

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiffs and the Class

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

RAMIRO PEREZ, individually, and on behalf
of other members of the general public
similarly situated; KIM BALLING,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiffs,

vs.

KAISER ALUMINUM CORPORATION, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 18STCV06639

Honorable Carolyn B. Kuhl
Department SSC-12

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Ramiro Perez and Kim
Balling); Declaration of Settlement
Administrator (Taylor Mitzner); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: May 26, 2022
Time: 9:00 a.m.
Department: SSC-12

Complaint Filed: November 29, 2018
FAC Filed: April 16, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 26, 2022 at 9:00 a.m., in Department SSC-12 of
2 the above-entitled Court, located at Spring Street Courthouse, 312 North Spring Street, Los
3 Angeles, California 90012, Plaintiffs Ramiro Perez and Kim Balling (“Plaintiff”) will and hereby
4 do move for an order granting final approval of:

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

- 8 • A Net Settlement Amount of approximately \$118,005.46 will be fully distributed to
9 the Class Members who did not timely opt out of the Settlement (“Participating Class
10 Member”);
- 11 • **No objections** were submitted to the settlement administrator, Phoenix Settlement
12 Administrators (“Settlement Administrator”);
- 13 • **Only one request for exclusion** was submitted to the Settlement Administrator;

14 2. Payment in the amount of \$202,125.00 to Lawyers *for* Justice, PC (“Class
15 Counsel”), representing twenty-seven and one-half percent (27.50%) of the Gross Settlement
16 Amount, for attorneys’ fees, which is reasonable and justified on a percentage-basis.

17 3. Payment in the amount of \$38,418.86 to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of \$7,500.00 to the Settlement Administrator, Phoenix
20 Settlement Administrators (“Settlement Administrator” or “Phoenix”), for Settlement
21 Administration Costs;

22 5. Payment in the amount of \$7,500.00 to Plaintiff Ramiro Perez and \$5,000.00 to
23 Plaintiff Kim Balling (\$12,500.00 total), as Class Representative Incentive Awards, for their time
24 and effort in representing the Class; and

25 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.*, in the amount of \$20,000.00, of which seventy-five
27 percent (75%), or \$15,000.00, will be paid to the California Labor and Workforce Development
28 Agency and twenty-five percent (25%), or \$5,000.00, will be part of the Net Settlement Amount

for distribution to the Participating Class Members.

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

This motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Edwin Aiwarzian), Declarations of Class Representatives (Ramiro Perez and Kim Balling), and Declaration 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: May 4, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwarzian

Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Ramiro Perez and Kim Balling (“Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$735,000.00; (2) attorneys’ fees in the amount of \$202,125.00, which is twenty-seven and one-half percent (27.50%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$38,418.86 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$7,500.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Class Representative Incentive Awards in the amount of \$7,500.00 to Plaintiff Ramiro Perez and \$5,000.00 to Plaintiff Kim Balling, for a combined amount of \$12,500; and (5) allocation of \$20,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Amount”).

Plaintiffs seek relief on behalf of the following Class:

All current and former non-exempt employees who worked for Defendant within the State of California at any time during November 29, 2014 through March 25, 2021 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during each of the two formal full-day mediation sessions conducted by Deborah Crandall Saxe, Esq., and extensive settlement negotiations. This matter has required 595.60 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents twenty-seven and one-half percent (27.50%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiffs move for final approval of the Class Representative Incentive Awards in the amount of \$7,500.00 to Plaintiff Ramiro Perez and \$5,000 to Plaintiff Kim Balling, to

¹ First Amended Joint Stipulation for Class Action and PAGA Settlement (“Settlement Agreement”) §§ 3,4.

1 compensate Plaintiffs for the time and effort they expended spearheading this lawsuit on behalf
2 of the Class. Plaintiffs also move for final approval of the payment to the Settlement
3 Administrator in the amount of \$7,500.00 for Settlement Administration Costs. Plaintiffs also
4 move for final approval of the allocation of \$20,000.00 for the PAGA Amount, of which
5 \$15,000.00 will be paid to the California Labor and Workforce Development Agency (“LWDA”)
6 for its portion of the PAGA Amount (“LWDA Payment”), and \$5,000.00 will be part of the Net
7 Settlement Amount that will be distributed to Class Members who did not submit a timely and
8 valid request to be excluded from the Settlement (“Participating Class Members”).

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

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

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

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

2 Defendant Kaiser Aluminum Corporation (“Defendant”) manufactures and produces
3 semi-fabricated aluminum products through approximately twelve (12) production facilities
4 located in North America. Plaintiffs Ramiro Perez and Kim Balling are former employees of
5 Defendant.

6 On November 29, 2018, Plaintiff Ramiro Perez filed a Class Action Complaint for
7 Damages in the Los Angeles County Superior Court (“Court”), thereby commencing the above-
8 captioned lawsuit (“Action”).

9 On August 8, 2019, Defendant filed an Answer to Plaintiff Ramiro Perez’s Unverified
10 Class Action Complaint for Damages, and thereafter, on August 20, 2019, Defendant filed an
11 Amended Answer to Plaintiff Ramiro Perez’s Unverified Class Action Complaint for Damages.

12 On April 16, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages
13 and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.*
14 (“Operative Complaint”), which added Plaintiff Kim Balling and a cause of action under PAGA,
15 among other changes.

16 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
17 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
18 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
19 and rest periods and associated premium pay, failing to timely pay wages during employment
20 and upon termination of employment, failing to provide compliant wage statements, failing to
21 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
22 thereby engaged in unfair business practices in violation of California Business and Professions
23 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs
24 contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
25 (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

26 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
27 associated with any of the allegations in the Action, and further denies that the Action is
28

appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

On August 27, 2019, Plaintiff Ramiro Perez propounded multiple sets of discovery requests on Defendant, including Requests for Production of Documents (Sets One & Two); Special Interrogatories (Sets One, Two, & Three), and Form Interrogatories-General (Set One), and served Defendant with notices of deposition of Defendant's Person Most Knowledgeable designees accompanied by additional Requests for Production of Documents. Thereafter, on November 15, 2019, Defendant responded to Plaintiff Ramiro Perez's discovery requests. On August 13, 2019, Defendant propounded a Request for Production of Documents (Set One) on Plaintiff Ramiro Perez. On October 24, 2019, Plaintiff Ramiro Perez re-noticed the depositions on Defendant's Person Most Knowledgeable designees, together with Requests for Productions of Documents. On November 14, 2019, Plaintiff Ramiro Perez responded to Defendant's discovery requests. On November 15, 2019, Defendant responded to Plaintiff's Requests for Production of Documents (Sets One & Two), Special Interrogatories (Sets One, Two, & Three), and Form Interrogatories-General (Set One). On December 3, 2019, Defendant objected to Plaintiff Ramiro Perez's re-notices of depositions and Requests for Production of Documents and on that same day Plaintiff Ramiro Perez again re-noticed the deposition of Defendant's Person Most Knowledgeable designee, together with Requests for Production of Documents. On January 30, 2020, Plaintiff Ramiro Perez propounded amended notices of depositions of Defendant's Person Most Knowledgeable designees and Requests for Production of Documents. Thereafter, on February 4, 2020, Defendant objected to Plaintiff Ramiro Perez's amended notices and Requests for Productions of Documents. On May 7, 2020, Plaintiff Ramiro Perez propounded second amended notices of depositions of Defendant's Person Most Knowledgeable designees and Requests for Production of Documents. Thereafter, on May 15, 2020, Defendant objected to Plaintiff Ramiro Perez's first and second amended notices of depositions of Defendant's Person Most Knowledgeable designees and Requests for Production of Documents. On June 4, 2020, Plaintiff Ramiro Perez propounded a third-amended notice of deposition of

Defendant's Person Most Knowledgeable designees and Requests for Production of Documents, combining all previous topics that had been noticed for deposition (namely, relating to Defendant's organizational structure, locations, activities performed and hours worked by putative class members, compensation and pay structure, and wage and hour policies and practices). On June 4, 2020, Plaintiff also served a notice of deposition of Defendant's Person Most Knowledgeable designee and Requests for Production of Documents that specifically inquired about settlement agreements (specifically, inquiring about settlement releases, settlement agreements, and settlement contracts that Defendant had entered into with putative class members relating to the Action). On June 11, 2020, Defendant objected to Plaintiff Ramiro Perez's third amended notice of deposition of Defendant's Person Most Knowledgeable designee and Requests for Production of Documents as well as Plaintiff Ramiro Perez's notice of Defendant's Person Most Knowledgeable designee regarding settlement agreement and Requests for Production of Documents. On June 26, 2020, Plaintiff Ramiro Perez propounded Special Interrogatories (Set Four) on Defendant, on the subject of settlement agreements offered to putative class members. On July 31, 2020, Defendant provided responses to Plaintiff Ramiro Perez's Special Interrogatories (Set Four).

The Parties have actively litigated the Action since it was commenced on November 29, 2018. Class Counsel prepared for and took multiple depositions of Defendant's Person Most Knowledgeable designees on May 19, 2020, May 20, 2020, June 16, 2020, June 17, 2020, and May 21, 2020. On May 24, 2019, the Parties participated in a formal, full-day mediation conducted by Deborah Crandall Saxe, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.

On May 28, 2020, Defendant filed a Motion for an Order Denying Class Certification.

On June 3, 2020, parties agreed to engage in a *Belaire-West* notice administration.

On June 29, 2020, parties filed their Joint Stipulation to (1) Extend Deadline re Plaintiff's Class Certification Motion and (2) Set Hearing Date/Briefing for Defendant's May 18, 2020

1 Motion for an Order Denying Class Certification, and on July 2, 2020, the Court entered an order
2 granting the stipulation with modifications.

3 On August 14, 2020, Plaintiffs received the Belaire-West class contact list.

4 On August 21, 2020, the Parties again stipulated to continue Plaintiff's deadline to file a
5 Motion for Class Certification, Plaintiff's deadline to oppose Defendant's Motion for an Order
6 Denying Class Certification, Defendant's deadline to file a reply in support of its motion, and the
7 hearing date of Defendant's motion.

8 On September 28, 2020, the Parties participated in a second formal, full-day mediation
9 conducted by Deborah Crandall Saxe, Esq. With the aid of the mediator's evaluation, the Parties
10 ultimately reached the Settlement described herein to resolve the Action in its entirety. In light
11 of the Settlement, and pursuant to parties' stipulation, Plaintiff's deadline to file a Motion for
12 Class Certification and Defendant's Motion for an Order Denying Class Certification, were
13 vacated.

14 On or about June 11, 2021, the parties entered into the Stipulation and Agreement for
15 Class Action and PAGA Settlement. On August 3, 2021, Plaintiffs filed a Motion for
16 Preliminary Approval of Class Action Settlement and supporting documents. On August 25,
17 2021, a hearing was held on Plaintiffs' Motion for Preliminary Approval, during which the Court
18 raised certain points of inquiry. On October 25, 2021, Plaintiffs filed supplemental papers in
19 support of the Motion for Preliminary Approval. On November 1, 2021, the Court entered an
20 Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement
21 ("Preliminary Approval Order"), thereby conditionally certifying the Class for purposes of the
22 Settlement and preliminarily approving the terms of the Settlement, the Class Notice, and the
23 proposed administration procedures and associated deadlines.

24 On December 7, 2021, the Parties filed their Joint Stipulation to Amend Settlement
25 Agreement and Order Granting Preliminary Approval of Class Action Settlement, and Extend
26 Notice Administration Process Consistent Therewith, in order to correct the Prior Settlement
27 Payment amount to \$341,450.68 (instead of \$340,381.00 as reflected in the Settlement
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Agreement). On December 16, 2021, the Court entered an Order Granting Preliminary Approval of Class Action Settlement and Extend Notice Administration Process Consistent Therewith, thereby approving the change in the Prior Settlement Payment Amount to \$341,450.68 (“December 16, 2021 Order”). The December 16, 2021 Order operates to modify the Settlement Agreement, and all references herein to the Settlement Agreement are to the Settlement Agreement as modified by the December 16, 2021 Order.

Plaintiffs now move for final approval of the Settlement, Attorneys’ Fees and Costs, Class Representative Incentive Awards, Settlement Administration Costs, and allocation for PAGA Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$735,000.00 on a non-reversionary basis. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in the amount of \$202,125.00 and reimbursement of litigation costs and expenses in the amount of \$38,418.86, to Class Counsel; (2) Class Representative Incentive Awards in the amounts of \$7,500.00 to Plaintiff Ramiro Perez and \$5,000.00 to Plaintiff Kim Balling, for a combined amount of \$12,500; (3) Settlement Administration Costs in the amount of \$7,500.00 to Phoenix; (4) LWDA Payment in the amount of \$15,000.00; and (5) Prior Settlement Payment Credit of \$341,450.68.² The Net Settlement Amount, which is estimated to be \$118,005.46, will be fully distributed to Participating Class Members in accordance with the Settlement Agreement, and there is no reversion to Defendant.³

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² Settlement Agreement, §§ 37, 37(a), 37(b), 37(b), 37(c), & 37(d) and December 16, 2021 Order

³ Declaration of Taylor Mitzner Regarding Notice and Settlement Administration (“Phoenix Declaration” or “Phoenix Decl.”) ¶ 15. Although up to \$75,000 is allocated for reimbursement of litigation costs and expenses, Class Counsel only seeks reimbursement of litigation costs and expenses in the amount of \$38,418.86, resulting in a savings of \$36,581.14 which is included in the Net Settlement Amount, resulting in a Net Settlement Amount of \$118,005.46.

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will divide the Net Settlement Amount by the total Workweeks during the Class Period of all Participating Class Members ("Total Workweeks"), and the resulting figure will be multiplied by the number of each Participating Class Member's individual Workweeks during the Class Period to yield his or her "Initial Share".⁴
- b. The Initial Share of any Participating Class Member who received a Prior Settlement Payment ("Previously Paid Participating Class Member") will be reduced by the amount of his or her Prior Settlement Payment, and if the Prior Settlement Payment exceeds the Initial Share, his or her Initial Share will be reduced to zero. In no case will the amount subtracted for a Prior Settlement Payment exceed the individual Participating Class Member's Initial Share.⁵
- c. The total amount by which the Initial Shares of all Previously Paid Participating Class Members are reduced by Prior Settlement Payments ("Share Redistribution") will be redistributed to all Unpaid Participating Class Members on a *pro rata* basis. Each Unpaid Participating Class Member's portion of the Share Redistribution will be added to his or her respective Initial Share to yield his or her Individual Settlement Payment.⁶

Class Members had sixty (60) calendar days after the initial mailing of the Class Notice to Class Members, to dispute the number of Workweeks credited to each of them, opt out of the Settlement, and/or object to the Settlement ("Notice Period").⁷ The Notice Period concluded on April 25, 2022.⁸ The Settlement Administrator has received one (1) written request for exclusion from the Settlement ("Requests for Exclusion") and zero (0) objections to the Settlement ("Objections") from Class Members.⁹

Individual Settlement Payments will be allocated as one-third (1/3) wages, to be reported on IRS Form W-2; and two-thirds (2/3) penalties and interest to be reported on IRS Form 1099 (if applicable).¹⁰ Individual Settlement Payments will be paid out to Participating Class Members subject to reduction for the employee's share of taxes, withholdings, and contributions with respect to the wages portion of the Individual Settlement Payments, and the net payment is

⁴ Settlement Agreement, § 37(e)(ii).

⁵ *Id.*, § 37(e)(iii).

⁶ *Id.*, § 37(e)(iv).

⁷ *Id.*, § 42.

⁸ Phoenix Decl., ¶ 10.

⁹ *Id.*, Exh. A § III(a).

¹⁰ Settlement Agreement, § 37.

referred to as “Individual Settlement Payment”.¹¹ Defendant will pay employer-side payroll taxes with respect to the wages portion of Individual Settlement Payments, separately and in addition to the Gross Settlement Amount.¹²

Any and all Individual Settlement Payment checks issued to Participating Class Members will remain valid for 180 calendar days from the date of mailing.¹³ Thereafter, Individual Settlement Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such voided checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq., in the name of the Participating Class Member.¹⁴

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 November 1, 2021 Preliminary Approval Order and the December 16, 2021 Order.

On November 10, 2021, Phoenix received the Court-approved text for the Class Notice.¹⁵

On November 16, 2021, Phoenix received a mailing list from Defendant's counsel that contained the full names, Social Security numbers, last known addresses, and dates of employment and number of Workweeks during the Class Period, and the amount, if applicable, of any Prior Settlement Payment to the Class Member, for individuals identified as Class Members (“Class List”).¹⁶ The Class List contained information for 225 individuals identified as Class Members.¹⁷ Phoenix processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class List with any updated addresses located.¹⁸

///

¹¹ *Id.*, § 21, 27, 37(e).

¹² Defendant already paid all applicable federal and state employer-side payroll taxes on the Prior Settlement Payments. *Id.*, § 22.

¹³ *Id.*, § 44(c).

¹⁴ *Ibid.*

¹⁵ Phoenix Decl., ¶ 3.

¹⁶ *Id.*, ¶ 4.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 6.

On February 24, 2022, Phoenix mailed the Class Notice via first class mail, in English and Spanish, to 225 individuals identified as Class Members in the Class List.¹⁹

As of the date of this Motion, six (6) Class Notices were returned as undeliverable and none were returned with a forwarding address.²⁰ Phoenix performed a skip-trace search on the six (6) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for five (5) Class Members, and promptly re-mailed the Class Notices to the updated addresses.²¹ Ultimately, one (1) Class Notice remains undeliverable because an updated address was not located through skip-tracing.²²

As of the date of this Motion, the Settlement Administrator has not received any Workweeks disputes or objections to the Settlement. The Settlement Administrator has received one (1) or request to be excluded from the Settlement from a Class Member.²³

Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$118,005.46 will be distributed to Participating Class Members in accordance with the terms of the Settlement.²⁴ The highest Individual Settlement Payment is currently estimated to be no less than \$21,840.61 and the average Individual Settlement Payment is currently estimated to be no less than \$2,408.27.²⁵

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

¹⁹ Phoenix Decl., ¶ 7.

²⁰ Phoenix Decl., ¶ 8.

²¹ Ibid.

²² Phoenix Decl., ¶ 9.

²³ *Id.*, ¶¶ 11, 12, & 13.

²⁴ Phoenix Decl., ¶ 15

²⁵ *Id.*, ¶ 14.

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 1127.5, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the Action since it was commenced on November 29, 2018. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,

1 and scope of the claims, and also to prepare the matter for class certification, representative
2 adjudication, and trial.²⁶ The parties conducted extensive formal and informal discovery and
3 investigation into the facts of the case, and also informally exchanged information and data in
4 preparation for two mediations.²⁷ Class Counsel propounded multiple sets of written discovery
5 requests in various forms; reviewed Defendant's objections and responses thereto; worked with
6 Plaintiff Ramiro Perez to provide responses to discovery requests that were propounded on him
7 by Defendant; and prepared and served numerous deposition notices.²⁸ Class Counsel prepared
8 for and took multiple depositions of Defendant's Person Most Knowledgeable designees on May
9 19, 2020, May 20, 2020, June 16, 2020, June 17, 2020, and May 21, 2020. Class Counsel also
10 interviewed and obtained information from Plaintiffs and Class Members, including and not
11 limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of
12 documents and data produced by Defendant and obtained through other sources.²⁹ The
13 documents and data reviewed and analyzed by Class Counsel included, and were not limited to,
14 Plaintiffs' employment records, a detailed sampling of Class Members' time and pay data,
15 Defendant's collective bargaining agreement with Teamsters 986, Acknowledgement of
16 Voluntary Meeting To Discuss A Pending Class Action Lawsuit, redacted versions of settlement
17 agreements signed by putative class members in connection with the Action (including, and not
18 limited to, Confidential Settlement Agreement and Release and Notice of Rights Regarding
19 Kaiser Aluminum Fabricated Products, LLC's (Kaiser) Early Voluntary Individual Settlement
20 Option), Defendant's Production Employee Handbook, company policies and policy
21 acknowledgements (including, but not limited to, Defendant's Acknowledgement of Receipt,
22 Employee Travel and Expense Reimbursement Policy, Corporate Purchasing Card Policy and
23 Agreement, Foothill Ranch Breaks & Meal Period Policy and Acknowledgment, Breaks & Meal
24 Periods Policy and Acknowledgement), internal memoranda, job descriptions, new hire
25 orientation checklists, Defendant's operations and employment practices, forms (including, but

26 Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 11.

27 Ibid.

28 Ibid.

29 Ibid.

not limited to, Defendant's Voluntary Waiver of Meal Period Less Than Six (6) Hours Worked FHR, Voluntary Waiver of Second Meal Period Less Than Twelve (12) Hours Worked FHR, and Voluntary Waiver of Second Meal Period), among other information and documents.³⁰ Class Counsel researched applicable law, developed damages/valuation models in preparation for mediations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, motion practice, case management, discovery, and production of documents and data prior to the mediations.³¹

After conducting significant formal and informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Deborah Crandall Saxe, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³² Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification, representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³³ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁴ Arriving at a settlement that was acceptable to the parties was not easy.³⁵ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification (in fact, Defendant had already filed a Motion for an Order Denying Class Certification, which was pending at the time of the second mediation), while Plaintiffs and Class Counsel believed that class certification would be obtained and Plaintiffs would prevail at trial.³⁶ After conducting significant formal and informal

³⁰ Aiwazian Decl., ¶ 12.

³¹ Ibid.

³² Aiwazian Decl., ¶ 11.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

discovery, investigations, and extensive settlement negotiations (which included two mediations), with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.³⁷

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiffs and other Class Members.³⁸ Class Counsel also reviewed and analyzed thousands of pages of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses, as well as facts discovered.³⁹ The Settlement was based on this large volume of facts, evidence, and investigation.⁴⁰ Additionally, Class Counsel have extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴¹

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

The Settlement, which provides for a Gross Settlement Amount of \$735,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴² The Settlement was calculated using information and data uncovered through extensive case investigation, discovery, and the exchange of information in the context of mediation.⁴³ Had the action not settled, Defendant would have persisted in vigorously challenging class certification, manageability of representative adjudication, and liability. Defendant contended that

³⁷ Aiwazian Decl., ¶ 11.

³⁸ Ibid.

³⁹ Aiwazian Decl., ¶ 12.

⁴⁰ *Id.*, ¶ 11.

⁴¹ Aiwazian Decl., ¶¶ 6 & 7.

⁴² Aiwazian Decl., ¶ 10.

⁴³ Aiwazian Decl., ¶¶ 11-13.

1 individualized questions of fact predominate over any common issues, and these issues would
2 pose challenges to certification and representative adjudication. Even if a class was certified
3 despite Defendant's Motion for an Order Denying Class Certification, Defendant would have
4 likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide
5 and/or representative adjudication. On the other hand, Defendant faced the risk of the Court
6 certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or
7 representative basis. Additionally, preparation for trial would have been expensive for all
8 parties.

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

26 ///

27 ///

It would be grossly inefficient for current and former employees who are members of the Class 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.

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

The Settlement, which provides for a Gross Settlement Amount of \$735,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, discovery, and the exchange of information in the context of mediation. 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 case, the Gross Settlement Amount represents a considerable recovery.

After deducting attorneys' fees in the amount of \$202,125.00, litigation costs and expenses in the amount of \$38,418.86, Class Representative Incentive Awards in the combined amount of \$12,500.00, Settlement Administration Costs in the amount of \$7,500.00, Prior Settlement Payment Credit in the amount of \$341,450.68, and LWDA Payment in the amount of \$15,000.00 from the Gross Settlement Amount of \$735,000.00, the Net Settlement Amount is currently estimated to be \$118,005.46.⁴⁴ Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out to Participating Class Members without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her, taking into account any Prior Settlement Payment he or she received. To date, there are 224 Participating Class Members, representing 99.56% of the Class Members.⁴⁵ The *highest* Individual Settlement Payment to a

⁴⁴ Phoenix Decl., ¶ 15; see n.4, *supra*.

⁴⁵ Phoenix Decl., ¶ 14.

Participating Class Member is currently estimated to be no less than \$21,840.61 and the *average* Individual Settlement Payment is currently estimated to be no less than \$2,408.27.⁴⁶ These are significant individual recoveries, particularly in light of the risks associated with continued 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 settlement here provides a fair and reasonable methodology for distribution of the Net Settlement Amount to Participating Class Members. In light of the above considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁴⁷ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, have experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel have extensive experience in employment class action law and complex wage-and-hour litigation.⁴⁸ The law firm of 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.⁴⁹ 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.

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⁴⁶ Phoenix Decl., ¶ 17; see n.24, *supra*.

⁴⁷ Aiwazian Decl., ¶ 11.

⁴⁸ Aiwazian Decl., ¶¶ 6 & 7.

⁴⁹ *Ibid*.

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

2 The Settlement has been well received by the Class – *not a single Class Member*
3 *objected to the Settlement.*⁵⁰ Specifically, no objections have been made as to the Gross
4 Settlement Amount or requested Attorneys’ Fees and Costs, Class Representative Incentive
5 Awards, Settlement Administration Costs, or the allocation for PAGA Amount. California courts
6 have consistently found that a small number of objectors indicates the class’ support for a
7 settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final
8 approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53
9 (final approval granted despite 9 objectors).

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

14 **VI. THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS**
15 **FAIR AND REASONABLE AND SHOULD BE APPROVED**

16 **A. Legal Standard for Attorneys’ Fees in a Class Action Settlement.**

17 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
18 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
20 1132 (The “experienced trial judge is the best judge of the value of professional services
21 rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
22 Where the amount of a settlement is a “certain easily calculable sum of money,” California
23 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and
24 Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
25 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.
26 The percentage-of-the-benefit approach is preferred in class and representative actions because

27 _____
28 ⁵⁰ Phoenix Decl., ¶¶ 11-13.

1 “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao*,
2 *supra*, 82 Cal.App.4th at 49.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
23 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
24 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
25 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
26 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
27 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”
28

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵¹ 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 27.5; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

⁵¹ 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.

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. In fact, the litigation of this particular matter leading up to settlement, confirms that the claims were highly-disputed and presented complex issues. 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).

As a result of Plaintiffs and Class Counsel’s efforts, a Gross Settlement Amount of \$735,000.00 has been recovered for the Class. The requested attorneys’ fees are twenty-seven and one-half percent (27.50%) of the total value of the monetary recovery. In light of Class Counsel’s successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early,

1 yet reasonable, settlement. The requested attorneys' fees in this matter satisfy all of those factors
2 and should be approved on a percentage basis.

3 The percentage method is consistent with, and is intended to mirror, the practice in the
4 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
5 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
6 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
7 counsel's work to the class is to review the consideration agreed to be paid by the named
8 plaintiff. If the named plaintiffs have employed counsel on a contingency-fee basis, it would
9 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
10 without incurring the risks of bringing the claim, to pay less than the named plaintiffs. In this
11 case, Plaintiffs have agreed to a contingency fee of more than (27.50%) of the recovery.

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and the Class, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee. Thus, the requested attorneys' fees are appropriate.

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the 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 attorneys' fees in the amount of \$202,125.00 (which is 27.50% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel have achieved, and the value of the recovery Class Counsel obtained for the Class Members.

1. *Time & Labor.*

Lawyers for Justice, PC dedicated the full extent of their resources to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions

1 and complex litigation matters.⁵²

2 As outlined in the Declaration of Edwin Aiwarzian, Class Counsel has fully and actively
3 participated in litigation of this case.⁵³ Prior to commencing the lawsuit, Class Counsel had
4 conducted a significant amount of investigation into the factual and legal issues, Defendant's
5 business, and its operations and employment policies, practices, and procedures.⁵⁴ During the
6 litigation of the action, Class Counsel interviewed Plaintiffs and other Class Members;
7 propounded formal written discovery requests and reviewed Defendant's objections and
8 responses thereto; worked with Plaintiff Ramiro Perez to provide responses to discovery requests
9 that were propounded by Defendant; prepared for and took the depositions of Defendant's
10 Person Most Knowledgeable witnesses; reviewed and analyzed thousands of pages of documents
11 and data produced by Defendant and obtained through other sources; and prepared violation,
12 damages, and penalties analyses and models.⁵⁵ Class Counsel also met and conferred with
13 Defendant's counsel over the issues relating to pleadings, case management, motion practice,
14 discovery, and production of documents and data, among other things; engaged in extensive
15 settlement negotiations; and prepared for and attended court proceedings, two full-day
16 mediations, and settlement negotiations.⁵⁶

17 Class Counsel have devoted a considerable number of hours to this matter over the course
18 of the litigation process. The task and time chart, which is attached as "EXHIBIT A" to the
19 accompanying declaration of Edwin Aiwarzian, sets forth in detail the hours that Lawyers *for*
20 Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.⁵⁷ The task and time
21 chart is thorough and comprehensive, and was prepared so that the Court can peruse it without
22 having to set forth each and every task in the body of this Motion. The Court is respectfully
23 referred to the chart, which sets forth the history of the work performed by Lawyers *for* Justice,
24 PC, commencing with the pre-filing analysis and research, and continuing up to settlement and

25 ⁵² Aiwarzian Decl., ¶¶ 6 & &.

26 ⁵³ Aiwarzian Decl., Exh. A

27 ⁵⁴ Aiwarzian Decl., ¶ 11-12 & Exh. A.

28 ⁵⁵ Aiwarzian Decl., ¶ 12 & Exh. A.

⁵⁶ Aiwarzian Decl., ¶ 6.

⁵⁷ Aiwarzian Decl., Exh. A.

1 final approval. Class Counsel has spent 595.60 hours performing tasks and to obtain a
2 significant recovery on behalf of Plaintiffs and the Class.⁵⁸ These hours were required to bring
3 this matter to its successful conclusion. In light of the value of time expended and the carrying
4 of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and
5 reasonable.

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

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

12 Class Counsel undertook significant investigation, analysis, and research prior to filing
13 this case, during the litigation, and prior to the mediations. Class Counsel took steps to prepare
14 the matter for class certification and had every intention of taking the case to trial on a class-wide
15 basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles
16 that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel
17 used its extensive experience in the handling of class actions and complex wage-and-hour
18 litigation matters in order to obtain the Settlement with maximum efficiency.⁵⁹

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

20 The Settlement represents an excellent resolution of the Action, given the risks inherent
21 in litigating the case through certification-related proceedings, trial, and/or appeals. Had the case
22 not settled, Defendant would have persisted in vigorously challenging certifiability,
23 manageability, and liability. Defendant, however, faced risks if the Court certified a class and
24 allowed a jury to decide the claims. Additionally, preparing the case for trial would have been
25 expensive for the parties.

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27 ⁵⁸ *Ibid.*

28 ⁵⁹ Aiwazian Decl., ¶¶ 6 & 7.

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-related proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Participating Class 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, a Gross Settlement Amount of \$735,000.00 has been recovered. After deducting the attorneys' fees (\$202,125.00), litigation costs and expenses (\$38,418.86), Class Representative Incentive Awards (collectively, \$12,500.00), Settlement Administration Costs (\$7,500.00), Prior Settlement Payment Credit (\$341,450.68), and LWDA Payment (\$15,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$118,005.46.⁶⁰ The Net Settlement Amount will be fully distributed to Participating Class Members in accordance with the terms of the Settlement. The *highest* Individual Settlement Payment to a Participating Class Member is currently estimated to be no less than \$21,840.61 and the *average* Individual Settlement Payment is currently estimated to be no less than \$2,408.27. The Settlement offers significant monetary relief to the Participating Class Members.

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 has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel have invested 595.60 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁶¹ Class Counsel has also incurred litigation costs and expenses in the amount of

⁶⁰ Phoenix Decl., ¶ 15; see n.3, *supra*.

⁶¹ Aiwazian Decl, Exh. A.

\$38,418.86.⁶²

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶³ Class Counsel are well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁴ 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 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 have 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 Settlement and only one (1) Class member opted out of the Settlement.⁶⁵

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]

⁶² See Part VII, *infra*.

⁶³ Aiwazian Decl., ¶ 19.

⁶⁴ See *id.*, ¶¶ 6 & 7.

⁶⁵ Phoenix Decl., ¶¶ 11 & 12.

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 the recovery of a Gross Settlement Amount of \$735,000.00.⁶⁶ The *highest* Individual Settlement Payment to a Participating Class Member is currently estimated to be no less than \$21,840.61 and the *average* Individual Settlement Payment is currently estimated to be no less than \$2,408.27⁶⁷

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

Lawyers for Justice, PC, is a recognized class action law firm that employed its attorneys’ knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁶⁸

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage

⁶⁶ Aiwazian Decl., ¶ 20.

⁶⁷ *Id.*, ¶ 14; see n.24, *supra*.

⁶⁸ Aiwazian Decl., ¶¶ 6 & 7.

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 matter involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending additional depositions of percipient witnesses and experts, propounding additionally discovery requests and conducting additional document production, and engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through mediation.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is the 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.⁶⁹ The charts demonstrate that Lawyers for Justice, PC has spent a total of 595.60 hours litigating the case and finalizing the Settlement.⁷⁰ In light of the facts and circumstances of the case, as well as the results that Class Counsel have achieved on behalf of Plaintiffs and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel's efforts resulted in the recovery of \$735,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional background and experience of Lawyers for Justice, PC supports a reasonable hourly rate of compensation of at

⁶⁹ See Aiwazian Decl., Exh. A.

⁷⁰ Aiwazian Decl., Exh. A.

1 least \$600 per hour for services provided by Lawyers for Justice, PC.⁷¹ Lawyers for Justice, PC
2 has been awarded attorneys' fees, compensating the firm at the rate of at least \$600 for legal
3 services performed, by courts of this state.⁷² While the circumstances of every case is unique, the
4 fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the
5 Class Members justify the requested attorneys' fees.

6 Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g.,
7 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier
8 without remand); *Wershba, supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or
9 even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512
10 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66
11 (applying a 2.5 multiplier in a consumer class action).

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

14 Even when courts have opted to award fees in settlement fund cases based on time
15 reasonably expended on the action, courts have generally awarded these fees based on the actual
16 time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen*
17 *Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67.

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19 _____
20 ⁷¹ Aiwazian Decl., ¶¶ 6 & 7.

21 ⁷² For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment,*
22 *Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of
23 attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in
24 *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on
25 April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class
26 action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court
27 Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees
28 involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge,*
et al. v. Healthport Technologies, LLC (Alameda County Superior Court Case No. RG16835813) was granted on
June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and
representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No.
SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of
\$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare*
Corporation (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the
award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative
action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No.
2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77;
and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond*
Growers (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the
award of attorneys' fees involved a higher hourly rate of \$845.64.

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 822-23. Multiple factors warrant enhancement in this case, including the following:

- 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 1127.5-1136; *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

1 compensation for counsel, which it then multiplies by the number of hours the court finds were
2 reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at
3 1131-32. The lodestar figure is the “basic fee for comparable legal services in the community”
4 based upon the “hourly amount to which attorneys of like skill in the area would typically be
5 entitled.” *Id.*, at 1132-33 (quotation marks and citation omitted).

6 As discussed above, this was a highly contested matter which required an extensive
7 amount of time and labor. Defendant raised defenses and denied liability, and the case involved
8 gathering and analyzing extensive documents and data. The handling of this matter involved a
9 great amount of effort, and required the exercise of a high-level of skill, which Class Counsel has
10 as a result of extensive experience in employment class actions and wage-and-hour litigation.
11 Class Counsel has been actively involved in the prosecution of this matter, prior to its
12 commencement and Class Counsel’s work has continued all the way up to the present. Class
13 Counsel’s dedication to the representation of the Class Members has precluded other
14 employment.

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

25 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
26 surrounding the matter is well within the range of reasonableness. While handling this matter,
27 Class Counsel devoted the hours in legal time summarized above and detailed in the task and
28

time chart, which is attached as “EXHIBIT A” to the Declaration of Edwin Aiwarzian.⁷³ As the chart indicates, the law firm has worked 595.60 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$600 per hour to 595.60 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$357,360.00 on Lawyers for Justice, PC’s services.⁷⁴ Class Counsel seeks an attorneys’ fee award of \$202,125.00 (equal to 27.50% of the Gross Settlement Amount based on the Settlement Agreement). 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 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**).

Therefore, 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 \$202,125.00 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 \$75,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total of \$38,418.86 in litigation costs and expenses.⁷⁵ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁷⁶ The cost savings of \$36,581.14 will

⁷³ Aiwarzian Decl., Exh. A.

⁷⁴ Aiwarzian Decl., ¶ 11.

⁷⁵ Aiwarzian Decl., ¶ 19.

⁷⁶ Aiwarzian Decl., ¶ 19.

be part of the Net Settlement Amount, which will be distributed to the Participating Class Members in accordance with the Settlement.⁷⁷ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$38,418.86 to Class Counsel.

VIII. 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 \$7,500.00.⁷⁸ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, objections, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁷⁹

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$7,500.00.

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

The Settlement provides for Incentive Awards in the amount of \$12,500.00 total to Plaintiffs Ramiro Perez (\$7,500.00 requested) and Kim Balling (\$5,000.00 requested) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Incentive Awards are both common and reasonable and should be awarded.

It is within the Court's discretion to award payment to a class representative for their efforts and work. In determining whether to make incentive payments, courts consider the

⁷⁷ Aiwazian Decl., ¶ 19.

⁷⁸ Phoenix Decl., ¶ 15.

⁷⁹ *Id.*, ¶ 2.

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 spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁸⁰ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that facilitated the pursuit of the class and PAGA claims.⁸¹ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁸² These services merit the requested Incentive Awards to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁸³

The requested Class Representative Incentive Awards were fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Incentive Awards. Accordingly, it is appropriate and just for Plaintiff Ramiro Perez to receive \$7,500.00 and Plaintiff Kim Balling to receive \$5,000.00 as reasonable Class Representative Incentive Awards, in addition to their Individual Settlement Payments, for their services on behalf of the Class.

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⁸⁰ Aiwazian Decl., ¶ 20; Declaration of Ramiro Perez (“Perez Decl.”), ¶¶ 3-5; Declaration of Kim Balling (“Balling Decl.”) ¶¶ 3-5

⁸¹ Aiwazian Decl., ¶ 20; Perez Decl., ¶¶ 3-5.

⁸² Aiwazian Decl., ¶ 20; Perez Decl., ¶¶ 2-6.

⁸³ Perez Decl., ¶ 9.

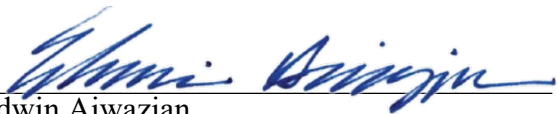
X. CONCLUSION

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

Dated: May 4, 2022

LAWYERS for JUSTICE, PC

By:


Edwin Aiwanian
Attorneys for Plaintiffs and the Class