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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ALICIA ORTEGA, BRYAN SHEPPARD,
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; SHANTEANNA BROWN,
RAYVEYONE BROWN, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

vs.

SMARTGUARD, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 34-2020-00278712-CU-OE-GDS

Honorable Lauri A. Damrell
Department 22

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declarations of Class
Representatives (Alicia Ortega, Bryan
Sheppard, Shanteanna Brown, Rayveyone
Brown); Declaration of Settlement
Administrator (Nathalie Hernandez); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: February 2, 2024
Time: 9:00 a.m.
Department: 22

Complaint Filed: May 15, 2020
FAC Filed: October 19, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 2, 2024, at 9:00 a.m., in Department 22 of
2 the above-entitled Court, located at 720 9th Street, Sacramento, California 95814, Plaintiffs Alicia
3 Ortega, Bryan Sheppard, Shanteanna Browm, and Rayveyone Brown (together, “Plaintiffs”) will
4 and hereby do move for an order granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$655,000.00** will be fully distributed to the
9 Class Members who do not submit a valid and timely Request for Exclusion
10 (“Settlement Class Members”);
11 • **No Notice of Objections** were submitted to the settlement administrator, ILYM
12 Group, Inc. (“Settlement Administrator” or “ILYM”);
13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$490,000.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’
16 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
17 check;

18 3. Payment in the amount of **\$9,878.63** to Class Counsel for reimbursement of
19 litigation costs and expenses;

20 4. Payment in the amount of **\$19,950.00** to the Settlement Administrator for
21 Settlement Administration Costs;

22 5. Payments in the amount of **\$10,000.00** each to Plaintiffs Alicia Ortega, Bryan
23 Sheppard, Shanteanna Browm, and Rayveyone Brown as Enhancement Payments, for their time
24 and effort in representing the Class; and

25 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.*, in the amount of \$150,000.00, of which seventy-five
27 percent (75%), or **\$112,500.00**, will be paid to the California Labor and Workforce Development
28 Agency (“LWDA”) and twenty-five percent (25%), or **\$37,500.00**, which will be distributed to

1 Aggrieved Employees (“PAGA Employee Amount”) based on their Workweeks during the PAGA
2 Period.

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

6 This motion is based upon the following Memorandum of Points and Authorities; the
7 Declarations of Class Counsel (Edwin Aiwarzian), Class Representatives (Alicia Ortega, Bryan
8 Sheppard, Shanteanna Brown, and Rayveyone Brown), and Settlement Administrator (Nathalie
9 Hernandez of ILYM) in support thereof; the pleadings and other records on file with the Court in
10 this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

11 Dated: January 10, 2024

LAWYERS for JUSTICE, PC

12
13 By:



14 Selena Matavosian
15 Attorneys for Plaintiffs and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown (together, “Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$1,400,000.00; (2) attorneys’ fees in the amount of \$490,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$9,878.63 (together “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$19,950.00 to ILYM Group, Inc., (“ILYM” or “Settlement Administrator”); (4) Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown, for a combined amount of \$40,000.00; and (5) allocation of \$150,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiffs seek relief on behalf of the following Class:

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

This matter involved ongoing investigations, formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by the Honorable Steven M. Vartabedian (Ret.) and settlement negotiations thereafter. This matter has required 634.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) 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.

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¹ Class Action and Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement”), § 2.A. “Class Period,” means the period from May 15, 2016, through March 31, 2021. *See id.*, § 2.B.

1 Plaintiffs move for final approval of the Enhancement Payments in the amount of
2 \$10,000.00 each to Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone
3 Brown, to compensate Plaintiffs for the time and effort that they expended spearheading this
4 lawsuit on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiffs also
5 move for final approval of the payment to the Settlement Administrator in the amount of
6 \$19,950.00 for Settlement Administration Costs. Plaintiffs also move for final approval of the
7 allocation of \$150,000.00 for the PAGA Penalties, of which 75%, or \$112,500.00, will be paid to
8 the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA
9 Penalties (“LWDA Payment”), and 25%, or \$37,500.00, will be distributed to all current and
10 former hourly-paid or non-exempt employees of Defendant, employed in California at any time
11 during the PAGA Period (“Aggrieved Employees”) (“PAGA Employee Amount”).²

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

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

24 In order to efficiently present the Court with adequate information to determine whether to
25 grant final approval of the Settlement and award Attorneys’ Fees and Costs, Enhancement
26 Payments, Settlement Administration Costs, and PAGA Penalties, Plaintiffs also move for an order
27

28 ² Settlement Agreement, §§ 2.D and 5.B. “PAGA Period” is defined as the period from March 3, 2019, through March 31, 2021. *See id.*, § 2.E.

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

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

5 Defendant Smartguard, Inc. (“Defendant”) is an organization that provides private security
6 services to private businesses, schools, and other facilities. Plaintiffs Alicia Ortega, Bryan
7 Sheppard, Shanteanna Brown, and Rayveyone Brown are former employees of Defendant.

8 On March 3, 2020, Plaintiff Alicia Ortega provided written notice by online submission to
9 the LWDA and by certified mail to Defendant of the specific provisions of the California Labor
10 Code and Industrial Welfare Commission Wage Orders that were violated.

11 On May 15, 2020, Plaintiff Alicia Ortega (“Plaintiff Ortega”) filed a Class Action
12 Complaint for Damages & Enforcement Under the Private Attorneys General Act, California
13 Labor Code § 2698, Et Seq. (“Original Complaint”), in the Sacramento County Superior Court
14 (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

15 On July 13, 2020, Defendant filed an Answer to the Original Complaint.

16 On June 3, 2021, Plaintiff Bryan Sheppard (“Plaintiff Sheppard”) provided written notice
17 by online submission to the LWDA and by certified mail to Defendant of the specific provisions
18 of the California Labor Code and Industrial Welfare Commission Wage Orders that were violated.

19 On October 19, 2021, Plaintiffs filed a First Amended Class Action Complaint for
20 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698,
21 Et Seq., (“Operative Complaint”), which added Plaintiffs Bryan Sheppard, Shanteanna Brown, and
22 Rayveyone Brown as named plaintiffs in the Action.

23 Plaintiffs’ core allegation is that Defendant has violated the California Labor Code by
24 engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and
25 Aggrieved Employees of, inter alia, failing to pay minimum and overtime wages, failing to provide
26 compliant meal and rest periods and associated premium pay, failing to timely pay wages and
27 associated waiting time penalties, failing to maintain accurate payroll records, failing to provide
28 compliant wage statements, and failing to reimburse necessary business-related expenses, and

thereby engaged in unfair business practices under the California Business and Professions Code and conduct that gives rise to civil penalties recoverable under PAGA. Plaintiffs contend that they, and the Class Members, and the Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On December 10, 2021, Defendant filed an Answer to the Operative Complaint. Defendant has denied, and continues to deny, any liability or wrongdoing of any kind associated with the allegations in any of the Action, and further denies that the Action is appropriate for class or representative treatment for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since the Action commenced on May 15, 2020. The Parties exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with mediation and settlement negotiations. On April 1, 2021, the Parties participated in a formal, full-day mediation conducted by the Honorable Steven M. Vartabedian (Ret.) (the "Mediator"), 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 January 18, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On February 2, 2023, the Court issued a tentative ruling in which it raised multiple points of inquiry with regard to the Motion for Preliminary Approval ("February 2, 2023 Tentative Ruling"). On February 3, 2023, the Court issued a Minute Order in which it requested supplemental briefs and/or declarations which address the points of inquiry in the February 2, 2023 Tentative Ruling. On April 14, 2023, Plaintiffs filed the Supplemental Declaration of Annabel Blanchard in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. On May 4, 2023, the Court issued a tentative ruling in which it granted Plaintiffs' Motion for Preliminary Approval. On May 5, 2023, a hearing was held on Plaintiffs' Motion for Preliminary Approval and the Court entered an Order Granting 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, Enhancement Payments, Settlement Administration Costs, and allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$1,400,000.00 and the employer's share of taxes and contributions within five (5) business days after the Effective Date.³ 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 \$490,000.00 and reimbursement of litigation costs and expenses in the amount of \$9,878.63, to Class Counsel; (2) Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown, for a combined amount of \$40,000.00; (3) Settlement Administration Costs in the amount of \$19,950.00 to ILYM; and (4) PAGA Penalties in the amount of \$150,000.00.⁴ The Net Settlement Amount, which is estimated to be \$690,171.37, will be distributed in accordance with the Settlement Agreement.⁵

The Settlement Administrator calculate each Settlement Class Member's (i.e., Class Members who do not submit a valid and timely Request for Exclusion) *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek Value," and multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁶

The Settlement Administrator will calculate each Aggrieved Employee's *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment"), by dividing the PAGA Employee Amount by the total number of PAGA Workweeks worked by all Aggrieved Employees to produce

³ Settlement Agreement, ¶ 8.f.

⁴ *Id.*, ¶¶ 5.a, 5.b, 5.c, 5.d, and 5.e.

⁵ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Nathalie Hernandez of ILYM Group, Inc. In Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("ILYM Declaration" or "ILYM Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$40,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$9,878.63 for reimbursement of litigation costs and expenses, and the difference of \$30,121.37 will remain part of the Net Settlement Amount.

⁶ Settlement Agreement, ¶ 14.

a “Weekly PAGA Value.”⁷ The Weekly PAGA Value will be multiplied by the number of PAGA Workweeks attributable to an individual Aggrieved Employee to derive his or her Individual PAGA Payment.⁸

Class Members had forty-five (45) calendar days from the date of mailing of the Class Notice to submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute (“Response Deadline”).⁹ The Response Deadline was December 14, 2023.¹⁰ ***As of the date of this Motion, the Settlement Administrator has not received any written requests to be excluded from the Class Settlement (“Requests for Exclusion”), written objections to the Class Settlement (“Notices of Objection”), or written disputes to the number of Workweeks (“Workweek Dispute”) from Class Members.***¹¹

Each Settlement Class Member’s Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and other non-wage damages, which will be reported on an IRS Form 1099 (if applicable).¹² The net payment of each Settlement Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, is referred to as an “Individual Settlement Payment”.¹³ No portion of the Individual PAGA Payments paid to Aggrieved Employees, is or shall be deemed compensation of wages.¹⁴ Rather, the Individual PAGA Payments are considered payments for civil penalties only under PAGA.¹⁵ No withholding shall be made in relation to the Individual PAGA Payments.¹⁶ An IRS 1099 Miscellaneous form shall be issued by the Settlement Administrator to each Aggrieved Employee at the same time the Individual PAGA Payment checks for the Aggrieved Employees are issued by the Settlement

⁷ Settlement Agreement, ¶ 13.

⁸ Ibid.

⁹ *Id.*, ¶ 8.c.

¹⁰ ILYM Decl., ¶¶ 11, 12, and 13.

¹¹ *Id.*, ¶¶ 1, 12, and 13.

¹² Settlement Agreement, ¶ 17.

¹³ *Id.*, ¶ 14.

¹⁴ *Id.*, ¶ 16.

¹⁵ Ibid.

¹⁶ Ibid.

Administrator.¹⁷ Defendant shall pay the employer’s share of taxes and contributions in connection with the wages portion of the Individual Settlement Shares (“Employer Taxes”), in addition to the Gross Settlement Amount, to the Settlement Administrator, and the Settlement Administrator will forward the Employer Taxes to the pertinent taxing authorities.¹⁸

Individual Settlement Payment and Individual PAGA Payment checks will expire one hundred and eighty (180) calendar days from the date they are issued by the Settlement Administrator.¹⁹ After the 180-day period, the Settlement Administrator shall cancel checks and remit any remaining funds associated with cancelled checks to Legal Aid at Work as the *cy pres* recipient.²⁰ Settlement Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound to the Class Settlement, and Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound to the PAGA Settlement.²¹

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, ILYM, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court’s May 5, 2023 Preliminary Approval Order.

On July 27, 2023, ILYM received a mailing list from Defendant’s counsel that contained the full name, last known mailing address, Social Security number, start and end dates of employment as an hourly-paid or non-exempt employee in California during the Class Period for each Class Member, and such other information as if necessary to calculate Workweeks and PAGA Workweeks as determined by the Settlement Administrator (collectively “Class List”).²² The Class List contained information for five hundred sixty-five (565) individuals identified as Class Members.²³ ILYM processed the names and addresses through the National Change of Address Database (“NCOA”) and updated the Class List with any updated addresses located.²⁴

¹⁷ Settlement Agreement, ¶ 16.

¹⁸ *Id.*, ¶¶ 8.f and 17.

¹⁹ *Id.*, ¶ 28.

²⁰ *Ibid.*

²¹ *Ibid.*

²² ILYM Decl., ¶ 4.

²³ *Ibid.*

²⁴ *Id.*, ¶ 6.

On October 30, 2023, ILYM mailed the Class Notice via first class mail to five hundred sixty-five (565) individuals identified as Class Members in the Class List.²⁵

As of the date of this Motion, one hundred six (106) Class Notices were returned.²⁶ Of the one hundred six (106) returned Class Notices, one (1) was returned with a forwarding address and promptly re-mailed to the forwarding address provided.²⁷ One hundred five (105) Class Notices were returned as undeliverable without forwarding addresses.²⁸ ILYM performed a skip-trace search on the one hundred five (105) Class Notices that were returned to ILYM without forwarding addresses, located an updated address for ninety-four (94) Class Members, and promptly re-mailed the Class Notices to the updated addresses.²⁹ Ultimately, eleven (11) Class Notices remain undeliverable because an updated address was not located through skip-tracing.³⁰

As of the date of this Motion, the Settlement Administrator has not received any Notice of Objections, Requests for Exclusion, or Workweek Disputes from Class Members.³¹

To date, there are five hundred sixty-five (565) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.³² Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$690,171.37 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³³ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$6,261.42 and the average Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$1,159.29.³⁴ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$328.74 and the average Individual PAGA Payment is

²⁵ ILYM Decl., ¶ 7.

²⁶ *Id.*, ¶ 8.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Id.*, ¶ 11.

³¹ *Id.*, ¶¶ 11, 12, and 13.

³² *Id.*, ¶ 14.

³³ *Id.*, ¶ 16; see also, n.5, *supra*.

³⁴ *Id.*, ¶ 17. The actual average and highest Individual Settlement Payment to a Settlement Class Member will be larger than the amounts stated in the ILYM 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 \$40,000.00 (the difference between the amount sought and the amount authorized under the Settlement, \$30,121.37, will be part of the Net Settlement Amount). See n.5, *supra*.

currently estimated to be \$66.37.³⁵

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*,

³⁵ ILYM Decl., ¶ 18.

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 the Action commenced on May 15, 2020. The Parties conducted significant formal and informal discovery and investigation into the facts of the case, to assess the veracity, strength, and scope of the claims, and prepare the matter for class certification and trial prior reaching the Settlement.³⁶

The Parties conducted formal and informal discovery and investigation into the facts of the case, and also formally and informally exchanged a large volume of information, documents, and data throughout the course of litigation and in connection with mediation and settlement negotiations.³⁷ The volume of information, documents, and data that Class Counsel reviewed and analyzed included, and were not limited to, Plaintiffs’ employment records, a sampling of Class Members’ time and pay data, job descriptions, and Defendant’s operations and employment practices, policies, and procedures documents, among other information and documents.³⁸ Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with mediation and settlement negotiations, and met and conferred with Defendant’s counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and production of information, documents and data in the course of litigation and in connection with mediation and settlement negotiations.³⁹ Class Counsel had the opportunity to interview and obtain information from Plaintiffs and other Class Members and reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiffs, Defendant, and other sources.⁴⁰ Class Counsel propounded multiple sets of formal written discovery requests

³⁶ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Id.*, ¶ 6.

on Defendant, and noticed the depositions of Defendant's Person Most Knowledgeable designees.⁴¹ In addition, Class Counsel prepared for and took the deposition of Defendant's Person Most Knowledgeable.⁴² Class Counsel also drafted, reviewed, and revised the pleadings, the mediation brief, and settlement documents; prepared for and attended court proceedings; and prepared for and participated in mediation and settlement negotiations, among other tasks.⁴³

After conducting formal and informal discovery and investigation into the facts of the case, the Parties participated in a formal, full-day mediation conducted by the Honorable Steven M. Vartabedian (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters.⁴⁴ In the course of mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the case, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁵ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁶ Arriving at a settlement that was acceptable to the Parties was not easy.⁴⁷ Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to class certification and representative adjudication, while Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁸ After conducting formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case 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.⁴⁹

⁴¹ Aiwazian Decl., ¶ 6.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ *Id.*, ¶ 8.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

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 had the opportunity to interview, and obtain information from Plaintiffs and other Class Members.⁵⁰ Class Counsel also reviewed and analyzed a large volume of information, documents and data obtained from Defendant, Plaintiffs, and other sources, and performed significant research into the applicable law, which is constantly evolving as it relates to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour law and enforcement, Plaintiffs' claims and allegations, and Defendant's defenses, as well as facts discovered.⁵¹ The Settlement was based on this large volume of facts, evidence, and investigation.⁵² Additionally, Class Counsel has extensive experience in handling complex wage-and-hour cases, including significant experience in employment class action litigation.⁵³

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

The Settlement, which provides for a Gross Settlement Amount of \$1,400,000.00, 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.⁵⁴ 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 and ongoing settlement negotiations.⁵⁵ Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant

⁵⁰ Aiwazian Decl., ¶ 6.

⁵¹ Ibid.

⁵² *Id.*, ¶¶ 6 & 8.

⁵³ *Id.*, ¶¶ 15-18.

⁵⁴ *Id.*, ¶¶ 8 & 21.

⁵⁵ *Id.*, ¶¶ 5-8.

1 also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims
2 on a class-wide or representative basis. Additionally, preparation for trial would have been
3 expensive for all parties.

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

22 It would be grossly inefficient for such a large class of current and former employees to
23 bring individual actions to recover from Defendant for the alleged violations of wage-and-hour
24 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would
25 not be significant enough to provide him or her with the incentive to sue. By granting final approval
26 of the Settlement, the Court can approve a resolution that provides a certain and substantial
27 recovery for Class Members, the State of California, and Aggrieved Employees.

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

2 The Settlement, which provides for a Gross Settlement Amount of \$1,400,000.00,
3 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
4 using information and data uncovered through extensive case investigation, formal and informal
5 discovery, and the exchange of information in the context of preparing for mediation and
6 conducting ongoing settlement negotiations. The Settlement takes into account the potential risks
7 and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of
8 the facts in the cases, the Gross Settlement Amount represents a considerable recovery.

9 Even after deducting attorneys' fees in the amount of \$490,000.00, litigation costs and
10 expenses in the amount of \$9,878.63, Enhancement Payments in the combined amount of
11 \$40,000.00, Settlement Administration Costs in the amount of \$19,950.00, and the PAGA
12 Penalties of \$150,000.00 from the Gross Settlement Amount of \$1,400,000.00, the Net Settlement
13 Amount is currently estimated to be \$690,171.37.⁵⁶ Under the Settlement Agreement, the Gross
14 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As
15 discussed in Section III, *supra*, the amount of each Settlement Class Member's Individual
16 Settlement Share will be paid a *pro rata* share of the Net Settlement Amount, based on the number
17 of Workweeks credited to him or her.⁵⁷ The amount of each Aggrieved Employees' Individual
18 PAGA Payment will be calculated based on his or her PAGA Workweeks.⁵⁸ To date, there are five
19 hundred sixty-five (565) Settlement Class Members, representing one hundred percent (100%) of
20 the Class Members.⁵⁹ The highest Individual Settlement Payment to a Settlement Class Member
21 is currently estimated to be \$6,261.42 and the average Individual Settlement Payment is currently
22 estimated to be 1,159.29.⁶⁰ The highest Individual PAGA Payment to an Aggrieved Employee is
23 currently estimated to be \$328.74 and the average Individual PAGA Payment is currently
24 estimated to be \$66.37.⁶¹ These are significant individual recoveries, particularly in light of the

25
26 ⁵⁶ ILYM Decl., ¶ 16; see n.5, *supra*.

27 ⁵⁷ Settlement Agreement, ¶ 14.

28 ⁵⁸ *Id.*, ¶ 13.

⁵⁹ ILYM Decl., ¶ 14.

⁶⁰ *Id.*, ¶ 17; see n.34, *supra*.

⁶¹ *Id.*, ¶ 18.

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, the State of California, and Aggrieved Employees.⁶² 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.⁶³ 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.⁶⁴ 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 Notices of Objections to the Settlement.

The Settlement has been well received by the Class – ***not a single Class Member objected to the Settlement.***⁶⁵ Specifically, no objections have been made as to the Gross Settlement Amount or requested Attorneys’ Fees and Costs, Enhancement Payments, Settlement Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small

⁶² Aiwasian Decl., ¶ 21.

⁶³ *Id.*, ¶¶ 15-18.

⁶⁴ *Ibid.*

⁶⁵ ILYM Decl., ¶ 12.

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 Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49.

California law provides that an attorneys’ fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will

1 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
2 representative actions that often relieve the courts of the need to separately adjudicate numerous
3 claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

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

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

22 **B. A Fee Award of a Percentage of the Entire Fund Is Appropriate.**

23 California and federal courts have long recognized that an appropriate method for
24 determining the award of attorneys’ fees is based on a percentage of the total value of benefits
25 made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*
26 *Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886
27 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
28

Priest (1977) 20 Cal.3d 25, 34.⁶⁶ 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.

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⁶⁶ 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.

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

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$1,400,00.00. The requested attorneys’ fees are \$490,000.00, which is 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 case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested attorneys’ fees in this matter satisfy all of those factors and should be approved on a percentage basis.

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. Named plaintiffs’ 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 plaintiffs. If the named plaintiffs have 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 plaintiffs. In this case, each of the Plaintiffs have agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁶⁷

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 Plaintiffs, the Class, Aggrieved Employees, and the State of California, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiffs 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

⁶⁷ Aiwazian Decl., ¶ 9.

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$490,000.00 (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 for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.⁶⁸

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of the Action.⁶⁹ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁷⁰ During the litigation of the action, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; reviewed and analyzed a large volume of information, documents and data obtained from Defendant, Plaintiffs, and other sources; and prepared liability, damages, penalties, and

⁶⁸ Aiwazian Decl., ¶¶ 15-18.

⁶⁹ *Id.*, Exh. A.

⁷⁰ *Id.*, ¶ 6.

1 valuation calculations.⁷¹ Class Counsel also met and conferred with Defendant's counsel over the
2 issues relating to pleadings, discovery, and the production of information, documents and data,
3 among other things; engaged in settlement negotiations with Defendant's counsel; and prepared
4 for and attended court proceedings, mediation, and settlement negotiations.⁷²

5 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
6 matter diligently and with maximum efficiency and has fully and actively participated in the
7 litigation process. The Task and Time Chart, which is attached as "EXHIBIT A" to the
8 accompanying Declaration of Edwin Aiwasian, sets forth in detail the hours that Class Counsel
9 has spent performing tasks on behalf of Plaintiffs and the Class.⁷³ The Task and Time Chart is
10 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
11 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
12 chart, which sets forth the history of the work performed by Class Counsel, commencing with the
13 pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel
14 has spent 634.50 hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs,
15 the Class, the Aggrieved Employees, and the State of California.⁷⁴ These hours were required to
16 bring this matter to its successful conclusion. In light of the value of time expended and the
17 carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate,
18 and reasonable.

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

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

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27 ⁷¹ Aiwasian Decl., ¶ 6.

⁷² Ibid.

⁷³ Id., Exh. A.

⁷⁴ Id., ¶ 12.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁷⁵

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 case not settled, Defendant would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendant, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the cases for trial would have been expensive for the parties.

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class Members, the State of California, and Aggrieved Employees 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 settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$1,400,000.00 to settle the matter. After deducting the attorneys' fees (\$490,000.00), litigation costs and expenses (\$9,878.63), Enhancement Payments (combined, \$40,000.00), Settlement Administration Costs (\$19,950.00), and PAGA Penalties (\$150,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is

⁷⁵ Aiwazian Decl., ¶¶ 15-18.

approximately \$690,171.37.⁷⁶ 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 \$6,261.42 and the average Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$1,159.29.⁷⁷ The highest Individual PAGA Payment to an Aggrieved Employee is currently estimated to be \$328.74 and the average Individual PAGA Payment is currently estimated to be \$66.37.⁷⁸ The Settlement offers significant monetary relief to the Settlement Class Members, the State of California, and Aggrieved Employees.

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 634.50 hours of time to obtain relief on behalf of Plaintiffs, Class Members, the State of California, and Aggrieved Employees.⁷⁹ Class Counsel has also incurred litigation costs and expenses in the amount of \$9,878.63.⁸⁰

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁸¹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁸² The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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⁷⁶ ILYM Decl., ¶ 16; see n.5, *supra*.

⁷⁷ *Id.*, ¶ 17; see n.34, *supra*.

⁷⁸ *Id.* ¶ 18.

⁷⁹ Aiwasian Decl., ¶ 12, Exh. A.

⁸⁰ See Part VII, *infra*.

⁸¹ Aiwasian Decl., ¶ 19.

⁸² See *id.*, ¶¶ 15-18.

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

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

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

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁸³

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 \$1,400,000.00.⁸⁴ 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 \$6,261.42 and the average Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$1,159.29.⁸⁵ The highest Individual PAGA Payment to an

⁸³ ILYM Decl., ¶ 12.

⁸⁴ Aiwazian Decl., ¶¶ 5-8.

⁸⁵ ILYM Decl., ¶ 17; see n.34, *supra*.

Aggrieved Employee is currently estimated to be \$328.74 and the average Individual PAGA Payment to is currently estimated to be \$66.37.⁸⁶

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.⁸⁷

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

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

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

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⁸⁶ IL YM Decl., ¶ 18.

⁸⁷ Aiwazian Decl., ¶¶ 15-18.

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

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

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

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

22 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
23 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
24 on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁸⁸ The chart
25 demonstrates that Class Counsel has spent a total of 634.50 hours litigating the case and finalizing
26 the Settlement.⁸⁹ In light of the facts and circumstances of the cases, as well as the results that

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28 ⁸⁸ See Aiwazian Decl., Exh. A.

⁸⁹ *Id.*, ¶ 12.

Class Counsel has achieved on behalf of Plaintiffs, Class Members, the Aggrieved Employees, and the State of California, 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 matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,400,000.00.

As set forth in the Declaration of Edwin Aiwasian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$775 per hour for services provided by Class Counsel.⁹⁰ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$775 per hour for legal service performed, by courts of this state.⁹¹ While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

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⁹⁰ Aiwasian Decl., ¶ 13.

⁹¹ *Id.*, ¶¶ 12 and 13.

Applying the rate of \$775 per hour to 634.50 hours would place a reasonable value of \$491,737.50 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$490,000.00, 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 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, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of \$490,000.00 to Class Counsel.

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

The Settlement provides for reimbursement of litigation costs and expenses of up to \$40,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks

reimbursement of \$9,878.63 in litigation costs and expenses incurred in this case.⁹² 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.⁹³ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$9,878.63 to Class Counsel.

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

As set forth in the accompanying ILYM Declaration, the total costs incurred and to be incurred by ILYM for the notice and settlement administration process are \$19,950.00.⁹⁴ The costs incurred and to be incurred include, but are not limited to, (i) printing and mailing to the Class Members the Class Notice; (ii) receiving and processing Requests for Exclusion and Notices of Objection; (iii) resolving any Workweek Disputes by Settlement Class Members about the number of Workweeks attributed to them; (iv) taking receipt of and safeguarding the Gross Settlement Amount; (v) calculating Individual Settlement Payments and Individual PAGA Payments; (vi) processing and mailing Individual Settlement Payments and Individual PAGA Payments; (vii) handling tax withholdings as required by the Settlement and the law; (viii) preparing, issuing and filing tax returns and other applicable tax forms; and (ix) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement, together with such other tasks as the Parties may mutually agree of the Court may order the Settlement Administrator to perform; among other things.⁹⁵

Accordingly, the Court should grant final approval of payment to ILYM, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$19,950.00.

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⁹² Aiwazian Decl., ¶ 19.

⁹³ *Id.*, ¶ 19.

⁹⁴ ILYM Decl., ¶ 19.

⁹⁵ *Id.*, ¶ 3.

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

The Settlement provides for Enhancement Payments in the amount of \$10,000.00 each to Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown (for a combined total of \$40,000.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class and the State of California. The requested Enhancement 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 Enhancement 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 to support the prosecution of the claims.⁹⁶ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the case.⁹⁷

Accordingly, it is appropriate and just for Plaintiffs Alicia Ortega, Bryan Sheppard, Shanteanna Brown, and Rayveyone Brown to each receive \$10,000.00 as reasonable Enhancement Payments, for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their individual settlement payments.

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⁹⁶ Aiwazian Decl., ¶ 20; Declaration of Alicia Ortega (“Ortega Decl.”), ¶¶ 3-5; Declaration of Bryan Sheppard (“Sheppard Decl.”), ¶¶ 3-5; Declaration of Shanteanna Brown (“S. Brown Decl.”), ¶¶ 3-5; Declaration of Rayveyone Brown (“R. Brown Decl.”), ¶¶ 3-5.

⁹⁷ Aiwazian Decl., ¶ 20; Ortega Decl., ¶¶ 3-5; Sheppard Decl., ¶¶ 3-5; S. Brown Decl., ¶¶ 3-5; R. Brown Decl., ¶¶ 3-5.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement Payments, Settlement Administration Costs, and allocation for the PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: January 10, 2024

LAWYERS for JUSTICE, PC

By:



Selena Matavosian
Attorneys for Plaintiffs and the Class