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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

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

Plaintiff,

vs.

NEW WORLD VAN LINES OF SAN FRANCISCO, a California corporation; NEW WORLD VAN LINES, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG21095207

Honorable Brad Seligman
Department 23

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS COUNSEL AWARD, AND CLASS REPRESENTATIVE SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declaration of Class Counsel (Edwin Aiwazian); Declaration of Class Representative (Kenneth Murray); Declaration of Settlement Administrator (Kevin Lee); and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Reservation No. A-21095207-003

Date:	June 20, 2023
Time:	3:00 p.m.
Department:	23
Complaint Filed:	April 6, 2021
FAC Filed:	October 15, 2021
Trial Date:	None Set

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PLEASE TAKE NOTICE that on June 20, 2023 at 3:00 p.m, in Department 23 of the above-entitled Court, located at 1221 Oak Street Oakland, California 94612, Plaintiff Kenneth Murray ("Plaintiff") will and hereby does move for an order granting final approval of:

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

- A Net Settlement Amount of approximately **$175,955.59** will be fully distributed to the Class Members who do not submit a timely and valid Opt Out ("Settlement Class Members");
- **No Objections** were submitted to the settlement administrator, Phoenix Settlement Administrators ("Settlement Administrator");
- **No Opt Outs** were submitted to the Settlement Administrator;

2. Payment in the amount of **$122,500.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys' fees, which is reasonable and justified on a percentage-basis;

3. Payment in the amount of **$13,044.41** to Class Counsel for reimbursement of litigation costs and expenses;

4. Payment in the amount of **$6,000.00** to the Settlement Administrator, Phoenix Settlement Administrators ("Phoenix"), for Settlement Administration Costs;

5. Payment in the amount of **$7,500.00** to Plaintiff Kenneth Murray, as a Class Representative Service Award, for his time and effort in representing the Class; and

6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq*., in the amount of $25,000.00, of which seventy-five percent (75%), or **$18,750.00**, will be paid to the California Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%), or **$6,250.00**, will be distributed to all current and former hourly-paid or non-exempt employees of Defendants who were employed within the State of California during the PAGA Period ("PAGA Group Members").

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

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Edwin Aiwazian), Class Representative (Kenneth Murray), and Settlement Administrator (Kevin Lee of Phoenix) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: June 2, 2023

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By:

Annabel Blanchard
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Kenneth Murray ("Plaintiff") seeks final approval of: (1) the Gross Settlement Amount of $350,000.00; (2) attorneys' fees in the amount of $122,500.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of $13,044.41 (together, "Class Counsel Award") to Lawyers *for* Justice, PC ("Class Counsel"); (3) Settlement Administration Costs in the amount of $6,000.00 to Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"); (4) Class Representative Service Award in the amount of $7,500.00 to Plaintiff Kenneth Murray; and (5) allocation of $25,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Payment").

Plaintiff seeks relief on behalf of the following Class:

> All current and former hourly-paid or non-exempt employees who were employed with any of the Defendants within the State of California at any time during the Class Period ("Class" or "Class Members").[1]

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during mediation conducted by Jeffrey Krivis, Esq., and extensive settlement negotiations. This matter has required 347.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represent thirty-five percent (35%) of the Gross Settlement Amount, are fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Class Representative Service Award in the amount of $7,500.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of $6,000.00 for Settlement Administration Costs.

[1] Joint Settlement Agreement of Class Action and Private Attorneys General Act Class Settlement ("Settlement Agreement"), ¶ 6.

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Plaintiff also moves for final approval of the allocation of $25,000.00 for the PAGA Payment, of which $18,750.00 will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Payment ("LWDA Payment"), and $6,250.00 will be distributed to all current and former hourly-paid or non-exempt employees of Defendants who were employed within the State of California during the PAGA Period ("PAGA Group Members") on a *pro rata* basis ("Employee PAGA Amount").

The requests for Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and allocation for the PAGA Payment were fully disclosed in the Notice of Class Action Settlement ("Class Notice") that was mailed to the Class Members. Most importantly, as of the date of this Motion, *not a single Class Member has objected to, or opted out of, any aspect of the Class Settlement, including the requested Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, or allocation for PAGA Payment*.

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 the Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and PAGA Payment 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 the Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and PAGA Payment, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants New World Van Lines of San Francisco and New World Van Lines, Inc. (together, "Defendants") are an international moving company that operated sixteen service centers throughout the United States, including California. Plaintiff Kenneth Murray is a former

employee of New World Van Lines of San Francisco, Inc. and alleges that he is a former employee of New World Van Lines, Inc.

On April 5, 2021, Plaintiff provided written notice to the LWDA by electronic submission and to Defendants by certified mail, of the specific provisions of the California Labor Code that Plaintiff alleges were violated ("LWDA Notice").

On April 6, 2021, Plaintiff filed a Class Action Complaint for Damages ("Murray Class Complaint"), thereby commencing the above-captioned lawsuit ("*Murray* Class Action"). On May 3, 2021, Defendants filed an Answer to the Murray Class Complaint.

On June 9, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., thereby commencing a PAGA representative action entitled *Kenneth Murray v. New World Van Lines of San Francisco, et al.*, Alameda County Case No. RG21102247 ("*Murray* PAGA Action").

On September 27, 2021, the Court ordered the *Murray* Class Action and *Murray* PAGA Action related, and reassigned both cases to the Honorable Brad Seligman.

On October 15, 2021, Plaintiff filed a First Amended Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., naming both Defendants New World Van Lines of San Francisco, Inc. and New World Van Lines, Inc. ("*Murray* PAGA Complaint"). The *Murray* Class Complaint and *Murray* PAGA Complaint are collectively referred to as the "Operative Complaints."

On October 18, 2021, Plaintiff filed a Request for Dismissal of New World Van Lines of California, Inc. without prejudice to the *Murray* Class Complaint in the *Murray* PAGA Action.

Plaintiff's core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Group 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

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Professions Code section 17200, et seq. and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he, and the Class Members and PAGA Group Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Operative Complaints, and further deny that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The parties have actively litigated the Action since it was commenced April 6, 2021. The parties conducted significant informal discovery, and exchanged a large volume of information, documents, and data. On January 27, 2022, the parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment cases. After conducting significant informal discovery and investigation into the facts of the cases and with the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the matter in its entirety.

On August 2, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On August 23, 2022, a hearing was held on Plaintiff's Motion for Preliminary Approval, during which the Court raised certain points of inquiry. On October 4, 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On October 13, 2022, the Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and allocation for PAGA Payment.

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Gross Settlement Amount of $350,000.00 on a non-reversionary basis.[2] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Award, consisting of attorneys' fees in the amount of $122,500.00 and reimbursement of litigation costs and expenses in the amount of $13,044.41, to Class Counsel; (2) Class Representative Service Award in the amount of $7,500.00 to Plaintiff Kenneth Murray; (3) Settlement Administration Costs in the amount of $6,000.00 to Phoenix; and (4) PAGA Payment in the amount of $25,000.00, of which seventy-five percent (75%) ($18,750.00) will be paid to the LWDA ("LWDA Payment"), and twenty-five percent (25%) ($6,250.00) will be distributed on a *pro rata* basis to the PAGA Group Members ("Employee PAGA Amount").[3] The Net Settlement Amount, which is estimated to be One Hundred Seventy-Five Thousand, Nine Hundred Fifty-Five Dollars and Fifty-Nine Cents ($175,955.59), will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.[4]

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payment"), in accordance with the Settlement Agreement and as follows: The Settlement Administrator will calculate the total number of Compensable Workweeks worked by all Settlement Class Members during the Class Period ("Total Compensable Workweeks"). Each Class Member's individual number of Compensable Workweeks worked during the Class Period will be divided by the Total Compensable Workweeks to yield his or her "Individual Compensable Workweek Value"; and the Settlement Administrator will multiply each Class Member's Individual Compensable Workweek Value by the Net Settlement Amount to yield his or her gross Individual Settlement Payment.[5]

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[2] Settlement Agreement; ¶ 21.
[3] *Id*., ¶ 4, 9, 31 and 44.
[4] This amount is higher than the amount stated in Paragraph 12of the accompanying Declaration of Kevin Lee 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 $20,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $13,044.41 for reimbursement of litigation costs and expenses, and the difference of $6,955.59 will remain part of the Net Settlement Amount.
[5] Settlement Agreement, ¶ 67.

The Settlement Administrator will calculate each PAGA Group Member's *pro rata* portion of the Employee PAGA Amount ("PAGA Payment Share"), in accordance with the Settlement Agreement and as follows: The Settlement Administrator will calculate the total number of PAGA Workweeks worked by all PAGA Group Members during the PAGA Period ("Total PAGA Workweeks"). Each PAGA Group Member's individual number of PAGA Workweeks worked during the PAGA Period will be divided by the Total PAGA Workweeks to yield his or her "Individual PAGA Workweek Value"; and the Settlement Administrator will multiply each PAGA Group Member's Individual PAGA Workweek Value by the Employee PAGA Amount to yield his or her PAGA Payment Share.[6]

Class Members had forty-five (45) calendar days after the date the Settlement Administrator mailed the Class Notice to submit a Workweek Dispute, submit an Opt Out requesting to be excluded from the Class Settlement, and/or submit an Objection to the Class Settlement ("Response Deadline").[7] The Response Deadline was January 16, 2023.[8] The Settlement Administrator has not received any written requests for exclusion from the Settlement ("Opt Outs") or objections to the Settlement ("Objections") from Class Members.[9]

Each gross Individual Settlement Payment will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2 by the Settlement Administrator, and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 by the Settlement Administrator.[10] The Settlement Administrator will withhold (and remit to the appropriate taxing authorities) the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments.[11] One hundred percent (100%) of the PAGA Payment Shares will be allocated as penalties and will be reported on IRS Form 1099 (if applicable) by the Settlement Administrator.[12]

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[6] Settlement Agreement, ¶ 69.
[7] *Id.*, ¶ 42.
[8] Phoenix Decl., ¶¶ 7, 8 ,9, Exh. A.
[9] *Id.*, ¶¶ 7 & 8.
[10] Settlement Agreement, ¶ 68.
[11] Ibid.
[12] *Id.*, ¶ 70.

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The Settlement Administrator may, at its discretion, distribute Individual Settlement Payments and PAGA Payment Shares by way of a single check that combines both payments (if applicable).[13] Any checks issued to Settlement Class Members and/or PAGA Group Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance, and thereafter, shall be cancelled.[14] Pursuant to California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be transmitted to Legal Aid Society of San Mateo County.[15]

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's October 13, 2022 Preliminary Approval Order.

On November 14, 2022, Phoenix received a mailing list from Defendants' counsel that contained the full names, last known mailing addresses, last known home and/or mobile telephone numbers, last known email addresses if such information was known, Social Security numbers, date of hiring, and date of termination of employment (if applicable), and such other information required for the Settlement Administrator to calculate Compensable Workweeks and PAGA Workweeks ("Class Information" or "Class List").[16] The Class List contained information for 59 individuals identified as Class Members.[17] Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.[18]

On December 1, 2022, Phoenix mailed the Class Notice via first class mail to 59 individuals identified as Class Members in the Class List.[19]

As of the date of this Motion, six (6) Class Notices were returned as undeliverable without forwarding addresses, and Phoenix performed a skip-trace search on the six (6) Class Notices that

[13] Settlement Agreement, ¶ 71.
[14] Ibid.
[15] Ibid.
[16] *Id*., ¶ 9.
[17] Phoenix Decl., ¶ 10.
[18] *Id*., ¶ 4.
[19] Phoenix Decl., ¶ 5.

were returned to Phoenix without forwarding addresses, located an updated address for six (6) Class Members, and promptly re-mailed the Class Notice to the updated addresses.[20] No (0) Class Notices were returned to Phoenix as undeliverable a second time.[21]

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.[22]

To date, there are 59 Class Members who did not submit a timely and valid Opt Out, and are therefore, deemed to be Settlement Class Members.[23] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $175,955.59 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.[24] The *highest* gross Individual Settlement Payment(before reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payment) is currently estimated to be $8,690.08, and the *average* gross Individual Settlement Payment is currently estimated to be 2,864.41.[25] The *highest* PAGA Payment Share is currently estimated to be 394.63, and the *average* PAGA Payment Share is currently estimated to be $250.00.

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.

[20] Phoenix Decl., ¶ 6.
[21] Phoenix Decl., ¶ 6.
[22] *Id*., ¶¶ 7 & 8.
[23] *Id*., ¶ 10.
[24] Phoenix Decl., ¶ 12; see also, n.4, *supra*.
[25] *Id*., ¶ 13. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than $20,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., $6,955.59, will be part of the Net Settlement Amount). See n.4, *supra*.

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

The parties actively litigated the Action since it was commenced on April 6, 2021. Both sides investigated the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the cases for class certification, and trial, prior to reaching settlement.[26] The parties conducted significant informal discovery and investigation into the facts of the cases, exchanging

[26] Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

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information and data in preparation for mediation.[27] Class Counsel had the opportunity to interview and obtain information from Plaintiff, and reviewed and analyzed a large volume of information, documents and data obtained from Plaintiff, Defendants, and other sources.[28] The documents and data reviewed and analyzed by Class Counsel included, and were not limited to, employment records of Plaintiff, a detailed sampling of Class Members' time and pay data, sampling of Driver and Helper Worksheets, class list, payroll legend, pay plans, Defendants' Employee Handbooks, and employment and operations policies, practices, and procedures documents (e.g., California Meal Period Policy, California Rest Break Policy, New Hire Personnel Activity Forms, and Orientation Forms), among other information, documents, and data.[29] Class Counsel researched applicable law, developed liability, damages and penalties valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, informal discovery, motion practice, and production of various documents and data in the course of litigation and in connection with mediation and settlement negotiations.[30] Class Counsel also drafted pleadings and the mediation brief, and prepared for and attended court proceedings, and prepared for and participated in the mediation and settlement negotiations, among other tasks.[31]

After conducting significant informal discovery and investigation into the facts of the cases, a formal, full-day mediation was conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment cases.[32] In the course of mediation and settlement discussions, the Parties exchanged information and documents, and discussed various aspects of the cases, 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, Plaintiff's claims and allegations, and wage-and-hour law

[27] Aiwazian Decl., ¶ 6
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Aiwazian Decl., ¶ 8.

and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.[33] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[34] Arriving at a settlement that was acceptable to the parties was not easy.[35] Defendants and their counsel felt very strongly about Defendants' ability to prevail on the merits and to obtain a denial of class certification and representative adjudication. Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[36] After conducting significant 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 Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.[37]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the casesmight have concluded at certification, trial, and/or appeals. Class Counsel had the opportunity to interview and obtain information from Plaintiff and other Class Members.[38] Class Counsel also reviewed and analyzed a large volume of information, documents, and data obtained from Defendants, Plaintiff, and other sources, and performed significant research into applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, PAGA representative claims, exemption, preemption, wage-and-hour law and enforcement, Plaintiff's claims, and Defendants' defenses, as well as facts discovered.[39] The Settlement was based on this large volume of facts, evidence, and investigation.[40] Additionally, Class Counsel has extensive experience in handling complex wage-and-hour cases, including significant experience in employment class action litigation.[41]

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[33] Aiwazian Decl., ¶ 8.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] *Id*., ¶ 6.
[39] Aiwazian Decl., ¶ 6.
[40] *Id*., ¶¶ 6 & 8.
[41] *Id*., ¶¶ 15-18.

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

The Settlement, which provides for a Gross Settlement Amount of $350,000.00, 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.[42] The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations.[43] Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's 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 cases, 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

[42] Aiwazian Decl., ¶¶ 8 & 21.
[43] *Id*., ¶¶ 5-8.

significant amount of additional discovery, including and not limited to, depositions of Defendants' 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 Defendants 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 and the State of California.

C. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Gross Settlement Amount of $350,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the cases, the Gross Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of $122,500.00, litigation costs and expenses in the amount of $13,044.41, Class Representative Service Award in the amount of $7,500.00, Settlement Administration Costs in the amount of $6,000.00, and the PAGA Payment in the amount of $25,000.00 from the Gross Settlement Amount of $350,000.00, the Net Settlement Amount is currently estimated to be $175,955.59.[44] Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out without any reversion to Defendants, in

[44] Phoenix Decl., ¶ 12; see n.4, *supra*.

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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 Compensable Workweeks credited to him or her. To date, there are 59 Settlement Class Members, representing 100% of the Class Members.[45] The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be $8,690.08 and the average Individual Settlement Payment is currently estimated to be $2,864.41.[46] The highest PAGA Payment Share is currently estimated to be at least $394.63 and the average PAGA Payment Share is currently estimated to be at least $250.00[47] These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.[48] 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. <u>The Class Was Represented by Competent Counsel.</u>

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.[49] 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.[50]

[45] Phoenix Decl., ¶ 10.
[46] *Id*., ¶ 13; see n.25, *supra*.
[47] *Id*., ¶ 14
[48] Aiwazian Decl., ¶ 21.
[49] *Id*., ¶¶ 15-18.
[50] Ibid.

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Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendants and the benefits of the Settlement under the circumstances of the cases 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 or opted out of the Class Settlement.***[51] Specifically, no objections have been made as to the Gross Settlement Amount or requested Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, or the allocation for PAGA Payment. 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.

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 Case*s (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert*

[51] Phoenix Decl., ¶¶ 7 & 8.

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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."

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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. Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.[52] 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).

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

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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 filed and the matter was initiated, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with defendants 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, Defendants will pay a Gross Settlement Amount of $350,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the cases, the requested attorneys' fees are appropriate and reasonable.

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

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The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this matter, Plaintiff has agreed to a contingency fee of as much as thirty-five percent (35%) of the recovery.[53]

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, and the State of California, and the results achieved justify an attorneys' fees award that is the equivalent

[53] Aiwazian Decl., ¶ 9.

of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of $122,500.00 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, the skill and determination 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.[54]

[54] Aiwazian Decl., ¶¶ 15-18.

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As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of this matter.[55] Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and their operations and employment policies, practices, and procedures.[56] During the litigation of the action, Class Counsel had the opportunity to interview Plaintiff and other Class Members; reviewed and analyzed a large volume of information, documents, and data obtained from Defendants, Plaintiff, and other sources; and prepared damages, penalties, and valuation calculations.[57] Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, case management, discovery, motion practice, and the production of information, documents, and data in the course of litigation and mediation and settlement negotiations, prepared for and attended court proceedings, and prepared for and participated in the mediation and settlement negotiations, among other tasks.[58]

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as "**EXHIBIT A"** to the accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, the Class, and the State of California.[59] 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 347.50 hours performing tasks and to obtain a significant recovery in the matter.[60] 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

[55] Aiwazian Decl., Exh. A.
[56] Aiwazian Decl., ¶ 6 & Exh. A.
[57] *Id*., ¶ 6.
[58] Ibid.
[59] *Id*., Exh. A.
[60] *Id*., ¶ 11.

in litigating this matter, 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 cases is evident not only in the results achieved, but in the steps necessary to reach those results. Defendants retained well-respected counsel to represent their defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this matter, during the litigation, and prior to mediation. Class Counsel took steps to prepare the cases for class certification and representative adjudication and had every intention of taking the matter to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation cases in order to obtain the Settlement with maximum efficiency.[61]

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 settled, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the 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

[61] Aiwazian Decl., ¶¶ 15-18.

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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, Defendants agreed to pay a Gross Settlement Amount of $350,000.00 to settle the cases. After deducting the attorneys' fees ($122,500.00), litigation costs and expenses ($13,044.41), Class Representative Service Award ($7,500.00), Settlement Administration Costs ($6,000.00), and the PAGA Payment ($25,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $175,955.59.[62] The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be $8,690.08 and the average Individual Settlement Payment is currently estimated to be $2,864.41.[63] The highest PAGA Payment Share is currently estimated to be at least $394.63 and the average PAGA Payment Share is currently estimated to be at least $250.00.[64] The Settlement offers significant monetary relief to the Settlement Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the cases without knowing whether any recovery would be obtained. Class Counsel has invested 347.50 hours of time to obtain relief on behalf of Plaintiff, the Class, and the State of California.[65] Class Counsel has also incurred litigation costs and expenses in the amount of $13,044.41.[66]

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[67] Class Counsel is well-experienced in wage-and-hour

[62] Phoenix Decl., ¶ 12; see n.4, *supra*.
[63] *Id*., ¶ 13; see n.25, *supra*.
[64] *Id*., ¶ 14
[65] Aiwazian Decl., ¶ 11, Exh. A.
[66] See Part VII, *infra*.
[67] Aiwazian Decl., ¶ 19.

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class action and complex litigation and used that experience to obtain a great result.[68] The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel 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 cases 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 cases would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

5. The Amount Involved and the Results Achieved.

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

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted

[68] See *id*., ¶¶ 15-18.
[69] Phoenix Decl., ¶¶ 7 & 8.

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in a settlement that provides for a Gross Settlement Amount of $350,000.00.[70] The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be $8,690.08 and the average Individual Settlement Payment is currently estimated to be $2,864.41.[71] The highest PAGA Payment Share is currently estimated to be at least $394.63 and the average PAGA Payment Share is currently estimated to be at least $250.00.[72]

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 matter 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. [73]

D. <u>The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.</u>

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); see also, e.g., *Vizcaino,* 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" of the settlement amount and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

[70] Aiwazian Decl., ¶¶ 5-8.
[71] *Id.*, ¶ 13; see n.25, *supra*.
[72] *Id.*, ¶14
[73] Aiwazian Decl., ¶¶ 15-18

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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 cases. *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 cases, 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. Defendants made it clear very early on that they disputed all of the allegations of the cases and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this matter involved gathering and analyzing data not only from Defendants but also from the Class Members. The handling of the cases 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 moved toward certification and/or trial, including taking and defending depositions of Defendants' Person Most Knowledgeable designees, percipient witnesses, and experts, propounding discovery requests and conducting additional document production, and engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire case through mediation.

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.[74] The chart

[74] See Aiwazian Decl., Exh. A.

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demonstrates that Class Counsel has spent a total of 347.50 hours litigating the cases and finalizing the Settlement.[75] In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Class Members, Class Counsel has spent a reasonable number of hours on this Action. In addition, Class Counsel will continue to perform work on this Action 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 matter, 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 $350,000.00.

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least $700.00 per hour for legal services provided by Class Counsel.[76] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least $700.00 for legal service performed, by courts of this state.[77] While the circumstances of every case is unique, the fact

[75] Aiwazian Decl., ¶ 11.
[76] Aiwazian Decl., ¶ 12.
[77] 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

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

Applying the rate of $700.00 per hour to 347.50 hours would place a reasonable value of $243,250.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of $122,500.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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

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action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of $764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of $855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare 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 *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved an hourly rate of $600; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of $780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of $845.64,. Aiwazian Decl., ¶ 12.

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2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of $122,500.00 to Class Counsel.

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for reimbursement of litigation costs and expenses of up to $20,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of $13,044.41 in litigation costs and expenses incurred in this matter.[78] This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.[79] The cost savings of $6,955.59 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.[80] Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of $13,044.41 to Class Counsel.

VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are $6,000.00.[81] The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Opt Outs, Objections, and Compensable Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement;

[78] Aiwazian Decl., ¶ 19.
[79] Ibid.
[80] Ibid.
[81] Phoenix Decl., ¶ 16.

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calculating Individual Settlement Payments and preparing the associated tax forms; calculating PAGA Payment Shares, and transmitting payments, among other things.[82]

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of $6,000.00.

IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for a Class Representative Service Award in the amount of $7,500.00 to Plaintiff Kenneth Murray to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Class Representative Service Award is both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative).

The requested Class Representative Service Award is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.[83] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide, information that would facilitate the pursuit of class and PAGA claims.[84] Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.[85] These services merit the requested Class Representative Service Award to Plaintiff, who has not received any compensation for his

[82] Phoenix Decl., ¶ 3.
[83] Aiwazian Decl., ¶ 20; Declaration of Kenneth Murray ("Murray Decl."), ¶¶ 3-5.
[84] Aiwazian Decl., ¶ 20; Murray Decl., ¶¶ 3-5.
[85] Aiwazian Decl., ¶ 20; Murray Decl., ¶¶ 2-6.

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efforts on behalf of the Class Members to date.[86]

The requested Class Representative Service Award was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Class Representative Service Award. Accordingly, it is appropriate and just for Plaintiff Kenneth Murray to each receive $7,500.00 as a reasonable Class Representative Service Award, for his services on behalf of the Class, PAGA Group Members, and the State of California, in addition to his individual settlement payment.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and allocation for the PAGA Payment, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: June 2, 2023

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By: _____
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[86] Murray Decl., ¶ 9.