

Edwin Aiwazian (SBN 232943)  
Arby Aiwazian (SBN 269827)  
Joanna Ghosh (SBN 272479)  
Yasmin Hosseini (SBN 326399)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Tel: (818) 265-1020 / Fax: (818) 265-1021

*Attorneys for Plaintiff and the Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

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

Plaintiff,

vs.

ASIAN BOX PALO ALTO LLC., a California  
limited liability company; ASIAN BOX, an  
unknown business entity; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 19CV346589

Honorable Sunil R. Kulkarni  
Department 1

**CLASS ACTION**

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

[Declaration of Class Counsel  
(Edwin Aiwazian); Declaration of Class  
Representative (Courtney Reese);  
Declaration of Settlement Administrator  
(Jarrod Salinas); and [Proposed] Final  
Approval Order and Judgment filed  
concurrently herewith]

Date: January 19, 2023  
Time: 1:30 p.m.  
Department: 1

Complaint Filed: April 18, 2019  
FAC Filed: September 29, 2021  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that on January 19, 2023 at 1:30 p.m., in Department 1 of the  
2 above-entitled Court, located at 191 North Street San Jose, California 95113, Plaintiff Courtney  
3 Reese (“Plaintiff”) will and hereby does move for an order granting final approval of:

4           1.       The Joint Stipulation of Class Action and PAGA Settlement and Release and  
5 Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release  
6 (together, “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 **\$127,841.77** will be fully distributed to the  
9 Class Members who did not timely opt out of the Settlement (“Settlement Class  
10 Member”);
- 11          • **No Objections** were submitted to the settlement administrator, Phoenix Settlement  
12 Administrators (“Settlement Administrator”);
- 13          • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14          2.       Payment in the amount of **\$100,000.00** to Lawyers for Justice, PC (“Class  
15 Counsel”), representing one-third (1/3) of the Maximum Settlement Amount, for attorneys’ fees,  
16 which is reasonable and justified on a percentage-basis;

17          3.       Payment in the amount of **\$20,658.23** to Class Counsel for reimbursement of  
18 litigation costs and expenses;

19          4.       Payment in the amount of **\$6,000.00** to the Settlement Administrator, Phoenix  
20 Settlement Administrators (“Phoenix”), for Settlement Administration Costs;

21          5.       Payment in the amount of **\$8,000.00** to Plaintiff Courtney Reese, as Incentive  
22 Payment, for her time and effort in representing the Class; and

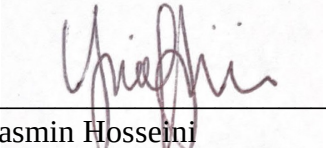
23          6.       Allocation of the penalties under the Private Attorneys General Act of 2004,  
24 California Labor Code section 2698, *et seq.*, in the amount of **\$50,000.00**, of which seventy-five  
25 percent (75%), or **\$37,500.00**, will be paid to the California Labor and Workforce Development  
26 Agency and twenty-five percent (25%), or **\$12,500.00**, will be part of the Net Settlement Amount  
27 for distribution to the Settlement Class Members.

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

4 This motion is based upon the following Memorandum of Points and Authorities; the  
5 Declaration of Class Counsel (Edwin Aiwazian), Class Representative (Courtney Reese), and  
6 Settlement Administrator (Jarrod Salinas of Phoenix) in support thereof; the pleadings and other  
7 records on file with the Court in this matter; and such evidence and oral argument as may be  
8 presented at the hearing on this Motion.

9 Dated: December 23, 2022

**LAWYERS for JUSTICE, PC**

10  
11 By: 

Yasmin Hosseini  
Attorneys for Plaintiff and the Class

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Courtney Reese (“Plaintiff”) seeks final approval of: (1) the Maximum Settlement Amount of \$300,000.00; (2) attorneys’ fees in the amount of \$100,000.00, which is one-third (1/3) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$25,000.00 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$6,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Incentive Payment in the amount of \$8,000.00 to Plaintiff Courtney Reese; and (5) allocation of \$50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Payment”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who worked for Defendant’s restaurant location in Mountain View, California, at any time during the Class Period (“Class” or “Class Members”).<sup>1</sup>

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Jeffrey A. Ross, Esq., and extensive settlement negotiations. This matter has required 406.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one-third (1/3) of the Maximum 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.

Plaintiff moves for final approval of the Incentive Payment in the amount of \$8,000.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$6,000.00 for Settlement Administration Costs. Plaintiff also moves for final

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<sup>1</sup> Joint Stipulation of Class Action and PAGA Settlement and Release and Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release (together, “Settlement,” “Agreement,” or “Settlement Agreement”), ¶ 5. “Class Period” is defined at the period of time from April 18, 2015 through February 2, 2021. *See id.*, ¶ 8.

1 approval of the allocation of \$50,000.00 for the PAGA Payment, of which \$37,500.00 will be paid  
2 to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the  
3 PAGA Payment (“LWDA Payment”), and \$12,500.00 will be part of the Net Settlement Amount  
4 that will be distributed to Class Members who did not submit a timely and valid request to be  
5 excluded from the Settlement (“Settlement Class Members”).

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

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

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

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

24 Defendant Asian Box Palo Alto LLC (“Defendant”) is a restaurant specializing in  
25 Vietnamese curry inspired by Asian street stalls. Plaintiff Courtney Reese is a former employee  
26 of Defendant.

27 ///

28 ///

1 On April 18, 2019, Plaintiff filed a Class Action Complaint for Damages (“Complaint”) in  
2 the Santa Clara County Superior Court (“Court”), thereby commencing the above-captioned  
3 lawsuit (“Action”).

4 On September 29, 2021, Plaintiff filed a First Amended Class Action Complaint for  
5 Damages and Enforcement under the Private Attorneys General Act, Cal. Labor Code § 2698 Et  
6 Seq. (“Operative Complaint”).

7 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by  
8 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of,  
9 *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant meal and rest  
10 periods and associated premium pay, failing to timely pay wages and associated waiting time  
11 penalties, failing to maintain accurate payroll records, failing to provide compliant wage  
12 statements, and failing to reimburse necessary business-related expenses, and thereby engaged in  
13 unfair business practices in violation of California Business and Professions Code and conduct  
14 that gives to penalties recoverable under PAGA. Plaintiff contends that she, and the Class  
15 Members, are entitled to, *inter alia*, unpaid wages, penalties (including, and not limited to,  
16 penalties pursuant to PAGA), and attorneys’ fees.

17 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind  
18 associated with any of the allegations in the case, and further denies that the case is appropriate for  
19 class treatment or representative adjudication for any purpose other than for settlement purposes  
20 only.

21 The parties have actively litigated the matter since it was commenced April 18, 2019. The  
22 parties conducted significant informal discovery and exchanged a large volume of documents and  
23 data. On February 2, 2021, the parties participated in a formal, full-day mediation conducted by  
24 Jeffrey A. Ross, Esq., a well-regarded mediator experienced in mediating complex labor and  
25 employment matters. With the aid of the mediator’s evaluation, the Parties ultimately reached the  
26 Settlement described herein to resolve the Action in its entirety.

27 On July 15, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action  
28 Settlement and supporting documents. On July 27, 2022, the Court issued a tentative ruling,

1 requiring that the Parties to provide additional information in support of the Motion for Preliminary  
2 Approval and to modify the Settlement Agreement and proposed Class Notice. On August 10,  
3 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On  
4 August 11, 2022, a hearing was held on Plaintiff's Motion for Preliminary Approval. On August  
5 15, 2022, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of  
6 Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the  
7 terms of the Settlement, the Class Notice, and the proposed administration procedures and  
8 associated deadlines.

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

11 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

12 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum  
13 Settlement Amount of \$300,000.00, in two (2) payments— a first deposit of one-half (1/2) of the  
14 Maximum Settlement Amount (i.e., One Hundred Fifty Thousand Dollars (\$150,000.00)) ("First  
15 Payment") within fifteen (30) calendar days of the Effective Date and a second deposit of the  
16 remaining one-half (1/2) of the Maximum Settlement Amount (i.e., One Hundred Fifty Thousand  
17 Dollars (\$150,000.00)) ("Second Payment") within six (6) months of the First Payment, into a  
18 qualified settlement account to be established by the Settlement Administrator.<sup>2</sup> Subject to  
19 approval by the Court, the Net Settlement Amount will be calculated by deducting the following  
20 amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Costs, consisting of  
21 attorneys' fees in the amount of \$100,000.00 and reimbursement of litigation costs and expenses  
22 in the amount of \$20,658.23, to Class Counsel; (2) Incentive Payment in the amount of \$8,000.00  
23 to Plaintiff Courtney Reese; (3) Settlement Administration Costs in the amount of \$6,000.00 to  
24 Phoenix; and (4) LWDA Payment in the amount of \$37,500.00.<sup>3</sup> The Net Settlement Amount,

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27  
28 <sup>2</sup> Settlement Agreement; ¶ 38.a & 38.b.

<sup>3</sup> *Id.*, ¶ 20; see also, ¶¶ 3, 16, 41, 42, 43, 44.

1 which is estimated to be \$127,841.77, will be distributed in accordance with the Settlement  
2 Agreement, and there is no reversion to Defendant.<sup>4</sup>

3 The Settlement Administrator will calculate each Settlement Class Member's share of the  
4 Net Settlement Amount ("Individual Settlement Share"), by dividing the final Net Settlement  
5 Amount by weeks, or fraction thereof, of all Settlement Class Members who worked at  
6 Defendant's restaurant location in Mountain View, California, in an hourly-paid or non-exempt  
7 position at any time during the Class Period, as reflected in Defendant's records ("Workweeks"),  
8 to yield the "Final Workweek Value," and multiplying each Settlement Class Member's individual  
9 Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.<sup>5</sup>

10 Class Members had forty-five (45) calendar days after the initial mailing of the Class  
11 Notice to Class Members to submit a Request for Exclusion, Notice of Objection, and/or  
12 Workweek Disputes ("Response Deadline").<sup>6</sup> The Response Deadline was October 29, 2022.<sup>7</sup> The  
13 Settlement Administrator has not received any written requests for exclusion from the Settlement  
14 ("Requests for Exclusion") or objections to the Settlement ("Notice of Objections") from Class  
15 Members.<sup>8</sup>

16 Each Individual Settlement Share will be allocated as one-third (1/3) wages, to be reported  
17 on IRS Form W-2; and two-thirds (2/3) for penalties, interest, and non-wage damages, to be  
18 reported on IRS Form 1099 (if applicable).<sup>9</sup> Settlement Class Members will be issued payment of  
19 their Individual Settlement Share subject to reduction for the employee's share of taxes and  
20 withholdings with respect to the wage portion of each Individual Settlement Share (the net  
21 payment is referred to as an "Individual Settlement Payment").<sup>10</sup> The employer's share of taxes  
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23 <sup>4</sup> This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Jarrod Salinas  
24 Regarding Notice and Settlement Administration ("Phoenix Declaration" or "Phoenix Decl.") because the Settlement  
25 Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum  
26 amount of \$25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only  
27 \$20,658.23 for reimbursement of litigation costs and expenses, and the difference of \$4,341.77 will remain part of  
28 the Net Settlement Amount.

<sup>5</sup> Settlement Agreement, ¶ 45.b.

<sup>6</sup> *Id.*, ¶ 29.

<sup>7</sup> Phoenix Decl., ¶¶ 8 & 9, Exh. A.

<sup>8</sup> *Id.*, ¶¶ 8 & 9.

<sup>9</sup> Settlement Agreement, ¶ 55.

<sup>10</sup> *Id.*, ¶ 18.

1 and withholdings on the wages portion of Individual Settlement Shares will be paid by Defendant  
2 separately and in addition to the Maximum Settlement Amount.<sup>11</sup>

3 Individual Settlement Payments will be paid to Settlement Class Members by way of one  
4 (1) check – no later than ten (10) calendar days after Defendant funds the First Payment.<sup>12</sup>

5 Each Individual Settlement Payment checks issued to Settlement Class Members will be  
6 valid and negotiable for a period of one hundred and eight (180) calendar days from the date of  
7 issuance of the check, and thereafter shall be cancelled.<sup>13</sup> The funds associated with such cancelled  
8 checks will be transmitted to the Legal Services of Northern California.<sup>14</sup>

9 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

10 The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to  
11 effectuate the notice and settlement administration process, as set forth in the Court’s August 15,  
12 2022 Preliminary Approval Order.

13 On August 15, 2022, Phoenix received the Court-approved text for the Class Notice.

14 On August 29, 2022, Phoenix received a list, compiled by Defendant based on their  
15 records, containing the following information for each Class Member: (1) full name, (2) last known  
16 mailing address, (3) Social Security Number, and (4) the number of Workweeks of each Class  
17 Member (“Class Data”).<sup>15</sup> The Class Data contained information for one hundred and twenty  
18 (120) individuals identified as Class Members.<sup>16</sup> Phoenix processed the names and addresses  
19 through the National Change of Address Database (“NCOA”) and updated the Class Data with  
20 any updated addresses located.<sup>17</sup>

21 On September 14, 2022, Phoenix mailed the Class Notice via first class mail to one hundred  
22 and twenty (120) individuals identified as Class Members in the Class Data.<sup>18</sup>

23 As of the date of this Motion, no Class Notices were returned as undeliverable with  
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25 <sup>11</sup> Settlement Agreement, ¶ 55.

26 <sup>12</sup> *Id.*, ¶ 39.a.

27 <sup>13</sup> *Id.*, ¶ 40.

28 <sup>14</sup> *Ibid.*

<sup>15</sup> Phoenix Decl., ¶ 3.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.*, ¶ 4.

<sup>18</sup> *Id.*, ¶ 5.

forwarding addresses.<sup>19</sup> Twenty-nine (29) Class Notices were returned as undeliverable without forwarding addresses.<sup>20</sup> Phoenix performed a skip-trace search on the twenty-nine (29) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for twenty-one (21) Class Members, and promptly re-mailed the Class Notice to the updated addresses.<sup>21</sup> Four (4) Class Notices were returned to Phoenix as undeliverable a second time.<sup>22</sup> Ultimately, twelve (12) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.<sup>23</sup>

As of the date of this Motion, the Settlement Administrator has not received any Notice of Objections or Requests for Exclusion from Class Members.<sup>24</sup>

To date, there are one hundred and twenty (120) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.<sup>25</sup> Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$127,841.77 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.<sup>26</sup> The highest Individual Settlement Share is currently estimated to be \$7,258.45 and the average Individual Settlement Share is currently estimated to be \$1,029.17.<sup>27</sup>

**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:

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<sup>19</sup> Phoenix Decl., ¶ 6.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> *Id.*, ¶ 7.

<sup>23</sup> Ibid.

<sup>24</sup> *Id.*, ¶¶ 8, 9 & 10.

<sup>25</sup> *Id.*, ¶ 11.

<sup>26</sup> *Id.*, ¶ 12; see also, n.4, *supra*.

<sup>27</sup> *Id.*, ¶ 13. The actual average and highest Individual Settlement Shares 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 \$25,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$4,341.77, will be part of the Net Settlement Amount). See n.4, *supra*.

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.*

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

The parties actively litigated the case since it was commenced on April 18, 2019. Class Counsel investigated the veracity, strength, and scope of the claims, and were preparing the matter

1 for class certification and trial, prior to reaching the Settlement.<sup>28</sup> The parties conducted significant  
2 investigation into the facts of the case, and also informally exchanged information, documents,  
3 and data in preparation for mediation.<sup>29</sup> Class Counsel also interviewed and obtained information  
4 from Plaintiff and Class Members, including and not limited to the names of potential witnesses,  
5 and reviewed and analyzed documents and data obtained from Plaintiff, Defendant and other  
6 sources.<sup>30</sup> The documents and data reviewed and analyzed by Class Counsel included, and were  
7 not limited to, Plaintiff's employment records, a detailed sampling of Class Member time and pay  
8 data, multiple iterations of Defendant's handbook, company policy acknowledgements, job  
9 descriptions, Defendant's operations and employment practices, policies, and procedures  
10 (including but not limited to Arbitration of Disputes, Direct Deposit Authorization and Agreement,  
11 Sexual Harassment Policy, Meal Policy, and ServSafe California Food Handler Assessment  
12 certificate), and extensive financial documents, among other information and documents.<sup>31</sup> Class  
13 Counsel developed damages and penalties valuation models in preparation for mediation, and met  
14 and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to  
15 the pleadings, case management, and production of various documents and data in the course of  
16 litigation and in connection with mediation and settlement negotiations.<sup>32</sup>

17 After conducting significant informal discovery and investigation into the facts of the case,  
18 the parties participated in a formal, full-day mediation conducted by Jeffrey A. Ross, Esq., a well-  
19 regarded mediator experienced in mediating complex labor and employment matters.<sup>33</sup> Prior to  
20 and during mediation and settlement discussions, the parties exchanged information and data, and  
21 discussed various aspects of the case, including and not limited to, the risks and delays of further  
22 litigation, the risks and expenses to the parties of proceeding with class certification, representative  
23 adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods,  
24 representative PAGA claims, arbitration agreements, and wage-and-hour enforcement,

25  
26 <sup>28</sup> Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

27 <sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> *Id.*, ¶ 8.

Defendant's financial condition, the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>34</sup> During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.<sup>35</sup> Arriving at a settlement that was acceptable to the parties was not easy.<sup>36</sup> 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.<sup>37</sup> 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, factual circumstances, as well as the costs and risks to the parties that would attend further litigation.<sup>38</sup>

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.<sup>39</sup> Class Counsel also reviewed and analyzed a large volume of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, arbitration agreements, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.<sup>40</sup> The Settlement was based on this large volume of facts, evidence, and investigation.<sup>41</sup> Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.<sup>42</sup>

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<sup>34</sup> Aiwazian Decl., ¶ 8.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> *Id.*, ¶ 6.

<sup>40</sup> Ibid.

<sup>41</sup> *Id.*, ¶ 6.

<sup>42</sup> *Id.*, ¶¶ 15-18.

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

3           The Settlement, which provides for a Maximum Settlement Amount of \$300,000.00,  
4 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in  
5 litigating class and representative claims through certification proceedings, trial, and/or appeals.<sup>43</sup>  
6 The Settlement was calculated using information and data uncovered through extensive case  
7 investigation, informal discovery, and the exchange of information in the context of mediation.<sup>44</sup>  
8 Had the action not settled, Defendant would have vigorously challenged class certification,  
9 manageability of representative adjudication, and liability. Defendant contended that  
10 individualized questions of fact predominate over any common issues, and these issues would pose  
11 challenges to certification and representative adjudication. Defendant would have likely argued  
12 again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or  
13 representative adjudication. On the other hand, Defendant also faced the risk of the Court  
14 certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative  
15 basis. Additionally, preparation for trial would have been expensive for all parties.

16           It is preferable to reach an early resolution of a dispute because such resolutions save time  
17 and money that would otherwise go to litigation. If this matter had settled after further litigation,  
18 the settlement amount would have taken into account the additional costs incurred, and there might  
19 have been less money available for Class Members after all was said and done. This is not just an  
20 abstract contention. The risks and expenses of further litigation outweighed any benefit that might  
21 have been gained otherwise. These risks of further litigation include a determination that the claims  
22 were unsuitable for class treatment and/or representative adjudication, class de-certification after  
23 certification of a class, allowing a jury to decide the claims asserted in the case, and the real  
24 possibility of no recovery after years of litigation, especially in light of Defendant's financial  
25 circumstances. Additionally, the parties were moving into the phase of the litigation where they  
26 would have to conduct a significant amount of discovery, including and not limited to, depositions  
27

28 <sup>43</sup> Aiwazian Decl., ¶¶ 8 & 21.

<sup>44</sup> *Id.*, ¶¶ 5-8.

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. 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 Maximum Settlement Amount of \$300,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, informal 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 Maximum Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$100,000.00, litigation costs and expenses in the amount of \$20,658.23, Incentive Payment in the amount of \$8,000.00, Settlement Administration Costs in the amount of \$6,000.00, and LWDA Payment in the amount of \$37,500.00 from the Maximum Settlement Amount of \$300,000.00, the Net Settlement Amount is currently estimated to be \$127,841.77.<sup>45</sup> Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the

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<sup>45</sup> Phoenix Decl., ¶ 12; see n.4, *supra*.

Net Settlement Amount, based on the number of Workweeks credited to him or her. To date, there are one hundred and twenty (120) Settlement Class Members, representing 100% of the Class Members.<sup>46</sup> The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$7,258.45 and the average Individual Settlement Share is currently estimated to be \$1,029.17.<sup>47</sup> 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.<sup>48</sup> Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

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

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.<sup>49</sup> 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.<sup>50</sup> 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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<sup>46</sup> Phoenix Decl., ¶ 11.

<sup>47</sup> *Id.*, ¶ 13; see n.27, *supra*.

<sup>48</sup> Aiwazian Decl., ¶ 21.

<sup>49</sup> *Id.*, ¶¶ 15-18.

<sup>50</sup> *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 objected***  
3 ***to or opted out of the Settlement.***<sup>51</sup> Specifically, no objections have been made as to the Maximum  
4 Settlement Amount or requested Attorneys’ Fees and Costs, Incentive Payment, Settlement  
5 Administration Costs, or the allocation for PAGA Payment. California courts have consistently  
6 found that a small number of objectors indicates the class’ support for a settlement and strongly  
7 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite  
8 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite  
9 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 entirety.  
13 *Dunk, supra*, 48 Cal.App.4th at 1802.

14       **VI.     THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR**  
15 **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 rendered  
21 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where  
22 the amount of a settlement is a “certain easily calculable sum of money,” California courts may  
23 calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, *California*  
24 *Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert*  
25 *Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-  
26 of-the-benefit approach is preferred in class and representative actions because “it better  
27

28           <sup>51</sup> Phoenix Decl., ¶¶ 8 & 9.

1 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82  
2 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 Half*  
5 *Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a  
6 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 will  
9 “chill the private enforcement essential to the vindication of many legal rights and obstruct the  
10 representative actions that often relieve the courts of the need to separately adjudicate numerous  
11 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 Cal.App.4th  
15 at 1270). It is not an abuse of discretion to choose one method over another as long as the method  
16 chosen is applied consistently using percentage figures and/or rates that accurately reflect the  
17 marketplace. In cases where class members present claims against a settlement amount and the  
18 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of  
19 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

20 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,  
21 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th  
22 Ed., 2002) § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494  
23 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*  
24 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding  
25 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely  
26 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”  
27 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent  
28 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.<sup>52</sup> The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

<sup>52</sup> 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.

1 small to economically justify legal action on an individual basis. Accordingly, in determining a  
2 reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue  
3 such litigation in order to achieve increased access to the judicial system for meritorious claims  
4 and to enhance deterrents to wrongdoing. This is especially true in situations where multiple  
5 similar alleged wrongs would not be economically feasible to pursue individually, such as here.  
6 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

14 Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement  
15 Amount of \$300,000.00. The requested attorneys’ fees are one-third (1/3) of the total value of the  
16 monetary settlement. In light of Class Counsel’s successful prosecution and resolution of the case,  
17 the requested attorneys’ fees are appropriate and reasonable.

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

25 The percentage method is consistent with, and is intended to mirror, the practice in the  
26 private marketplace where contingent-fee attorneys typically negotiate percentage-fee  
27 arrangements with their clients. A named plaintiff’s agreement to pay a contingent fee is powerful  
28 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 one-third (1/3) of the recovery.<sup>53</sup>

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

In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4<sup>th</sup> 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, the Class, and the State of California, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

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<sup>53</sup> Aiwazian Decl., ¶ 9.

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* (11<sup>th</sup> 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 \$100,000.00 (which is 1/3 of the Maximum 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. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.<sup>54</sup>

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of this case.<sup>55</sup> Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's

<sup>54</sup> Aiwazian Decl., ¶¶ 15-18.

<sup>55</sup> *Id.*, Exh. A.

business, and its operations and employment policies, practices, and procedures.<sup>56</sup> During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; reviewed and analyzed a large volume of pages of documents and data produced by Defendant and obtained through other sources; and prepared damages and penalties valuation calculations.<sup>57</sup> Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, motion practice, and production of various documents and data prior to mediation; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.<sup>58</sup> Class Counsel also performed significant research into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, arbitration agreements, PAGA claims and penalties, wage-and-hour enforcement, Plaintiff's claims and damages, and Defendant's defenses.<sup>59</sup>

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 Edwin Aiwazian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, the Class, and the State of California.<sup>60</sup> 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 406.50 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, and the State of California.<sup>61</sup> These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the

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<sup>56</sup> Aiwazian Decl., ¶ 6 & Exh. A.

<sup>57</sup> *Id.*, ¶ 6.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Id.*, Exh. A.

<sup>61</sup> *Id.*, ¶ 11.

1 carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate,  
2 and reasonable.

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

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

9 Class Counsel undertook significant investigation, analysis, and research prior to filing this  
10 case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter  
11 for class certification and representative adjudication and had every intention of taking the case to  
12 trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite  
13 all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwasian,  
14 Class Counsel used its extensive experience in the handling of class actions and complex wage-  
15 and-hour litigation matters in order to obtain the Settlement with maximum efficiency.<sup>62</sup>

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

17 The Settlement represents an excellent resolution of the action, given the risks inherent in  
18 litigating the case through certification proceedings, trial, and/or appeals. Had the case not settled,  
19 Defendant would have vigorously challenged certifiability, manageability of representative  
20 adjudication, and liability. Defendant, however, faced risks if the Court certified a class and  
21 allowed a jury to decide the claims. Additionally, preparing the case for trial would have been  
22 expensive for the parties.

23 The Settlement at this stage is preferred over continued litigation because such resolutions  
24 save time and money that would otherwise go to litigation. The risks and expenses of further  
25 litigation outweighed any benefit that might have been gained otherwise. The Settlement provides  
26 an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation  
27 involving expert discovery, trial preparation, class certification proceedings, and appellate review

28 <sup>62</sup> Aiwasian Decl., ¶¶ 15-18.

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 Maximum Settlement Amount of \$300,000.00 to settle the matter. After deducting the attorneys' fees (\$100,000.00), litigation costs and expenses (\$20,658.23), Incentive Payment (\$8,000.00), Settlement Administration Costs (\$6,000.00), and LWDA Payment (\$37,500.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$127,841.77.<sup>63</sup> 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 \$7,258.45 and the average Individual Settlement Share is currently estimated to be \$1,029.17.<sup>64</sup> The Settlement offers significant monetary relief to the Settlement Class 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 **406.50** hours of time to obtain relief on behalf of Plaintiff, the Class, and the State of California.<sup>65</sup> Class Counsel seeks reimbursement of \$20,658.23 in litigation costs and expenses incurred in this matter.<sup>66</sup>

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.<sup>67</sup> Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.<sup>68</sup> The skill and determination that Class Counsel has shown, along with the results obtained, justify the

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<sup>63</sup> Phoenix Decl., ¶ 12; see n.4, *supra*.

<sup>64</sup> *Id.*, ¶ 13; see n.27, *supra*.

<sup>65</sup> Aiwasian Decl., ¶ 11, Exh. A.

<sup>66</sup> See Part VII, *infra*.

<sup>67</sup> Aiwasian Decl., ¶ 19.

<sup>68</sup> See *id.*, ¶¶ 15-18.

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 has devoted to litigating the case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

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

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to or opted out of the Settlement.<sup>69</sup>

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, the Class, and the State of California 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 Maximum Settlement Amount of \$300,000.00.<sup>70</sup> The Maximum Settlement Amount will be fully paid out, in accordance with

<sup>69</sup> Phoenix Decl., ¶¶ 8 & 9.

<sup>70</sup> Aiwasian Decl., ¶¶ 5-8.

the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$7,258.45 and the average Individual Settlement Share is currently estimated to be \$1,029.17.<sup>71</sup>

**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.<sup>72</sup>

**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 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.

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<sup>71</sup> Phoenix Decl., ¶ 13; see n.27, *supra*.

<sup>72</sup> Aiwasian Decl., ¶¶ 15-18.

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

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

5                   As discussed above, the case was highly contested and required a significant amount of  
6                   time and labor. Defendant made it clear very early on that it disputed all of the allegations of the  
7                   case and disputed that the matter was appropriate for class or representative treatment. Defendant  
8                   raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering  
9                   and analyzing data not only from Defendant but also from the Class Members. The handling of  
10                  the case involved a great amount of effort, and also required and involved the exercise of a high  
11                  level of skill, which Class Counsel has as a result of its extensive experience in employment class  
12                  actions and complex wage-and-hour litigation. Long and difficult battles would have followed as  
13                  the case moved toward certification and trial, including taking and defending depositions of  
14                  Defendant’s Person Most Knowledgeable designees, percipient witnesses, and experts,  
15                  propounding discovery requests and conducting additional document production, and engaging in  
16                  extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook  
17                  intense preparation in an attempt to resolve the entire matter through mediation.

18                  Class Counsel had to bring together a large volume of data and documents that were  
19                  produced by Defendant and obtained from Plaintiff and Class Members and through other sources.  
20                  Class Counsel conducted extensive review and analysis of these documents and data to strategize  
21                  the Action and to prepare for and attend mediation and engage in settlement discussions.

22                  As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian  
23                  is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed  
24                  on behalf of Plaintiff, the Class, and the State of California, and the time required for completing  
25                  those tasks.<sup>73</sup> The chart demonstrates that Class Counsel has spent a total of 406.50 hours litigating  
26                  the case and finalizing the Settlement.<sup>74</sup> In light of the facts and circumstances of the case, as well  
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28                  

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<sup>73</sup> See Aiwazian Decl., Exh. A.

<sup>74</sup> Aiwazian Decl., ¶ 11.

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 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 \$300,000.00.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650 per hour for services provided by Class Counsel.<sup>75</sup> Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$650 for legal service performed, by courts of this state.<sup>76</sup> While the circumstances of every case is unique, the fact remains that the

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<sup>75</sup> Aiwasian Decl., ¶ 12.

<sup>76</sup> For example, final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare*

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

Applying the rate of \$650 per hour to 406.50 hours would place a reasonable value of \$264,225.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$100,000.00, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 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

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*Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an 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 an 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 an hourly rate of \$845.64. Aiwazian Decl., ¶ 12.

the Court grant final approval of, and award, attorneys' fees in the amount of \$100,000.00 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 \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of a total of \$20,658.23 in litigation costs and expenses incurred in this matter.<sup>77</sup> This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.<sup>78</sup> The cost savings of \$4,341.77 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.<sup>79</sup> Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$20,658.23 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 \$6,000.00.<sup>80</sup> The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, 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 Objections, and Workweeks Disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and preparing the associated tax forms; and transmitting payments, among other things.<sup>81</sup>

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 \$6,000.00.

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<sup>77</sup> Aiwazian Decl., ¶ 19.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Phoenix Decl., ¶ 12.

<sup>81</sup> *Id.*, ¶ 2.

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

The Settlement provides for an Incentive Payment in the amount of \$8,000.00 to Plaintiff Courtney Reese to compensate Plaintiff for the time and effort that she expended on behalf of the Class. The requested Incentive 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. *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 Payment is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and information, as well as providing the facts and evidence necessary to attempt to prove the allegations.<sup>82</sup> Plaintiff was available whenever Class Counsel needed her and actively tried to obtain, and gave, information that would support the pursuit of class and PAGA claims.<sup>83</sup> Plaintiff spent numerous hours speaking with Class Counsel about her claims, describing her work experiences with Defendant, and gathering and reviewing documents.<sup>84</sup> These services merit the requested Incentive Payment to Plaintiff, who has not received any compensation for her efforts on behalf of the Class Members to date.<sup>85</sup>

The requested Incentive Payment was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Incentive Payment. Accordingly, it is appropriate and just for Plaintiff Courtney Reese to receive \$8,000.00 as a reasonable Incentive Payment, in addition to her Individual Settlement Payment, for her services

<sup>82</sup> Aiwasian Decl., ¶ 20; Declaration of Reese (“Reese Decl.”), ¶¶ 3-5.

<sup>83</sup> Aiwasian Decl., ¶ 20; Reese Decl., ¶¶ 3-5.

<sup>84</sup> Aiwasian Decl., ¶ 20; Reese Decl., ¶¶ 2-6.

<sup>85</sup> Reese Decl., ¶ 8.

1 in the Action.

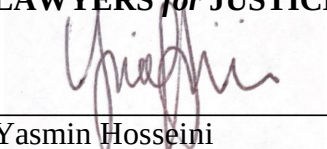
2 **X. CONCLUSION**

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

7  
8 Dated: December 23, 2022

**LAWYERS for JUSTICE, PC**

9  
10 By: \_\_\_\_\_

  
Yasmin Hosseini  
Attorneys for Plaintiff and the Class