

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

Attorneys for Plaintiffs and the Class

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

CELIA ACUNA, 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; IAN PFEIFLE,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

vs.

BASS PRO OUTDOOR WORLD, LLC, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CIVDS1811384

Honorable David S. Cohn
Department S26

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Celina Acuna and Ian
Pfeifle); Declaration of Settlement
Administrator (Kevin Lee); and [Proposed]
Final Approval Order and Judgment filed
concurrently herewith]

Date: April 26, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: May 9, 2018
FAC Filed: June 3, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 26, 2022, at 10:00 a.m., in Department S26 of
2 the above-entitled Court, located at San Bernardino Justice Center, 247 West Third Street, San
3 Bernardino, California 92415, Plaintiffs Celina Acuna and Ian Pfeifle (“Plaintiffs”) will and
4 hereby do move for an order granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$2,901,931.69** will be fully distributed to
9 the Class Members who did not timely opt out of the Settlement (“Settlement Class
10 Member”);
- 11 • **No Objections** to the Class Settlement were submitted to the settlement
12 administrator, Phoenix Settlement Administrators (“Settlement Administrator”);
- 13 • **No Opt Out Requests** to the Class Settlement were submitted to the Settlement
14 Administrator;

15 2. Payment in the amount of **\$1,666,666.67** to Lawyers *for* Justice, PC (“Class
16 Counsel”), representing only one-third (1/3) of the Gross Settlement Amount, for
17 Attorneys’ Fees, which is reasonable and justified on a percentage-basis and also based
18 on a lodestar cross-check with a multiplier of 2.28;

19 3. Payment in the amount of **\$36,401.64** to Class Counsel for Litigation Costs;

20 4. Payment in the amount of **\$25,000.00** to the Settlement Administrator, Phoenix
21 Settlement Administrators (“Phoenix”), for Settlement Administration Costs;

22 5. Payments in the amount of **\$10,000.00** each to Plaintiffs Celina Acuna and Ian
23 Pfeifle, as Incentive Payment, 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 **\$350,000.00**, of which seventy-five
26 percent (75%), or \$262,500.00, will be paid to the California Labor and Workforce Development
27 Agency and twenty-five percent (25%), or \$87,500.00, will paid to PAGA Group Members on
28 *pro rata* basis.

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Edwin Aiwarzian), Class Representatives (Celina Acuna and Ian
6 Pfeifle), and Settlement Administrator (Kevin Lee of Phoenix) in support thereof; the pleadings
7 and other records on file with the Court in this matter; and such evidence and oral argument as
8 may be presented at the hearing on this Motion.

9 Dated: April 4, 2022

LAWYERS for JUSTICE, PC

10
11 By: 
12 Edwin Aiwarzian
13 Attorneys for Plaintiffs and the Class
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	SUMMARY OF MOTION	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND	3
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION .	5
IV.	THE SETTLEMENT ADMINISTRATION PROCESS	8
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT.....	10
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.	11
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	13
C.	The Settlement Is Fair, Reasonable, and Adequate.	15
D.	The Class Was Represented by Competent Counsel.....	16
E.	There Are No Objections to the Class Settlement.	16
VI.	THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS FAIR AND REASONABLE AND SHOULD BE APPROVED	17
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.....	17
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.	18
C.	The Attorneys’ Fees Award Requested by Class Counsel Is Reasonable Based on the Factors Considered in Determination of Fee Awards.	21
	1. Time & Labor.....	22
	2. The Skill Required to Perform Legal Services Properly.	23
	3. The Value of the Settlement for the Class Members.	24
	4. Whether the Fee Is Fixed or Contingent.	25
	5. The Amount Involved and the Results Achieved.	26
	6. The Reputation and Ability of the Attorneys.	27
D.	The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.

.....	27
1. <i>The Number of Hours Spent on the Litigation was Reasonable.</i>	28
2. <i>The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel's Efforts and Experience.</i>	29
3. <i>The Risks Involved, Skill Required, Complexity of the Matter, and Results Obtained Warrant Upward Enhancement of the Lodestar.</i>	30
VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	33
VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED	33
IX. THE REQUESTED INCENTIVE PAYMENTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED	34
X. CONCLUSION	35

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	10, 17
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195..	18
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	19, 21
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4th 791	26
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4th 1110	17
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	10, 11, 19, 33
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	18
<i>County of San Bernardino</i> (C.D. Cal. 2006) 624 F.Supp.2d 1113	33
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4th 308	19
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	10, 17, 18
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	31
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	19
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127	
F.Supp.2d 418.....	16
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	18
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	17, 28, 29, 31, 32
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	18, 19, 28
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19	17, 18, 21
<i>Paul, Johnson, Alston & Hunt v. Grauly</i> (1989) 886 F.2d 268.....	19
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	19
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	19
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759.....	19
<i>Vizcaino v. Microsoft</i> (9th Cir. 2002) 290 F.3d 1043	20
<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4th 440.....	28
<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> (2d Cir. 2005) 396 F.3d 96	33
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	10, 11, 17, 21, 31, 33

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Winslow v. Harold G. Ferguson Corp. (1944) 25 Cal.2d 27421

Statutes

Cal. Lab. Code § 2698 1

Other Authorities

A. Conte, *Attorney Fee Awards* (2d Ed., 1993)..... 19

California Practice Guide, *Civil Procedure Before Trial*, Chapter 14 17

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47 16, 26

Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03 18

Court Awarded Attorney Fees, Report of the Third Circuit Task Force (October 8, 1985) 108

F.R.D. 23726

R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A 19

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Celina Acuna and Ian Pfeifle (“Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$5,000,000.00; (2) Attorneys’ Fees in the amount of \$1,666,666.67, which is one-third (1/3) of the Gross Settlement Amount, and Litigation Costs in the amount of \$36,401.64 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$25,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Incentive Payments in the amount of \$10,000.00 each to Plaintiffs Celina Acuna and Ian Pfeifle, for a combined amount of \$20,000.00; and (5) allocation of \$350,000.00 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 hourly-paid or non-exempt employees who worked for Defendant in the State of California during the period from May 9, 2014, through November 5, 2021 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, significant motion practice, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by David A. Rotman, and extensive settlement negotiations. This matter has required 946.10 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 Incentive Payments in the amount of \$10,000.00 to each of them, to compensate Plaintiffs for the time and effort that they expended spearheading

¹ Joint Stipulation of Class Action Settlement (“Settlement Agreement”), § II.B. The period of time from May 9, 2014 through November 5, 2021 is defined as the “Class Period.” See *id.*, § II.E.

² Applying a modest multiplier of 2.28, the total enhanced lodestar fees are \$1,671,758.70, and Class Counsel seeks an attorneys’ fees award of \$1,666,666.67 (equal to 1/3 of the Gross Settlement Amount).

1 this lawsuit on behalf of the Class. Plaintiffs also move for final approval of the payment to the
2 Settlement Administrator in the amount of \$25,000.00 for Settlement Administration Costs.
3 Plaintiffs also move for final approval of the allocation of \$350,000.00 for the PAGA Settlement
4 Amount, of which \$262,500.00 will be paid to the California Labor Workforce and Development
5 Agency (“LWDA”) for its portion of the PAGA Settlement Amount (“LWDA Payment”), and
6 \$87,500.00 will be part of the Net Settlement Amount that will be distributed to Settlement Class
7 Members who worked for Defendant any time from May 9, 2017, through November 5, 2021
8 (“PAGA Group Members”).³

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

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

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

27
28 ³ Settlement Agreement, § II.W.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a retailer of hunting, fishing, camping, and other related outdoor recreation merchandise founded in 1971. Although Defendant originally started as a direct mail order service, it opened its first brick and mortar store in 1972. In September 2017, Defendant acquired Cabela's, a rival outdoor retailer, for approximately \$5 billion. Defendant operates 177 locations within the United States and Canada, with four California locations in Manteca, Rocklin, Rancho Cucamonga, and San Jose. Plaintiff Celina Acuna ("Plaintiff Acuna") is a former employee of Defendant and Ian Pfeifle ("Plaintiff Pfeifle") is a current employee of Defendant.

On May 9, 2018, Plaintiff Acuna filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 1698 Et Seq. in the San Bernardino County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On June 11, 2018, Defendant filed an Answer to Plaintiff Acuna's Class Action Complaint, and thereafter, on July 3, 2018, Defendant filed an Amended Answer to Plaintiff Acuna's Class Action Complaint.

On March 1, 2021, Plaintiff Acuna provided written notice by certified mail to the LWDA of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The LWDA did not respond.

On June 3, 2021, Plaintiffs filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("First Amended Complaint" or "Operative Complaint") adding a cause of action under PAGA and Plaintiff Pfeifle as a named plaintiff to the Action.

Plaintiffs' core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs 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. 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.

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

On July 18, 2018, Plaintiff Acuna propounded multiple sets of discovery including Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and Form Interrogatories, (Set One) on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding job duties and organizational structure of Defendant. On August 2, 2018, Plaintiff Acuna propounded additional sets of Requests for Production of Documents, (Set Two); and Special Interrogatories, (Set Three) on Defendant, and noticed the deposition of Defendant's person most knowledgeable regarding Defendant's affirmative defenses. Thereafter, on August 21, 2018, September 5, 2018, and November 2, 2018, Defendant responded to Plaintiff Acuna's discovery requests. On September 12, 2019, Defendant propounded Plaintiff Acuna with Requests for Production of Documents, (Set One) and Form Interrogatory, (Set One) to which Plaintiff Acuna served responses on October 31, 2018. On March 15, 2019, Plaintiff Acuna propounded Requests for Production of Documents, (Set Three); Form Interrogatories, (Set Two); and Requests for Admission, (Set One) and noticed the second and third deposition of Defendant's person most knowledgeable regarding organizational structure of Defendant. Thereafter, on May 8, 2019, Defendant responded to Plaintiff Acuna's discovery requests. On November 10, 2020, Plaintiff Acuna propounded additional sets of Requests for Production of Documents, (Set Three); and Special Interrogatories, (Set Four) on Defendant.

///

The parties have actively litigated the Action since it was commenced on May 9, 2018. On October 13, 2020, the parties participated in a formal, full-day mediation conducted by David A. Rotman, 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 October 28, 2021, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On November 5, 2021, a hearing was held on Plaintiffs' Motion for Preliminary Approval and 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 Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Attorneys' Fees and Costs, Incentive Payments, Settlement Administration Costs, and the 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 \$5,000,000.00 on a non-reversionary basis. Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$1,666,666.67 (of which \$10,000.00 will be shared with the Melmed Law Group P.C.⁴) and reimbursement of litigation costs and expenses in the amount of \$36,401.64, to Class Counsel; (2) Incentive Payments in the amount of \$10,000.00 each to Plaintiffs Celina Acuna and Ian Pfeifle, for a combined amount of \$20,000.00; (3) Settlement Administration Costs in the amount of \$25,000.00 to Phoenix; and (4) PAGA Settlement Amount in the amount of \$350,000.00 of which 75% (i.e., \$262,500.00), will be paid to the LWDA ("LWDA Payment")

⁴ Per the Settlement Agreement, § V.C.1: "Class Counsel's attorneys' fees, as approved by the Court, in an amount not to exceed 35% of the Gross Settlement Amount, or \$1,750,000, to Class Counsel ("Attorneys' Fees"). \$10,000 from the Court-approved Attorneys' Fees to Class Counsel will be shared with the Melmed Law Group P.C. The fees shall be detailed in Class Counsel's application for Attorneys' Fees and Litigation Costs in this Action, to be heard at the time of Final Approval."

1 and the remaining 25% (i.e., \$87,500.00), will be distributed to PAGA Group Members.⁵ The
2 Net Settlement Amount, which is estimated to be \$2,901,931.69, will be distributed in
3 accordance with the Settlement Agreement, and there is no reversion to Defendant.⁶

4 Class Members had forty-five (45) calendar days after the initial mailing of the Class
5 Notice to Class Members to dispute the number of Workweeks credited to each of them, opt out
6 of the Settlement, and/or object to the Class Settlement (“Response Deadline”).⁷ The Response
7 Deadline was February 28, 2022.⁸ The Settlement Administrator has not received any written
8 requests for exclusion from the Class Settlement (“Opt Out Requests”) or written objections to
9 the Class Settlement (“Objections”) from Class Members.⁹

10 The parties have agreed that the Settlement Administrator will determine each Settlement
11 Class Member’s share of the available Net Settlement Amount (“Individual Settlement Share”) on a *pro rata*
12 basis based upon the number of weeks each Settlement Class Member was
13 employed by Defendant in California in a non-exempt or hourly-paid position during the period
14 from May 9, 2014 through Preliminary Approval (“Workweeks”), in accordance with the
15 Settlement Agreement and as follows:¹⁰

- 16 a. The Settlement Administrator will calculate each Settlement Class Member’s gross
17 share of the Net Settlement Amount by dividing the total number of Workweeks
18 worked by all Settlement Class Members during the Class Period to yield a “Class
19 Weekly Rate.” Each Settlement Class Member’s respective number of Workweeks
20 during the Class Period will be multiplied by the Class Weekly Rate, to yield his or
21 her respective Individual Settlement Share.¹¹

22 The parties have also agreed that the Settlement Administrator will determine each
23 PAGA Group Member’s share of the of twenty-five percent (25%) of the PAGA Settlement
24

25 ⁵ Settlement Agreement, §§ V.A, V.C.1-2, V.C.3, V.C.4, V.C.5, V.C.6, & V.D.2-6.

26 ⁶ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Kevin Lee of
27 Phoenix Settlement Administrators Regarding Notice and Settlement Administration (“Phoenix Declaration” or
28 “Phoenix Decl.”) because the Settlement Administrator’s calculation assumes that Class Counsel will obtain
attorneys’ fees in the maximum amount of \$1,750,000.00 (which is 35% of the Gross Settlement Amount) as well as
litigation costs and expenses in the maximum amount of \$60,000.00, which is allocated under the Settlement.
However, Class Counsel seeks the amount of only \$1,666,666.67 (which is 1/3 of the Gross Settlement Amount) for
Attorneys’ Fees and \$36,401.64 for Litigation Costs, and the difference of \$83,333.33 and \$23,598.36,
respectively, will remain part of the Net Settlement Amount.

⁷ Settlement Agreement, § IV.D.1. See id., § II.FF. for definition of “Response Deadline.”

⁸ Phoenix Decl., ¶ 10, Exh. A.

⁹ Id., ¶¶ 11 & 12.

¹⁰ Settlement Agreement, § V.D.3.

¹¹ Ibid.

Amount (“Individual PAGA Share”) on a *pro rata* basis based upon the number of weeks each Class Member was employed by Defendant in California in a non-exempt or hourly-paid position during the period from May 9, 2017 through Preliminary Approval (“PAGA Period”), in accordance with the Settlement Agreement and as follows:¹²

- b. The Settlement Administrator will calculate each PAGA Group Members Individual PAGA Share by dividing the total number of Workweeks worked by all of the PAGA Group Members during the PAGA Period to yield a “PAGA Weekly Rate.” Each PAGA Group Member’s respective number of Workweeks during the PAGA Period will be multiplied by the PAGA Weekly Rate, to yield his or her respective Individual PAGA Share.¹³

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (30%) as wages (the “wage portion”), which will be reported on an IRS Form W-2; and the remaining eighty percent (70%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099.¹⁴ Each PAGA Group Member’s Individual PAGA Payments will be allocated as one hundred percent (100%) penalties (to be reported on IRS Form 1099).¹⁵

Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment, including Individual Settlement Share and, if applicable, Individual PAGA Share is referred to as an “Individual Settlement Payment”).¹⁶ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares (“Employer Taxes”) in addition to the Gross Settlement Amount.¹⁷

The Individual Settlement Payment checks issued to Settlement Class Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.¹⁸ Individual

¹² Settlement Agreement, § V.D.4.

¹³ *Id.*, § V.D.4.

¹⁴ *Id.*, § V.D.3 & 4.

¹⁵ *Id.*, § V.D.4.

¹⁶ *Id.*, § V.D.6.

¹⁷ *Id.*, § V.A.

¹⁸ *Id.*, § V.D.6.

1 Settlement Payment checks that are not negotiated within the 180-day period will be cancelled.¹⁹
2 The funds from associated with such cancelled checks will be transmitted by the Settlement
3 Administrator after the expiration of the 180-day period and sent to the Controller of the State of
4 California to be held pursuant to the Unclaimed Property Law, California Civil Code Section
5 1500, et seq., in the name of the Participating Class Member whose check is cancelled and in the
6 respective amount of the cancelled check.²⁰

7 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

8 The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to
9 effectuate the notice and settlement administration process, as set forth in the Court's November
10 5, 2021, Preliminary Approval Order.

11 On September 27, 2021, Phoenix received the Court-approved text for the Class Notice.²¹

12 On November 24, 2021 and January 5, 2022, Phoenix received a mailing list from
13 Defendant's counsel that contained the names, last known addresses and phone numbers, Social
14 Security numbers, telephone numbers, and start and end dates of employment as non-exempt
15 employees in California from May 9, 2014 through November 5, 2021 for individuals identified
16 as Class Members ("Class List").²² The Class List contained information for 5,059 individuals
17 identified as Class Members.²³ Phoenix processed the names and addresses through the National
18 Change of Address Database ("NCOA") and updated the Class List with any updated addresses
19 located.²⁴

20 On January 14, 2022, Phoenix mailed the Class Notice via first class mail to 5,059
21 individuals identified as Class Members in the Class List.²⁵

22 As of the date of this Motion, eight (8) Class Notices were returned as undeliverable with
23 forwarding addresses, and Phoenix promptly re-mailed the Class Notice to the forwarding
24

25 ¹⁹ *Ibid.*

26 ²⁰ *Ibid.*

27 ²¹ Phoenix Decl., ¶ 4.

28 ²² *Id.*, ¶ 5.

²³ *Ibid.*

²⁴ *Id.*, ¶ 6.

²⁵ *Id.*, ¶ 7.

addresses.²⁶ Ninety-three (93) Class Notices were returned as undeliverable without forwarding addresses.²⁷ Phoenix performed a skip-trace search on the ninety-three (93) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for ninety-two (92) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁸ Eighteen (18) Class Notices were returned to Phoenix as undeliverable a second time and one (1) was undeliverable since an updated address could not be obtained.²⁹ Ultimately, nineteen (19) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.³⁰

As of the date of this Motion, the Settlement Administrator has not received any Objections and has received four (4) Opt Out Requests from Class Members.³¹

To date, there are 5,055 Class Members who did not submit a timely and valid Opt Out Request, and are therefore, deemed to be Settlement Class Members.³² Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$2,901,931.69 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³³ The highest Individual Settlement Share is currently estimated to be at least \$3,679.00 and the average Individual Settlement Share is currently estimated to be at least \$552.92.³⁴ Moreover, the *highest* estimated Individual PAGA Share to be paid to a PAGA Group Member is currently estimated to be approximately \$129.16, and the *average* Individual PAGA Payment is currently estimated to be approximately \$28.11.³⁵

///

²⁶ Phoenix Decl., ¶8.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Id., ¶¶ 11 & 12.

³² Id., ¶ 14.

³³ Id., ¶ 16; see also, n.6, *supra*.

³⁴ Id., ¶ 17. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger since Class Counsel seeks the amount of only \$1,666,666.67 (which is 1/3 of the Gross Settlement Amount) for Attorneys' Fees and \$36,401.64 for Litigation Costs, and the difference of \$83,333.33 and \$23,598.36, respectively, will remain part of the Net Settlement Amount. See n.6, *supra*.

³⁵ Id., ¶¶ 19 & 20.

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

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

the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a

voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the case since it was commenced on May 9, 2018. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification, representative adjudication, and trial.³⁶ The parties conducted extensive formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.³⁷ Class Counsel propounded multiple sets of formal written discovery requests on Defendant, reviewed Defendant's responses and supplemental responses thereto, noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties, and worked with Plaintiffs to provide responses to discovery requests that were propounded by Defendant.³⁸ Class Counsel prepared for and took two depositions of Defendant's Person Most Knowledgeable witnesses.³⁹ Class Counsel also interviewed and obtained information from Plaintiffs and Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of documents and data produced by Defendant and obtained through other sources.⁴⁰ The documents and data reviewed and analyzed by Class Counsel included, Plaintiffs and other Class Members' employment records, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's Associate Handbook and California Handbook Supplement, company policy acknowledgements (including but not limited to Receipt of Substance Abuse Policy for Employees and Voluntary Waiver of Meal Period), emails, new hire orientation checklists (including but not limited to New Hire Checklist – Retail Locations, New Hire Data Sheet, and

³⁶ Declaration of Edwin Aiwazian ("Aiwasian Decl."), ¶ 6.

³⁷ Aiwazian Decl., ¶ 6.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Aiwazian Decl., ¶ 6.

1 Employment Interview Form), Defendant's operations and employment practices, forms
2 (including but not limited to Associate Coaching/Counseling Report, Bass Pro Shops – Retail
3 Performance Appraisal, Bass Pro Group Separation Notice, and Exit Interview Form),
4 procedures (including but not limited to Security and Inspections, Breaks and Meal Periods, and
5 Searches of Company and Associate Property), and policies (including but not limited to
6 Overtime, Time Keeping, Appearance Standards, Code of Ethics, and Conflicts of Interest),
7 among other information and documents.⁴¹ The parties engaged in significant motion practice,
8 and Class Counsel researched applicable law, developed damages/valuation models in
9 preparation for mediation, and met and conferred with Defendant's counsel on numerous
10 occasions, e.g., to discuss issues relating to the pleadings, discovery, and production of
11 documents and data prior to mediation.⁴²

12 After conducting significant formal and informal discovery and investigation into the
13 facts of the case, the parties participated in a formal, full-day mediation conducted by David A.
14 Rotman, a well-regarded mediator experienced in mediating complex labor and employment
15 matters.⁴³ Prior to and during mediation and settlement discussions, the parties exchanged
16 information and data, and discussed various aspects of the case, including and not limited to, the
17 risks and delays of further litigation, the risks and expenses to the parties of proceeding with
18 class certification, representative adjudication, and trial, the law relating to off-the-clock theory,
19 meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the
20 evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁴ During all
21 settlement discussions, the parties conducted their negotiations at arm's length in an adversarial
22 position.⁴⁵ Arriving at a settlement that was acceptable to the parties was not easy.⁴⁶ Defendant
23 and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain
24 a denial of class certification, while Plaintiffs and Class Counsel believed that class certification

25 _____
26 ⁴¹ Aiwazian Decl., ¶ 6.

27 ⁴² Ibid.

28 ⁴³ Aiwazian Decl., ¶ 8.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

would be obtained and Plaintiffs would prevail at trial.⁴⁷ After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴⁸

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiffs and other Class Members.⁴⁹ Class Counsel also reviewed and analyzed thousands of pages of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses, as well as facts discovered.⁵⁰ The Settlement was based on this large volume of facts, evidence, and investigation.⁵¹ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁵²

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

The Settlement, which provides for a Gross Settlement Amount of \$5,000,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁵³ 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 mediation.⁵⁴ Had the action not settled, Defendant would have vigorously challenged class

⁴⁷ Ibid.

⁴⁸ Aiwazian Decl., ¶ 8.

⁴⁹ Aiwazian Decl., ¶ 6.

⁵⁰ Ibid.

⁵¹ *Id.*, ¶¶ 6 & 8.

⁵² Aiwazian Decl., ¶¶ 15-18.

⁵³ Aiwazian Decl., ¶¶ 8 & 21.

⁵⁴ Aiwazian Decl., ¶¶ 5-8.

certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification 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.

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

It would be grossly inefficient for such a large class of current and former employees to bring individual actions to recover from Defendant for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member

would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

The Settlement, which provides for a Gross Settlement Amount of \$5,000,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

Even after deducting Attorneys' Fees in the amount of \$1,666,666.67, litigation costs and expenses in the amount of \$36,401.64, Incentive Payments in the combined amount of \$20,000.00, Settlement Administration Costs in the amount of \$25,000.00, and LWDA Payment in the amount of \$262,500.00 from the Gross Settlement Amount of \$5,000,000.00, the Net Settlement Amount is currently estimated to be \$2,901,931.69.⁵⁵ Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her. To date, there are 5,055 Settlement Class Members, representing 99.92% of the Class Members.⁵⁶ The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$3,679.00 and the average Individual Settlement Share is currently estimated to be at least \$552.92.⁵⁷ These are significant individual recoveries, particularly in light of the risks of litigation.

///

⁵⁵ Phoenix Decl., ¶ 16; see n.6, *supra*.

⁵⁶ Phoenix Decl., ¶ 14.

⁵⁷ *Id.*, ¶ 17; see n.34, *supra*.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁵⁸ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁵⁹ 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.⁶⁰ 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 Class Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected the Class Settlement.*⁶¹ Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys’ Fees and Costs, Incentive Payments, Settlement Administration Costs, or the PAGA Settlement Amount. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement and strongly

⁵⁸ Aiwazian Decl., ¶ 21.

⁵⁹ Aiwazian Decl., ¶¶ 15-18.

⁶⁰ Ibid.

⁶¹ Phoenix Decl., ¶ 12.

1 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite
2 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted
3 despite 9 objectors).

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

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

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

11 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
12 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
13 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
14 1132 (The "experienced trial judge is the best judge of the value of professional services
15 rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
16 Where the amount of a settlement is a "certain easily calculable sum of money," California
17 courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil and
18 Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
19 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.
20 The percentage-of-the-benefit approach is preferred in class and representative actions because
21 "it better approximates the workings of the marketplace than the lodestar approach." *Lealao,*
22 *supra*, 82 Cal.App.4th at 49.

23 California law provides that an attorneys' fees award should be equivalent to fees paid in
24 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert*
25 *Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to
26 a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
27 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
28 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, 34.⁶² 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 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.

///

⁶² The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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

8 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
9 Amount of \$5,000,000.00 on a non-reversionary basis. The requested Attorneys’ Fees are one-
10 third (1/3) of the total value of the monetary settlement. In light of Class Counsel’s successful
11 prosecution and resolution of the case, the requested Attorneys’ Fees are appropriate and
12 reasonable.

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

20 The percentage method is consistent with, and is intended to mirror, the practice in the
21 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
22 arrangements with their clients. Named plaintiffs’ agreement to pay a contingent fee is powerful
23 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel’s work to
24 the class is to review the consideration agreed to be paid by the named plaintiffs. If the named
25 plaintiffs’ have employed counsel on a contingency-fee basis, it would indeed be inequitable for
26 the members of the class, who will enjoy the benefits of the settlement without incurring the
27
28

1 risks of bringing the claim, to pay less than the named plaintiffs. In this case, Plaintiffs have
2 agreed to a contingency fee of at least one-third (1/3) of the recovery.⁶³

3 Furthermore, a percentage-fee award is not dependent on a determination of the actual
4 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
5 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
6 equitable that [the attorney’s] compensation and expenses should come from the entire fund
7 saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.*
8 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
9 calculated on the basis of the total fund made available rather than the actual payments made to
10 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a
11 litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or
12 his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

18 Class Counsel has obtained a substantial recovery on behalf of Plaintiffs and the Class,
19 and the results achieved justify an attorneys’ fees award that is the equivalent of the standard
20 market fee and that is consistent with the contingency-fee agreement entered into by and between
21 Plaintiffs and Class Counsel. Thus, the requested Attorneys’ Fees are appropriate.

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

24 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
25 to be considered in determining whether fee awards are reasonable: (1) the time and labor
26 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform

27
28 ⁶³ Aiwazian Decl., ¶ 9.

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

8 Each and every one of these factors favors the Attorneys' Fees sought here; however,
9 some of the most relevant factors to this Court's fee determination will be addressed herein. The
10 award of Attorneys' Fees in the amount of \$1,666,666.67 (which is one-third (1/3) of the Gross
11 Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case,
12 the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill
13 and determination required, the results that Class Counsel has achieved, and the value of the
14 settlement that Class Counsel has obtained for the Class Members.

15 **1. Time & Labor.**

16 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
17 litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as
18 demonstrated in the supporting declaration, Class Counsel has extensive experience in the
19 handling of class actions and complex litigation matters.⁶⁴

20 As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively
21 participated in litigation of this case.⁶⁵ Prior to commencing the lawsuit, Class Counsel had
22 conducted a significant amount of investigation into the factual and legal issues, Defendant's
23 business, and its operations and employment policies, practices, and procedures.⁶⁶ During the
24 litigation of the action, Class Counsel interviewed Plaintiffs and other Class Members;
25 propounded formal written discovery requests and reviewed Defendant's responses thereto;

26
27 ⁶⁴ Aiwazian Decl., ¶¶ 15-18.

⁶⁵ Aiwazian Decl., Exh. A.

28 ⁶⁶ Aiwazian Decl., ¶ 6 & Exh. A.

1 worked with Plaintiffs to provide responses to discovery requests that were propounded by
2 Defendant; preparing for and taking the depositions of Defendant's Person Most Knowledgeable
3 witnesses; reviewed and analyzed thousands of pages of documents and data produced by
4 Defendant and obtained through other sources; engaged in significant motion practice; and
5 prepared damages/valuation calculations.⁶⁷ Class Counsel also met and conferred with
6 Defendant's counsel over the issues relating to pleadings, case management, discovery, and
7 production of documents and data, among other things; engaged in extensive settlement
8 negotiations with Defendant's counsel; and prepared for and attended court proceedings,
9 mediation, and settlement negotiations.⁶⁸

10 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
11 matter diligently and with maximum efficiency and has fully and actively participated in the
12 litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the
13 accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel
14 has spent performing tasks on behalf of Plaintiffs and the Class.⁶⁹ The Task and Time Chart is
15 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
16 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
17 chart, which sets forth the history of the work performed by Class Counsel, commencing with
18 the pre-filing analysis and research, and continuing up to settlement and final approval. Class
19 Counsel has spent **946.10 hours** performing tasks and to obtain a significant recovery on behalf
20 of Plaintiffs and the Class.⁷⁰ These hours were required to bring this matter to its successful
21 conclusion. In light of the value of time expended and the carrying of costs involved in litigating
22 this case, the requested Attorneys' Fees are fair, adequate, and reasonable.

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

24 The skill required to properly litigate the case is evident not only in the results achieved,
25 but in the steps necessary to reach the same. Defendant retained well-respected counsel to

26 _____
27 ⁶⁷ Aiwazian Decl., ¶ 6.

28 ⁶⁸ Aiwazian Decl., ¶ 6.

⁶⁹ Aiwazian Decl., Exh. A.

⁷⁰ Aiwazian Decl., ¶ 11.

1 represent its defenses. More specifically, Defendant and its counsel felt very strongly about
2 Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and
3 Class Counsel believed that they would have obtained class certification and prevailed at trial.

4 Class Counsel undertook significant investigation, analysis, and research prior to filing
5 this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
6 matter for class certification and representative adjudication and had every intention of taking the
7 case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement.
8 Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin
9 Aiwasian, Class Counsel used its extensive experience in the handling of class actions and
10 complex wage-and-hour litigation matters in order to obtain the Settlement with maximum
11 efficiency.⁷¹

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

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

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

27
28 ⁷¹ Aiwasian Decl., ¶¶ 15-18.

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$5,000,000.00 to settle the matter. After deducting the Attorneys' Fees (\$1,666,666.67), Litigation Costs (\$36,401.64), Incentive Payments (combined, \$20,000.00), Settlement Administration Costs (\$25,000.00), and LWDA Payment (\$262,500.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$2,901,931.69.⁷² The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$3,679.00 and the average Individual Settlement Share is currently estimated to be at least \$552.92.⁷³ The Settlement offers significant monetary relief to the Settlement Class Members. Moreover, the *highest* estimated Individual PAGA Share to be paid to a PAGA Group Member is currently estimated to be approximately \$129.16, and the *average* Individual PAGA Payment is currently estimated to be approximately \$28.11.⁷⁴

4. *Whether the Fee Is Fixed or Contingent.*

Plaintiffs entered into contingency fee agreements 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 946.10 hours of time to obtain relief on behalf of Plaintiffs and the Class.⁷⁵ Class Counsel has also incurred litigation costs and expenses in the amount of \$36,401.64.⁷⁶

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷⁷ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁷⁸ The skill and determination that Class Counsel has shown, along with the results obtained, justify the

⁷² Phoenix Decl., ¶ 16; see n.6, *supra*.

⁷³ *Id.*, ¶ 17; see n.34, *supra*.

⁷⁴ Phoenix Decl., ¶ 20.

⁷⁵ Aiwazian Decl., ¶ 11, Exh. A.

⁷⁶ See Part VII, *infra*.

⁷⁷ Aiwazian Decl., ¶ 19.

⁷⁸ See *id.*, ¶¶ 15-18.

requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel has devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses.

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

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—only four (4) Class Members have opted out of the Settlement and there have been no objections.⁷⁹

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 Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$5,000,000.00.⁸⁰

⁷⁹ Phoenix Decl., ¶¶ 11 & 12.

⁸⁰ Aiwazian Decl., ¶¶ 5-8.

The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be at least \$3,679.00 and the average Individual Settlement Share is currently estimated to be at least \$552.92.⁸¹ Moreover, the *highest* estimated Individual PAGA Share to be paid to a PAGA Group Member is currently estimated to be approximately \$129.16, and the *average* Individual PAGA Payment is currently estimated to be approximately \$28.11.⁸²

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.⁸³

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.

⁸¹ *Id.*, ¶ 17; see n.34, *supra*.

⁸² Phoenix Decl., ¶ 20.

⁸³ Aiwazian Decl., ¶¶ 15-18.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

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

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

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

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed

on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁸⁴ The chart demonstrates that Class Counsel has spent a total of 946.10 hours litigating the case and finalizing the Settlement.⁸⁵ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$5,000,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$775 per hour for services provided by Class Counsel.⁸⁶ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$775 for legal service performed, by

⁸⁴ See Aiwazian Decl., Exh. A.

⁸⁵ Aiwazian Decl., ¶ 11.

⁸⁶ Aiwazian Decl., ¶ 12.

courts of this state.⁸⁷ While the circumstances of every case is 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 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 over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal. 4th at 1132.

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-23. Multiple factors warrant enhancement in this case, including the following:

⁸⁷ For example, final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved a higher hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved a higher hourly rate of \$831.38; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved a higher hourly rate of \$845.64. Aiwazian Decl., ¶ 12.

- 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 1135-36; *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 1131-32. 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 1132-33 (quotation marks and citation omitted).

As discussed above, this was a highly-contested matter which required an extensive amount of time and labor. Defendant raised defenses and denied liability, and the case involved gathering and analyzing documents and data not only from Defendant 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 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 \$5,000,000.00. 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 Aiwarzian.⁸⁸ As the chart indicates, Class Counsel has worked 946.10 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$775 per hour to 946.10 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$733,227.50 on Class Counsel's services, and applying a modest multiplier of 2.28, the total enhanced lodestar fees are \$1,671,758.70.⁸⁹ Class Counsel seeks an attorneys' fee award of \$1,666,666.67 (equal to only one-third (1/3) of the Gross Settlement Amount). 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 2.28 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the

⁸⁸ Aiwarzian Decl., Exh. B.

⁸⁹ Aiwarzian Decl., ¶ 11; *see n.2, supra*.

requested Attorneys' Fees award. Plaintiffs respectfully request that the Court grant final approval of, and award, Attorneys' Fees in the amount of \$1,666,666.67 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 \$60,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$36,401.64 in litigation costs and expenses.⁹⁰ 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.⁹¹ The cost savings of \$23,598.36 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁹² Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$36,401.64 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 \$25,000.00.⁹³ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Opt Out Requests, Objections, and Workweeks Disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and preparing the associated tax forms; and transmitting payments, among other things.⁹⁴

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$25,000.00.

///

⁹⁰ Aiwazian Decl., ¶ 19.

⁹¹ Aiwazian Decl., ¶ 19.

⁹² Aiwazian Decl., ¶ 19.

⁹³ Phoenix Decl., ¶ 21.

⁹⁴ *Id.*, ¶ 3.

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

The Settlement provides for Incentive Payments in the amount of \$10,000.00 each to Plaintiffs Celina Acuna and Ian Pfeifle to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Incentive 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 Incentive 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, including and not limited to, by way of working with Class Counsel to prepare responses to written discovery requests that were propounded on each of them by Defendant.⁹⁵ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information that would benefit the Class.⁹⁶ Plaintiffs spent numerous hours speaking with counsel about their claims, describing their work experiences with Defendant, and gathering and reviewing documents.⁹⁷ These services merit the requested Incentive Payments to Plaintiffs, who have not received any compensation for their efforts on behalf of the Class Members to date.⁹⁸

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

⁹⁵ Aiwasian Decl., ¶ 20; Declaration of Celina Acuna in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Acuna Decl."), ¶ 4; Declaration of Ian Pfeifle in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Pfeifle Decl."), ¶ 4.

⁹⁶ Aiwasian Decl., ¶ 20; Acuna Decl., ¶¶ 2-6; Pfeifle Decl., ¶ 3-6

⁹⁷ Aiwasian Decl., ¶ 20; Acuna Decl., ¶¶ 2-6; Pfeifle Decl., ¶ 2-6.

⁹⁸ Acuna Decl., ¶ 8; Pfeifle Decl., ¶ 8.

1 Payments. Accordingly, it is appropriate and just for Plaintiffs Celina Acuna and Ian Pfeifle to
2 each receive \$10,000.00 as reasonable Incentive Payments, in addition to their Individual
3 Settlement Payments, for their services on behalf of the Class.

4 **X. CONCLUSION**

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

9 Dated: April 4, 2022

LAWYERS for JUSTICE, PC

10
11 By:


Edwin Aiwanian
Attorneys for Plaintiffs and the Class