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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHRIS WARD, JOSE PEREDA, and TAWNY
MILLIGAN, individually, and on behalf of
other members of the general public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiffs,

vs.

RELISH LABS LLC, D/B/A HOME CHEF, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CIVSB2113821

Honorable David S. Cohn
Department S26

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
FEE AND EXPENSE AWARD, AND
SERVICE PAYMENTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Chris Ward, Jose Pereda,
and Tawny Milligan); Declaration of
Settlement Administrator (Jarrod Salinas);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: July 13, 2023
Time: 10:00 a.m.
Department: S26

Complaint Filed: May 13, 2021
FAC Filed: August 26, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 13, 2023, at 10:00 a.m., in Department S26 of the
2 above-entitled Court, located at 247 West 3rd Street, San Bernardino, California 92415, Plaintiffs
3 Chris Ward, Jose Pereda, and Tawny Milligan (together, “Plaintiffs”) will and hereby do move for
4 an order granting final approval of:

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

- 8 • A Net Settlement Sum of approximately **\$754,413.51** will be fully distributed to the
9 Class Members who do not submit a valid and timely Request for Exclusion
10 (“Settlement Class Members”);
- 11 • **No Objections** were submitted to the settlement administrator, Phoenix Settlement
12 Administrators (“Settlement Administrator” or “Phoenix”);
- 13 • **Nine (9) Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$483,333.33** to Lawyers *for* Justice, PC (“Class
15 Counsel”), representing one-third (1/3) of the Gross Settlement Amount, for attorneys’ fees, which
16 is reasonable and justified on a percentage-basis and also based on a lodestar cross-check with a
17 multiplier of 1.04;

18 3. Payment in the amount of **\$18,753.16** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$21,000.00** to the Settlement Administrator, Phoenix
21 Settlement Administrators, for Settlement Administration Costs;

22 5. Payments in the amount of **\$7,500.00** each to Plaintiffs Chris Ward, Jose Pereda,
23 and Tawny Milligan, as Service Payments, for their time and effort in representing the Class; and

24 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
25 California Labor Code section 2698, *et seq.*, in the amount of \$150,000.00, of which seventy-five
26 percent (75%), or **\$112,500.00**, will be paid to the California Labor and Workforce Development
27 Agency (“LWDA”) and twenty-five percent (25%), or **\$37,500.00**, which is to form the “PAGA
28 Fund” to be paid to: (1) all current and former hourly-paid or non-exempt employees who were

1 employed by Defendant in California during the PAGA Period and (2) all salaried exempt
2 production supervisors employed by Defendant in California during the PAGA Period (“PAGA
3 Group Members”).

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

7 This motion is based upon the following Memorandum of Points and Authorities; the
8 Declarations of Class Counsel (Edwin Aiwazian), Class Representatives (Chris Ward, Jose Pereda,
9 and Tawny Milligan), and Settlement Administrator (Jarrod Salinas of Phoenix) in support thereof;
10 the pleadings and other records on file with the Court in this matter; and such evidence and oral
11 argument as may be presented at the hearing on this Motion.

12 Dated: June 20, 2023

LAWYERS for JUSTICE, PC

13
14 By:



15 Annabel Blanchard
16 Attorneys for Plaintiffs and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan (together, “Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$1,450,000.00; (2) attorneys’ fees in the amount of \$483,333.33, which is one-third (1/3) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$18,753.16 (“Fee and Expense Award”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$21,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Service Payments in the amount of \$7,500.00 each to Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan, for a combined amount of \$22,500.00; and (5) allocation of \$150,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Settlement Amount”).

Plaintiffs seek relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who were employed by Defendant in California at any time during the Class Period (“Class” or “Class Members”).¹

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a volume of documents and data prior to and during two mediations conducted by the Honorable Edward A. Infante (Ret.) and extensive follow-up discussions and settlement negotiations thereafter. This matter has required **641.30 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 Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.²

Plaintiffs move for final approval of the Service Payments in the amount of \$7,500.00 each to Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan, to compensate Plaintiffs for the time and effort that they expended spearheading this lawsuit on behalf of the Class. Plaintiffs also move

¹ Class Action and PAGA Settlement Agreement and Release (“Settlement Agreement”), § 2.5. “Class Period,” means the period from May 13, 2017 to and including January 13, 2023. *See id.*, § 2.7.

² Applying a modest multiplier of 1.04, the total enhanced lodestar fees are \$483,540.20 and Class Counsel seeks an attorneys’ fees award of \$483,333.33 (equal to 1/3 of the Gross Settlement Amount).

for final approval of the payment to the Settlement Administrator in the amount of \$21,000.00 for Settlement Administration Costs. Plaintiffs also move for final approval of the allocation of \$150,000.00 for the PAGA Settlement Amount, of which \$112,500.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Settlement Amount, and \$37,500.00 which is to form the 25% of the PAGA Settlement Amount (“PAGA Fund”) to be paid to Plaintiffs and (1) all current and former hourly-paid or non-exempt employees who were employed by Defendant in California during the period from September 17, 2019 to and including January 13, 2023 (“PAGA Period”) and (2) all salaried exempt production supervisors employed by Defendant in California during the PAGA Period (together, “PAGA Group Members”).³

The requests for the Fee and Expense Award, Service Payments, Settlement Administration Costs, and allocation for the PAGA Settlement Amount were fully disclosed in the Notice of Settlement of Class Action (“Class Notice”). The Class Notice, along with the Notice of Eligible Work Weeks (also referred to as “Form A”), and Request for Exclusion From Class Settlement (also referred to as “Request for Exclusion” or “Form B”) (together, “Notice Packet”) 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 Fee and Expense Award, Service Payments, Settlement Administration Costs, or allocation for PAGA Settlement Amount.*

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

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Fee and Expense Award, Service Payments, Settlement Administration Costs, and PAGA Settlement Amount, Plaintiffs also move for an order

³ Settlement Agreement, §§ 2.25, 2.26, & 2.27.

1 permitting the filing of this single consolidated memorandum, although it exceeds the page limit
2 established by California Rules of Court, Rule 3.1113(d), instead of filing several separate
3 motions.

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

5 Defendant Relish Labs LLC does business as Home Chef and prepares and distributes meal
6 kits containing fresh, pre-portioned ingredients and easy-to-follow recipes, for sale to home
7 consumers via an online subscription service and in retail stores. Plaintiffs Chris Ward, Jose
8 Pereda, and Tawny Milligan are former employees of Defendant.

9 On November 23, 2020, Plaintiff Jose Pereda (“Plaintiff Pereda”) filed a Complaint for
10 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., in
11 the San Bernardino County Superior Court (“Court”), thereby commencing the action entitled *Jose*
12 *Pereda v. Relish Labs LLC*, Case No. CIVSB2026010 (the “*Pereda* Action”).

13 On April 5, 2021, Defendant filed an Answer to Plaintiff Pereda’s Complaint. Defendant
14 also propounded a Request for Production of Documents on Plaintiff Pereda. Thereafter, on May
15 10, 2021, Plaintiff Pereda responded to Defendant’s discovery request.

16 On May 13, 2021, Plaintiff Chris Ward (“Plaintiff Ward”) filed a Class Action Complaint
17 for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
18 2698, Et Seq., in the San Bernardino Superior Court, thereby commencing the above-captioned
19 action (the “*Ward* Action”).

20 On June 24, 2021, Plaintiff Tawny Milligan (“Plaintiff Milligan”) filed a Class Action
21 Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §
22 2698, *Et Seq.* in the San Bernardino Superior Court, thereby commencing the action entitled *Tawny*
23 *Milligan v. Relish Labs LLC*, Case No. CIVSB2116459 (the “*Milligan* Action”).

24 On August 26, 2022, by leave of the Court, Plaintiff Ward filed the First Amended Class
25 Action Complaint for Damages & Enforcement Under the Private Attorneys General Act,
26 California Labor Code § 2698, Et Seq., in the *Ward* Action (“First Amended Complaint” or
27 “Operative Complaint”), adding Jose Pereda and Tawny Milligan as named plaintiffs in the *Ward*
28 Action, and alleging fourteen causes of action: (1) unpaid overtime (Lab. Code §§ 510, 1198), (2)

unpaid meal period premiums (Lab. Code §§ 226.7, 512, subd. (a)), (3) unpaid rest period premiums (Lab. Code § 226.7), (4) failure to pay wages, including, *inter alia*, minimum wages (Lab. Code, §§ 1194, 1197, 1197.1), (5) final wages not timely paid (Lab. Code §§ 201, 202), (6) wages not timely paid during employment (Lab. Code § 204), (7) non-compliant wage statements (Lab. Code § 226, subd. (a)), (8) failure to keep requisite payroll records (Lab. Code, § 1174, subd. (d)), (9) unreimbursed business expenses (Lab. Code §§ 2800, 2802), (10) failure to provide paid sick leave and vacation pay and underpayment of sick time (Lab. Code §§ 201-203, 227.3, 245 et seq., and 2810.5), (11) failure to pay reporting time pay (Lab. Code § 1198; IWC Wage Order Nos. 1-2001, 3-2001, 4-2001, 5-2001, 7-2001, 8-2001, subd. 5, (12) failure to provide suitable seating (Lab. Code § 1198; IWC Wage Order Nos. 1-2001, 3-2001, 4-2001, 5-2001, 7-2001, 8-2001, subds. 14(A) and 14(B), (13) violation of California Business & Professions Code, § 17200, et seq., and (14) violation of California Labor Code § 2698 et seq. (Labor Code Private Attorneys General Act of 2004, “PAGA”). Plaintiffs contend that they, 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 November 28, 2022, Defendant filed its Answer to the First Amended Complaint.⁴ Defendant has denied, and continues to deny, any liability or wrongdoing of any kind associated with the allegations in any of the Actions, and further denies that the Actions are appropriate for class treatment or representative adjudication for any purpose other than for settlement.

The Parties have actively litigated the Actions since they were commenced. Given the substantial overlap between and among the *Pereda* Action, the *Ward* Action, and the *Milligan* Action (collectively, the “Actions”), the Parties ultimately decided to mediate all three Actions concurrently as part of the same mediation. The Parties conducted formal and informal discovery and exchanged a large volume of information, documents, and data. On November 9, 2021, the Parties participated in a formal, full-day mediation conducted by the Honorable Edward A. Infante

⁴ Defendant served its Answer to the First Amended Complaint and attempted to file it on September 12, 2022, but the Court clerk returned the filing because the filing of the First Amended Complaint had not yet been processed. The Parties agreed that Defendant would re-file the Answer upon receiving confirmation from Plaintiffs that the First Amended Complaint filing was accepted and that, under these circumstances, no default, waiver, or other prejudice to Defendant would result if it was unable to file the Answer within the timeframe specified under the Code of Civil Procedure or the stipulation and order entered in this action on August 9, 2022.

(Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. On January 10, 2022, the Parties participated in a supplemental mediation session conducted by the Honorable Edward A. Infante (Ret.). After conducting formal and informal discovery and investigation into the facts of the case and with the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the case in its entirety.

On December 12, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On January 13, 2023, a hearing was held on Plaintiffs' Motion for Preliminary Approval, and, on that date, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Notice Packet, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Fee and Expense Award, Service Payments, Settlement Administration Costs, and allocation for PAGA Settlement Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$1,450,000.00. Subject to approval by the Court, the Net Settlement Sum will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees, in the amount of \$483,333.33; (2) and reimbursement of litigation costs and expenses in the amount of \$18,753.16, to Class Counsel; (3) Service Payments in the amount of \$7,500.00 each to Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan, for a combined amount of \$22,500.00; (4) Settlement Administration Costs in the amount of \$21,000.00 to Phoenix; and (5) PAGA Settlement Amount in the amount of \$150,000.00.⁵ The Net Settlement Fund, which is estimated to be \$754,413.51, will be distributed in accordance with the Settlement Agreement.⁶

⁵ Settlement Agreement, §§ 2.45, 3.5, 3.6, & 3.7.

⁶ This amount is higher than the amount stated in Paragraph 13 of the accompanying Declaration of Jarrod Salinas of Phoenix Settlement Administrators Regarding Notice and Settlement Administration ("Phoenix Declaration" or "Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$30,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$18,753.16 for reimbursement of litigation costs and expenses, and the difference of \$11,246.84 will remain part of the Net Settlement Sum.

1 The Settlement Administrator will calculate each Settlement Class Member's share of the
2 available Net Settlement Sum ("Class Settlement Award") as follows: Defendant has provided
3 each Class Member's number of Class Work Weeks and the Settlement Administrator will
4 calculate the total aggregate number of Class Work Weeks of all Settlement Class Members then
5 divide the Net Settlement Sum by the aggregate number of Class Work Weeks, resulting in the
6 "per Class Work Week value." The Settlement Administrator will then multiply each individual
7 Settlement Class Member's number of Class Work Weeks by the per Class Work Week value to
8 yield his or her Class Settlement Award.⁷

9 The Settlement Administrator will calculate each PAGA Group Member's *pro rata* share
10 of the PAGA Fund ("PAGA Settlement Awards"), calculated as follows: The Defendant has
11 calculated all the weeks during the PAGA Period that PAGA Group Members were employed by
12 Defendant for at least one day in California as (i) an hourly-paid and/or non-exempt employee or
13 (ii) a salaried exempt production supervisor ("PAGA Work Weeks") and provided that number to
14 the Settlement Administrator, both in the aggregate and for each PAGA Group Member.⁸ The
15 Settlement Administrator will divide the PAGA Fund (which is 25% of the overall PAGA
16 Settlement Amount) by the total PAGA Group Member Work Weeks, resulting in a per PAGA
17 Work Week value. The Settlement Administrator shall then multiply each PAGA Group Member's
18 individual number of PAGA Work Weeks by the PAGA Work Week value to yield his or her
19 individual PAGA Settlement Award.⁹

20 Class Members had forty-five (45) calendar days after the initial mailing of the Notice
21 Packet to Class Members to submit a Request for Exclusion, Objection, and/or Notice of Eligible
22 Work Weeks wherein the Class Member could dispute the number of Class Work Weeks credited
23 to him or her ("Notice Response Deadline").¹⁰ The Notice Response Deadline was April 7, 2023.
24 The Settlement Administrator has received nine (9) timely written requests for exclusion from the
25
26

27 ⁷ Settlement Agreement, § 4.5.

28 ⁸ *Id.*, § 4.5.4.

⁹ *Ibid.*

¹⁰ *Id.*, § 2.24.

1 Settlement (“Requests for Exclusion”).¹¹ The Settlement Administrator has not received any
2 written objections to the Settlement (“Objections”) from Class Members.¹²

3 Each Settlement Class Member’s Class Settlement Award will be allocated as follows: one-
4 third (1/3) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the
5 remaining two-thirds (2/3) as penalties, interest, and other non-wage damages, which will be
6 reported on an IRS Form 1099 (if applicable).¹³ Settlement Class Members will be issued payment
7 of their Class Settlement Awards subject to withholding for the employee’s share of taxes and
8 withholdings with respect to the wage portion of each Class Settlement Award (“Withholdings and
9 Taxes”).¹⁴ Defendant will pay the employer’s share of Withholdings and Taxes in addition to the
10 Gross Settlement Amount.¹⁵ The entirety of each PAGA Settlement Award shall be allocated as
11 penalties.¹⁶

12 The Class Settlement Award checks issued to Settlement Class Members and PAGA
13 Settlement Award checks issued to PAGA Group Members will be negotiable for one hundred
14 eighty (180) calendar days from the date of issuance.¹⁷ Class Settlement Award checks and/or
15 PAGA Settlement Award checks that are not negotiated within the 180-day period will be
16 cancelled.¹⁸ The funds associated with such cancelled checks will be transmitted by the Settlement
17 Administrator and sent to the Legal Aid Society of San Bernardino, in the name of the Settlement
18 Class Member and/or PAGA Group Member whose check is cancelled and in the respective
19 amount of the cancelled check.¹⁹

20 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

21 The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to
22 effectuate the notice and settlement administration process, as set forth in the Court’s January 13,
23 2023 Preliminary Approval Order.

24
25 ¹¹ Phoenix Decl., ¶¶ 8, 9, 10, Exh. A.

26 ¹² Phoenix Decl., ¶¶ 8 & 9.

27 ¹³ Settlement Agreement, § 4.6.1.

28 ¹⁴ *Id.*, § 4.5.5.

¹⁵ *Id.*, § 2.5.2.

¹⁶ *Id.*, § 4.6.1.

¹⁷ *Id.*, § 4.10.3.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

On February 6, 2023, Phoenix received a mailing list from Defendant’s counsel that contained the following information for each Class Member: (i) last known full name; (ii) last known mailing address; (iii) last known telephone number; (iv) Social Security number; (v) individual number of Class Work Weeks during the Class Period; (vi) individual number of Class Work Weeks during the period of time beginning May 13, 2017 through November 9, 2021, and; (vii) individual number of PAGA Work Weeks during the PAGA Period (if applicable) (collectively “Class Information List”).²⁰ The Class Information List contained information for 3,555 individuals identified as Class Members and another 18 individuals who are not Class Members but are PAGA Group Members.²¹ Phoenix processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class Information List with any updated addresses located.²²

On February 21, 2023, Phoenix mailed the Notice Packet via first class mail to 3,555 individuals identified as Class Members in the Class Information List.²³

As of the date of this Motion, three hundred ninety-one (391) Notice Packets were returned as undeliverable without forwarding addresses.²⁴ Phoenix performed a skip-trace search on the three hundred ninety-one (391) Notice Packets that were returned to Phoenix without forwarding addresses, located an updated address for three hundred and four (304) Class Members, and promptly re-mailed the Notice Packets to the updated addresses.²⁵ None of the re-mailed Notice Packets were returned to Phoenix as undeliverable a second time.²⁶ Ultimately, eighty-seven (87) Notice Packets remain undeliverable because an updated address was not located through skip-tracing.²⁷

One individual who was included in the Class Information List submitted a Notice of Eligible Work Weeks (the form Class Members were instructed to use if disputing their Class Work Weeks), but the Class Member was not disputing the number of Class Work Weeks which

²⁰ Phoenix Decl., ¶ 3; Settlement Agreement, § 4.2.1.

²¹ Phoenix Decl., ¶ 3.

²² *Id.*, ¶ 4.

²³ *Id.*, ¶ 5.

²⁴ *Id.*, ¶ 6.

²⁵ Phoenix Decl., ¶ 6.

²⁶ *Ibid.*

²⁷ *Id.*, ¶ 7

1 had been credited to her, she was instead clarifying that she had not signed any prior Settlement
2 Agreement with Defendant.²⁸

3 As of the date of this Motion, the Settlement Administrator has not received any Objections
4 to the Settlement. As of the date of this Motion, the Settlement Administrator has received nine
5 (9) timely Requests for Exclusion from Class Members. The Settlement Administrator received
6 one (1) additional Request for Exclusion, postmarked on April 14, 2023, which was rejected
7 because it was submitted after the Notice Response Deadline.²⁹

8 To date, there are 3,546 Class Members who did not submit a timely and valid Request for
9 Exclusion, and are therefore, deemed to be Settlement Class Members.³⁰ Pursuant to the terms of
10 the Settlement, the Net Settlement Sum of approximately \$754,413.51 will be distributed to
11 Settlement Class Members in accordance with the terms of the Settlement.³¹ The highest Class
12 Settlement Award to a Settlement Class Member is currently estimated to be \$1,900.39 and the
13 average Class Settlement Award to a Settlement Class Member is currently estimated to be
14 \$202.76.³² The highest PAGA Settlement Award to a PAGA Group Member is currently estimated
15 to be \$76.54 and the average PAGA Settlement Award is currently estimated to be \$12.08.³³

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

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

21 the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
22 further litigation, the risk of maintaining class action status through trial, the
23 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

24 ²⁸ *Id.*, ¶ 10.

25 ²⁹ Phoenix Decl., ¶¶ 8 & 9.

26 ³⁰ *Id.*, ¶ 11.

27 ³¹ *Id.*, ¶ 13; see also, n.6, *supra*.

28 ³² *Id.*, ¶ 14. The actual average and highest Class Settlement Award to a Settlement Class Member will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Sum is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, \$11,246.84, will be part of the Net Settlement Sum). See n.6, *supra*.

³³ *Id.*, ¶ 15

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 Actions since the *Pereda* Action was commenced on November 23, 2020. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the Actions for class certification, representative

1 adjudication, and trial, prior to reaching Settlement.³⁴ The Parties conducted formal and informal
2 discovery and investigation into the facts of the case, exchanging information and data in the
3 course of litigation and in connection with mediation and settlement negotiations.³⁵ Class Counsel
4 had the opportunity to interview and obtain information from Plaintiffs and other Class Members,
5 and reviewed and analyzed a large volume of information, documents and data obtained from
6 Plaintiffs, Defendant, and other sources.³⁶ The information, documents, and data reviewed and
7 analyzed by Class Counsel included, and were not limited to, employment records of Plaintiffs,
8 company policy acknowledgments, (including, but not limited to, receipt of employee handbook,
9 receipt of time hire pamphlet, acknowledgement of receipt of revised time and attendance policy,
10 Labor Code section 2810.5 notice to employee, notice of employment responsibilities, and paid
11 sick leave and worker's compensation policy acknowledgment of receipt), internal memoranda,
12 forms (including, but not limited to, time off request form, time clock missed punch form,
13 biometric time clock employee consent form, corrective action form, employee payroll change
14 form, financial statement wage garnishment enforcement of judgment form, and early out form),
15 procedures, and policies, among other information, documents and data.³⁷ Class Counsel
16 researched applicable law, developed liability, damages, and penalties valuation models in
17 connection with mediation and settlement negotiations, and met and conferred with Defendant's
18 counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and
19 production of information, documents and data in the course of litigation and in connection with
20 mediation and settlement negotiations. Class Counsel also drafted pleadings, and the mediation
21 brief, prepared for and attended court proceedings, and prepared for and participated in the
22 November 9, 2021 mediation, as well as a follow-up supplemental mediation session on January
23 10, 2022, and ongoing settlement negotiations, among other tasks.³⁸

24 After conducting formal and informal discovery and investigation into the facts of the case,
25 a formal, full-day mediation, and a follow up mediation session were conducted by the Honorable
26

27 ³⁴ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

³⁵ Ibid.

³⁶ Aiwazian Decl., ¶ 6.

³⁷ Ibid.

³⁸ Aiwazian Decl., ¶ 8

Edward A. Infante (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters.³⁹ In the course of mediation and settlement discussions, the Parties exchanged information and documents, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the Parties of proceeding with class certification, the law relating to off-the-clock theory, meal and rest periods, PAGA representative claims and manageability, exemption, preemption, Plaintiffs' claims and allegations, arbitration agreements with class and representative action waivers signed by approximately half of the individuals employed by Defendant as non-exempt employees in California during the relevant time period, wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁰ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴¹ Arriving at a settlement that was acceptable to the Parties was not easy.⁴² Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification and representative adjudication. Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴³ After conducting formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁴⁴

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel had the opportunity to interview, and obtain information from Plaintiffs and other Class Members.⁴⁵ Class Counsel also reviewed and analyzed a volume of information, documents and data obtained from Defendant, Plaintiffs, and other sources, and performed significant research

³⁹ Ibid

⁴⁰ Aiwazian Decl., ¶ 8

⁴¹ Ibid.

⁴² Ibid.

⁴³ Aiwazian Decl., ¶ 8.

⁴⁴ Ibid.

⁴⁵ *Id.*, ¶ 6.

into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, PAGA representative claims, arbitration agreements, misclassification and exemption, preemption, wage-and-hour law and enforcement, Plaintiffs' claims and allegations, and Defendant's defenses, as well as facts discovered.⁴⁶ The Settlement was based on this volume of facts, evidence, and investigation.⁴⁷ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour cases, including significant experience in employment class action litigation.⁴⁸

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

Plaintiffs contend that the Settlement, which provides for a Gross Settlement Amount of \$1,450,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁹ The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations.⁵⁰ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

Plaintiffs contend that it is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If these cases had settled

⁴⁶ Aiwazian Decl., ¶ 6.

⁴⁷ *Id.*, ¶¶ 6 & 8.

⁴⁸ *Id.*, ¶¶ 15-18.

⁴⁹ Aiwazian Decl., ¶¶ 8 & 21.

⁵⁰ Aiwazian Decl., ¶¶ 5-8.

1 after further litigation, the settlement amount would have taken into account the additional costs
2 incurred, and there might have been less money available for Class Members after all was said and
3 done. This is not just an abstract contention. The risks and expenses of further litigation
4 outweighed any benefit that might have been gained otherwise. These risks of further litigation
5 include a determination that the claims were unsuitable for class treatment and/or representative
6 adjudication, failure to obtain certification, class de-certification after certification of a class,
7 allowing a jury to decide the claims asserted in the cases, and the real possibility of no recovery
8 after years of litigation. Additionally, the Parties were moving into the phase of the litigation where
9 they would have to conduct a significant amount of additional discovery, including and not limited
10 to, depositions of Plaintiffs, of Defendant's Person Most Knowledgeable designees, expert
11 witnesses, and percipient witnesses, such as managers, supervisors, and other current and former
12 employees throughout the State of California. Discovery disputes would have certainly arisen,
13 which would have cost the Parties additional time and money. In contrast, the Settlement provides
14 real and significant benefits for the Class here and now, while avoiding the further expenses, risks,
15 and delay of prolonged litigation with only the possibility of recovery.

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

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

23 Plaintiffs contend that the Settlement, which provides for a Gross Settlement Amount of
24 \$1,450,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Settlement
25 was calculated using information and data uncovered through extensive case investigation, formal
26 and informal discovery, and the exchange of information in the context of preparing for mediation
27 and conducting ongoing settlement negotiations. The Settlement takes into account the potential
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1 risks and rewards inherent in any case and, in particular, in these cases. Moreover, considering all
2 of the facts in the cases, the Gross Settlement Amount represents a considerable recovery.

3 Even after deducting attorneys' fees in the amount of \$483,333.33, litigation costs and
4 expenses in the amount of \$18,753.16, Service Payments in the combined amount of \$22,500.00,
5 Settlement Administration Costs in the amount of \$21,000.00, and the PAGA Settlement Amount
6 of \$150,000.00 from the Gross Settlement Amount of \$1,450,000.00, the Net Settlement Sum is
7 currently estimated to be \$754,413.51.⁵¹ Under the Settlement Agreement, the Gross Settlement
8 Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in
9 Section III, *supra*, the amount of each Settlement Class Member's Class Settlement Award will be
10 calculated based on his or her Class Work Weeks.⁵² The amount of each PAGA Group Member's
11 PAGA Settlement Award will be calculated based on his or her PAGA Work Weeks.⁵³ To date,
12 there are 3,546 Settlement Class Members, representing 99.75% of the Class Members.⁵⁴ The
13 highest Class Settlement Award to a Settlement Class Member is currently estimated to be
14 \$1,900.39 and the average Class Settlement Award is currently estimated to be \$202.76.⁵⁵ The
15 highest PAGA Settlement Award to a PAGA Group Member is currently estimated to be \$76.54
16 and the average PAGA Settlement Award is currently estimated to be \$12.08.⁵⁶ These are
17 significant individual recoveries, particularly in light of the risks of litigation.

18 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
19 basis [to warrant approval], particularly if recommended by experienced and competent class
20 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
21 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute
22 the Net Settlement Fund. In light of the above considerations, Class Counsel believes that the
23 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class
24 Members.⁵⁷ Although the recommendations of Class Counsel are not conclusive, the Court can

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26 ⁵¹ Phoenix Decl., ¶ 13; see n.6, *supra*.

⁵² Settlement Agreement, § 4.5.2.

⁵³ *Id.*, § 4.3.4.

⁵⁴ Phoenix Decl., ¶ 11.

⁵⁵ Phoenix Decl., ¶ 14; see n.32, *supra*.

⁵⁶ *Id.*, ¶ 15.

⁵⁷ Aiwasian Decl., ¶ 21.

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.⁵⁸ 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.⁵⁹ Both Parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to the Settlement.*⁶⁰ Specifically, no objections have been made as to the Gross Settlement Amount or requested Fee and Expense Award, Service Payments, Settlement Administration Costs, or the allocation for PAGA Settlement Amount. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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⁵⁸ Aiwasian Decl., ¶¶ 15-18.

⁵⁹ *Ibid.*

⁶⁰ Phoenix Decl., ¶ 9.

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

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

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in 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. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao, supra*, 82 Cal.App.4th at 53.

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method

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

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

B. 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, 34.⁶¹ 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

⁶¹ 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.

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

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

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$1,450,00.00. The requested attorneys' fees are \$483,333.33, which is one-third (1/3)

1 of the total value of the monetary settlement. In light of Class Counsel’s successful prosecution
2 and resolution of the cases, the requested attorneys’ fees are appropriate and reasonable.

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

10 The percentage method is consistent with, and is intended to mirror, the practice in the
11 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
12 arrangements with their clients. Named plaintiffs’ agreement to pay a contingent fee is powerful
13 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel’s work to
14 the class is to review the consideration agreed to be paid by the named plaintiffs. If the named
15 plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for
16 the members of the class, who will enjoy the benefits of the settlement without incurring the risks
17 of bringing the claim, to pay less than the named plaintiffs. In this case, each of the Plaintiffs have
18 agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁶²

19 Furthermore, a percentage-fee award is not dependent on a determination of the actual
20 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
21 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
22 equitable that [the attorney’s] compensation and expenses should come from the entire fund saved
23 for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944)
24 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
25 calculated on the basis of the total fund made available rather than the actual payments made to
26 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant
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⁶² Aiwasian Decl., ¶ 9.

1 or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client
2 is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

8 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs, the Class, and the
9 State of California, and the results achieved justify an attorneys’ fees award that is the equivalent
10 of the standard market fee and that is consistent with the contingency-fee agreement entered into
11 by and between Plaintiffs and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

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

14 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
15 to be considered in determining whether fee awards are reasonable: (1) the time and labor required;
16 (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal
17 services properly; (4) the preclusion of other employment by the attorney due to the acceptance of
18 the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation
19 imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the
20 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature
21 and length of the professional relationship with the client; and (12) awards in similar cases.
22 *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

23 Each and every one of these factors favors the attorneys’ fees sought here; however, some
24 of the most relevant factors to this Court’s fee determination will be addressed herein. The award
25 of attorneys’ fees in the amount of \$483,333.33 (which is 1/3 of the Gross Settlement Amount) is
26 commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of
27 Class Counsel’s fee and the risks taken in commencing the cases, the skill and determination
28

required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained in this matter.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class, PAGA Group Members, and the State of California. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.⁶³

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of these cases.⁶⁴ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶⁵ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; reviewed and analyzed a volume of information, documents and data obtained from Defendant, Plaintiffs, and other sources; and prepared damages, penalties, and valuation calculations.⁶⁶ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, discovery, 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, and prepared for and attended the November 9, 2021 mediation as well as a supplemental mediation session on January 10, 2022, and ongoing settlement negotiations, among other tasks.⁶⁷

Class Counsel has dedicated staffing and monetary resources necessary to prosecute these cases 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 Aiwasian, sets forth in detail the hours that Class Counsel

⁶³ Aiwasian Decl., ¶¶ 15-18.

⁶⁴ *Id.*, Exh. A.

⁶⁵ Aiwasian Decl., ¶ 6 & Exh. A.

⁶⁶ *Id.*, ¶ 6.

⁶⁷ Aiwasian Decl., ¶ 6.

has spent performing tasks on behalf of Plaintiffs, the Class, and the State of California.⁶⁸ 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, PC have spent 641.30 hours performing tasks and to obtain a significant recovery in the case.⁶⁹ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

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

The skill required to properly litigate the case is evident not only in the results achieved, but in the steps necessary to reach those results. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification, to show that the representative PAGA claims could not be manageably tried consistent with due process, and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of 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.⁷⁰

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 cases through certification proceedings, trial, and/or appeals. Had the cases not

⁶⁸ Aiwazian Decl., Exh. A.

⁶⁹ *Id.*, ¶ 11.

⁷⁰ Aiwazian Decl., ¶¶ 15-18.

settled, Defendant would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendant, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the cases for trial would have been expensive for the Parties.

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class Members and the State of California 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 Gross Settlement Amount of \$1,450,000.00 to settle the matter. After deducting the attorneys' fees (\$483,333.33), litigation costs and expenses (\$18,753.16), Service Payments (combined, \$22,500.00), Settlement Administration Costs (\$21,000.00), and PAGA Settlement Amount (\$150,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Sum is approximately \$754,413.51.⁷¹ The Net Settlement Sum will be fully distributed in accordance with the terms of the Settlement. The highest Class Settlement Award to a Settlement Class Member is currently estimated to be \$1,900.39 and the average Class Settlement Award to a Settlement Class Member is currently estimated to be \$202.76.⁷² The highest PAGA Settlement Award to a PAGA Group Member is currently estimated to be \$76.54 and the average PAGA Settlement Award is currently estimated to be \$12.08.⁷³ The Settlement offers significant monetary relief to the Settlement Class Members and the State of California.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the

⁷¹ Phoenix Decl., ¶ 13; see n.4, *supra*.

⁷² Phoenix Decl., ¶ 14; see n.32, *supra*.

⁷³ *Id.* ¶15,

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 641.30 of time to obtain relief on behalf of Plaintiffs, the Class, and the State of California.⁷⁴ Class Counsel has also incurred litigation costs and expenses in the amount of \$18,753.16.⁷⁵

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁶ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁷ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Fee and Expense Award. 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

⁷⁴ Aiwazian Decl., ¶ 11, Exh. A.

⁷⁵ See Part VII, *infra*.

⁷⁶ Aiwazian Decl., ¶ 19.

⁷⁷ See *id.*, ¶¶ 15-18.

1 from the Class Members—no Class Members objected to the Class Settlement.⁷⁸

2 The court in *Camden* noted that, “a key element of the common fund case is that fees are
3 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
4 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
5 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
6 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

7 Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable
8 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted
9 in a settlement that provides for a Gross Settlement Amount of \$1,450,000.00.⁷⁹ The Gross
10 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
11 Agreement. The highest Class Settlement Award to a Settlement Class Member is currently
12 estimated to be \$1,900.39 and the average Class Settlement Award to a Settlement Class Member
13 is currently estimated to be \$202.76..⁸⁰ The highest PAGA Settlement Award to a PAGA Group
14 Member is currently estimated to be \$76.54 and the average PAGA Settlement Award is currently
15 estimated to be \$12.08.⁸¹

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

17 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
18 knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel
19 has years of complex and class action litigation experience, has recovered millions of dollars on
20 behalf of thousands of individuals in California, and has successfully handled numerous significant
21 wage-and-hour class action and complex cases.⁸²

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27 ⁷⁸ Phoenix Decl., ¶ 9.

⁷⁹ Aiwasian Decl., ¶¶ 5-8.

⁸⁰ Phoenix Decl., ¶ 14; see n.32, *supra*.

⁸¹ *Id.*, ¶ 15.

⁸² Aiwasian Decl., ¶¶ 15-18.

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.

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 cases were highly contested and required a significant amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the cases and disputed that the cases were appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the cases

1 moved toward certification and trial, including taking and defending depositions of Plaintiffs,
2 Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts,
3 propounding additional discovery requests and conducting additional document production, and
4 engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel
5 undertook intense preparation in an attempt to resolve the entire case through mediation.

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

10 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
11 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
12 on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁸³ The chart
13 demonstrates that Class Counsel has spent a total of 641.30 litigating the cases and finalizing the
14 Settlement.⁸⁴ In light of the facts and circumstances of the cases, as well as the results that Class
15 Counsel has achieved on behalf of Plaintiffs and the Class Members, Class Counsel has spent a
16 reasonable number of hours on this matter. In addition, Class Counsel will continue to perform
17 work on this matter through the date of final approval and in connection with the implementation
18 of the Settlement.

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

21 Both California and federal courts recognize that attorneys should be compensated for
22 providing representation on a contingency basis and for taking on the risks associated with said
23 representation, as well as being provided with financial incentives to enforce important rights and
24 protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In
25 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
26 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
27

28 ⁸³ See Aiwazian Decl., Exh. A.

⁸⁴ Aiwazian Decl., ¶ 11.

normal hourly rates for winning contingency cases.” See *id.*

Class Counsel has been actively involved in this matter, prior to its commencement and all the way up to the present, and Class Counsel’s dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,450,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$725.00 per hour for services provided by Class Counsel.⁸⁵ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$725.00 per hour for legal service performed, by courts of this state.⁸⁶ 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.

3. The Risks Involved, Skill Required, Complexity of the Matter, and the 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

⁸⁵ Aiwarzian Decl., ¶ 12.

⁸⁶ 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.. Aiwarzian Decl., ¶ 12.

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 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

1 it then multiplies by the number of hours the court finds were reasonably spent preparing the case,
2 to obtain the lodestar figure. *Ketchum, supra*, 24 Cal.4th at 1131-1132. The lodestar figure is the
3 “basic fee for comparable legal services in the community” based upon the “hourly amount to
4 which attorneys of like skill in the area would typically be entitled.” *Id.*, at 1132-1133 (quotation
5 marks and citation omitted).

6 As discussed above, this was a highly-contested matter which required an extensive amount
7 of time and labor. Defendant raised defenses and denied liability, and the case involved gathering
8 and analyzing information, documents, and data not only from Defendant but also from the
9 Plaintiffs, Class Members, and other sources. The handling of this matter involved a great amount
10 of effort, and required the exercise of a high-level of skill, which Class Counsel has as a result of
11 extensive experience in employment class actions and wage-and-hour litigation. Class Counsel
12 has been actively involved in the prosecution of this matter, prior to its commencement and Class
13 Counsel’s work has continued all the way up to the present. Class Counsel’s dedication to the
14 representation of the Class Members has precluded other employment.

15 Most importantly, all services were performed by Class Counsel on a contingent basis.
16 Both California and federal courts recognize that attorneys should be compensated for taking on
17 such contingent risks and provided with financial incentives to enforce important rights and
18 protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*,
19 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the
20 skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to
21 a risk multiplier. The results obtained by way of Class Counsel’s efforts are significant here. Class
22 Counsel was successful in achieving substantial results in the form of a settlement of
23 \$1,450,000.00. Also, Class Counsel’s efforts throughout the case demonstrate dedication to the
24 interests of the Class Members.

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

Time Chart, which is attached as EXHIBIT A to the Declaration of Edwin Aiwasian.⁸⁷ As the chart indicates, Class Counsel has worked **641.30 hours** in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$725.00 per hour to **641.30 hours** of work performed by Lawyers for Justice, PC would place a base lodestar value of \$464,942.50 on Class Counsel's services, and applying a modest multiplier of 1.04, the total enhanced lodestar fees are \$483,540.20.⁸⁸ Class Counsel seeks an attorneys' fee award of \$483,333.33 (equal to 1/3 of the Gross Settlement Amount based on the Settlement Agreement). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even higher." *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving multiplier of 2.5); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and referring to other cases with cross-check multipliers ranging from 4.5 to 19.6).

Therefore, application of a modest multiplier of 1.04 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 \$483,333.33 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 \$30,000.00. As set forth in the Declaration of Edwin Aiwasian, Class Counsel seeks reimbursement of \$18,753.16 in litigation costs and expenses incurred in this case.⁸⁹ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is

⁸⁷ Aiwasian Decl., Exh. A.

⁸⁸ *Id.*, ¶ 11; *see n.2, supra*.

⁸⁹ Aiwasian Decl., ¶ 19.

less than the maximum amount allocated under the Settlement Agreement.⁹⁰ The cost savings of \$11,246.84 will be part of the Net Settlement Sum, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁹¹ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$18,753.16 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 \$21,000.00.⁹² The costs incurred and to be incurred include, but are not limited to, (i) printing and mailing to the Class Members the Notice Packet (containing the Class Notices, the Notice of Eligible Work Weeks, and the Request for Exclusion) as directed by the Court; (ii) taking all steps reasonably necessary to ensure Class Members timely receive the Notice Packet; (iii) resolving any disputes by Settlement Class Members about the number of Class Work Weeks attributed to them; (iv) taking receipt of and safeguarding the Settlement Fund amount; (v) calculating and distributing Class Settlement Awards, PAGA Settlement Awards, the portion of the PAGA Settlement Amount payable to the LWDA, the Service Payments, and the Fee and Expense Award, provided such amounts are approved by the Court; (vi) calculating and remitting all Withholdings and Taxes; (vii) issuing IRS Forms W-2 and 1099-MISC, as applicable; and (viii) filing such other reports with the taxing authorities as required by law, together with such other tasks as the Parties may mutually agree of the Court may order the Settlement Administrator to perform; among other things.⁹³

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$21,000.00.

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⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Phoenix Decl., ¶ 17.

⁹³ Phoenix Decl., ¶ 2.

IX. THE REQUESTED SERVICE PAYMENTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for Service Payments in the amount of \$7,500.00 each to Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan (for a combined total of \$22,500.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class and the State of California. The requested Service Payments are 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 Service Payments are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹⁴ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁹⁵ Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁹⁶ These services merit the requested Service Payments to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁹⁷

The requested Service Payments were fully disclosed in the Notice Packet that was mailed to the Class Members. No objections were made with regards to the requested Service Payments.

⁹⁴ Aiwasian Decl., ¶ 20; Declaration of Chris Ward (“Ward Decl.”), ¶¶ 3-5; Declaration of Jose Pereda (“Pereda Decl.”), ¶¶ 3-5; Declaration of Tawny Milligan (“Milligan Decl.”), ¶¶ 3-5.

⁹⁵ Aiwasian Decl., ¶ 20; Ward Decl., ¶¶ 3-5; Pereda Decl., ¶¶ 3-5; Milligan Decl., ¶¶ 3-5.

⁹⁶ Aiwasian Decl., ¶ 20; Ward Decl., ¶¶ 2-6; Pereda Decl., ¶¶ 2-6; Milligan Decl., ¶¶ 2-6.

⁹⁷ Ward Decl., ¶ 9; Pereda Decl., ¶ 9; Milligan Decl., ¶ 9.

Accordingly, it is appropriate and just for Plaintiffs Chris Ward, Jose Pereda, and Tawny Milligan to each receive \$7,500.00 as reasonable Service Payments, for their services on behalf of the Class and the State of California, in addition to their individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Fee and Expense Award, Service Payments, Settlement Administration Costs, and allocation for the PAGA Settlement Amount, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: June 20, 2023

LAWYERS for JUSTICE, PC

By: 
Annabel Blanchard
Attorneys for Plaintiffs and the Class