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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FARRAH FOWLER, 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.

TOTAL MERCHANT SERVICES, LLC, an
unknown business entity; TOTAL
MERCHANT SERVICES, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: BC722782

Honorable William F. Highberger
Department SSC10

CLASS ACTION

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

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

Date: September 29, 2022
Time: 10:00 a.m.
Department: SSC10

Complaint Filed: September 27, 2018
FAC Filed: January 10, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 29, 2022 at 10:00 a.m., in Department 10
2 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
3 Farrah Fowler (“Plaintiff”) will and hereby does move for an order granting final approval of:

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

- 7 • A Total Settlement Amount of approximately **\$3,000,000.00** will be fully distributed
8 to the Class Members who did not timely opt out of the Settlement (“Settlement Class
9 Member”);
- 10 • **No Notices of Objection** were submitted to the settlement administrator, Phoenix
11 Settlement Administrators (“Settlement Administrator”);
- 12 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$1,050,000.00** to Lawyers for Justice, PC (“Class
14 Counsel”), representing thirty-five percent (35%) of the Total Settlement Amount, for attorneys’
15 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
16 check with a multiplier of 1.97;

17 3. Payment in the amount of **\$20,259.70** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$8,000.00** to the Settlement Administrator, Phoenix
20 Settlement Administrators (“Phoenix”), for Settlement Administration Costs;

21 5. Payment in the amount of **\$10,000.00** to Plaintiff Farrah Fowler, as an
22 Enhancement Award for her time and effort in representing the 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 **\$75,000.00**, of which seventy-five
25 percent (75%), or \$56,250.00, will be paid to the California Labor and Workforce Development
26 Agency and twenty-five percent (25%), or \$18,750.00, will be part of the Net Settlement
27 Amount for distribution to the Settlement Class Members.

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 Aiwarzian), Class Representative (Farrah Fowler), and
6 Settlement Administrator (Taylor Mitzner of Phoenix) in support thereof; the pleadings and other
7 records on file with the Court in this matter; and such evidence and oral argument as may be
8 presented at the hearing on this Motion.

9 Dated: September 6, 2022

LAWYERS for JUSTICE, PC

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11 By: 
12 Edwin Aiwarzian
13 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Farrah Fowler (“Plaintiff”) seeks final approval of: (1) the Total Settlement Amount of \$3,000,000.00; (2) attorneys’ fees in the amount of \$1,050,000.00, which is thirty-five percent (35%) of the Total Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$20,259.70 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$8,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Enhancement Award in the amount of \$10,000.00 to Plaintiff Farrah Fowler; and (5) allocation of \$75,000.00 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 Class:

All current and former hourly paid, non-exempt employees who worked for Defendant in California at any time from September 27, 2014 through December 1, 2020 (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Mark Rudy, Esq., and extensive settlement negotiations. This matter has required 735.50 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Total Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.²

Plaintiff moves for final approval of the Enhancement Award in the amount of \$10,000.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on behalf of the Class and State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$9,000.00 for Settlement

¹ Settlement Agreement, ¶ 9. “Class Period” is defined as the period of time from September 27, 2014 through December 1, 2020. *See id.*, ¶ 8.f.

² Applying a modest multiplier of 1.97, the total enhanced lodestar fees are \$1,050,477.88, and Class Counsel seeks an attorneys’ fees award of \$1,050,000.00 (equal to 35% of the Total Settlement Amount).

Administration Costs. Plaintiff also moves for final approval of the allocation of \$75,000.00 for the PAGA Penalties, of which \$56,2500.00 will be paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA Penalties (“LWDA Payment”), and \$18,750.00 will be part of the Net Settlement Amount that will be distributed to Class Members who did not submit a timely and valid request to be excluded from the Settlement (“Settlement Class Members”).

The requests for Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, and allocation for the PAGA Penalties 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 Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, or allocation for PAGA Penalties.

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 Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, and PAGA Penalties in the amounts as fully disclosed to the Class and as requested herein.

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Total Merchant Services, LLC (“Defendant”) is a payment processing company which enables small businesses to take a variety of forms of payment such as credit and debit cards, Apple Pay, and EBT. Plaintiff Farrah Fowler is a former employee of Defendant.

1 On September 27, 2018, Plaintiff Farrah Fowler, individually, and on behalf of all current
2 and former hourly-paid or non-exempt employees who worked for Defendant within the State of
3 California at any time since September 27, 2014, filed a Class Action Complaint for Damages
4 and Demand for Jury Trial, thereby commencing the action. The action was filed in the Superior
5 Court of California for the County of Los Angeles, Case No. BC722782 (the “Action”).

6 On January 6, 2020, Plaintiff propounded multiple sets of discovery including Requests
7 for Production of Documents (Set One); Special Interrogatories (Sets One & Two); and Form
8 Interrogatories (Set One), on Defendant Total Merchant Services, LLC . and on Total Merchant
9 Services, Inc.

10 On September 16, 2020, the Parties participated in a formal, full-day mediation
11 conducted by Mark Rudy, Esq., a well-regarded mediator experienced in mediating complex
12 labor and employment matters. With the aid of the mediator’s evaluation, the Parties ultimately
13 reached the Settlement described herein to resolve the Action in its entirety.

14 On January 10, 2022, Plaintiff filed a First Amended Class Action Complaint for
15 Damages and for Enforcement Under the Private Attorneys General Act, California Labor Code
16 § 2698 *Et Seq.* in the Action (“Operative Complaint”). Plaintiff’s core allegation is that
17 Defendant has violated the California Labor Code by engaging in a uniform practice and
18 procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all
19 overtime and minimum wages, failing to provide compliant meal and rest periods and associated
20 premium pay, failing to timely pay wages during employment and upon termination of
21 employment, failing to provide compliant wage statements, failing to maintain requisite payroll
22 records, and failing to reimburse necessary business expenses, and thereby engaged in unfair
23 business practices in violation of California Business and Professions Code section 17200, *et*
24 *seq.* and conduct that gives rise to penalties recoverable under the Private Attorneys General Act
25 of 2004 (California Labor Code sections 2698, *et seq.*)(PAGA). Plaintiff contends that she, and
26 the Class Members, are entitled to, *inter alia*, unpaid wages, penalties, and attorneys’ fees.

27 On January 14, 2022, Defendant filed an Answer to the First Amended Complaint.
28 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind

associated with any of the allegations in the case, and further deny that the case is appropriate for class or representative treatment for any purpose other than for settlement purposes only.

On February 4, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) and supporting documents. On April 28, 2022, the Court issued a tentative ruling and subsequent Minute Order wherein it raised certain points of inquiry regarding the Motion for Preliminary Approval. On May 27, 2022, Plaintiff filed supplemental papers in support of the Motion for Preliminary Approval. On June 6, 2022, the Court entered an Order Granting Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of the Settlement, Attorneys’ Fees and Costs, Enhancement Award, Settlement Administration Costs, and allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount of \$3,000,000.00 on a non-reversionary basis.³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in the amount of \$1,050,000.00 and reimbursement of litigation costs and expenses in the amount of \$20,259.70, to Class Counsel; (2) Enhancement Award in the amount of \$10,000.00 to Plaintiff Farrah Fowler; (3) Settlement Administration Costs in the amount of \$8,000.00 to Phoenix; and (4) LWDA Payment in the amount of \$56,250.00.⁴ The Net Settlement Amount, which is estimated to be \$1,847,750.00, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendants.⁵

³ Settlement Agreement; § 8.ee.

⁴ *Id.*, §§ 12, 13, 14, & 15.

⁵ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Taylor Mitzner 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 \$28,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$20,259.70 for reimbursement of litigation costs and expenses, and the difference of \$7,740.30 will remain part of the Net Settlement Amount.

1 The Settlement Administrator calculated each Class Member's share of the Net
2 Settlement Amount ("Individual Settlement Payment"), by dividing the Net Settlement Amount
3 by the Workweeks of all Class Members to yield the "Estimated Workweeks Value," and
4 multiplied each Class member's individual Workweeks by the Estimated Workweeks Value to
5 yield each Class Member's estimated Individual Settlement Share. After Final Approval of the
6 Settlement, the Settlement Administrator will divide the Net Settlement Amount by the
7 Workweeks of all Settlement Class Members to yield the "Final Workweeks Value," and will
8 multiply each Settlement Class Member's individual Workweeks by the Final Workweeks Value
9 to yield each Settlement Class Member's Individual Settlement Share.⁶

10 Class Members had forty-five (45) calendar days after the initial mailing of the Class
11 Notice to dispute the number of Workweeks credited to each of them, opt out of the Settlement,
12 and/or object to the Settlement ("Response Deadline").⁷ The Response Deadline was August 15,
13 2022.⁸ The Settlement Administrator has not received any written requests for exclusion from the
14 Settlement ("Requests for Exclusion") or written objections to the Settlement ("Notices of
15 Objection") from Class Members.⁹

16 Individual Settlement Payments will be allocated as one-third (1/3) as wages (the "wages
17 portion"), to be reported on an IRS Form W-2; and one-third (1/3) as penalties and one-third
18 (1/3) as interest, which will be reported on an IRS Form 1099.¹⁰ Individual Settlement Payments
19 will be paid out to Settlement Class Members subject to reduction for the employee's share of
20 taxes and withholdings with respect to the wages portion of each Individual Settlement Share,
21 and the net payment is referred to as "Individual Settlement Payment".¹¹

22 Any and all Individual Settlement Payment checks issued to Settlement Class Members
23 will remain valid for 180 calendar days from the date of mailing.¹² Thereafter, Individual
24 Settlement Payment checks that are not negotiated within the 180-day period will be void, and

25
26 ⁶ Settlement Agreement, §§ 16.a and 16.b.

27 ⁷ *Id.*, § 8.z.

28 ⁸ Phoenix Decl., ¶ 8, Exh. A.

⁹ *Id.*, ¶¶ 8 & 9.

¹⁰ Settlement Agreement., § 27.

¹¹ *Ibid.*

¹² *Id.*, § 11.

the funds associated with such voided checks will be transmitted by the Settlement Administrator to the State Controller's Office Unclaimed Property Division, in the name of the Settlement Class Member whose check is cancelled and in the respective amount of the cancelled check.¹³

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 June 6, 2022 Preliminary Approval Order.

On June 6, 2022, Phoenix received the Court-approved text for the Class Notice.

On June 17, 2022, Phoenix received a mailing list from Defendants' counsel that contained the names, last known addresses, Social Security numbers, and dates of employment as hourly and/or non-exempt employees in California from during the Class Period for individuals identified as Class Members ("Class Data List").¹⁴ The Class Data List contained information for 502 individuals identified as Class Members.¹⁵ Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data List with any updated addresses located.¹⁶

On July 1, 2022, Phoenix mailed the Class Notice via first class mail to 502 individuals identified as Class Members in the Class Data List.¹⁷

As of the date of this Motion, one (1) Class Notice was returned as undeliverable with a forwarding address, and Phoenix promptly re-mailed the Class Notice to the forwarding address.¹⁸ Fifty-eight (58) Class Notices were returned as undeliverable without forwarding addresses.¹⁹ Phoenix performed a skip-trace search on the fifty-eight (58) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for fifty-eight (58) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²⁰ Three (3)

¹³ Settlement Agreement., § 11.

¹⁴ Phoenix Decl., ¶ 3.

¹⁵ Ibid.

¹⁶ *Id.*, ¶ 4.

¹⁷ *Id.*, ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ Ibid.

²⁰ Ibid.

Class Notices were returned to Phoenix as undeliverable a second time.²¹ Ultimately, three (3) Class Notices remain undeliverable because an updated address was not located through skip-tracing or the Class Notice was returned as undeliverable a second time.²²

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection or Requests for Exclusion from Class Members.²³

To date, there are five hundred two (502) Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁴ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$1,847,750.00 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁵ The highest Individual Settlement Payment is currently estimated to be \$13,107.55 and the average Individual Settlement Payment is currently estimated to be \$3,680.78.²⁶

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

²¹ Phoenix Decl., ¶ 7.

²² Ibid.

²³ *Id.*, ¶¶ 8 & 9.

²⁴ *Id.*, ¶ 11.

²⁵ *Id.*, ¶ 12; see also, n.5, *supra*.

²⁶ *Id.*, ¶ 13. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$28,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$7,740.30, will be part of the Net Settlement Amount). See n.5, *supra*.

1 circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.
2 “Due regard should be given to what is otherwise a private consensual agreement between the
3 parties.” *Dunk, supra*, 48 Cal.App.4th at 1801.

4 The proponent of the settlement has the burden to show that it is fair and reasonable.
5 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
6 exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2)
7 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
8 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk,*
9 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
10 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
11 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.
12 The inquiry is not whether the settlement agreement is the best one that class members could
13 have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and
14 reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain
15 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful.
16 *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is
17 substantially narrower than it would be if the case were to be successfully litigated, that is no bar
18 to a class settlement because the public interest may indeed be served by a voluntary settlement
19 in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

22 The parties actively litigated the case since it was commenced on September 27, 2018.
23 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,
24 and scope of the claims, and also to prepare the matter for class certification, representative
25 adjudication, and trial.²⁷ The parties conducted extensive formal and informal discovery and
26 investigation into the facts of the case, and also informally exchanged information and data in
27
28

²⁷ Declaration of Edwin Aiwasian (“Aiwasian Decl.”), ¶ 6.

1 preparation for mediation.²⁸ Class Counsel propounded multiple sets of written discovery
2 requests in various forms and reviewed Defendants' responses thereto.²⁹ Class Counsel also
3 interviewed and obtained information from Plaintiff and Class Members, including and not
4 limited to the names of potential witnesses, and reviewed and analyzed thousands of pages of
5 documents and data produced by Defendant and obtained through other sources.³⁰ The
6 documents and data reviewed and analyzed by Class Counsel included, and were not limited to,
7 Plaintiff and other Class Members' employment records, a detailed sampling of Class Members'
8 time and pay data, Defendant's Team Member Handbook, company policy acknowledgements
9 and agreements (including but not limited to Second Meal Period Waiver, Team Member
10 Handbook Acknowledgement of Receipt, and Employee Confidentiality Agreement), internal
11 memoranda, new hire materials and checklists, and operations and employment policies,
12 practices, forms, and procedures (including but not limited to Defendant's Rules of Conduct,
13 Employment Categories, and Department Performance Reviews, Meal and Rest Period Policy,
14 Sick Leave Policy, and California-Specific Overtime Policy), among other information and
15 documents.³¹ Class Counsel researched applicable law, developed damages/valuation models in
16 preparation for mediation, and met and conferred with Defendant's counsel on numerous
17 occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and
18 production of documents and data prior to mediation.³²

19 After conducting significant formal and informal discovery and investigation into the
20 facts of the case, the parties participated in a formal, full-day mediation conducted by Mark
21 Rudy, Esq., a well-regarded mediator experienced in mediating complex labor and employment
22 matters.³³ Prior to and during mediation and settlement discussions, the parties exchanged
23 information and data, and discussed various aspects of the case, including and not limited to, the
24 risks and delays of further litigation, the risks and expenses to the parties of proceeding with
25 class certification, representative adjudication, and trial, the law relating to off-the-clock theory,

26 ²⁸ Aiwazian Decl., ¶ 6.

27 ²⁹ Ibid.

28 ³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ *Id.*, ¶ 8.

meal and rest periods, representative PAGA claims, and wage-and-hour law and enforcement, the evidence produced and analyzed, and the possibility of appeals, among other things.³⁴ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.³⁵ Arriving at a settlement that was acceptable to the parties was not easy.³⁶ 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.³⁷ 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.³⁸

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 Class Members.³⁹ 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 law and enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.⁴⁰ The Settlement was based on this large volume of facts, evidence, and investigation.⁴¹ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴²

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³⁴ Aiwazian Decl., ¶ 8.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ *Id.*, ¶ 6.

⁴⁰ Ibid.

⁴¹ *Id.*, ¶¶ 6 & 8.

⁴² *Id.*, ¶¶ 15-18.

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

3 The Settlement, which provides for a Total Settlement Amount of \$3,000,000.00,
4 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
5 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴³
6 The Settlement was calculated using information and data uncovered through extensive case
7 investigation, formal and informal discovery, and the exchange of information in the context of
8 mediation.⁴⁴ Had the action not settled, Defendant would have vigorously challenged class
9 certification, manageability of representative adjudication, and liability. Defendant contended
10 that individualized questions of fact predominate over any common issues, and these issues
11 would pose challenges to certification and representative adjudication. Defendant would have
12 likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide
13 and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court
14 certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or
15 representative basis. Additionally, preparation for trial would have been expensive for all parties.

16 It is preferable to reach an early resolution of a dispute because such resolutions save
17 time and money that would otherwise go to litigation. If this matter had settled after further
18 litigation, the settlement amount would have taken into account the additional costs incurred, and
19 there might have been less money available for Settlement Class Members after all was said and
20 done. This is not just an abstract contention. The risks and expenses of further litigation
21 outweighed any benefit that might have been gained otherwise. These risks of further litigation
22 include a determination that the claims were unsuitable for class treatment and/or representative
23 adjudication, failure to obtain certification, class de-certification after certification of a class,
24 allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery
25 after years of litigation. Additionally, the parties were moving into the phase of the litigation
26 where they would have to conduct a significant amount of additional discovery, including and
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28 ⁴³ Aiwazian Decl., ¶¶ 8 & 21.

⁴⁴ *Id.*, ¶¶ 5-8.

not limited to, additional depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Discovery would have certainly arisen, which would have cost the parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

The Settlement, which provides for a Total Settlement Amount of \$3,000,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information in the context of mediation. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Total Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$1,050,000.00, litigation costs and expenses in the amount of \$20,259.70, Enhancement Award in the amount of \$10,000.00, Settlement Administration Costs in the amount of \$8,000.00, and LWDA Payment in the amount of \$56,250.00 from the Total Settlement Amount of \$3,000,000.00, the Net Settlement Amount is currently estimated to be \$1,847,750.00.⁴⁵ Under the Settlement Agreement, the Total Settlement Amount will be fully paid out without any reversion to Defendants, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class

⁴⁵ Phoenix Decl., ¶ 12; see n.5, *supra*.

Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her. To date, there are 502 Settlement Class Members, representing 100% of the Class.⁴⁶ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$13,107.55 and the average Individual Settlement Payment is currently estimated to be \$3,680.78.⁴⁷ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁴⁸ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁴⁹ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁵⁰ 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.

⁴⁶ Phoenix Decl., ¶ 11.

⁴⁷ *Id.*, ¶ 13; see n.26, *supra*.

⁴⁸ Aiwasian Decl., ¶ 21.

⁴⁹ *Id.*, ¶¶ 15-18.

⁵⁰ *Ibid.*

1 **E. There Are No Objections to the Settlement.**

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

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

14 **VI. THE ATTORNEYS’ FEES AWARD REQUESTED BY CLASS COUNSEL IS**
15 **FAIR AND REASONABLE AND SHOULD BE APPROVED.**

16 **A. Legal Standard for Attorneys’ Fees in a Class Action Settlement.**

17 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
18 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
20 1132 (The “experienced trial judge is the best judge of the value of professional services
21 rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
22 Where the amount of a settlement is a “certain easily calculable sum of money,” California
23 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and
24 Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
25 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.
26 The percentage-of-the-benefit approach is preferred in class and representative actions because
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⁵¹ Phoenix Decl., ¶¶ 8 & 9.

1 “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao*,
2 *supra*, 82 Cal.App.4th at 49.

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

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

21 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
22 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
23 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
24 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
25 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
26 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
27 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”
28 *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, 34.⁵² The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. *See*, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. *See Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

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

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Total Settlement Amount of \$3,000,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s successful prosecution and resolution of the 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.

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1 The percentage method is consistent with, and is intended to mirror, the practice in the
2 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
3 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
4 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
5 counsel's work to the class is to review the consideration agreed to be paid by the named
6 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed
7 be inequitable for the members of the class, who will enjoy the benefits of the settlement without
8 incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case,
9 Plaintiff has agreed to a contingency fee of thirty-nine percent (39%) of the recovery.⁵³

10 Furthermore, a percentage-fee award is not dependent on a determination of the actual
11 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
12 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
13 equitable that [the attorney's] compensation and expenses should come from the entire fund
14 saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.*
15 (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
16 calculated on the basis of the total fund made available rather than the actual payments made to
17 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a
18 litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or
19 his client is entitled to a reasonable attorneys' fee from the fund as a whole”).

20 In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining
21 reasonable attorneys' fees, the Court of Appeal valued a settlement based on the total value of
22 the settlement made available to class members by the efforts of counsel, decided in favor of
23 granting fees as a percentage of the total value of the settlement, and rejected an Notice of
24 Objection that the fees be awarded based on the exact amount claimed by class members. *Id.* at
25 247.

26 Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, and
27 the State of California, and the results achieved justify an attorneys' fees award that is the
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⁵³ Aiwazian Decl., ¶ 9.

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 \$1,050,000.00 (which is 35% of the Total Settlement Amount) 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 Class Members.

1. *Time & Labor.*

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁴

⁵⁴ Aiwazian Decl., ¶¶ 15-18.

As outlined in the Declaration of Edwin Aiwazian, Class Counsel has fully and actively participated in litigation of this case.⁵⁵ 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.⁵⁶ During the litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; propounded formal written discovery requests and reviewed Defendant's responses thereto; prepared for and defending the depositions of Plaintiff; reviewed and analyzed thousands of pages of pages of documents and data produced by Defendant and obtained through other sources; and prepared damages/valuation calculations.⁵⁷ 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.⁵⁸

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Edwin Aiwazian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, Class Members, and the State of California.⁵⁹ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent **735.50** hours performing tasks and to obtain a significant recovery in this case.⁶⁰ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved

⁵⁵ Aiwazian Decl., Exh. A.

⁵⁶ *Id.*, ¶ 6 & Exh. A.

⁵⁷ *Id.*, ¶ 6.

⁵⁸ *Ibid.*

⁵⁹ *Id.*, Exh. A.

⁶⁰ *Id.*, ¶ 11.

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.⁶¹

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

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

⁶¹ Aiwasian Decl., ¶¶ 15-18.

1 appellate review of those proceedings. The Settlement offers present relief and/or recovery to
2 Class Members while avoiding the further expense, risk, and delay in obtaining possible
3 recovery at an unknown time in the future.

4 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
5 pay a Total Settlement Amount of \$3,000,000.00 to settle the matter. After deducting the
6 attorneys' fees (\$1,050,000.00), litigation costs and expenses (\$20,259.70), Enhancement Award
7 (\$10,000.00), Settlement Administration Costs (\$8,000.00), and LWDA Payment (\$56,250.00)
8 from the Total Settlement Amount, it is currently estimated that the Net Settlement Amount is
9 approximately \$1,847,750.00.⁶² The Net Settlement Amount will be fully distributed in
10 accordance with the terms of the Settlement. The highest Individual Settlement Payment to a
11 Settlement Class Member is currently estimated to be \$13,107.55 and the average Individual
12 Settlement Payment is currently estimated to be \$3,680.78.⁶³ The Settlement offers significant
13 monetary relief to the Settlement Class Members.

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

15 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
16 representation of the Class provided by Class Counsel has been wholly contingent. Class
17 Counsel took on the case without knowing whether any recovery would be obtained. Class
18 Counsel has invested 735.50 hours of time to obtain relief on behalf of Plaintiff, Class Members,
19 and the State of California.⁶⁴ Class Counsel has also incurred litigation costs and expenses in the
20 amount of \$20,259.70.⁶⁵

21 Class Counsel has borne all of the risks and costs of litigation and will not receive any
22 compensation until recovery is obtained.⁶⁶ Class Counsel is well-experienced in wage-and-hour
23 class action and complex litigation and used that experience to obtain a great result.⁶⁷ The skill
24 and determination that Class Counsel has shown, along with the results obtained, justify the
25 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,

26 ⁶² Phoenix Decl., ¶ 12; see n.5, *supra*.

27 ⁶³ *Id.*, ¶ 13; see n.6, *supra*.

28 ⁶⁴ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁵ See Part VII, *infra*.

⁶⁶ Aiwasian Decl., ¶ 19.

⁶⁷ See *id.*, ¶¶ 15-18.

and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to or opted out of the Settlement.⁶⁸

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 in the case 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 Total Settlement Amount of \$3,000,000.00.⁶⁹ The Total Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be

⁶⁸ Phoenix Decl., ¶¶ 8 & 9.

⁶⁹ Aiwasian Decl., ¶¶ 5-8.

\$13,107.55 and the average Individual Settlement Payment is currently estimated to be \$3,680.78.⁷⁰

6. The Reputation and Ability of the Attorneys.

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁷¹

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

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

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

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⁷⁰ Phoenix Decl., ¶ 13; see n.26, *supra*.

⁷¹ Aiwasian Decl., ¶¶ 15-18.

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

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

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

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

24 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
25 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
26 on behalf of Plaintiff, the Class, and the State of California, and the time required for completing
27 those tasks.⁷² The chart demonstrates that Class Counsel has spent a total of 735.50 hours
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⁷² See Aiwazian Decl., Exh. A.

litigating the case and finalizing the Settlement.⁷³ In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved on behalf of Plaintiff, Class Members, and the State of California, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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

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

Class Counsel has been actively involved in this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$3,000,000.00 .

As set forth in the Declaration of Edwin Aiwazian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$725 per hour for services provided by Class Counsel.⁷⁴ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$725 for legal service performed, by courts of this state.⁷⁵ While the circumstances of every case is unique, the

⁷³ Aiwazian Decl., ¶ 11.

⁷⁴ *Id.*, ¶ 12.

⁷⁵ 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

fact remains that the work performed and efforts undertaken by Class Counsel on behalf of 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 Total Settlement Amount cases based on time reasonably expended on the action, courts have generally awarded these fees based on the actual time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted in this case.

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

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

- The time and labor required

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; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved an hourly rate of \$780.77; and final approval of the class and representative action settlement in *Demetrius Camarillo v. Blue Diamond Growers* (Sacramento County Superior Court Case No. 34-2015-00175871) was granted on June 30, 2017, and the award of attorneys' fees involved an hourly rate of \$845.64. Aiwazian Decl., ¶ 12.

- 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 "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 case 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.

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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 \$3,000,000.00 . Also, Class Counsel's efforts throughout the case demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time summarized above and detailed in the Task and Time Chart, which is attached as EXHIBIT A to the Declaration of Edwin Aiwarzian.⁷⁶ As the chart indicates, Class Counsel has worked 735.50 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable blended rate of \$725 per hour to 735.50 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$533,237.50 on Class Counsel's services, and applying a modest multiplier of 1.97, the total enhanced lodestar fees are \$1,050,477.88.⁷⁷ Class Counsel seeks an attorneys' fee award of \$1,050,000.00 (equal to 35% of the Total Settlement Amount based on the Settlement Agreement). 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)

⁷⁶ Aiwarzian Decl., Exh. B.

⁷⁷ *Id.*, ¶ 11; *see n.2, supra*.

396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2** and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

Therefore, application of a modest multiplier of 1.97 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. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$1,050,000.00 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 \$28,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel has incurred a total of \$20,259.70 in litigation costs and expenses.⁷⁸ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁷⁹ The cost savings of \$7,740.30 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸⁰ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$20,259.70 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 \$8,000.00.⁸¹ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Requests for Exclusion, Notices of Objection, and Workweeks disputes; handling inquiries from Class Members

⁷⁸ Aiwazian Decl., ¶ 19.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Phoenix Decl., ¶ 16.

1 regarding the Settlement; calculating Individual Settlement Payments and preparing the
2 associated tax forms; and transmitting payments, among other things.⁸²

3 Accordingly, the Court should grant final approval of payment to Phoenix, a necessary
4 third-party for handling of the notice and settlement process, in the amount of \$8,000.00.

5 **IX. THE REQUESTED ENHANCEMENT AWARD IS FAIR AND REASONABLE,**
6 **AND SHOULD BE APPROVED.**

7 The Settlement provides for an Enhancement Award in the amount of \$10,000.00 to
8 Plaintiff Farrah Fowler to compensate Plaintiff for the time and effort that she expended on
9 behalf of the Class and the State of California. The requested Enhancement Award is both
10 common and reasonable and should be awarded.

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

18 The requested Enhancement Award is fair and appropriate because Plaintiff spent a
19 substantial amount of time and effort producing relevant documents and past employment
20 records, as well as providing the facts and evidence necessary to attempt to prove the
21 allegations.⁸³ Plaintiff was available whenever Class Counsel needed her and actively tried to
22 obtain, and gave, information that would benefit the pursuit of the class and PAGA claims.⁸⁴
23 Plaintiff spent numerous hours speaking with Class Counsel about her claims, describing her
24 work experiences with Defendant, and gathering and reviewing documents.⁸⁵ These services
25 merit the requested Enhancement Award to Plaintiff, who has not received any compensation for
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27 ⁸² Phoenix Decl., ¶ 2.

28 ⁸³ Aiwasian Decl., ¶ 20; Declaration of Farrah Fowler (“Fowler Decl.”), ¶¶ 3-5.

⁸⁴ Aiwasian Decl., ¶ 20; Fowler Decl., ¶¶ 3-5.

⁸⁵ Aiwasian Decl., ¶ 20; Fowler Decl., ¶¶ 2-6.

her efforts on behalf of the Class Members and State of California to date.⁸⁶

The requested Enhancement Award was fully disclosed in the Class Notice that was mailed to the Class Members. No Notices of Objection were made with regards to the requested Enhancement Award. Accordingly, it is appropriate and just for Plaintiff Farrah Fowler to receive \$10,000.00 as a reasonable Enhancement Award, in addition to her Individual Settlement Payment, for her services on behalf of the Class and the State of California.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Enhancement 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 Class

⁸⁶ Fowler Decl., ¶ 8.