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

REGINIA SAM, 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.

CONCORDANCE HEALTHCARE
SOLUTIONS, LLC, an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2102017

Honorable Harold Hopp
Department 1

CLASS ACTION

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

[Declarations of Class Counsel
(Edwin Aiwanian); Declaration of Class
Representative (Regina Sam); Declaration
of Settlement Administrator (Jarrod Salinas);
and [Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: August 1, 2023
Time: 8:30 a.m.
Department: 1

Complaint Filed: April 29, 2021
FAC Filed: March 9, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 1, 2023 at 8:30 a.m., in Department 1 of the
2 above-entitled Court, located at 4050 Main Street, Riverside California 92501, Plaintiff Reginia
3 Sam (“Plaintiff”) will and hereby does move for an order granting final approval of:

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

- 7 • A Net Settlement Amount of approximately **\$197,617.76** will be fully distributed to
8 the Class Members who did not timely opt out of the Settlement (“Settlement Class
9 Member”);
10 • **No Objections** were submitted to the settlement administrator, Phoenix Class Action
11 Administration Solutions (“Settlement Administrator”);
12 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$157,500.00** to Lawyers *for* Justice, PC (“Class
14 Counsel”), representing thirty-five percent (35%) of the Maximum Settlement Amount, for
15 attorneys’ fees, which is reasonable and justified on a percentage-basis and also based on a
16 lodestar cross-check;

17 3. Payment in the amount of **\$12,882.24** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$7,000.00** to the Settlement Administrator, Phoenix
20 Class Action Administration Solutions (“Phoenix”), for Settlement Administration Costs;

21 5. Payment in the amount of **\$7,500.00** to Plaintiff Reginia Sam, as Enhancement
22 Payment, 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 **\$67,500.00**, of which seventy-five
25 percent (75%), or **\$50,625.00**, will be paid to the California Labor and Workforce Development
26 Agency and twenty-five percent (25%), or **\$16,875.00**, will be part of the Net Settlement
27 Amount 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 Declarations of Class Counsel (Edwin Aiwasian), Class Representative (Reginia Sam), and
6 Settlement Administrator (Jarrod Salinas 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
10 Dated: July 10, 2023

LAWYERS for JUSTICE, PC

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12 By: _____
13 Kyla Buenaventura
14 Attorneys for Plaintiff and the Class
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Reginia Sam (“Plaintiff”) seeks final approval of: (1) the Maximum Settlement Amount of \$450,000.00; (2) attorneys’ fees in the amount of \$157,500.00, which is thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$12,882.24 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$7,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Reginia Sam; and (5) allocation of \$67,500.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Amount”).

Plaintiff seeks relief on behalf of the following Class:

All current and former non-exempt employees who were employed by Defendant within the State of California at any time during the period from April 29, 2017 through January 12, 2022 (“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 Warren Jackson, Esq., and extensive settlement negotiations. This matter has required 390.60 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 Maximum 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.

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00, to compensate Plaintiff for the time and effort that she expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of \$7,000.00 for Settlement Administration Costs.

¹ First Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 6(b). “Class Period” is defined as the period of time from April 29, 2017 through January 12, 2022.

1 Plaintiff also moves for final approval of the allocation of \$67,500.00 for the PAGA Amount, of
2 which \$50,625.00 will be paid to the California Labor Workforce and Development Agency
3 (“LWDA”) for its portion of the PAGA Payment (“LWDA Payment”), and \$16,875.00 will be
4 distributed to all non-exempt employees of Defendant employed in California at any time
5 during the PAGA Period (“PAGA Employees”).²

6 The requests for Attorneys’ Fees and Costs, Enhancement Payment, Settlement
7 Administration Costs, and allocation for the PAGA Amount were fully disclosed in the Notice of
8 Class Action Settlement (“Notice”) that was mailed to the Class Members. Most importantly, as
9 of the date of this Motion, *not a single Class Member has objected to or requested exclusion*
10 *from any aspect of the Settlement, including the requested Attorneys’ Fees and Costs,*
11 *Enhancement Payment, Settlement Administration Costs, or allocation for PAGA Amount.*

12 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length,
13 good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who
14 is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should
15 grant final approval of the Settlement, and award Attorneys’ Fees and Costs, Enhancement
16 Payment, Settlement Administration Costs, and PAGA Amount in the amounts as fully disclosed
17 to the Class and as requested herein.

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

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28 ² Settlement Agreement, ¶ 13. “PAGA Period” is defined as the period of time from September 7, 2019 through
January 12, 2022. See id., ¶ 6(dd).

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

2 Defendant Concordance Healthcare Solutions, LLC, (“Defendant”) provides technology
3 and solutions to support logistics, contracts, and processes for the medical supply and healthcare
4 industry. Plaintiff Reginia Sam is a former employee of Defendant.

5 On April 29, 2021, Plaintiff filed a Class Action Complaint for Damages in the Riverside
6 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

7 On November 12, 2021, Plaintiff provided written notice by certified mail to Defendant
8 and by online submission to the LWDA of the specific provisions of the California Labor Code
9 that were violated.

10 On March 9, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages
11 and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq.
12 (“Operative Complaint”). On April 8, 2022, Defendant filed an Answer to Plaintiff’s First
13 Amended Class Action Complaint.

14 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
15 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
16 of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal
17 and rest periods and associated premium pay, failing to timely pay wages during employment
18 and upon termination of employment, failing to provide compliant wage statements, failing to
19 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
20 thereby engaged in unfair business practices in violation of California Business and Professions
21 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
22 contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
23 (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

24 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
25 associated with any of the allegations in the Action, and further denies that the Action is
26 appropriate for class treatment or representative adjudication for any purpose other than for
27 settlement purposes only. More specifically, Defendant asserts that the proposed class lacks a
28 well-defined community of interest, requiring individualized questions and proof. Defendant

1 further points out that the Company policies at issue in this case are, on their face, compliant
2 with California state law. Defendant also pointed to the lack of evidence of any meal and/or rest
3 periods that were not provided. Furthermore, Defendant asserts that its payroll systems ensure
4 compliance with the specific overtime requirements for California. Finally, Defendants assert
5 that Plaintiff's PAGA claim is not manageable pursuant to *Wesson v. Staples the Office*
6 *Superstore, LLC*.

7 The Parties have actively litigated the Action since it was commenced on April 29, 2021.
8 On October 12, 2021, the Parties participated in a formal, full-day mediation conducted by
9 Warren Jackson, Esq., a well-regarded mediator experienced in mediating complex labor and
10 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached
11 the Settlement described herein to resolve the Action in its entirety.

12 On September 26, 2022, Plaintiff filed a Motion for Preliminary Approval of Class
13 Action Settlement ("Motion for Preliminary Approval") and supporting documents. On
14 November 15, 2022, the Court issued an Order in which the Court raised certain points of inquiry
15 regarding Plaintiff's Motion for Preliminary Approval. On January 10, 2023, Plaintiff filed
16 supplemental papers in support of the Motion for Preliminary Approval. On January 19, 2023,
17 the Court issued an Order in which the Court raised additional points of inquiry. On February
18 6, 2023, Plaintiff filed additional declarations in support of the Motion for Preliminary
19 Approval. On February 14, 2023, the Court entered an Order in which the Court raised further
20 points of inquiry. On March 6, 2023, Plaintiff filed an amended declaration in support of the
21 Motion for Preliminary Approval. On March 14, 2023, the Court entered an Order Granting
22 Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary
23 Approval Order"), thereby preliminarily approving the terms of the Settlement, the Class
24 Notice, and the proposed administration procedures and associated deadlines.

25 Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs,
26 Enhancement Payment, Settlement Administration Costs, and allocation for PAGA Amount.

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$450,000.00 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 Maximum Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$157,500.00 and reimbursement of litigation costs and expenses in the amount of \$12,882.24, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Reginia Sam; (3) Settlement Administration Costs in the amount of \$7,000.00 to Phoenix; and (4) PAGA Amount in the amount of \$67,500.00.⁴ The Net Settlement Amount, which is estimated to be \$197,617.76, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.

The Settlement Administrator will calculate each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Share"), by dividing the final Net Settlement Amount by the total number of weeks each Settlement Class Member was employed by Defendant as a non-exempt employee in California during the Class Period ("Workweeks") to yield the "Final Workweek Value," and multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value.⁵

The Settlement Administrator will calculate each PAGA Employee's share of the 25% portion of the PAGA Amount ("Individual PAGA Payment"), by dividing the 25% portion of the PAGA Amount by the total number of Workweeks of all PAGA Employees during the PAGA Period, and multiply the resulting figure by each PAGA Employee's individual Workweeks during the PAGA Period.⁶

Class Members had forty-five (45) calendar days after the initial mailing of the Notice to Class Members to dispute the number of Compensable Workweeks credited to each of them, opt out of the Settlement, and/or object to the Settlement ("Response Deadline").⁷ The Response

³ Settlement Agreement; ¶ 6(v).

⁴ *Id.*, ¶¶ 6(a), 6(n), 6(aa) & 6(nn).

⁵ *Id.*, ¶ 14(b).

⁶ *Id.*, ¶ 15.

⁷ *Id.*, ¶ 6(ll).

Deadline was June 2, 2023.⁸ The Settlement Administrator has received zero (0) written requests for exclusion from the Settlement and/or Exclusion Forms (together, “Requests for Exclusion”) and has received zero (0) Objection Forms or written objections to the Settlement (together, “Objections”) from Class Members.⁹

Individual Settlement Shares will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2 and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable).¹⁰ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee’s and employer’s share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Shares (the net payment is referred to as “Individual Settlement Payment”).¹¹ Individual PAGA Payments will be allocated as one hundred percent (100%) penalties to be reported on IRS Form 1099.

Any and all Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Employees will remain valid for 180 calendar days from the date of mailing.¹² Thereafter, Individual Settlement Payment and Individual PAGA Payment checks that are not negotiated within the 180-day period will be void, and the funds associated with such voided checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, et seq., for the benefit of those Settlement Class Members and PAGA Employees who did not cash, deposit, or otherwise negotiate their checks until such time that they claim their property.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 March 14,

⁸ Declaration of Jarrod Salinas Regarding Notice and Settlement Administration (“Phoenix Declaration” or “Phoenix Decl.”), ¶¶ 7-9, Exh. A.

⁹ *Id.*, ¶¶ 7 & 8.

¹⁰ Settlement Agreement, ¶ 24.

¹¹ *Ibid.*

¹² *Id.*, ¶ 13.

¹³ *Ibid.*

2023 Preliminary Approval Order.

On March 14, 2023, Phoenix received the Court-approved text for the Notice.

On March 15, 2023, Phoenix received a mailing list from Defendant's counsel that contained the names, last known mailing addresses, Social Security numbers, telephone numbers, and dates of employment as non-exempt employees in California from April 29, 2017 through January 12, 2022 for individuals identified as Class Members ("Class List").¹⁴ The Class List contained information for 134 individuals identified as Class Members.¹⁵ Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class List with any updated addresses located.¹⁶

On April 18, 2023, Phoenix mailed the Notice via first class mail to 134 individuals identified as Class Members in the Class List.¹⁷

As of the date of this Motion, zero (0) Notices were returned as undeliverable with forwarding addresses.¹⁸ Zero (0) Notices were returned as undeliverable without forwarding addresses.¹⁹

As of the date of this Motion, the Settlement Administrator has not received any Objections or Requests for Exclusion from Class Members.²⁰

To date, there are 134 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²¹ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$197,617.76 will be distributed to Settlement Class Members and the 25% share of the PAGA Amount of \$16,875.00 will be distributed to PAGA Employees in accordance with the terms of the Settlement.²² The highest Individual Settlement Payment is currently estimated to be \$6,085.29 and the average Individual Settlement Payment is currently estimated to be \$1,474.76.²³ The highest Individual PAGA

¹⁴ Phoenix Decl., ¶ 3.

¹⁵ Ibid.

¹⁶ *Id.*, ¶ 4.

¹⁷ *Id.*, ¶ 5.

¹⁸ *Id.*, ¶ 6.

¹⁹ Ibid.

²⁰ *Id.*, ¶¶ 7 & 8.

²¹ *Id.*, ¶ 10.

²² *Id.*, ¶ 12.

²³ *Id.*, ¶ 13.

Payment is currently estimated to be at least \$400.44 and the average Individual PAGA Payment is currently estimated to be at least \$193.97.²⁴

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

²⁴ Phoenix Decl., ¶ 14.

1 obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately,
2 meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords
3 relief that is substantially narrower than it would be if the case were to be successfully litigated,
4 that is no bar to a class settlement because the public interest may indeed be served by a
5 voluntary settlement in which each side gives ground in the interest of avoiding prolonged
6 litigation. *Id.*

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

9 The parties actively litigated the case since it was commenced on April 29, 2021.
10 Counsel for the parties used the pre-mediation time period to investigate the veracity, strength,
11 and scope of the claims, and also to prepare the matter for class certification, representative
12 adjudication, and trial.²⁵ The parties conducted significant informal discovery and investigation
13 into the facts of the case, and also informally exchanged information and data in preparation for
14 mediation.²⁶ Class Counsel also interviewed and obtained information from Plaintiff and Class
15 Members, including and not limited to the names of potential witnesses, and reviewed and
16 analyzed thousands of pages of documents and data produced by Defendant and obtained
17 through other sources.²⁷ The information, documents, and data reviewed and analyzed by Class
18 Counsel included, and were not limited to, Plaintiff and other Class Members’ employment
19 records, a detailed sampling of Class Members’ time and pay data (including, but not limited to,
20 Timecard Records, Payroll Journal, and Defendant’s Earnings Codes), Concordance Healthcare
21 Solutions Employee Handbook, company policy acknowledgements (including, but not limited
22 to, Employee Handbook Acknowledgement and Receipt, Receipt of Employee Handbook and
23 Benefit Summary), job descriptions, Defendant’s operations and employment practices, forms
24 (including, but not limited to, Employee Status Change Form and Direct Deposit Form), and
25 policies (including, but not limited to, Clock In & Out Policy, Rounding Policy, Overtime Pay
26 Policy, and Termination Matrix Procedures), among other documents and data.²⁸ Class Counsel

27 ²⁵ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

28 ²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

1 researched applicable law, developed damages, violation, and penalties valuation models in
2 preparation for the mediation session, and met and conferred with Defendant's counsel on
3 numerous occasions, e.g., to discuss issues relating to the pleadings, case management, informal
4 discovery, and production of documents and data prior to mediation.²⁹

5 After conducting significant informal discovery and investigation into the facts of the
6 case, the parties participated in a formal, full-day mediation conducted by Warren Jackson, Esq.,
7 a well-regarded mediator experienced in mediating complex labor and employment matters.³⁰
8 Prior to and during mediation and settlement discussions, the parties exchanged information and
9 data, and discussed various aspects of the case, including and not limited to, the risks and delays
10 of further litigation, the risks and expenses to the parties of proceeding with class certification,
11 representative adjudication, and trial, the law relating to off-the-clock theory, meal and rest
12 periods, representative PAGA claims, and wage-and-hour enforcement, the evidence produced
13 and analyzed, and the possibility of appeals, among other things.³¹ During all settlement
14 discussions, the parties conducted their negotiations at arm's length in an adversarial position.³²
15 Arriving at a settlement that was acceptable to the parties was not easy.³³ Defendant and its
16 counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial
17 of class certification, while Plaintiff and Class Counsel believed that class certification would be
18 obtained and Plaintiff would prevail at trial.³⁴ After conducting significant informal discovery
19 and investigations, extensive settlement negotiations, and with the aid of the mediator's
20 evaluation, the parties agreed that the matter was well-suited for settlement given the legal issues
21 relating to Plaintiff's principal claims, as well as the costs and risks to the parties that would
22 attend further litigation.³⁵

23 The Settlement takes into account the strengths and weaknesses of each side's position
24 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

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26 ²⁹ Aiwazian Decl., ¶ 6.

27 ³⁰ *Id.*, ¶ 8.

28 ³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

Class Counsel interviewed, and obtained information from Plaintiff and other Class Members.³⁶ 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.³⁷ The Settlement was based on this large volume of facts, evidence, and investigation.³⁸ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.³⁹

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

The Settlement, which provides for a Maximum Settlement Amount of \$450,000.00, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁰ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation.⁴¹ 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.

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³⁶ Aiwazian Decl., ¶ 6.

³⁷ Ibid.

³⁸ *Id.*, ¶¶ 6 & 8.

³⁹ *Id.*, ¶¶ 15-22.

⁴⁰ *Id.*, ¶¶ 8 & 24.

⁴¹ *Id.*, ¶¶ 6-8.

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

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

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

25 The Settlement, which provides for a Maximum Settlement Amount of \$450,000.00,
26 represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated
27 using information and data uncovered through extensive case investigation, informal discovery,
28 and the exchange of information in the context of mediation. The Settlement takes into account

1 the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover,
2 considering all of the facts in the case, the Maximum Settlement Amount represents a
3 considerable recovery.

4 Even after deducting attorneys' fees in the amount of \$157,500.00, litigation costs and
5 expenses in the amount of \$12,882.24, Enhancement Payment in the amount of \$7,500.00,
6 Settlement Administration Costs in the amount of \$7,000.00, and PAGA Amount in the amount
7 of \$67,500.00 from the Maximum Settlement Amount of \$450,000.00, the Net Settlement
8 Amount is currently estimated to be \$197,617.76.⁴² Under the Settlement Agreement, the
9 Maximum Settlement Amount will be fully paid out without any reversion to Defendant, in
10 accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement
11 Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number
12 of Workweeks during the Class Period credited to him or her and each PAGA Employee will be
13 paid a *pro rate* share of the 25% share of the PAGA Amount, based on the number of
14 Workweeks during the PAGA Period credited to him or her. To date, there are 134 Settlement
15 Class Members, representing 100% of the Class Members, and 87 PAGA Employees.⁴³ The
16 highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be
17 \$6,085.29 and the average Individual Settlement Payment is currently estimated to be
18 \$1,474.76.⁴⁴ The highest Individual PAGA Payment to an Aggrieved Employee is currently
19 estimated to be at least \$400.44 and the average Individual PAGA Payment is currently
20 estimated to be at least \$193.97.⁴⁵ These are significant individual recoveries, particularly in light
21 of the risks of litigation.

22 At the final approval stage, "[a]n allocation formula need only have a reasonable, rational
23 basis [to warrant approval], particularly if recommended by experienced and competent class
24 counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
25 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to
26 distribute the Net Settlement Amount. In light of the above considerations, Class Counsel

27 ⁴² Phoenix Decl., ¶ 12.

28 ⁴³ *Id.*, ¶¶ 10 and 14.

⁴⁴ *Id.*, ¶ 13.

⁴⁵ *Id.*, ¶ 14.

believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁴⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, have 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.⁴⁷ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals in California.⁴⁸ Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

The Settlement has been well received by the Class – *not a single Class Member objected to or opted out of the Settlement.*⁴⁹ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, or the allocation for PAGA Amount. 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,

⁴⁶ Aiwazian Decl., ¶ 25.

⁴⁷ *Id.*, ¶¶ 17-22.

⁴⁸ *Ibid.*

⁴⁹ Phoenix Decl., ¶¶ 7 & 8.

reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

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

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

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

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "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, 34.⁵⁰ 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.

⁵⁰ 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 When a litigant's efforts result in a settlement from which others may derive benefits, the
2 litigant may require the passive beneficiaries to compensate those whose efforts brought about
3 the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7
4 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the
5 other parties enjoying the benefit of the settlement). Both state and federal courts have embraced
6 this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17
7 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

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

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

3 Under the terms of the Settlement Agreement, Defendant will pay a Maximum
4 Settlement Amount of \$450,000.00 on a non-reversionary basis. The requested attorneys' fees
5 are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class
6 Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are
7 appropriate and reasonable.

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

15 The percentage method is consistent with, and is intended to mirror, the practice in the
16 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
17 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
18 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
19 counsel's work to the class is to review the consideration agreed to be paid by the named
20 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
21 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
22 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
23 case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the
24 recovery.⁵¹

25 Furthermore, a percentage-fee award is not dependent on a determination of the actual
26 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
27 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
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⁵¹ Aiwazian Decl., ¶ 9.

equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be calculated on the basis of the total fund made available rather than the actual payments made to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class, PAGA Employees, and the State of California and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between 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

1 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
2 768, 772.

3 Each and every one of these factors favors the attorneys' fees sought here; however,
4 some of the most relevant factors to this Court's fee determination will be addressed herein. The
5 award of attorneys' fees in the amount of \$157,500.00 (which is 35% of the Maximum
6 Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case,
7 the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill
8 and determination required, the results that Class Counsel has achieved, and the value of the
9 settlement that Class Counsel has obtained for the Class Members.

10 **1. Time & Labor.**

11 Class Counsel used its experience and skills, and dedicated the full extent of resources, to
12 litigate and bring this matter to a successful conclusion on behalf of the Class, PAGA
13 Employees, and the State of California. Moreover, as demonstrated in the supporting
14 declarations, Class Counsel has extensive experience in the handling of class actions and
15 complex litigation matters.⁵²

16 As outlined in the Declarations of Edwin Aiwazian, Class Counsel has fully and actively
17 participated in litigation of this case.⁵³ Prior to commencing the lawsuit, Class Counsel had
18 conducted a significant amount of investigation into the factual and legal issues, Defendant's
19 business, and its operations and employment policies, practices, and procedures.⁵⁴ During the
20 litigation of the action, Class Counsel interviewed Plaintiff and other Class Members; reviewed
21 and analyzed thousands of pages of pages of documents and data produced by Defendant and
22 obtained through other sources; and prepared damages, violations, and penalties valuation
23 calculations.⁵⁵ Class Counsel also met and conferred with Defendant's counsel over the issues
24 relating to pleadings, case management, discovery, and production of documents and data,

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27 ⁵² Aiwazian Decl., ¶¶ 17-22.

28 ⁵³ *Id.*, Exh. A.

⁵⁴ *Id.*, ¶ 6 & Exh. A.

⁵⁵ *Id.*, ¶ 6.

among other things; engaged in extensive settlement negotiations with Defendant's counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁵⁶

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 Aiwanian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiff, the Class, PAGA Employees, and the State of California.⁵⁷ 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 set 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 390.60 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, PAGA Employees, and the State of California.⁵⁸ 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 its defenses. More specifically, Defendant and its 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.

⁵⁶ Aiwanian Decl., ¶ 6.

⁵⁷ *Id.*, Exh. A.

⁵⁸ *Id.*, ¶ 13-14.

Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwazian, Class Counsel used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁵⁹

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Maximum Settlement Amount of \$450,000.00 to settle the matter. After deducting the attorneys' fees (\$157,500.00), litigation costs and expenses (\$12,882.24), Enhancement Payment (\$7,500.00), Settlement Administration Costs (\$7,000.00), and PAGA Amount (\$67,500.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$197,617.76.⁶⁰ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a

⁵⁹ Aiwazian Decl., ¶¶ 17-21.

⁶⁰ Phoenix Decl., ¶ 12.

Settlement Class Member is currently estimated to be \$6,085.29 and the average Individual Settlement Payment is currently estimated to be \$1,474.76.⁶¹ The highest Individual PAGA Payment to an PAGA Employee is currently estimated to be at least \$400.44 and the average Individual PAGA Payment is currently estimated to be at least \$193.97.⁶² The Settlement offers significant monetary relief to the Settlement Class Members and PAGA Employees.

4. Whether the Fee Is Fixed or Contingent.

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 390.60 hours of time to obtain relief on behalf of Plaintiff and the Class.⁶³ Class Counsel has also incurred litigation costs and expenses in the amount of \$12,882.24.⁶⁴

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁵ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁶ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

⁶¹ Phoenix Decl., ¶ 13.

⁶² *Id.*, ¶ 14.

⁶³ Aiwasian Decl., ¶ 13, Exh. A.

⁶⁴ See Part VII, *infra*.

⁶⁵ Aiwasian Decl., ¶ 23.

⁶⁶ See *id.*, ¶¶ 17-22.

1 in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class
2 Counsel has devoted to litigating the case would have been for naught, and would not have
3 produced any fee or any reimbursement of costs or expenses.

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

5 The results achieved, in light of the difficulties inherent in similar cases and the specific
6 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
7 from the Class Members—no Class Members objected to or opted out of the Settlement.⁶⁷

8 The court in *Camden* noted that, “a key element of the common fund case is that fees are
9 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
10 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
11 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
12 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

13 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
14 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have
15 resulted in a settlement that provides for a Maximum Settlement Amount of \$450,000.00.⁶⁸ The
16 Maximum Settlement Amount will be fully paid out, in accordance with the terms of the
17 Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class
18 Member is currently estimated to be \$6,085.29 and the average Individual Settlement Payment is
19 currently estimated to be \$1,474.76.⁶⁹ The highest Individual PAGA Payment to an PAGA
20 Employee is currently estimated to be at least \$400.44 and the average Individual PAGA
21 Payment is currently estimated to be at least \$193.97.⁷⁰

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

23 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
24 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
25 has years of complex and class action litigation experience, has recovered millions of dollars on
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27 ⁶⁷ Phoenix Decl., ¶¶ 7 & 8.

28 ⁶⁸ Aiwasian Decl., ¶¶ 5-8.

⁶⁹ Phoenix Decl., ¶ 13.

⁷⁰ *Id.*, ¶ 14.

1 behalf of thousands of individuals in California, and has successfully handled numerous
2 significant wage-and-hour class action and complex cases.⁷¹

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

6 While the percentage-of-the-benefit approach is endorsed as the better approximation of
7 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
8 method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining
9 that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time
10 spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*,
11 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method,
12 the lodestar may provide a useful perspective on the reasonableness of a given percentage
13 award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary
14 determination of the fee as a percentage” of the settlement amount and “does not impose an
15 absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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

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

23 As discussed above, the case was highly contested and required a significant amount of
24 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the
25 case and disputed that the matter was appropriate for class or representative treatment.
26 Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved
27 gathering and analyzing data not only from Defendant but also from the Class Members. The
28

⁷¹ Aiwasian Decl., ¶¶ 17-22.

1 handling of the case involved a great amount of effort, and also required and involved the
2 exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in
3 employment class actions and complex wage-and-hour litigation. Long and difficult battles
4 would have followed as the case moved toward certification and trial, including taking and
5 defending depositions of Defendant's Person Most Knowledgeable designees, percipient
6 witnesses, and experts, propounding discovery requests and conducting additional document
7 production, and engaging in extensive motion practice. As Class Counsel geared up for these
8 battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter
9 through mediation.

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

15 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
16 is a task and time charts that set forth in detail the numerous tasks that Class Counsel performed
17 on behalf of Plaintiff, the Class, PAGA Employees, and the State of California and the time
18 required for completing those tasks.⁷² The chart demonstrates that Class Counsel has spent a
19 total of 390.60 hours litigating the case and finalizing the Settlement.⁷³ In light of the facts and
20 circumstances of the case, as well as the results that Class Counsel has achieved on behalf of
21 Plaintiff, the Class Members, PAGA Employees, and the State of California, Class Counsel has
22 spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to
23 perform work on this matter through the date of final approval and in connection with the
24 implementation of the Settlement.

25 ///

26 ///

27
28 ⁷² See Aiwazian Decl., Exh. A.

⁷³ Aiwazian Decl., ¶¶ 13-14.

**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 their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$450,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Lawyers for Justice, PC support a reasonable hourly rates of compensation between \$425 and \$850 per hour for services provided by Class Counsel.⁷⁴ Lawyers for Justice, PC has been awarded attorneys’ fees, compensating the firm at the rate of at least \$650 for legal service performed, by courts of this state.⁷⁵ While the circumstances of every case is unique, the

⁷⁴ Aiwarzian Decl., ¶ 14.

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 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; final approval of the

fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members, PAGA Employees, and the State of California justify the requested attorneys' fees.

Applying the blended rate of \$650 per hour to 390.60 hours would place a reasonable value of \$253,332.50 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seek attorneys' fees in the amount of \$157,500.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$157,500.00 to Class Counsel.

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., ¶ 15.

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 \$25,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of \$12,882.24 in litigation costs and expenses incurred in this matter.⁷⁶ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁷⁷ The cost savings of \$12,117.76 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁷⁸ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$12,882.24 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 \$7,000.00.⁷⁹ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, translating, printing, and mailing the Notice Packet in English and Spanish to the Class Members; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Notices 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 Class Members regarding the Settlement; calculating Individual Settlement Payments and Individual PAGA Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸⁰

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 \$7,500.00.

⁷⁶ Aiwazian Decl., ¶ 23.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Phoenix Decl., ¶ 16.

⁸⁰ *Id.*, ¶ 2.

**IX. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE,
AND SHOULD BE APPROVED.**

The Settlement provides for an Enhancement Payment in the amount of \$7,500.00 to Plaintiff Reginia Sam to compensate Plaintiff for the time and effort that she expended on behalf of the Class, PAGA Employees, and the State of California. The requested Enhancement Payment is both common and reasonable and should be awarded.

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

The requested Enhancement Payment is fair and appropriate because Plaintiff has been, and continues to be, actively engaged in the litigation of her case, constantly checking in on the status of court proceedings in her lawsuit and 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.⁸¹ Plaintiff was available whenever Class Counsel needed her and actively tried to obtain, and gave, information that would benefit the Class.⁸² Plaintiff spent numerous hours speaking with Class Counsel about her claims, describing her work experiences with Defendant, and gathering and reviewing documents.⁸³ These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for her efforts on behalf of the Class Members, PAGA Employees, and the State of California to date.⁸⁴

The requested Enhancement Payment was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested

⁸¹ Aiwasian Decl., ¶ 24; Declaration of Reginia Sam (“Sam Decl.”), ¶¶ 3-5.

⁸² Aiwasian Decl., ¶ 20; Sam Decl., ¶¶ 3-5.

⁸³ Aiwasian Decl., ¶ 20; Sam Decl., ¶¶ 3-5.

⁸⁴ Sam Decl., ¶ 6.

Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Reginia Sam to receive \$7,500.00 as a reasonable Enhancement Payment, in addition to her individual settlement payments, for her services on behalf of the Class, the State of California, and PAGA Employees.

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 Payment, Settlement Administration Costs, and allocation for the PAGA Amount, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: July 10, 2023

LAWYERS for JUSTICE, PC

By: 
Kyla Buenaventura
Attorneys for Plaintiff and the Class