent 828.30 hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs, the Class, the PAGA Group, and the State of California.[64] These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the 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 case 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 Vartan Madoyan, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.[65]

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

The Settlement represents an excellent resolution of the Actions, given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Had the case 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.

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[64] *Id.*, ¶¶ 12-13.
[65] Madoyan Decl., ¶¶ 14-19.

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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 Qualified 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 settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of $1,710,000.00 to settle the matter. After deducting the Class Counsel Attorneys' Fees ($585,500.00), litigation Expenses ($35,000.00), Incentive Award (combined, $20,000.00), Administrative Expenses ($9,000.00), and PAGA Payment ($150,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $897,500.00.[66] The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Qualified Class Member is currently estimated to be $4,829.94 and the average Individual Settlement Share is currently estimated to be $1,842.92.[67] The highest Individual PAGA Payment to a member of the PAGA Group is currently estimated to be $233.65 and the average Individual PAGA Payment is currently estimated to be $112.28.[68] The Settlement offers significant monetary relief to the Participating Class Members, the State of California, and PAGA Group Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 828.30 hours of time to obtain relief on behalf of Plaintiffs, Class Members, the State of

[66] Phoenix Decl., ¶ 12; see also, n.8, *supra*.
[67] *Id.*, ¶ 12.
[68] *Id.*, ¶ 14.

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California, and the PAGA Group.[69] Class Counsel has also incurred litigation costs and expenses in the amount of almost $70,000 but seeks only to recover $35,000.00.[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 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 Class Counsel Attorneys' Fees and Expenses. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

5. *The Amount Involved and the Results Achieved.*

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.[73]

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[69] Madoyan Decl., ¶ 12, Exh. A.
[70] *Id.*, ¶ 20.
[71] *Id.*
[72] *Id.*, ¶¶ 14-19.
[73] Phoenix Decl., ¶ 9.

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

Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of $1,710,000.00.[74] The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Qualified Class Member is currently estimated to be $4,829.94 and the average Individual Settlement Share is currently estimated to be $1,842.92.[75] The highest Individual PAGA Payment to a member of the PAGA Group is currently estimated to be $233.65 and the average Individual PAGA Payment is currently estimated to be $112.28.[76]

6. The Reputation and Ability of the Attorneys.

Lawyers *for* Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing these cases to a successful conclusion. Class Counsel has 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.[77]

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar

[74] Madoyan Decl., ¶ 10.
[75] Phoenix Decl., ¶ 12.
[76] *Id.*, ¶ 13.
[77] Madoyan Decl., ¶¶ 14-19.

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

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

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

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

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the case and disputed that the 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 from Defendant. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel have as a result of their 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 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.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Vartan Madoyan is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.[78] The chart demonstrates that Class Counsel has spent a total of 828.30 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 on behalf of Plaintiffs, Class Members, the PAGA Group, and the State of California, 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 has 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

[78] Madoyan Decl., Exh. A.
[79] *Id.*, ¶¶ 12-13, Exh. A.

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efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of $1,710,000.00.

As set forth in the Declaration of Vartan Madoyan, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation of at least $850 per hour for services provided by Class Counsel.[80] 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.[81] 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. And no lodestar multiplier is required – in fact, a negative multiplier would apply in light of Class Counsel's exhaustive litigation efforts that led to this incredible result.

Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of $598,500.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to $35,000.00**.** As set forth in the Declaration of Vartan Madoyan, Class Counsel seeks reimbursement of $35,000.00 in litigation costs and expenses incurred in this case.[82] This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.[83] Accordingly, Plaintiffs requests that the Court award litigation costs and expenses in the amount of $35,000.00 to Class Counsel.

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[80] Madoyan Decl., ¶ 13.
[81] Ibid.
[82] Madoyan Decl., ¶ 20.
[83] Ibid.

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VIII. THE SETTLEMENT ADMINISTRATION EXPENSES 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 $9,000.00.[84] The costs incurred and to be incurred include, but are not limited to, (i) preparing, printing, and mailing the *Notice of Proposed Class Action Settlement* ("Class Notice"); (ii) responding to any inquiries from Class Members; (iii) calculating the number of weeks each Class Member worked during the Class Period and the number of pay periods that each PAGA Group employee worked during the PAGA Period; (iv) determining the validity of any letters indicating a request to be excluded from the Class Settlement ("Requests for Exclusion"), any written objections to the Class Settlement ("Objections"), and/or any disputes 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 the PAGA Group; (vii) issuing the payment to Class Counsel for Attorneys' Fees and Expenses, the Incentive Awards to 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.[85]

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 $9,000.00.

IX. THE REQUESTED INCENTIVE AWARDS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for an Incentive Award in the amount of $10,00.00 each to Plaintiffs Christina Cocotis-Andrade and Nycole Torres (for a combined total of $20,000.00) to

[84] Phoenix Decl., ¶ 13.
[85] *Id.*, ¶ 2.

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compensate Plaintiffs for the time and effort that they expended on behalf of the Class and the State of California and their broader release of claims. The requested Incentive Award is both common and reasonable and should be awarded.

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

The requested Incentive Awards are fair and appropriate because Plaintiffs bargained for a broader release of claims and spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts, evidence, and declarations to support the prosecution of the claims, and Plaintiff Cocotis-Andrade providing important deposition testimony.[86] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the cases.[87] Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.[88]

Accordingly, it is appropriate and just for Plaintiffs Christina Cocotis-Andrade and Nycole Torres to each receive $10,000.00 as reasonable Incentive Award, for their services on behalf of the Class, the PAGA Group, and the State of California, in addition to their individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Attorneys Fees and Expenses, Incentive Award,

[86] Madoyan Decl., ¶ 21; Declaration of Christina Cocotis-Andrade ("Cocotis-Andrade Decl."), ¶¶ 3-9; Declaration of Nycole Torres ("Torres Decl."), ¶¶ 3-9.
[87] *Ibid.*
[88] *Ibid.*

Administrative Expenses, and allocation for the PAGA Payment, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: February 3, 2025

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By: Vartan S. Madoyan

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