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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

VALENCIA KING, individually, and on behalf of other members of the general public similarly situated; VICTORIA PERKINS, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

LEISURE CARE, LLC, a Washington limited liability company; FRESN, LLC, a Washington limited liability company; LIVERMORE SENIOR LIVING, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG21099267 (*Consolidated with* Case No. RG21112925)

Honorable Michael Markman
Department 23

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS COUNSEL FEES PAYMENT AND LITIGATION EXPENSES PAYMENT, AND SERVICE PAYMENTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declaration of Class Counsel (Selena Matavosian); Declaration of Class Representatives (Valencia King and Victoria Perkins); Declaration of Settlement Administrator (Kevin Lee); and [Proposed] Final Approval Order and Judgment filed concurrently herewith]

Date:	December 12, 2024
Time:	10:00 a.m.
Department:	23

Complaint Filed:	May 14, 2021
FAC Filed:	March 4, 2024
Trial Date:	None Set

PLEASE TAKE NOTICE that on December 12, 2024, at 10:00 a.m., in Department 23 of the above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Valencia King and Victoria Perkins (together, "Plaintiffs") will and hereby does move for an order granting final approval of:

1. The Class Action and PAGA Settlement Agreement and Amendment No. 1 to Class Action and PAGA Settlement Agreement (together, "Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Net Settlement Amount of approximately **$1,214,003.95** will be fully distributed to all Class Members other than those who have submitted timely and valid Opt Out Requests and thereby excluded themselves from the Class Settlement ("Participating Class Members");
- **No objections** were submitted to the settlement administrator, Phoenix Settlement Administrators ("Settlement Administrator" or "Phoenix");
- **Only one (1) Requests for Exclusion** was submitted to the Settlement Administrator;

2. Payment in the amount of **$840,000.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing 35% of the Gross Settlement Amount, for attorneys' fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check with a multiplier of 2.16;

3. Payment in the amount of **$24,996.05** to Class Counsel for reimbursement of litigation costs and expenses;

4. Payment in the amount of **$20,000.00** to the Settlement Administrator for Settlement Administration Expenses;

5. Payment in the amount of **$14,500.00** each to Plaintiffs Valencia King and Victoria Perkins as Service Payments, for their 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 $272,000.00, of which 75%, or **$204,000.00**, will be paid to the California Labor and Workforce Development Agency ("LWDA")

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("LWDA Payment") and 25%, or **$68,000.00**, will be distributed to PAGA Group Members ("PAGA Group Member Amount").

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 (Selena Matavosian), Class Representatives (Valencia King and Victoria Perkins), 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: December 3, 2024

LAWYERS *for* JUSTICE, PC

By: Selena

Selena Matavosian
Attorney for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Valencia King and Victoria Perkins (together, "Plaintiffs") seek final approval of: (1) the Gross Settlement Amount of $2,400,000.00[1]; (2) attorneys' fees in the amount of $840,000.00, which is 35% of the Gross Settlement Amount[2] ("Class Counsel Fees Payment"), and reimbursement of litigation costs and expenses in the amount of $24,996.05 ("Litigation Expenses Payment") to Lawyers *for* Justice, PC ("Class Counsel"); (3) Settlement Administration Expenses in the amount of $20,000.00 to Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"); (4) Service Payments in the amount of $14,500.00 each to Plaintiffs Valencia King and Victoria Perkins, for a combined amount of $29,000.00; and (5) allocation of $272,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Payment").

Plaintiffs seek relief on behalf of the following Class:

> All current and former non-exempt employees who were employed by Defendants or who were employed at a Leisure Care-Managed Community in the State of California at any time during the Class Period ("Class").[3]

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 settlement negotiations thereafter. This matter has required 458.80 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents 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.[4]

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[1] Class Action and PAGA Settlement Agreement and Amendment No. 1 to Class Action and PAGA Settlement Agreement (together, "Settlement Agreement"), § I.O.

[2] The Settlement Agreement and Class Notice provide that Class Counsel will seek an award of up to 35% of the Gross Settlement Amount. However, Class Counsel only seeks attorneys' fees equal to 35% of the Gross Settlement Amount.

[3] Settlement Agreement, § I.B. "Class Period" is defined as the time period from May 14, 2017 through June 25, 2023. *See id.*, § I.H.

[4] Applying a modest multiplier of 2.16, the total enhanced lodestar fees are $842,356.80, and Class Counsel seeks an attorneys' fees award of $840,000.00 (equal to 35% of the Gross Settlement Amount).

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Plaintiffs move for final approval of the Service Payments in the amount of $14,500.00 each to Plaintiffs Valencia King and Victoria Perkins, to compensate Plaintiffs for the time and effort that they expended spearheading the lawsuits on behalf of the Class, PAGA Group Members, and the State of California. Plaintiffs also move for final approval of the payment to the Settlement Administrator in the amount of $20,000.00 for Settlement Administration Expenses. Plaintiffs also move for final approval of the allocation of $272,000.00 for the PAGA Payment, of which 75%, or $204,000.00, will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Payment ("LWDA Payment"), and 25%, or $68,000.00, will be distributed on a *pro rata* basis to all current and former non-exempt employees who were employed by Defendants or who were employed at a Leisure Care-Managed Community in the State of California ("PAGA Group Members") based on their Workweeks during the PAGA Period ("PAGA Group Member Amount").[5]

The requests for Class Counsel Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, 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 any aspect of the Settlement, including the requested Class Counsel Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, 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 Class Counsel Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, and PAGA Payment in the amounts as fully disclosed to the Class and as requested herein.

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[5] Settlement Agreement, § I.Y. "PAGA Period" is defined as the time period from July 12, 2020 through June 25, 2023. *See id*., § I.Z.

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In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Class Counsel Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, and PAGA Payment, Plaintiffs also move 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 are one of the nation's largest privately held retirement and assisted living companies. Defendants own, manage, develop and consult in all facets of the senior living business, but primarily run independent living, assisted living, and memory care residential facilities for elderly individuals. Plaintiffs Valencia King and Victoria Perkins are former employees of Defendants.

On July 12, 2021, Plaintiff King provided written notice by online submission to the LWDA and by certified mail to Defendants Leisure Care, LLC, Livermore Senior Living, Heritage Estates, and Dan B. Madsen of the specific provisions of the California Labor Code that were alleged to be violated ("LWDA Notice").

On May 14, 2021, Plaintiff King filed a Class Action Complaint for Damages ("*King* Class Complaint") against Defendants Leisure Care, LLC and Livermore Senior Living in the Superior Court of the State of California for the County of Alameda ("Court"), thereby commencing the above-captioned lawsuit entitled *Valencia King v. Leisure, LLC, et al.*, Case No. RG21099267 ("*King* Class Action").

On July 7, 2021, Defendants Leisure Care, LLC and Livermore Senior Living filed an Answer to the *King* Class Complaint.

On September 16, 2021, Plaintiff King filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("*King* PAGA Complaint") against Defendants Leisure Care, LLC, Heritage Estates, Livermore Senior Living, and Dan B. Madsen in the Court, thereby commencing a Private Attorneys General Act ("PAGA")

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representative action entitled Valencia *King v. Leisure Care, LLC, et al*., Case No. RG21112925 ("*King* PAGA Action")

On November 5, 2021, Defendants Leisure Care, LLC, Heritage Estates, Livermore Senior Living, and Dan B. Madsen filed an Answer to the *King* PAGA Complaint.

On February 25, 2022, the Court consolidated the *King* Class Action and the *King* PAGA Action, and deemed the *King* Class Action as the lead case.

On April 28, 2022, Plaintiff Perkins filed a Class Action Complaint for Damages ("*Perkins* Complaint") against Defendants Leisure Care, LLC and Fresn, LLC in the Superior Court of the State of California for the County of Fresno, thereby commencing a class action entitled Victoria *Perkins v. Leisure Care, LLC, et al*., Case No. 22CECG01299 ("*Perkins* Action") (the *King* Class Action, *King* PAGA Action, and *Perkins* Action are collectively referred to as the "Actions").

On July 19, 2022, Defendants Leisure Care, LLC and Fresn, LLC filed an Answer to the *Perkins* Complaint.

On March 4, 2024, Plaintiff King filed a First Amended Class Action Complaint for Damages ("Operative Complaint" or "First Amended Complaint") in the *King* Class Action, thereby adding Plaintiff Perkins to the *King* Class Action.

Plaintiffs' core allegation is that Defendants has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and PAGA Group Members of, *inter alia*, failing to pay all overtime and minimum wages and associated premium pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, 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.

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

The Parties have actively litigated the Actions since the *King* Class Action was commenced on May 14, 2021. On April 10, 2023, 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 matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions in their entirety.

On June 3, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On June 26, 2024, the Court issued a tentative ruling in which it raised multiple points of inquiry with regard to the Motion for Preliminary Approval ("June 26, 2024 Tentative Ruling"). On July 25, 2024, Plaintiffs filed the Supplemental Declaration of Selena Matavosian in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. On July 30, 2023, the Court issued a tentative ruling in which granted Plaintiffs' Motion for Preliminary Approval in part. On August 12, 2024, Plaintiffs filed the Further Supplemental Declaration of Selena Matavosian in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and the [Revised Proposed] Order Granting Preliminary Approval of Class Action Settlement. On September 5, 2024, a hearing was held on the 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, Class Counsel Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, 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 $2,400,000.00 and the employer's share of payroll taxes on the Wage Portion of the Individual Settlement Shares ("Employer Taxes") within 30 calendar days after the Effective Date.[6] 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 Fees Payment and Litigation Expenses Payment, consisting of attorneys' fees in the amount of $840,000.00 and reimbursement of litigation costs and expenses in the amount of $24,996.05, to Class Counsel; (2) Service Payments in the amount of $14,5000.00 each to Plaintiffs Valencia King and Victoria Perkins, for a combined amount of $29,000.00; (3) Settlement Administration Expenses in the amount of $20,000.00 to Phoenix; and (4) PAGA Penalty in the amount of $272,000.00.[7] The Net Settlement Amount, which is estimated to be $1,214,003.95 will be distributed in accordance with the Settlement Agreement.[8]

The Settlement Administrator will determine each Participating Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), according to the following methodology: After Final Approval of the Settlement, the Settlement Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members during the Class Period to yield the "Final Workweek Value," and multiply each Participating Class Member's individual Workweeks during the Class Period by the Final Workweek Value to yield his or her Individual Settlement Share.[9]

The Settlement Administrator will determine each PAGA Group Member's *pro rata* share of the 25% portion of the PAGA Payment ("Individual PAGA Payment"), according to the following methodology: The Settlement Administrator will divide the PAGA Group Member

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[6] Settlement Agreement, §§ I.O & IV.D.9.
[7] *Id.*, §§ IV.B.1-4.
[8] This amount is higher than the amount stated in Paragraph 14 of the accompanying Declaration of Kevin Lee with Respect to Notice and Settlement Administration ("Phoenix Declaration" or Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $30,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $24,996.05 for reimbursement of litigation costs and expenses, and the difference of $5,003.95 will remain part of the Net Settlement Amount.
[9] Settlement Agreement, § IV.C.2.b.

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Amount by the Workweeks of all PAGA Group Members during the PAGA Period to yield the "PAGA Workweek Value," and multiply each PAGA Group Member's individual Workweeks during the PAGA Period by the PAGA Workweek Value to yield his or her Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement.[10]

Class Members had forty-five (45) calendar days after the Class Notice is mailed to Class Members ("Response Deadline") to submit a Request for Exclusion, objection, and/or disputes regarding Workweeks.[11] The Response Deadline was November 18, 2024.[12] ***As of the date of this Motion, the Settlement Administrator has not received any written objections to the Class Settlement.***[13]

Each Participating Class Member's Individual Settlement Share will be allocated as follows: 10% as wages (the "Wage Portion"), which will be reported on an IRS Form W-2; 45% penalties and 45% interest ("Non-Wage Portion"), which will be reported on an IRS form 1099.[14] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments.[15] Any payment for an Individual PAGA Payment will be allocated as 100% penalties and will be reported on an IRS Form-1099, if necessary; the Settlement Administrator will not undertake any withholding with respect to the Individual PAGA Payment.[16] The Employer Taxes will be paid separately and in addition to the Gross Settlement Amount.[17]

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for 180 calendar days from the date the checks are issued, and thereafter, shall be canceled.[18] All funds associated with canceled checks will be transmitted to the cy pres, Children's

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[10] Settlement Agreement, § IV.B.3.a.
[11] *Id.*, §§ IV.D.3 & IV.D.3.a.
[12] Phoenix Decl., ¶ 8.
[13] *Id.*, ¶ 10.
[14] Settlement Agreement, § IV.C.3.a.
[15] Ibid.
[16] Ibid.
[17] *Id.* §§ I.O. & IV.C.3.a.
[18] *Id.*, § IV.D.11.

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Advocacy Institute, in accordance with California Code of Civil Procedure section 384.[19]

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 Preliminary Approval Order.

On September 19, 2024, Phoenix received a data file from Defendants' Counsel that contained each Class Member's full name, last known mailing address, Social Security Number, punch data of non-exempt employees who were employed by Defendants in California during the Class Period and, if applicable, during the PAGA Period, punch data of non-exempt employees who were employed at a Leisure Care-Managed Community in California during the Class Period and, if applicable, during the PAGA Period, and such other information and data as necessary for the Settlement Administrator to independently calculate the Workweeks (collectively, "Class Data").[20] The final mailing list contained two thousand three hundred twenty-eight (2,328) individuals identified as Class Members.[21] On October 4, 2024, Phoenix conducted a National Change of Address ("NCOA") search in an attempt to update the Class Data addresses as accurately as possible.[22] To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice.[23] To the extent that no updated address was found in the NCOA database, the original address provided by Defendants' Counsel was used for the mailing of the Class Notice.[24]

On October 4, 2024, Phoenix mailed the Class Notice via U.S. First Class Mail, in English and Spanish, to all two thousand three hundred twenty-eight (2,328) individuals identified as Class Members.[25] Of the two thousand three hundred twenty-eight (2,328) individuals, one thousand five hundred forty (1,540) individuals were identified as PAGA Group Members.[26]

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[19] Settlement Agreement, § IV.D.11.
[20] Phoenix Decl., ¶ 4.
[21] Ibid.
[22] *Id.*, ¶ 5.
[23] Ibid.
[24] Ibid.
[25] *Id.*, ¶ 6.
[26] Ibid.

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As of the date of this declaration, fifty-seven (57) Class Notices have been returned to Phoenix.[27] None were returned with a forwarding address.[28] For the fifty-seven (57) Class Notices returned from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing.[29] Of the fifty-seven (57) Class Notices that were skip traced, fifty-seven (57) updated addresses were obtained and the Class Notice was promptly re-mailed to those Class Members via first class mail.[30] There are zero (0) Class Notices that remain undeliverable.[31]

As of the date of this Motion, the Settlement Administrator has not received any objections to the Class Settlement.[32]

As of the date of this Motion, the Settlement Administrator has received only one (1) Request for Exclusion and (1) Workweeks Dispute.[33]

To date, there are two thousand three hundred twenty-seven (2,327) Class Members who did not submit a valid and timely Requests for Exclusion from the Class Settlement and are therefore deemed Participating Class Members, representing 99.96% of the Class.[34] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $1,214,003.95 will be distributed to Participating Class Members in accordance with the terms of the Settlement.[35] The highest Individual Settlement Share to a Participating Class Member is currently estimated to be $2,699.36 and the average Individual Settlement Share to a Participating Class Member is currently estimated to be $516.97.[36] The highest Individual PAGA Payment to a PAGA Group Member is currently estimated to be $140.86 and the average Individual PAGA Payment is

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[27] Phoenix Decl., ¶ 7.
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] *Id.,* ¶ 10.
[33] *Id.*, ¶¶ 9 & 11.
[34] *Id.,* ¶ 12.
[35] Settlement Agreement, § I.V; see also, n.8, *supra*.
[36] Phoenix Decl., ¶ 15. The actual average and highest Individual Settlement Share to a Participating Class Member 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 $30,000.00 (the difference between the amount sought and the amount authorized under the Settlement, $5,003.495, will be part of the Net Settlement Amount). See n.8, *supra*.

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currently estimated to be $44.16.[37]

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*,

[37] Phoenix Decl., ¶ 16.

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

The Parties actively litigated the case since the *King* Class Action commenced on May 14, 2021. Class Counsel conducted significant investigation and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing the matter for class certification and trial prior to reaching the Settlement.[38]

The Parties conducted significant informal discovery and investigation into the facts of the cases.[39] The information, documents, and data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiffs' employment records, a sampling of Class Members' time and pay data, and documents regarding Defendant's operations and employment practices, policies, and procedures, among other information and documents.[40] 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 Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery and production of information, documents, and data, and claims evaluation and analysis.[41] Class Counsel reviewed and analyzed a large volume of information, data, and documents obtained from Plaintiffs, Defendants, and other sources, in the course of litigation and in connection with mediation and settlement negotiations.[42] Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings,

[38] Declaration of Selena Matavosian ("Matavosian Decl."), ¶ 6.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.

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motion-related papers, the mediation brief, and settlement documents; and preparing for and attending court proceedings and mediation and settlement negotiations, among other tasks.[43]

After conducting informal discovery and investigation into the facts of the cases, the Parties participated in a formal, full-day mediation conducted on April 10, 2023 by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters, as well as extensive additional review and analysis of data, claim evaluation, and settlement negotiations, before the mediator's proposal was issued and accepted in April 11, 2023.[44] In the course of mediation and settlement negotiations, the Parties exchanged information, documents, and data, and discussed all aspects of the cases, 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 class certification, manageability, off-the-clock theory, rounding, meal and rest periods, on-premises breaks, representative PAGA claims, 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] Defendants contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to class certification and representative adjudication.[48] Defendants and its counsel felt strongly about Defendants' ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain relief in court, obtain class certification and prevail at trial.[49] After conducting significant informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the cases were well-suited for settlement given the

[43] Matavosian Decl., ¶ 6.
[44] *Id.*, ¶ 8.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.

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legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.[50]

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 analyzed a large volume of information, documents, and data obtained from Defendants, Plaintiffs, and other sources, both prior to and after the mediation, and performed research regarding applicable law, which is evolving as it relates to class certification, manageability, off-the-clock theory, rounding, meal and rest periods, representative PAGA claims and penalties, wage-and-hour law and enforcement, Plaintiffs' claims and allegations, and Defendants' defenses thereto, as well as facts discovered.[51] The Settlement was based on this large volume of facts, evidence, and investigation.[52] Additionally, Class Counsel have extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.[53]

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 $2,400,000.00, 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.[54] The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation and ongoing settlement negotiations.[55] 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

[50] Matavosian Decl., ¶ 8.
[51] *Id.*, ¶ 7.
[52] *Id.*, ¶¶ 6-8.
[53] *Id.*, ¶¶ 13-18.
[54] *Id.,* ¶¶ 8 & 21.
[55] *Id.,* ¶¶ 8-11.

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

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members, PAGA Group Members, and the State of California after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, 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. Additional 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 Members, the PAGA Group Members, and the State of California 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, the State of California, and PAGA Group Members.

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

The Settlement, which provides for a Gross Settlement Amount of $2,400,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and 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 $840,000.00, litigation costs and expenses in the amount of $24,996.05, Service Payments in the combined amount of $29,000.00, Settlement Administration Expenses in the amount of $20,000.00, and the PAGA Payment of $272,000.00 from the Gross Settlement Amount of $2,400,000.00, the Net Settlement Amount is currently estimated to be $1,214,003.95.[56] Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks worked credited to him or her.[57] To date, there are two thousand three hundred twenty-seven (2,327) Participating Class Members, representing 99.96% of the Class Members.[58] The highest Individual Settlement Share to a Participating Class Member is currently estimated to be $2,699.36 and the average Individual Settlement Share is currently estimated to be $516.97.[59] The highest Individual PAGA Payment to a PAGA Group Member is currently estimated to be $140.86 and the average Individual PAGA Payment is currently estimated to be $44.16.[60] 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

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[56] Phoenix Decl., ¶ 14; see also, n.8, *supra*.
[57] Settlement Agreement, §§ IV.C.2.a-b.
[58] Phoenix Decl., ¶ 12.
[59] *Id.,* ¶ 15; see n.36, *supra*.
[60] *Id.,* ¶ 16.

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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 PAGA Group Members.[61] 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.[62] 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.[63] 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 case and in the context of a private, consensual settlement agreement.

E. <u>There Are No Objections to the Settlement.</u>

The Settlement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***[64] Specifically, no objections have been made as to the Gross Settlement Amount or requested Class Counsel Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, 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

[61] Matavosian Decl., ¶ 21.
[62] *Id*., ¶¶ 13-18.
[63] Ibid.
[64] Phoenix Decl., ¶ 10.

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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 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

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representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao*, *supra*, 82 Cal.App.4th at 53.

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

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

B. <u>A Fee Award of a Percentage of the Entire Fund Is Appropriate.</u>

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

Priest (1977) 20 Cal.3d 25, 34.[65] 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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[65] 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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When the case was originally filed, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that the courts approve the 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 $2,400,000.00 on a non-reversionary basis. The requested attorneys' fees are 35% of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. 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.

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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, PAGA Group Members, and the State of California, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the

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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 $840,000.00 (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 have achieved, and the value of the settlement that Class Counsel have obtained 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 declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.[66]

As outlined in the Declaration of Selena Matavosian, Class Counsel has fully and actively participated in litigation of the Actions.[67] Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.[68] During the litigation of the Actions, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; reviewed and analyzed a large volume of pages of information, documents and data obtained from Defendants, Plaintiffs, and other sources; and prepared liability, damages, penalties, and valuation calculations.[69] Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, discovery, and the production of information, documents and data,

[66] Matavosian Decl., ¶¶ 13-18.
[67] *Id.,* Exh. A.
[68] *Id.,* ¶ 7.
[69] *Id.*, ¶¶ 6-7.

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among other things; engaged in settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.[70]

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 Selena Matavosian, sets forth in detail the hours that Lawyers *for* Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.[71] 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. Class Counsel has spent 458.80 hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs, the Class, the PAGA Group Members, and the State of California.[72] These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the 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 its defenses. More specifically, Defendants and its counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite

[70] Matavosian Decl., ¶ 6.
[71] *Id*., Exh. A.
[72] *Id*., ¶¶ 11-12.

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all of the obstacles that had to be overcome, as demonstrated in the Declaration of Selena Matavosian, 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.[73]

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

The Settlement represents an excellent resolution of the Actions, given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Had the case not settled, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the 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 Participating Class Members, the State of California, and PAGA Group Members 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, Defendants agreed to pay a Gross Settlement Amount of $2,400,000.00 to settle the matter. After deducting the attorneys' fees ($840,000.00), litigation costs and expenses ($24,996.05), Service Payments (combined, $29,000.00), Settlement Administration Expenses ($20,000.00), and PAGA Payment ($272,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $1,214,003.95.[74] The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a

[73] Matavosian Decl., ¶¶ 13-18.
[74] Phoenix Decl., ¶ 14; see also, n.8, *supra*.

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Participating Class Member is currently estimated to be $2,699.36 and the average Individual Settlement Share is currently estimated to be $516.97.[75] The highest Individual PAGA Payment to a PAGA Group Member is currently estimated to be $140.86 and the average Individual PAGA Payment is currently estimated to be $44.16.[76] The Settlement offers significant monetary relief to the Participating Class Members, the State of California, and PAGA Group Members.

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 458.80 hours of time to obtain relief on behalf of Plaintiffs, Class Members, the State of California, and PAGA Group Members.[77] Class Counsel has also incurred litigation costs and expenses in the amount of $24,996.05.[78]

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[79] Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.[80] The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Fees Payment and Litigation Expenses Payment. 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.

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[75] Phoenix Decl., ¶ 15; see also, n.36, *supra*.
[76] *Id.,* ¶ 16.
[77] Matavosian Decl., ¶ 11, Exh. A.
[78] *Id*., ¶ 19.
[79] Ibid.
[80] *Id*., ¶¶ 13-18.

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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 have 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.[81]

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 $2,400,000.00.[82] The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Participating Class Member is currently estimated to be $2,699.36 and the average Individual Settlement Share is currently estimated to be $516.97.[83] The highest Individual PAGA Payment to a PAGA Group Member is currently estimated to be $140.86 and the average Individual PAGA Payment is currently estimated to be $44.16.[84]

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[81] Phoenix Decl., ¶ 10.
[82] Matavosian Decl., ¶ 10.
[83] Phoenix Decl., ¶ 15; see n.36, *supra*.
[84] *Id.*, ¶ 16.

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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 these cases to a successful conclusion. Class Counsel has years of complex and class action litigation experience, have recovered millions of dollars on behalf of thousands of individuals in California, and have successfully handled numerous significant wage-and-hour class action and complex cases.[85]

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.

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

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

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

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[85] Matavosian Decl., ¶¶ 13-18.

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As discussed above, the case was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data not only from Defendants but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel have as a result of their 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 trial, including engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through mediation.

Class Counsel had to bring together a large volume of information, documents and data that were obtained from Defendants, Plaintiffs, 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 Selena Matavosian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.[86] The chart demonstrates that Class Counsel has spent a total of 458.80 hours litigating the cases and finalizing the Settlement.[87] In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved on behalf of Plaintiffs, Class Members, the PAGA Group Members, and the State of California, Class Counsel have 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.

[86] Matavosian Decl., Exh. A.
[87] *Id.*, ¶¶ 11-12, Exh. A.

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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 $2,400,000.00.

As set forth in the Declaration of Selena Matavosian, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation of at least $850 per hour for services provided by Class Counsel.[88] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least $850 per hour for legal service performed, by courts of this state.[89] While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

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

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

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[88] Matavosian Decl., ¶ 12.
[89] Ibid.

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Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal. 4th at 1132.

In determining whether or not to enhance the lodestar, California courts take into account multiple factors, many of which were specifically addressed above in §§ VI.B-C, *infra*. See, *Cates* at 822-823. Multiple factors warrant enhancement in this case, including the following:

- The time and labor required
- The skill requisite to perform the legal services properly
- The preclusion of other employment by the attorney due to the acceptance of the case
- The contingent nature of the fee
- The amount involved and results obtained
- The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

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

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"basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-1133 (quotation marks and citation omitted).

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

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of $2,400,000.00. Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the Task and Time Chart, which is attached as **EXHIBIT A** to the Declaration of Selena Matavosian.[90] As indicated in the chart and the Declaration of Selena Matavosian, Class Counsel has worked 458.80

[90] Matavosian Decl., Exh. A.

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hours in the pursuit of this matter. The Declaration of Selena Matavosian sets forth the entire picture, and the work performed by Class Counsel would place a base lodestar value of $389,980.00 on Lawyers *for* Justice, PC's services.[91] Applying a modest multiplier of 2.16, the total enhanced lodestar fees are $842,356.80. Class Counsel seeks an attorneys' fee award of $840,000.00 (35% of the Gross Settlement Amount). Far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to 4 or even higher**." *Wershba, supra,* 91 Cal.App.4th at 255 (emphasis added); *see also, e.g.*, *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**); *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

The nature of the work performed, skill exercised, and the outcome in "this matter—which involves an outstanding monetary recovery involving a ***Gross Settlement Amount of $2,400,000.00 (***with a Net Settlement Amount of ***at least $1,214,003.95 to be paid to Participating Class Members*** with an average payment of approximately $516.97 per Participating Class Member, a ***payment of $68,000.00 to PAGA Group Members*** with an average payment of $44.16 per PAGA Group Member, and ***payment of $204,000.00 to the State of California***)—support the percentage fee sought and the application of a lodestar multiplier.[92]

Therefore, application of a modest multiplier of 2.16 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of $840,000.00 to Class Counsel.

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

[91] Matavosian Decl., ¶ 12.
[92] Phoenix Decl., ¶¶ 15 & 16. See n.8 & 36, *supra*.

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The Settlement provides for reimbursement of litigation costs and expenses of up to $30,000.00**.** As set forth in the Declaration of Selena Matavosian, Class Counsel seeks reimbursement of $24,996.05 in litigation costs and expenses incurred in this case.[93] 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.[94] Accordingly, Plaintiffs requests that the Court award litigation costs and expenses in the amount of $24,996.05 to Class Counsel.

VIII. THE SETTLEMENT ADMINISTRATION EXPENSES 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 $20,000.00.[95] The costs incurred and to be incurred include, but are not limited to, (i) preparing, translating, printing, and mailing the Class Notice; (ii) responding to inquiries from Class Members and PAGA Group Members; (iii) calculating the number of weeks credited to each Class Member during the Class Period and the number of weeks credited to each PAGA Group Member during the PAGA Period; (iv) determining the validity of Requests for Exclusion, written objections to the Class Settlement, and/or Workweeks Disputes; (v) calculating the Net Settlement Amount; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Settlement Class Members and Individual PAGA Payments to PAGA Group Members; (vii) issuing the payments to Class Counsel for the Class Counsel Fees Payment and Litigation Expenses Payment, Plaintiffs for the Service Payments, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders.[96]

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[93] Matavosian Decl., ¶ 19.
[94] Ibid.
[95] Phoenix Decl., ¶ 18.
[96] *Id.,* ¶ 3.

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Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of $20,000.00.

IX. <u>THE REQUESTED SERVICE PAYMENTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

The Settlement provides for a Service Payment in the amount of $14,500.00 each to Plaintiffs Valencia King and Victoria Perkins (for a combined total of $29,000.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class and the State of California. The requested Service Payments are both common and reasonable and should be awarded.

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

The requested Service Payments are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence to support the prosecution of the claims.[97] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the cases.[98] Plaintiffs spent numerous hours speaking with Class Counsel about their claims, describing their work experiences with Defendants, and gathering and reviewing documents.[99]

Accordingly, it is appropriate and just for Plaintiffs Valencia King and Victoria Perkins to

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[97] Matavosian Decl., ¶ 20; Declaration of Valencia King ("King Decl."), ¶¶ 3-5; Declaration of Victoria Perkins ("Perkins Decl."), ¶¶ 3-5

[98] Matavosian Decl., ¶ 20; King Decl., ¶¶ 3-5; Perkins Decl., ¶¶ 3-5.

[99] Ibid.

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each receive $14,500.00 as reasonable Service Payments, for their services on behalf of the Class, PAGA Group Members, and the State of California, in addition to their individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Fees, Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, 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: December 3, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________
Selena Matavosian
Attorney for Plaintiffs and the Class