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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JOSEPH OCASIO, 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.

THE GOODMAN GROUP LLC, an unknown business entity; MONTE VISTA LODGE LP, an unknown business entity; MONTE VISTA VILLAGE, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2021-00014215-CU-OE-CTL

Honorable Timothy Taylor
Department C-72

CLASS ACTION

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

[Declaration of Class Counsel (Edwin Aiwazian); Declaration of Class Representative (Joseph Ocasio); Notice of Motion and Motion for Final Approval of Class Action Settlement; Declaration of Settlement Administrator (Mary Butler); [Proposed] Order Granting Final Approval of Class Action Settlement and Judgment; and [Proposed] Order Awarding Attorneys' Fees and Costs, and Enhancement Payment filed concurrently herewith]

Date:	April 21, 2023
Time:	1:00 p.m.
Department:	C-72
Complaint Filed:	April 1, 2021
FAC Filed:	May 21, 2021
Trial Date:	None Set

PLEASE TAKE NOTICE that on April 21, 2023, at 1:00 p.m., in Department C-72 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Joseph Ocasio ("Plaintiff") will and hereby does move for an order awarding the following pursuant to the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement"):

- Payment in the amount of **$420,000.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing thirty-five percent (35%) of the Maximum Settlement Amount, for attorneys' fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check with a multiplier of 1.34;
- Payment in the amount of **$18,406.38** to Class Counsel for reimbursement of litigation costs and expenses;
- Payment in the amount of **$7,500.00** to Plaintiff Joseph Ocasio, as an Enhancement Payment, for his time and effort in representing the Class.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which requires approval by the Court of a class action settlement.

This motion is based upon the following Memorandum of Points and Authorities; the concurrently filed Declarations of Class Counsel (Edwin Aiwazian) and Class Representative (Joseph Ocasio) in support thereof; as well as the concurrently-filed Notice of Motion and Motion for Final Approval of Class Action Settlement and the Declaration of Settlement Administrator (Mary Butler of Simpluris) 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 or before the hearing on this Motion.

Dated: March 27, 2023 **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 Joseph Ocasio ("Plaintiff") seeks an award of attorneys' fees in the amount of $420,000.00, which is thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of $18,406.38 (together, "Attorneys' Fees and Costs") to Lawyers *for* Justice, PC ("Class Counsel") and an Enhancement Payment in the amount of $7,500.00 to Plaintiff, as provided for by the Joint Stipulation of Class Action and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement")[1].

This litigation involved formal and informal discovery and ongoing investigation into the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of information, documents, and data prior to mediation conducted by Paul Grossman, Esq., and extensive settlement negotiations. This matter has required 448.80 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for an award of attorneys' fees, which represents 35% of the Maximum Settlement Amount of $1,200,000.00, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to 50% of the recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.[2]

Plaintiff also moves for payment in the amount of $7,500.00 as Enhancement Payment, to compensate Plaintiff for the time and efforts that he expended spearheading this lawsuit on behalf of the Class, PAGA Group Members, and the State of California.

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

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[1] In the interest of judicial efficiency, and in support of final approval of the Settlement, Settlement Administration Costs, and the amount for the PAGA Penalties, Plaintiff respectfully refers the Court to Plaintiff's Motion for Final Approval of Class Action Settlement, and papers in support thereof, filed concurrently herewith, on March 17, 2023.

[2] Applying a modest multiplier of 1.34, the total enhanced lodestar fees are $420,974.4, and Class Counsel seek an attorneys' fees award of $420,000.00 (equal to 35% of the Gross Settlement Amount).

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants manage private residential and health care properties throughout the United States. Plaintiff Joseph Ocasio is a former employee of Defendants.

. On March 17, 2021, Plaintiff sent a letter to the LWDA and Defendants, pursuant to California Labor Code section 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq*., for Defendants' alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001 and 5-2001 ("LWDA Letter"). On April 1, 2021, Plaintiff filed a Class Action Complaint for Damages, Case No. 37-2021-00014215-CU-OE-CTL, in San Diego County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action"). On May 21, 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" or "First Amended Complaint"), in the Action, adding a representative cause of action under the Private Attorneys General Act, California Labor Code section 2698, *et seq*. ("PAGA") against Defendants.

Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class 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, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On June 24, 2021, Defendants filed an Answer to Plaintiff's First Amended Complaint. Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated

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with any of the allegations in the Action, and further deny that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on April 1, 2021. On July 19, 2022, Plaintiff propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Requests for Admission, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One), on Defendants, and noticed the depositions of Defendants' Person Most Knowledgeable designees, with accompanying requests for production of documents. On August 4, 2022, the Parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

On November 2, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On December 2, 2022, 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 approval of the requested Attorneys' Fees and Costs and Enhancement Payment, and for final approval of the Settlement, Settlement Administration Costs, and the amount for the PAGA Penalties, as set forth in the concurrently filed Motion for Final Approval of Class Action Settlement.

III. SUMMARY OF THE SETTLEMENT TERMS AND NOTICE ADMINISTRATION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Maximum Settlement Amount of $1,200,000.00.[3] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of $420,000.00 and reimbursement of litigation costs and expenses in the amount of $18,406.38, to Class Counsel; (2) Enhancement Payment in the amount of $7,500.00 to Plaintiff Joseph Ocasio; (3) Settlement Administration Costs in the amount

[3] Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), § I.R.

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of $10,250.00 to Simpluris; and (4) PAGA Penalties in the amount of $100,000.00.[4] The Net Settlement Amount, which is estimated to be $637,543.62, will be distributed in accordance with the Settlement Agreement.[5]

On January 10, 2023, Simpluris mailed the Class Notice via first class mail to 1,001 individuals identified as Class Members in the Class List .[6] The deadline for Class Members to opt out of the Settlement and/or object to the Settlement was February 24, 2023.[7] The Settlement Administrator has not received any written objections to the Settlement and only one (1) Request for Exclusion.[8] As of the date of this Motion, there are one thousand (1,000) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating Settlement Class Members.[9] The *highest* Individual Settlement Payment is currently estimated to be at least $2,251.20 and the *average* Individual Settlement Payment is currently estimated to be at least $637.25.[10] The *highest* Individual PAGA Payment is currently estimated to be $102.95 and the *average* Individual PAGA Payment is estimated to be $24.98.[11]

IV. <u>THE ATTORNEYS' FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

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

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

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[4] Settlement Agrement, §§ I.A, I.K, IX, XIV, XV, & XVII; see also n.1, *supra.*

[5] This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Mary Butler Regarding Notice and Settlement Administration ("Simpluris Declaration" or "Simpluris Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $25,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $18,406.38 for reimbursement of litigation costs and expenses, and the difference of $6,593.62 will remain part of the Net Settlement Amount.

[6] Simpluris Decl., ¶ 8.

[7] *Id.*, ¶ 10.

[8] *Id.*, ¶¶ 10-11.

[9] *Id.*, ¶ 12.

[10] Ibid. The actual average and highest Individual Settlement Payment will be larger than the amounts stated in the Simpluris 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., $6,593.62, will be part of the Net Settlement Amount). See n.5, *supra*.

[11] *Id.*, ¶ 12.

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the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (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.

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of $7.3 million); *Beech 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]

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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.[12] 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 small to economically

[12] The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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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 used of the percentage method when a settlement is obtained by the efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks of engaging in litigation without certainty of compensation).

Under the terms of the Settlement Agreement, Defendants will pay a Maximum Settlement Amount of $1,200,000.00, and the requested attorneys' fees are thirty-five percent (35%) of the total value of the monetary settlement (equal to $420,000.00). 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

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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.[13]

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, the PAGA Group Members, 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.

C. <u>The Attorneys' Fees Award Requested by Class Counsel is Reasonable Based on the Factors Considered in Determination of Fee Awards.</u>

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the

[13] Aiwazian Decl., ¶ 9.

novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of $420,000.00 (which is 35% 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 achieved in the case.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this case 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.[14]

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of this case.[15] Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.[16] During the litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class Members; reviewed and analyzed a large volume of information, documents and data produced by Defendants and obtained through other sources; and prepared damages/valuation calculations.[17] Class Counsel researched applicable law, developed liability, damages, and penalties valuation models in connection with mediation and settlement

[14] Aiwazian Decl., ¶¶ 15-18.
[15] *Id.*, Exh. A.
[16] *Id.*, ¶ 6 & Exh. A.
[17] *Id.*, ¶ 6.

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negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings and the production of information, documents, and data in the course of litigation, mediation, and settlement negotiations. Class Counsel also drafted pleadings and the mediation brief, prepared for and attended court proceedings, mediation, and settlement negotiations, among other tasks.[18]

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this case 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, PAGA Group Members, and the State of California.[19] 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. Attorneys at Lawyers *for* Justice have spent **448.80 hours** performing tasks and to obtain a significant recovery in the case.[20] These hours were required to bring this case 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 those results. Defendants retained well-respected counsel to represent its defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to avoid class certification and representative adjudication, and to prevail at trial. 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

[18] Aiwazian Decl., ¶ 6.
[19] *Id*., Exh. A.
[20] *Id.*, ¶ 11.

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certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, 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.[21]

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, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, 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 Participating Settlement Class Members, the State of California, and the PAGA Group Members while avoiding the further expense, risk, and delay of obtaining possible recovery at an unknown time in the future.

As a result of this litigation and extensive settlement negotiations, Defendants agreed to pay a Maximum Settlement Amount of $1,200,000.00 to settle the case. After deducting the attorneys' fees ($420,000.00), litigation costs and expenses ($18,406.38), Enhancement Payment ($7,500.00), Settlement Administration Costs ($10,250.00), and PAGA Penalties ($100,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $637,543.62.[22] The Net Settlement Amount will be fully distributed in accordance with the terms of the

[21] Aiwazian Decl., ¶¶ 15-18.
[22] Simpluris Decl., ¶ 12; see n.5, *supra*.

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Settlement. The Settlement offers significant monetary relief to the Participating Settlement Class Members, the State of California, and the PAGA Group 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 448.80 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and the PAGA Group Members.[23] Class Counsel has also incurred litigation costs and expenses in the amount of $18,406.38.[24]

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[25] Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.[26] The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel 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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[23] Aiwazian Decl., ¶ 11, Exh. A.
[24] See Part VII, *infra*.
[25] Aiwazian Decl., ¶ 19.
[26] See *id.*, ¶¶ 15-18.

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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 case, are considerable. The Settlement has yielded a positive response from the Class Members – no Class Members have objected to or opted out of the Settlement.[27]

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 case. Class Counsel's efforts have resulted in a settlement that provides for a Maximum Settlement Amount of $1,200,000.00.[28] The Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement.

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.[29]

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

[27] Simpluris Decl., ¶ 16
[28] Aiwazian Decl., ¶¶ 5-8.
[29] Aiwazian Decl., ¶¶ 15-18.

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

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

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As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian 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.[30] The chart demonstrates that Class Counsel has spent a total of 448.80 hours litigating the case and finalizing the Settlement.[31] 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 case. In addition, Class Counsel will continue to perform work on this case 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 case 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 $1,200,000.00.

As set forth in the Declaration of Edwin Aiwazian, 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.[32] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least $700 per hour for legal service performed, by courts

[30] See Aiwazian Decl., Exh. A.
[31] *Id.*, ¶ 11.
[32] *Id.*, ¶ 12.

of this state.[33] While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the blended rate of $700 per hour to 448.80 hours would place a reasonable value of $228,060.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of $420,000.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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

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

Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium

[33] For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of $936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of $919.57; 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 Corp*. (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 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.

over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal. 4th at 1132.

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-823. Multiple factors warrant enhancement in this case, including the following: The time and labor required; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the amount involved and results obtained; the experience, reputation, and ability of the attorney; awards in similar cases. *Ketchum* at 1134.

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

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendants raised defenses and denied liability, and the case involved gathering and analyzing documents and data not only from Defendants but also from the Class Members. The handling of this matter involved a great amount of effort, and required the exercise of high-level of skill, which Class Counsel has as a result of extensive experience in employment class actions and wage-and-hour litigation. Class Counsel has been actively involved in the prosecution

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of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to the representation of the Class Members has precluded other employment.

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of $1,200,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the Task and Time Chart, which is attached as EXHIBIT A to the Declaration of Edwin Aiwazian.[34] As the chart indicates, Class Counsel has worked 448.80 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable blended rate of $700 per hour to 448.80 hours of work performed by Lawyers *for* Justice, PC would place a base lodestar value of $314,160.00 on Class Counsel's services, and applying a modest multiplier of 1.34, the total enhanced lodestar fees are $420,974.40.[35] Class Counsel seeks an attorneys' fee award of $420,000.00 (equal to 35% of the Settlement Fund based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even higher." *Wershba, supra,*

[34] Aiwazian Decl., Exh. B.

[35] Aiwazian Decl., ¶ 11; see n.**Error! Bookmark not defined.**, *supra.*

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91 Cal.App.4th at 255 (emphasis added); *see also, e.g.*, *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving multiplier of 2.5); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and referring to other cases with cross-check multipliers ranging from 4.5 to 19.6).

Therefore, application of a modest multiplier of 1.34 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of $420,000.00 to Class Counsel.

V. 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 $18,406.38 in litigation costs and expenses incurred in this case.[36] 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.[37] The cost savings of $6,593.62 will be part of the Net Settlement Amount, which will be distributed to the Participating Settlement Class.[38] Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of $18,406.38 to Class Counsel.

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

The Settlement provides for an Enhancement Payment in the amount of $7,500.00 to Plaintiff Joseph Ocasio to compensate Plaintiff for the time and effort that he expended on behalf of the Class, PAGA Group Members, and the State of California. The requested Enhancement Payment is both common and reasonable and should be awarded.

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[36] Aiwazian Decl., ¶ 19.
[37] Ibid.
[38] Ibid.

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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 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.[39] 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.[40] Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.[41] 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.[42]

The requested Enhancement Payment was fully disclosed in the Class 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 Joseph Ocasio to receive $7,500.00 as a reasonable Enhancement Payment, for his services on behalf of the Class, the State of California, and the PAGA Group Members, in addition to his Individual Settlement Payment and Individual PAGA Payment.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court award Attorneys' Fees and Costs and the Enhancement Payment in their entirety, as sought herein.

Dated: March 27, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________

Brian J. St. John
Attorneys for Plaintiff and the Class

[39] Aiwazian Decl., ¶ 20; Declaration of Joseph Ocasio ("Ocasio Decl."), ¶¶ 3-5.
[40] Aiwazian Decl., ¶ 20; Ocasio Decl., ¶¶ 3-5.
[41] Aiwazian Decl., ¶ 20; Ocasio Decl., ¶¶ 2-6.
[42] Ocasio Decl., ¶ 8.

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