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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

SAMUEL RANGEL, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

v.

SERPA PACKAGING SOLUTIONS, an unknown business entity; FOOD MACHINERY SALES, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Lead Case No.: VCU285951

Honorable Bret D. Hillman
Department 7

CLASS ACTION

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

[Declaration of Class Counsel (Joanna Ghosh); Declaration of Class Representative (Samuel Rangel); Declaration of Settlement Administrator (Yami Burns); and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Date:	March 5, 2024
Time:	8:30 a.m.
Department:	7
Complaint Filed:	February 10, 2021
FAC Filed:	March 5, 2021
Trial Date:	None Set

PLEASE TAKE NOTICE that on March 6, 2024 at 8:30 a.m., in Department 7 of the above-entitled Court, located at Visalia County Civic Center, 221 South Mooney Boulevard, Visalia, California 93291, Plaintiff Samuel Rangel ("Plaintiff") will and hereby does move for an order granting final approval of:

1. The Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Net Settlement Amount of approximately **$85,963.26** will be fully distributed to the Class Members who did not timely opt out of the Settlement ("Settlement Class Member");
- **No Notices of Objection** have been submitted to the Settlement Administrator, Phoenix Settlement Administrators ("Settlement Administrator");
- **No Requests for Exclusion** were submitted to the Settlement Administrator;

2. Payment in the amount of **$87,500.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing thirty-five percent (35%) of the Total Settlement Amount less the Prior Settlement Payment Credit, 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 **$13,536.74** to Class Counsel for reimbursement of litigation costs and expenses;

4. Payment in the amount of **$8,000.00** to the Settlement Administrator, Phoenix Settlement Administrators ("Phoenix"), for Settlement Administration Costs; and

5. Payment in the amount of **$5,000.00** to Plaintiff Samuel Rangel, as Enhancement Payment, for his time and effort in representing the Class.

6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq*., in the amount of $50,000.00, of which seventy-five percent (75%), or **$37,500.00**, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or **$12,500.00**, will be distributed to all current and

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former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the PAGA Period ("PAGA 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 (Joanna Ghosh), Class Representative (Samuel Rangel), and Settlement Administrator (Yami Burns 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 8, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________________
Brian J. St. John
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Samuel Rangel ("Plaintiff") seeks final approval of: (1) the Total Settlement Amount of $343,300.00 less $93,300.00 for the total of payments previously paid by Defendant to Class Members in connection with individual release of claims Defendant obtained via individual *Pick-Up Stix* agreements ("Prior Settlement Payment Credit"), for a total of $250,000.00 ("Settlement Amount"); (2) attorneys' fees in the amount of $87,500.00, which is thirty-five percent (35%) of the Total Settlement Amount less the Prior Settlement Payment Credit, and reimbursement of litigation costs and expenses in the amount of $13,536.74 (together, "Attorneys' Fees and Costs") to Lawyers *for* Justice, PC ("Class Counsel"); (3) Settlement Administration Costs in the amount of $8,000.00 to Phoenix Settlement Administrators ("Phoenix " or "Settlement Administrator"); (4) Enhancement Payment in the amount of $5,000.00 to Plaintiff Samuel Rangel; and allocation of $50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Amount").

Plaintiff seeks relief on behalf of the following Class:

> All current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the period from February 10, 2017 through April 26, 2023. ("Class" or "Class Members")[1]

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a volume of information, documents, and data in the course of litigation and in connection with mediation conducted by Jeffrey Krivis, Esq., and extensive settlement negotiations. This matter has required 365.90 hours of attorney time by Class Counsel. As will

[1] Settlement Agreement, ¶ 9.d. § 8.d. "Class Period" is defined as the period of time from February 10, 2017 through date of Preliminary Approval. *See id.*, § 8.f. The Escalator Clause of the Settlement Agreement states that Defendant estimated that for the period of February 10, 2017 to October 30, 2022, there were approximately 20,877 Workweeks and that if it is determined that the total number of Workweeks during the Class Period actually exceed this amount by more than fifteen percent (15%) (i.e., the Workweeks during the Class Periods are actually more than 24,009), then, at Defendant's option, the Class Period and PAGA Period will end on the last day that the total Workweeks do not exceed 24,009 Workweeks or the Total Settlement Amount will increase on a proportional basis to the extend the threshold is exceed. The Escalator Clause was triggered and Defendant opted to end the Class Period and PAGA Period on the last day that the total Workweeks did not exceed 24,009 Workweeks, i.e., April 26, 2023. *See id*., § 40.

be demonstrated herein, the request for attorneys' fees, which represents thirty-five percent (35%) of the Total Settlement Amount less the Prior Settlement Payment Credit, 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.

Plaintiff moves for final approval of the Enhancement Payment in the amount of $5,000.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class, PAGA Members, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of $8,000.00 for Settlement Administration Costs.

The requests for Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation for the PAGA Amount 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 Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, or allocation for PAGA Amount.*

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

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and allocation for PAGA Amount, Plaintiff also moves 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.

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II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a U.S. manufacturer of end-of-line packaging machines. Defendant is headquartered in Visalia, California, and has a major presence in the pharmaceutical, medical device, personal care, cosmetic, nutraceutical, food, dairy and household industries . Plaintiff Samuel Rangel is a former employee of Defendant.

On January 6, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Notice.")

On February 10, 2021, Plaintiff filed a Class Action Complaint for Damages in the Tulare County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On March 15, 2021, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("Operative Complaint").

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

On June 14, 2021, Defendant filed an Answer to Plaintiff's First Amended Complaint. Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is

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

On June 22, 2021 Defendant propounded multiple sets of discovery on Plaintiff (specifically, Requests for Production of Documents (Set One), and Form Interrogatories-General (Set One). Defendant also noticed the deposition of Plaintiff. Thereafter, on August 9, 2021, Plaintiff responded to Defendant's discovery requests.

On July 1, 2021, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One), on Defendant. Plaintiff also noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter, on July 23, 2021 and August 31, 2021, Defendant responded to Plaintiff's discovery requests.

The Parties have actively litigated the Action since it was commenced on February 10, 2021. On December 19, 2022, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On July 24, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") and supporting documents. On August 15, 2023, a hearing was held on Plaintiff's Motion for Preliminary Approval wherein the Court continued the hearing on the Motion for Preliminary Approval and raised certain points of inquiry regarding the Settlement. On August 21, 2023, Plaintiff filed a supplemental declaration in support of the Motion for Preliminary Approval. On August 29, 2023, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

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

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount ($343,300.00) less the Prior Settlement Payment Credit of $93,300.00 for a total of $250,000.00 (i.e., the Settlement Amount) on a non-reversionary basis.[2] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of $87,500.00 and reimbursement of litigation costs and expenses in the amount of $13,536.74, to Class Counsel; (2) Enhancement Payment in the amount of $5,000.00 to Plaintiff Samuel Rangel; (3) Settlement Administration Costs in the amount of $8,000.00 to Phoenix; and (4) the amount of $50,000.00 allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $37,500.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $12,500.00) will be distributed on a *pro rata* basis to all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the PAGA Period ("PAGA Members").[3] The Net Settlement Amount, which is estimated to be $85,963.26, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.[4]

The Settlement Administrator will calculate each Settlement Class Member's (i.e., Class Members who did not timely opt out of the Class Settlement) share of the Net Settlement Amount ("Individual Settlement Share"), as follows:

a. The Settlement Administrator will calculate each Settlement Class Member's number of Workweeks and the total aggregate number of Workweeks of all Settlement Class Members by utilizing the start and end dates worked as an hourly paid or non-exempt employee for Defendant in California.[5]

b. The Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value,"

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[2] Settlement Agreement, § 8.oo.

[3] *Id.*, §§ 8.w & 8.x. "PAGA Period" is defined as the period of time from July 12, 2019 through date of Preliminary Approval. *See id.*, § 8.z and n.1.

[4] This amount is higher than the amount stated in Paragraph 14 of the accompanying Declaration of Yami Burns Regarding Notice and Settlement Administration ("Phoenix Declaration" or "Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $40,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $13,536.74 for reimbursement of litigation costs and expenses, and the difference of $26,463.26 will remain part of the Net Settlement Amount.

[5] *Id.*, § 8.pp.

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and multiply each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.[6]

The Settlement Administrator will calculate each PAGA Member's *pro rata* share of the 25% share of the PAGA Amount ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows:

a. The Settlement Administrator will divide the PAGA Member Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks during the PAGA Period for all PAGA Members to yield the "PAGA Workweek Value," and multiply each PAGA Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment.[7]

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 Class Settlement, and/or object to the Class Settlement ("Response Deadline").[8] The Response Deadline was December 19, 2023.[9] As of this date, the Settlement Administrator has received zero (0) written requests for exclusion from the Class Settlement ("Requests for Exclusion") and zero (0) written objections to the Class Settlement ("Notices of Objection") from Class Members.[10]

Each Individual Settlement Share will be allocated as twenty percent (20%) wages (the "wage portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) penalties, interest, and other non-wage damages, 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 wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[12] Defendant will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Settlement Amount.[13]

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[6] Settlement Agreement, § 17.b.
[7] *Id.*, § 18.
[8] Settlement Agreement, § 8.kk.
[9] Phoenix Decl., ¶¶ 9-11 & Exh. A.
[10] *Id.*, ¶¶ 9 & 10.
[11] Settlement Agreement, § 28.
[12] Ibid.
[13] Ibid.

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Each individual Settlement Payment check issued to Settlement Class Members and the Individual PAGA Payment check issued to the PAGA Members will be valid and negotiable for one hundred eighty (180) calendar days from the date of issuance.[14] Individual Settlement Payment checks and Individual PAGA Payment checks that are not negotiated within the 180-day period will be cancelled.[15] The funds from associated with such cancelled checks will be transmitted by the Settlement Administrator within (10) calendar days after the expiration of the 180-day period, and sent to the State Controller's Office, Unclaimed Property Division, in the name of the Settlement Class Member and/or PAGA Member whose check is cancelled and in the respective amount of the cancelled check.[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 August 29, 2023 Preliminary Approval Order.

On October 2, 2023, Phoenix received a mailing list from Defendant's counsel that contained each Class Member's (1) full name; (2) last-known mailing address; (3) last known telephone number; (4) Social Security number, and start and end dates of employment as hourly and/or non-exempt employee for Defendant for each Class Member (collectively, "Class List").[17]

The Class List contained information for two hundred thirty (230) individuals identified as Class Members.[18] Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.[19]

On October 20, 2023, Phoenix mailed the Class Notice via first class mail to 230 individuals identified as Class Members in the Class List.[20]

No Class Notices were returned as undeliverable with forwarding addresses.[21] Ten (10)

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[14] Settlement Agreement, § 23.
[15] Ibid.
[16] Ibid.
[17] Phoenix Decl., ¶ 4.
[18] Ibid.
[19] *Id.*, ¶ 5.
[20] *Id.*, ¶ 6.
[21] *Id.*, ¶ 7.

Class Notices were returned as undeliverable without forwarding addresses.[22] Phoenix performed a skip-trace search on the ten (10) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for eight (8) Class Members, and promptly re-mailed the Class Notice to the updated addresses.[23] Two (2) Class Notices were returned as undeliverable a second time. Ultimately, four (4) Class Notices remain undeliverable because an updated address was not located through skip-tracing.[24]

The Settlement Administrator has received zero (0) Notices of Objection and zero (0) Requests for Exclusion from Class Members.[25]

To date, there are two hundred thirty (230) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.[26] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $85,963.26 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.[27] The highest Individual Settlement Share is currently estimated to be at least $802.56 and the average Individual Settlement Share is currently estimated to be at least $259.83.[28] The highest Individual PAGA Payment is currently estimated to be at least $151.27, and the average Individual PAGA Payment is currently estimated to be at least $71.43.[29]

V. <u>THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.</u>

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:

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[22] Phoenix Decl., ¶ 7.
[23] Ibid.
[24] *Id.*, ¶ 8.
[25] *Id.*, ¶¶ 9 & 10.
[26] *Id.*, ¶ 12.
[27] *Id.*, ¶ 14; see n.4, *supra*.
[28] *Id.*, ¶ 15. The actual average and highest Individual Settlement Share will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than $40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., $26,463.26, will be part of the Net Settlement Amount). See n.4, *supra*.
[29] *Id.*, ¶ 16.

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> 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 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.*

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

The parties actively litigated the case since it was commenced on February 10, 2021. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification and trial.[30] The parties conducted extensive informal discovery and investigation into the facts of the case, and also informally exchanged information, documents, and data in preparation for mediation.[31] Class Counsel also had the opportunity to interview and obtain information from Plaintiff and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed a volume of documents and data obtained from Defendant, Plaintiff, and other sources.[32] The information, documents, and data reviewed and analyzed by Class Counsel included, and were not limited to, employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, Defendant's Employee Handbook, , company policy acknowledgements, internal memoranda, job descriptions, new hire orientation checklists, operations and employment practices, forms, procedures, and policies (including but not limited to Meal Periods and Rest Breaks Policy, Standards of Conduct, Meal Period waivers, Telephone and Cell Phone Policy, and Computer E-Mail Internet and Software Policy), among other information, data, and documents.[33] Class Counsel researched applicable law, developed damages, penalties, and valuation models in preparation for mediation, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the case management, informal discovery, and production of documents and data in the course of litigation and in connection to mediation and settlement negotiations.[34]

After conducting significant informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a

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[30] Declaration of Joanna Ghosh ("Ghosh Decl."), ¶ 6.
[31] Ibid.
[32] Ibid.
[33] Ibid
[34] Ibid.

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well-regarded mediator experienced in mediating complex labor and employment matters.[35] In the course of litigation and in connection with 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 and trial, the law relating to class certification, off-the-clock theory, meal and rest periods, non-discretionary bonus/shift differential/incentive pay, regular rate of pay, wage-and-hour enforcement, business expense reimbursement, PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things.[36] During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.[37] Arriving at a settlement that was acceptable to the parties was not easy.[38] Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.[39] After conducting significant informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.[40]

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 Plaintiff and other Class Members.[41] Class Counsel also reviewed and analyzed a volume of documents obtained from Defendant, Plaintiff, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to class certification, off-the-clock theory, meal and rest periods, non-discretionary bonus/shift differential/incentive pay, regular rate of pay, wage-and-hour

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[35] Ghosh Decl., ¶ 8.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] Ibid
[40] Ibid.
[41] *Id.*, ¶ 6.

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enforcement, business expense reimbursement PAGA representative actions, wage-and-hour enforcement, Plaintiff's claims and damages, and Defendant's defenses, as well as facts discovered.[42] The Settlement was based on this volume of facts, evidence, and investigation.[43] Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class and representative action litigation.[44]

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

The Settlement, which provides for a Total Settlement Amount of $343,300.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class claims through certification proceedings, trial, and/or appeals.[45] The Settlement was calculated using information and data uncovered through extensive case investigation, extensive informal discovery, and the exchange of information in the context of mediation and settlement negotiations.[46] Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This

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[42] Ghosh Decl., ¶ 6
[43] *Id.*, ¶¶ 6 & 8.
[44] *Id.*, ¶¶ 13-18.
[45] *Id.*, ¶¶ 8 & 21.
[46] *Id.*, ¶¶ 5-8.

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is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment, 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. Additionally, the parties were moving into the phase of the litigation where they would have to conduct a significant amount of discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Formal discovery would have certainly arisen, which would have cost the parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class 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.

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

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

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Even after deducting attorneys' fees in the amount of $87,500.00, litigation costs and expenses in the amount of $13,536.74, Enhancement Payment in the amount of $5,000.00, Settlement Administration Costs in the amount of $8,000.00, Prior Settlement Payment Credit in the amount of $93,300.00 and PAGA Amount in the amount of $50,000.00 from the Total Settlement Amount of $343,300.00, the Net Settlement Amount is currently estimated to be $85,963.26.[47] Under the Settlement Agreement, the Total Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks during the Class Period credited to him or her and each PAGA Member will be paid a *pro rata* share of the twenty-five present share of the PAGA Amount, based on the number of Workweeks during the PAGA Period credited to him or her. To date, there are 230 Settlement Class Members, representing 100% of the Class Members.[48] The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least $802.56 and the average Individual Settlement Share is currently estimated to be at least $259.83.[49] The highest Individual PAGA Payment is currently estimated to be at least $151.27, and the average Individual PAGA Payment is currently estimated to be at least $71.43.[50] 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.[51] Although the recommendations of Class Counsel are not conclusive, the

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[47] Phoenix Decl., ¶ 14; see n.4, *supra*.
[48] Phoenix Decl., ¶ 13.
[49] *Id*., ¶ 14; see n.28, *supra*.
[50] *Id*., ¶ 15.
[51] Ghosh Decl., ¶ 21.

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Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. <u>The Class Was Represented by Competent Counsel.</u>

Class Counsel has extensive experience in employment class and representative action law and complex wage-and-hour litigation.[52] 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.[53] 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. <u>There are no Objections to the Settlement.</u>

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement.*[54] Specifically, no objections have been made as to the Total Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, or the allocation for PAGA Amount. 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.

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[52] Ghosh Decl., ¶¶ 13-18.
[53] Ibid.
[54] Phoenix Decl., ¶ 10.

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

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "'not be disturbed on appeal absent a manifest abuse of discretion.'" *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in her 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

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as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

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

B. <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.[55] 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

[55] 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.

the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. See *Serrano*, *supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent*, *supra*, 557 F.2d at 769.

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a 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).

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Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of $343,300.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five percent (35%) of the Total Settlement Amount less the Prior Settlement Payment Credit. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.[56]

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.*

[56] Ghosh Decl., ¶ 9.

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(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 her 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 Plaintiff and the Class, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the 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

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award of attorneys' fees in the amount of $87,500.00 (which is 35% of the Total Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class, PAGA Members, and the State of California. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.[57]

As outlined in the Declaration of Joanna Ghosh, Class Counsel has fully and actively participated in litigation of this case.[58] Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.[59] During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; reviewed and analyzed a volume of information, documents, and data obtained from Defendant, Plaintiff, and other sources; and prepared liability, damages, and penalties valuation calculations.[60] Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, informal discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations. Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising pleadings, the mediation brief, and settlement approval motion papers; preparing and appearing for court proceedings, among other tasks.[61]

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[57] Ghosh Decl., ¶¶ 13-18.
[58] *Id*., Exh. A.
[59] *Id*., ¶ 6 & Exh. A.
[60] *Id*., ¶ 6.
[61] Ibid.

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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 Joanna Ghosh, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff and the Class.[62] 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 Counsel has spent 365.90 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Class.[63] 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 case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification 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 Joanna Ghosh, 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.[64]

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[62] Ghosh Decl., Exh. A.
[63] Ibid.
[64] *Id.*, ¶¶ 13-18.

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

The Settlement represents an excellent resolution of the action, given the risks inherent in litigating the case 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 case for trial would have been expensive for the parties.

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Total Settlement Amount of $343,300.00 to settle the matter. After deducting the attorneys' fees ($87,500.00), litigation costs and expenses ($13,536.74), Enhancement Payment ($5,000.00), Settlement Administration Costs ($8,000.00), Prior Settlement Payment Credit ($93,300.00), and the PAGA Amount ($50,000.00) from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $85,963.26.[65] The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least $802.56 and the average Individual Settlement Share is currently estimated to be at least $259.83.[66] The highest Individual PAGA Payment is currently estimated to be at least $151.27, and the average Individual PAGA Payment is currently estimated to be at least $71.43.[67] The

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[65] Phoenix Decl., ¶ 14; see n.4, *supra*.
[66] *Id*., ¶ 15; see n.28, *supra*.
[67] *Id*., ¶ 16.

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Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and PAGA Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 365.90 hours of time to obtain relief on behalf of Plaintiff and the Class.[68] Class Counsel has also incurred litigation costs and expenses in the amount of $13,536.74.[69]

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[70] Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.[71] The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested attorneys' fees. 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 she 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 her work if she is paid only for the second of these functions. If she 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.

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[68] Ghosh Decl., ¶ 11, Exh. A.
[69] See Part VII, *infra*.
[70] Ghosh Decl., ¶ 19.
[71] See *id*., ¶¶ 13-18.

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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.[72]

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Total Settlement Amount of $343,300.00.[73] The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least $802.56 and the average Individual Settlement Share is currently estimated to be at least $259.83.[74] The highest Individual PAGA Payment is currently estimated to be at least $151.27, and the average Individual PAGA Payment is currently estimated to be at least $71.43.[75]

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. [76]

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[72] Phoenix Decl., ¶ 10.
[73] Ghosh Decl., ¶¶ 5-8.
[74] Phoenix Decl., ¶ 15; see n.28, *supra*.
[75] *Id*., ¶ 16.
[76] Ghosh Decl., ¶¶ 13-18.

D. <u>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.</u>

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. See *Laffitte*, *supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time 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 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 and representative actions and complex wage-and-hour litigation. Long and difficult

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battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding 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 volume of data and documents that were produced by Defendant and obtained from Plaintiff and Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents, information, and data to strategize the action and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VII.C.1, *infra*, attached to the Declaration of Joanna Ghosh is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.[77] The chart demonstrates that Class Counsel has spent a total of 365.90 hours litigating the case and finalizing the Settlement.[78] In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff 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

[77] See Ghosh Decl., Exh. A.
[78] Ghosh Decl., ¶ 11.

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 its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of $343,300.00.

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least $700 per hour for services provided by Class Counsel.[79] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating Lawyers *for* Justice, PC at the blended rate of at least $700 for legal service performed, by courts of this state.[80] 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, PAGA Members, and the State of California justify the requested attorneys' fees.

Applying the rate of $700 per hour to 365.90 hours would place a reasonable value of $256,130.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of $87,500.00, which is thirty-five percent (35%) of the Settlement Amount.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See Ketchum, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency

[79] Ghosh Decl., ¶ 12.
[80] Ibid.

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cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, supra, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, supra, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); Chavez, supra, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of $87,500.00 to Class Counsel.

VII. <u>COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.</u>

The Settlement provides for reimbursement of litigation costs and expenses of up to $40,000.00. As set forth in the Declaration of Joanna Ghosh, Class Counsel seeks reimbursement of $13,536.74, in litigation costs and expenses incurred in this matter.[81] 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.[82] The cost savings of $26,463.26 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.[83] Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of $13,536.74 to Class Counsel.

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[81] Ghosh Decl., ¶ 19 & Exh. B.
[82] Ibid.
[83] Ibid.

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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 $8,000.00.[84] 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; 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, Notices of Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.[85]

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 $8,000.00.

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

The Settlement provides for an Enhancement Payment in the amount of $5,000.00 to Plaintiff Samuel Rangel to compensate Plaintiff for the time and effort that he expended on behalf of the Class, PAGA Members, and the State of California. The requested Enhancement Payment 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.

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[84] Phoenix Decl., ¶ 18.
[85] *Id*., ¶ 3.

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

The requested Enhancement Payment is fair and appropriate because Plaintiff 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, including and not limited to, by way of working with Class Counsel to prepare responses to discovery requests that were propounded on him by Defendant.[86] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would facilitate the pursuit of class and PAGA claims.[87] Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing her work experiences with Defendant, and gathering and reviewing documents.[88] These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.[89]

The requested Enhancement Payment was fully disclosed in the Notice that was mailed to the Class Members. No objections were made with regards to the requested Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Samuel Rangel to receive $5,000.00 as a reasonable Enhancement Payment for his services on behalf of the Class, PAGA Members, and the State of California, in addition to his individual settlement payment.

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[86] Ghosh Decl., ¶ 20; Declaration of Samuel Rangel (“Rangel Decl.”), ¶¶ 3-5.
[87] Ghosh Decl., ¶ 20; Rangel Decl., ¶¶ 3-5.
[88] Ghosh Decl., ¶ 20; Rangel Decl., ¶¶ 2-6.
[89] Rangel Decl., ¶ 9.

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X. CONCLUSION

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

Dated: February 8, 2024

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By: ______________________________

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