

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Brian J. St. John (SBN 304112)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff and the Settlement Class

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

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

Plaintiff,

vs.

INLAND MARINE INDUSTRIES, INC., a
California corporation; INLAND METAL
TECHNOLOGIES, an unknown business
entity; INLAND METAL INDUSTRIES, an
unknown business entity; INLAND METAL,
INC., an unknown business entity; and DOES
1 through 100, inclusive,

Defendant.

Case No.: RG19039075

Honorable Frank Roesch
Department 17

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Ciomara Ayala Dolores);
Declaration of Settlement Administrator
(Taylor Mitzner); and [Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: September 29, 2022
Time: 3:30 p.m.
Department: 17

Complaint Filed: October 15, 2019
FAC Filed: November 13, 2019
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 29, 2022 at 3:30 p.m., in Department 17
2 of the above-entitled Court, located at 1225 Fallon Street, Oakland, California 94612, Plaintiff
3 Ciomara Ayala Dolores (“Plaintiff”) will and hereby does move for an order granting final
4 approval of:

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

- 8 • Net Settlement Proceeds of approximately **\$588,264.61** will be fully distributed to the
9 Settlement Class Members who did not timely opt out of the Settlement
10 (“Participating Settlement Class Member”);
11 • **No Objections** were submitted to the settlement administrator, Phoenix Settlement
12 Administrators (“Settlement Administrator”);
13 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

14 2. Payment in the amount of **\$300,000.00** to Lawyers for Justice (“Class Counsel”),
15 representing thirty percent (30%) of the original non-escalated Settlement Fund , for attorneys’
16 fees, which is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$25,126.14** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$9,000.00** to the Settlement Administrator, Phoenix
20 Settlement Administrators (“Phoenix”), for Settlement Administration Costs;

21 5. Payment in the amount of **\$7,500.00** to Plaintiff Ciomara Ayala Dolores, as a
22 Service Award, for her time and effort in representing the Settlement Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of **\$50,000.00** , of which seventy-five
25 percent (75%), or \$37,500.00 , will be paid to the California Labor and Workforce Development
26 Agency and twenty-five percent (25%), or \$12,500.00, will be part of the Net Settlement
27 Proceeds for distribution to the Settlement Class Members.
28

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

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declaration of Class Counsel (Edwin Aiwanian), Class Representative (Ciomara Ayala Dolores),
6 and Settlement Administrator (Taylor Mitzner of Phoenix) in support thereof; the pleadings and
7 other records on file with the Court in this matter; and such evidence and oral argument as may
8 be presented at the hearing on this Motion.

9 Dated: September 6, 2022

LAWYERS for JUSTICE, PC

10
11 By:



Edwin Aiwanian

Attorneys for Plaintiff and the Settlement Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Ciomara Ayala Dolores (“Plaintiff”) seeks final approval of: (1) the Settlement Fund of \$1,026,758.07¹; (2) attorneys’ fees in the amount of \$300,000.00², which is thirty percent (30%) of the original non-escalated Settlement Fund (i.e., \$1,000,000.00), and reimbursement of litigation costs and expenses in the amount of \$25,126.14 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$9,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Service Award in the amount of \$7,500.00 to Plaintiff Ciomara Ayala Dolores; and (5) allocation of \$50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiff seeks relief on behalf of the following Settlement Class:

All current and former hourly-paid or non-exempt who worked for Defendant within the State of California at any time during the period from October 15, 2015 through November 11, 2021 (“Settlement Class” or “Settlement Class Members”).³

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 Jeffrey Ross, Esq., and extensive settlement negotiations. This matter has required 543.40 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty percent (30%) of the original non-escalated Settlement Fund, 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.

¹ Pursuant to the escalator clause in Paragraph 84 of the Joint Stipulation of Class Action and PAGA Settlement Agreement and General Release (“Settlement Agreement”), the Settlement Fund has increased from \$1,000,000 to \$1,026,754.39. *See* Declaration of Taylor Mizner Regarding Notice and Settlement Administration (“Phoenix Declaration” or “Phoenix Decl.”), ¶¶ 3 & 11.

² The Settlement Agreement provides for attorneys’ fees of up to thirty five percent (35%) of the Settlement Fund. At the time of granting preliminary approval of the Settlement, the Court indicated in its ruling that “the amount of attorneys’ fees awarded to class counsel shall be reduced from \$350,000 to \$300,000.” *See* Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 9.

³ Settlement Agreement, ¶ 25.

1 Plaintiff moves for final approval of the Service Award in the amount of \$7,500.00, to
2 compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on
3 behalf of the Settlement Class. Plaintiff also moves for final approval of the payment to the
4 Settlement Administrator in the amount of \$9,000.00 for Settlement Administration Costs.
5 Plaintiff also moves for final approval of the allocation of \$50,000.00 for the PAGA Penalties,
6 of which \$37,500.00 will be paid to the California Labor Workforce and Development Agency
7 (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and \$12,500.00 will be
8 part of the Net Settlement Proceeds that will be distributed to Settlement Class Members who did
9 not submit a timely and valid request to be excluded from the Settlement (“Participating
10 Settlement Class Members”).

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

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

23 In order to efficiently present the Court with adequate information to determine whether
24 to grant final approval of the Settlement and award Attorneys' Fees and Costs, Service Award,
25 Settlement Administration Costs, and PAGA Penalties, Plaintiff also moves for an order
26 permitting the filing of this single consolidated memorandum, although it exceeds the page limit
27 established by California Rules of Court, Rule 3.1113(d), instead of filing several separate
28 motions.

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

2 Defendant Inland Marine Industries (“Defendant”) is a precision sheet metal job shop and
3 contract manufacturer located in California. Plaintiff Ciomara Ayala Dolores is a former
4 employee of Defendant.

5 On October 15, 2019, Plaintiff Ciomara Ayala Dolores, individually, and on behalf of all
6 current and former hourly-paid or non-exempt employees who worked for Defendant within the
7 State of California at any time since October 15, 2015, filed a Class Action Complaint for
8 Damages, thereby commencing the action. The action was filed in the Superior Court of
9 California for the County of Alameda, Case No. RG19039075 (the “Action”).

10 On October 15, 2019, Plaintiff filed a Class Action Complaint in the Alameda County
11 Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

12 On November 15, 2019, Defendant filed an Answer to Plaintiff’s Class Action
13 Complaint.

14 On December 11, 2019, Plaintiff propounded multiple sets of discovery including
15 Requests for Production of Documents, (Set One); Special Interrogatories, (Set One & Two); and
16 Form Interrogatories, (Set One), on Defendant and noticed the deposition of Defendant’s person
17 most knowledgeable regarding job duties and organizational structure of Defendant. Thereafter,
18 on August 10, 2020, August 21, 2020, and August 31, 2020, Defendant responded to Plaintiff’s
19 discovery requests.

20 On January 26, 2022, Plaintiff filed a First Amended Class Action Complaint for
21 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
22 2698, *Et Seq.* (“Operative Complaint”).

23 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
24 engaging in a uniform practice and procedure, with respect to Plaintiff and the Settlement Class
25 Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide
26 compliant meal and rest periods and associated premium pay, failing to timely pay wages during
27 employment and upon termination of employment, failing to provide compliant wage statements,
28 failing to maintain requisite payroll records, and failing to reimburse necessary business

1 expenses, and thereby engaged in unfair business practices in violation of California Business
2 and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to
3 PAGA. Plaintiff contends that she, and the Settlement Class Members, are entitled to, *inter alia*,
4 unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and
5 attorneys' fees.

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

9 The parties have actively litigated the matter since it was commenced on October 15,
10 2019. The Parties participated in multiple formal, full-day mediations conducted by Jeffrey Ross,
11 Esq., a well-regarded mediator experienced in mediating complex labor and employment
12 matters, on July 1, 2020, July 13, 2020, and August 3, 2021. With the aid of the mediator's
13 evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in
14 its entirety.

15 On March 24, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action
16 Settlement and supporting documents. On April 14, 2022, a hearing was held on Plaintiff's
17 Motion for Preliminary Approval. On April 18, 2022, the Court entered an Order Granting
18 Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval
19 Order"), thereby preliminarily approving the terms of the Settlement, the Notice of Settlement,
20 and the proposed administration procedures and associated deadlines.

21 Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs,
22 Service Award, Settlement Administration Costs, and allocation for PAGA Penalties.

23 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

24 Under the terms of the Settlement Agreement, Defendant have agreed to pay a Settlement
25 Fund of \$1,026,758.07 on a non-reversionary basis.⁴ Subject to approval by the Court, the Net
26 Settlement Proceeds will be calculated by deducting the following amounts from the Settlement
27 Fund: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$300,000.00

28

⁴ Settlement Agreement; ¶ 26; see n.1, *supra*.

1 and reimbursement of litigation costs and expenses in the amount of \$25,126.14, to Class
2 Counsel; (2) Service Award in the amount of \$7,500.00 to Plaintiff Ciomara Ayala Dolores; (3)
3 Settlement Administration Costs in the amount of \$9,000.00 to Phoenix; and (4) LWDA
4 Payment in the amount of \$37,500.00.⁵ The Net Settlement Proceeds, which is estimated to be
5 \$588,264.61, will be distributed in accordance with the Settlement Agreement, and there is no
6 reversion to Defendant.⁶

7 The Settlement Administrator will calculate the value of each Workweek by dividing the
8 Net Settlement Proceeds by the total number of Workweeks for all Class Members (“Workweek
9 Value”).⁷ The Settlement Administrator will calculate each Participating Settlement Class
10 Member’s share of the Net Settlement Proceeds (“Individual Settlement Award”), by multiplying
11 an individual’s total number of Workweeks by the Workweek Value.⁸

12 Settlement Class Members had forty-five (45) calendar days after the initial mailing of
13 the Notice of Settlement to Settlement Class Members to dispute the number of Workweeks
14 credited to each of them, opt out of the Settlement, and/or object to the Settlement (“Response
15 Deadline”).⁹ The Response Deadline was July 5, 2022.¹⁰ The Settlement Administrator has not
16 received any written requests for exclusion from the Settlement (“Requests for Exclusion”) or
17 objections to the Settlement (“Objections”) from Settlement Class Members.¹¹

18 Individual Settlement Awards will be allocated as twenty-five percent (25%) as wages
19 (the “wage portion”), which will be reported on an IRS Form W-2-, thirty-seven and one-half
20 percent (37.5%) as penalties, and thirty-seven and one half percent (37.5%) as interest, which
21 will be reported on an IRS Form 1099. Individual Settlement Awards will be paid out to
22 Participating Settlement Class Members subject to reduction for the employee’s share of taxes,

23

⁵ Settlement Agreement, ¶ 46.

24 ⁶ This amount is higher than the amount stated in Paragraph 13 of the accompanying Phoenix Declaration because
25 the Settlement Administrator’s calculation assumes that Class Counsel will obtain litigation costs and expenses in
26 the maximum amount of \$30,000.00, which is allocated under the Settlement. However, Class Counsel seeks the
amount of only \$25,126.14 for reimbursement of litigation costs and expenses, and the difference of \$4,873.86
will remain part of the Net Settlement Proceeds.

27 ⁷ Settlement Agreement, ¶ 53.

28 ⁸ *Id.*, ¶ 54.

⁹ *Id.*, ¶¶ 70.b, 70.c & 70.d.

¹⁰ Phoenix Decl., ¶¶ 8, 9, and 10.

¹¹ *Id.*, ¶ 14.

1 withholdings, and contribution with respect to the wages portion of the Individual Settlement
2 Awards, and the net payment is referred to as “Individual Settlement Award”.¹²

3 Any and all Individual Settlement Award checks issued to Participating Settlement Class
4 Members will remain valid for 180 calendar days from the date of mailing.¹³ Thereafter,
5 Individual Settlement Award checks that are not negotiated within the 180-day period will be
6 void, and the funds associated with such voided checks will be distributed to the Consumer
7 Justice Clinic at the East Bay Community Law Center, a clinic of Berkeley Law.¹⁴

8 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

9 The Court-appointed Settlement Administrator, Phoenix Settlement Administrators, has
10 taken all necessary steps to effectuate the notice and settlement administration process, as set
11 forth in the Court’s April 18, 2022 Preliminary Approval Order.

12 On April 21, 2022, Phoenix received the Court-approved text for the Notice of
13 Settlement.¹⁵

14 On May 5, 2022, Phoenix received a mailing list from Defendant’s counsel that contained
15 the names, last known addresses, Social Security numbers, email address, work site of
16 employment, and number of Workweeks worked from October 15, 2015 to November 11, 2021,
17 and the number of Workweeks worked during each calendar year during the Class Period (“Class
18 Data List”).¹⁶ The Class Data List contained information for 903 individuals identified as
19 Settlement Class Members.¹⁷ Phoenix processed the names and addresses through the National
20 Change of Address Database (“NCOA”) and updated the Class Data List with any updated
21 addresses located.¹⁸

22 On May 19, 2022, Phoenix mailed the Notice of Settlement via first class mail to 903
23 individuals identified as Settlement Class Members in the Class Data List.¹⁹ A copy of the
24

25 ¹² Phoenix Decl., ¶ 14.

26 ¹³ *Id.*, ¶ 15.

27 ¹⁴ Settlement Agreement, ¶ 80.

28 ¹⁵ Phoenix Decl., ¶ 8.

¹⁶ *Id.*, ¶ 3.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 4.

¹⁹ *Id.*, ¶ 5.

1 Notice of Settlement was also emailed to the one hundred eighty-two (182) Class Members with
2 email addresses provided in the Class List.²⁰

3 As of the date of this Motion, seventy-five (75) Notice of Settlements were returned as
4 undeliverable without forwarding addresses.²¹ Phoenix performed a skip-trace search on the
5 seventy-five (75) Notice of Settlements that were returned to Phoenix without forwarding
6 addresses and located an updated address for forty-four (44) Settlement Class Members, and
7 promptly re-mailed the Notice of Settlement to the updated addresses.²² Four (4) Notices of
8 Settlement were returned to Phoenix as undeliverable a second time.²³ Ultimately, thirty-five
9 (35) Notices of Settlement remain undeliverable because an updated address was not located
10 through skip-tracing or the Notice of Settlement was returned as undeliverable a second time.²⁴

11 As of the date of this Motion, the Settlement Administrator has not received any
12 Objections, Requests for Exclusion, or Workweek disputes from Settlement Class Members.²⁵

13 To date, there are nine hundred three (903) Settlement Class Members who did not
14 submit a timely and valid Request for Exclusion, and are therefore, deemed to be Participating
15 Settlement Class Members.²⁶ Pursuant to the terms of the Settlement, the Net Settlement
16 Proceeds of approximately \$588,264.61 will be distributed to Participating Settlement Class
17 Members in accordance with the terms of the Settlement.²⁷ The highest Individual Settlement
18 Award is currently estimated to be \$3,233.95 and the average Individual Settlement Award is
19 currently estimated to be \$646.06.²⁸

20 ///

21 ///

22 ²⁰ Phoenix Decl., ¶ 5.

23 ²¹ *Id.*, ¶ 6.

24 ²² *Ibid.*

25 ²³ *Id.*, ¶ 7.

26 ²⁴ *Ibid.*

27 ²⁵ *Id.*, ¶¶ 8-10.

28 ²⁶ *Id.*, ¶ 8.

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

²⁸ *Id.*, ¶ 14. The actual average and highest Individual Settlement Awards will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Proceeds 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, \$4,873.86, will be part of the Net Settlement Proceeds). See n.6, *supra*.

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

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

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

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

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

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

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

The parties actively litigated the case since it was commenced on October 15, 2019. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare the matter for class certification, representative adjudication, and trial.²⁹ The parties conducted extensive, formal and informal discovery and investigation into the facts of the case, and also informally exchanged information and data in preparation for mediation.³⁰ Class Counsel propounded multiple sets of written discovery requests in various forms; reviewed Defendant's responses thereto; and prepared and served numerous deposition notices.³¹ Class Counsel also interviewed and obtained information from Plaintiff and Settlement Class Members, including and not limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of documents and data produced by Defendant and obtained through other sources.³² The documents and data reviewed and analyzed by Class Counsel included, and were not limited to: employment records of Plaintiff, a detailed sampling of Settlement Class Members' time and pay data, company policy acknowledgements and agreements (including but not limited to Paycheck and Hours Acknowledgement and Employee Agreement on Safety Glasses), internal memoranda, new hire materials and checklists, and operations and employment policies, practices, forms, and procedures (including but not limited to the Employee Policy Manual, General Employment Policies, Dress Codes and Other Personal Standards, Punctuality and Attendance, and Meal and Rest Periods policy), among other information and documents.³³ Class Counsel researched applicable law, developed damages/valuation models in preparation for mediation, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the

²⁹ Aiwasian Decl., ¶ 6.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

pleadings, case management, discovery, and production of documents and data prior to mediation.³⁴

After conducting significant formal and informal discovery and investigation into the facts of the case, the parties participated in multiple formal, full-day mediations and extensive follow-up sessions conducted by Jeffrey Ross, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³⁵ Prior to and during mediation and settlement discussions, the parties exchanged information and data, and discussed various aspects of the case, including and not limited to, the risks and delays of further litigation, the risks and expenses to the parties of proceeding with class certification, representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁶ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁷ Arriving at a settlement that was acceptable to the parties was not easy.³⁸ Defendant and their counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiff and Class Counsel believed that class certification would be obtained and Plaintiff would prevail at trial.³⁹ After conducting significant formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴⁰

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiff and other Settlement Class

³⁴ Aiwazian Decl., ¶ 6.

³⁵ *Id.*, ¶ 8.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

Members.⁴¹ Class Counsel also reviewed and analyzed thousands of pages of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁴² The Settlement was based on this large volume of facts, evidence, and investigation.⁴³ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁴

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

The Settlement, which provides for a Settlement Fund of \$1,026,758.07⁴⁵, 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.⁴⁶ 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.⁴⁷ 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 predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further

⁴¹ Aiwazian Decl., ¶ 6.

⁴² Ibid.

⁴³ *Id.*, ¶¶ 6 & 8.

⁴⁴ *Id.*, ¶¶ 15-18.

⁴⁵ See n.1, *supra*.

⁴⁶ Aiwazian Decl., ¶¶ 8 & 21.

⁴⁷ *Id.*, ¶¶ 5-8.

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

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

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

The Settlement, which provides for a Settlement Fund of \$1,026,758.07⁴⁸, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter.

⁴⁸ See n.1, *supra*.

Moreover, considering all of the facts in the case, the Settlement Fund represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$300,000.00, litigation costs and expenses in the amount of \$25,126.14, Service Award in the amount of \$7,500.00, Settlement Administration Costs in the amount of \$9,000.00, and LWDA Payment in the amount of \$37,500.00 from the Settlement Fund of \$1,026,758.07, the Net Settlement Proceeds is currently estimated to be \$588,264.61.⁴⁹ Under the Settlement Agreement, the Settlement Fund will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Settlement Class Member will be paid a *pro rata* share of the Net Settlement Proceeds, based on the number of Workweeks credited to him or her. To date, there are 903 Participating Settlement Class Members, representing 100% of the Class.⁵⁰ The highest Individual Settlement Award to a Participating Settlement Class Member is currently estimated to be \$3,233.95 and the average Individual Settlement Award is currently estimated to be \$646.06.⁵¹ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Proceeds. 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 Settlement Class Members and the State of California.⁵² 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.

⁴⁹ Phoenix Decl., ¶ 13; see n.1 & 6, *supra*.

⁵⁰ *Id.*, ¶ 12.

⁵¹ *Id.*, ¶ 14; see n.28, *supra*.

⁵² Aiwasian Decl., ¶ 21.

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.⁵³ 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.⁵⁴ Both parties' counsel were capable of assessing the strengths and weaknesses of the Settlement Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Settlement Class – ***not a single Settlement Class Member objected to or opted out of the Settlement.***⁵⁵ Specifically, no objections have been made as to the Settlement Fund or requested Attorneys' Fees and Costs, Service Award, Settlement Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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⁵³ Aiwazian Decl., ¶¶ 15-18.

⁵⁴ Ibid.

⁵⁵ Phoenix Decl., ¶¶ 8 & 9.

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

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

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

California law provides that an attorneys’ fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will “chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

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

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

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

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

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁵⁶ 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

⁵⁶ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7
2 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the
3 other parties enjoying the benefit of the settlement). Both state and federal courts have embraced
4 this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17
5 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

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

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

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Under the terms of the Settlement Agreement, Defendant will pay a Settlement Fund of \$1,026,758.07 on a non-reversionary basis.⁵⁷ The requested attorneys' fees are thirty percent (30%) of the original non-escalated Settlement Fund, and twenty-nine point two percent (29.2%) of the total value of the monetary settlement.⁵⁸ 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 such 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. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of forty percent (40%) of the recovery.⁵⁹

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.*

⁵⁷ See n.1, *supra*.

⁵⁸ See n.2, *supra*.

⁵⁹ Aiwasian Decl., ¶ 9.

(1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be calculated on the basis of the total fund made available rather than the actual payments made to the class.” *Lealao*, *supra*, 82 Cal.App.4th at 51; *see also Boeing*, *supra*, 444 U.S. at 478 (“a litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Settlement Class, 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 Plaintiff and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the 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 \$300,000.00 (which is 30% of the original non-escalated Settlement Fund)⁶⁰ is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Settlement 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 Settlement Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁶¹

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of this case.⁶² Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and their operations and employment policies, practices, and procedures.⁶³ During the litigation of the action, Class Counsel interviewed Plaintiff and other Settlement Class Members; propounded formal written discovery requests and reviewed Defendant's responses thereto; reviewed and analyzed thousands of pages of documents and data produced by Defendant and obtained through other sources; and prepared damages/valuation calculations.⁶⁴ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, discovery, and production of documents and data, among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁶⁵

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

⁶⁰ See n.2, *supra*.

⁶¹ Aiwasian Decl., ¶¶ 15-18.

⁶² *Id.*, Exh. A.

⁶³ *Id.*, ¶ 6 & Exh. A.

⁶⁴ *Id.*, ¶ 6.

⁶⁵ *Ibid*.

litigation process. The Task and Time Chart, which is attached as **EXHIBIT A** to the accompanying Declaration of Edwin Aiwasian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff and the Settlement Class.⁶⁶ 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 **543.40 hours** performing tasks and to obtain a significant recovery on behalf of Plaintiff and the Settlement Class.⁶⁷ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

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

Class Counsel undertook significant investigation, analysis, and research prior to filing this 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 Aiwasian, 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.⁶⁸

⁶⁶ Aiwasian Decl., Exh. A.

⁶⁷ *Id.*, ¶ 11.

⁶⁸ *Id.*, ¶¶ 15-18.

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

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

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

16 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
17 pay a Settlement Fund of \$1,026,758.07 to settle the matter.⁶⁹ After deducting the attorneys' fees
18 (\$300,000.00), litigation costs and expenses (\$25,126.14), Service Award (\$7,500.00),
19 Settlement Administration Costs (\$9,000.00), and LWDA Payment (\$37,500.00) from the
20 Settlement Fund, it is currently estimated that the Net Settlement Proceeds is approximately
21 \$588,264.61.⁷⁰ The Net Settlement Proceeds will be fully distributed in accordance with the
22 terms of the Settlement. The highest Individual Settlement Award to a Participating Settlement
23 Class Member is currently estimated to be \$3,233.95 and the average Individual Settlement
24 Award is currently estimated to be \$646.06.⁷¹ The Settlement offers significant monetary relief
25 to the Participating Settlement Class Members.

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28 ⁶⁹ See n.1, *supra*.

⁷⁰ Phoenix Decl., ¶ 13; see n.6, *supra*.

⁷¹ *Id.*, ¶ 14; see n.28, *supra*.

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

2 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
3 representation of the Settlement Class provided by Class Counsel has been wholly contingent.
4 Class Counsel took on the case without knowing whether any recovery would be obtained. Class
5 Counsel has invested 543.40 hours of time to obtain relief on behalf of Plaintiff and the
6 Settlement Class.⁷² Class Counsel has also incurred litigation costs and expenses in the amount
7 of \$25,126.14.⁷³

8 Class Counsel has borne all of the risks and costs of litigation and will not receive any
9 compensation until recovery is obtained.⁷⁴ Class Counsel is well-experienced in wage-and-hour
10 class action and complex litigation and used that experience to obtain a great result.⁷⁵ The skill
11 and determination that Class Counsel has shown, along with the results obtained, justify the
12 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,
13 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

16 A contingent fee must be higher than a fee for the same legal services paid as they
17 are performed. The contingent fee compensates the lawyer not only for the legal
18 services he renders but for the loan of those services. A lawyer who both bears the
19 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.

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

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27 ⁷² Aiwasian Decl., ¶ 11, Exh. A.

28 ⁷³ See Part VII, *infra*.

⁷⁴ Aiwasian Decl., ¶ 19.

⁷⁵ See *id.*, ¶¶ 15-18.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
4 from the Settlement Class Members—no Settlement Class Members objected to or opted out of
5 the Settlement.⁷⁶

6 The court in *Camden* noted that, “a key element of the common fund case is that fees are
7 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
8 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
9 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
10 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

11 Here, the results achieved and obtained on behalf of Plaintiff and the Settlement Class are
12 reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts
13 have resulted in a settlement that provides for a Settlement Fund of \$1,026,758.07.⁷⁷ The
14 Settlement Fund will be fully paid out, in accordance with the terms of the Settlement
15 Agreement. The highest Individual Settlement Award to a Participating Settlement Class
16 Member is currently estimated to be \$3,233.95 and the average Individual Settlement Award is
17 currently estimated to be \$646.06.⁷⁸

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

19 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
20 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
21 has years of complex and class action litigation experience, has recovered millions of dollars on
22 behalf of thousands of individuals in California, and has successfully handled numerous
23 significant wage-and-hour class action and complex cases.⁷⁹

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27 ⁷⁶ Phoenix Decl., ¶¶ 8 & 9.

28 ⁷⁷ Aiwasian Decl., ¶¶ 5-8; see n.1, *supra*.

⁷⁸ *Id.*, ¶ 14; see n.28, *supra*.

⁷⁹ *Id.*, ¶¶ 15-18.

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

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

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

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

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

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

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

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Settlement Class, and the time required for completing those tasks.⁸⁰ The chart demonstrates that Class Counsel has spent a total of 543.40 hours litigating the case and finalizing the Settlement.⁸¹ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff and the Settlement Class Members, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In

⁸⁰ See Aiwasian Decl., Exh. A.

⁸¹ Aiwasian Decl., ¶ 11.

1 awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market
2 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
3 normal hourly rates for winning contingency cases." See *id.*

4 Class Counsel has been actively involved in this case, prior to its commencement and all
5 the way up to the present, and Class Counsel's dedication to providing representation in this
6 matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its
7 efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful
8 in reaching a settlement of \$1,026,758.07.⁸²

9 As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and
10 experience of Class Counsel support a reasonable hourly rate of compensation of at least \$650
11 per hour for services provided by Class Counsel.⁸³ Lawyers for Justice, PC has been awarded
12 attorneys' fees, compensating the firm at the rate of at least \$650 for legal service performed, by
13 courts of this state.⁸⁴ While the circumstances of every case is unique, the fact remains that the
14 work performed and efforts undertaken by Class Counsel on behalf of the Settlement Class
15 Members justify the requested attorneys' fees.

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18 ⁸² See n.1, *supra*.

19 ⁸³ Aiwarzian Decl., ¶ 12.

20 ⁸⁴ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment,*
21 *Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of
22 attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in
23 *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on
24 April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class
25 action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court
26 Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees
27 involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge,*
28 *et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on
June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and
representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No.
SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96;
final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation*
(Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of
attorneys' fees involved an hourly rate of \$831.38; final approval of the class and representative action settlement in
Maryjo Ungerbuhler Anderson v. Boyett Petroleum (Stanislaus County Superior Court Case No. 2020582) was
granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of
the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento
County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees
involved an hourly rate of \$845.64. Aiwarzian Decl., ¶ 12.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$600 per hour for services provided by Class Counsel.⁸⁵ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$600 for legal service performed, by courts of this state.⁸⁶ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the rate of \$650 per hour to 543.40 hours would place a reasonable value of \$353,210.00, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$300,000.00, which is twenty-nine point two percent (29.2%) of the total recovery, as provided for by the Settlement Agreement and the Court's Order.⁸⁷

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⁸⁵ Aiwarzian Decl., ¶ 12.

⁸⁶ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved an hourly rate of \$936.47; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved an hourly rate of \$919.57; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved an hourly rate of \$764.82; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved an hourly rate of \$855.96; final approval of the class and representative action settlement in *Stanley Bland, et al. v. Telecare Corporation* (Alameda County Superior Court Case No. RG16811450) was granted on November 21, 2018, and the award of attorneys' fees involved an hourly rate of \$831.38; approval of the Private Attorneys General Act settlement in *Roberta Robles v. Altamed Health Services Corporation* (Los Angeles County Superior Court Case No. BC639623) was granted on October 31, 2018, and the award of attorneys' fees involved an hourly rate of \$602.22; final approval of the class and representative action settlement in *Samuel Guerra, et al v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved an hourly rate of \$600; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64; ; and final approval of the class and representative action settlement in *Kevin Coonce v. Ferguson Enterprises, Inc.* (Sacramento County Superior Court Case No. 34-2021-00136285) was granted on May 22, 2014, and the award of attorneys' fees involved an hourly rate of \$625. Aiwarzian Decl., ¶ 12.

⁸⁷ See n.2, *supra*.

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 \$247,000.00 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 \$30,000.00. As set forth in the Declaration of Edwin Aiwasian, Class Counsel has incurred a total of \$25,126.14 in litigation costs and expenses.⁸⁸ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸⁹ The cost savings of 4,873.86 will be part of the Net Settlement Proceeds, which will be distributed to the Participating Settlement

⁸⁸ Aiwasian Decl., ¶ 19.

⁸⁹ *Ibid*.

Class Members in accordance with the Settlement.⁹⁰ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$25,126.14 to Class Counsel.

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

As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$9,000.00.⁹¹ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Notice of Settlement to the Settlement Class Members; performing skip-trace searches on Notice of Settlements returned as undeliverable; re-mailing the Notice of Settlements to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Objections, and Workweeks disputes (if any); handling inquiries from Settlement Class Members regarding the Settlement; calculating Individual Settlement Awards and preparing the associated tax forms; and transmitting payments, among other things.⁹²

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$9,000.00.

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

The Settlement provides for a Service Award in the amount of \$7,500.00 to Plaintiff Ciomara Ayala Dolores to compensate Plaintiff for the time and effort that she expended on behalf of the Settlement Class. The requested Service Award is both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the

⁹⁰ Aiwasian Decl., ¶ 19.

⁹¹ Phoenix Decl., ¶ 17.

⁹² *Id.*, ¶ 2.

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 Award is fair and appropriate because Plaintiff spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹³ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain, and gave, information that would benefit the pursuit of the class and PAGA claims.⁹⁴ Plaintiff spent numerous hours speaking with Class Counsel about her claims, describing her work experiences with Defendant, and gathering and reviewing documents.⁹⁵ These services merit the requested Service Award to Plaintiff, who has not received any compensation for her efforts in the case.⁹⁶

The requested Service Award was fully disclosed in the Notice of Settlement that was mailed to the Settlement Class Members. No objections were made with regards to the requested Service Award. Accordingly, it is appropriate and just for Plaintiff Ciomara Ayala Dolores to each receive \$7,500.00 as a reasonable Service Award, in addition to her Individual Settlement Award, for her services in the case.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Service Award, 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: September 6, 2022

LAWYERS for JUSTICE, PC

By:



Edwin Aiwanian
Attorneys for Plaintiff and the Settlement Class

⁹³ Aiwanian Decl., ¶ 20; Declaration of Ciomara Ayala Dolores ("Ayala Dolores Decl."), ¶¶ 3-5.

⁹⁴ Aiwanian Decl., ¶ 20; Ayala Dolores Decl., ¶¶ 3-5.

⁹⁵ Aiwanian Decl., ¶ 20; Ayala Dolores Decl., ¶¶ 2-6.

⁹⁶ Ayala Dolores Decl., ¶ 9.