

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Annabel Blanchard (SBN 258135)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff and the Class

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

MANUEL SALCEDO, 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.

MAJCO INC., a California corporation;
MAJCO, LLC, a California limited liability
company; BIG BRAND TIRES & SERVICES,
an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 56-2021-00551487-CU-OE-VTA

Honorable Benjamin F. Coats
Department 43

CLASS ACTION

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

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Manuel Salcedo);
Declaration of Settlement Administrator
(Jarrod Salinas); and [Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: March 23, 2023
Time: 8:30 a.m.
Department: 43

Complaint Filed: March 3, 2021
FAC Filed: November 7, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 23, 2023 at 8:30 a.m., in Department 43 of the
2 above-entitled Court, located at 800 South Victoria Avenue, Ventura, California 93003, Plaintiff
3 Manuel Salcedo (“Plaintiff”) will and hereby does move for an order granting final approval of:

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

- 7 • A Net Settlement Amount of approximately **\$592,867.32** will be fully distributed to the
8 Class Members who did not submit a valid and timely Request for Exclusion
9 (“Settlement Class Members”);
10 • **No Notices of Objection** were submitted to the settlement administrator, Phoenix
11 Class Action Administration Solutions (“Settlement Administrator”);
12 • **Only one (1) Request for Exclusion** was submitted to the Settlement Administrator;

13 2. Payment in the amount of **\$420,000.00** 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 lodestar
16 cross-check with a multiplier of 1.35;

17 3. Payment in the amount of **\$17,632.68** to Class Counsel for reimbursement of
18 litigation costs and expenses;

19 4. Payment in the amount of **\$12,000.00** 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 Manuel Salcedo, as an
22 Enhancement Payment, for his 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 **\$200,000.00**, of which seventy-five
25 percent (75%), or \$150,000.00, will be paid to the California Labor and Workforce Development
26 Agency and twenty-five percent (25%), or \$50,000.00, will be part of the Net Settlement Amount
27 for distribution to the Settlement Class Members.
28

1 This Motion is made pursuant to Rule 3.764, Rule 3.769, and Rule 3.1113(e) of the
2 California Rules of Court, which require approval by the Court of a class action settlement and
3 permit the Court to 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 Aiwazian), Class Representative (Manuel Salcedo), and the
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 other evidence and oral argument as may be
8 presented at the hearing on this Motion.

9 Dated: March 1, 2023

LAWYERS for JUSTICE, PC

10
11 By:



Annabel Blanchard
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Manuel Salcedo (“Plaintiff”) seeks final approval of: (1) the Maximum Settlement Amount of \$1,200,000.00; (2) attorneys’ fees in the amount of \$420,000.00, which is thirty-five percent (35%) of the Maximum Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$17,632.68 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$12,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Manuel Salcedo; and (5) allocation of \$200,000.00 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 or non-exempt employees of Defendant in California at any time during the period from March 3, 2017 through and including March 8, 2022; provided however that it is specifically acknowledged and agreed that no person who became a direct or indirect employee of MAJCO LLC as a result of the ATV Acquisition shall be (i) considered an employee of Defendant for purposes of this Agreement or (ii) included in this settlement or considered to be part of the Class (“Class” or “Class Members”).¹

This matter involved ongoing investigations, informal discovery, review and analysis of thousands of pages of information, documents, and data prior to and during mediation conducted by Paul Grossman, Esq., and extensive settlement negotiations. This matter has required 416.40 hours of attorney time from 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.²

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¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 6.d.

² Applying a modest multiplier of 1.35, the total enhanced lodestar fees are \$421,605.00, and Class Counsel seeks an attorneys’ fees award of \$420,000.00 (equal to 35% of the Maximum Settlement Amount).

1 Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500.00,
2 to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf
3 of the Class. Plaintiff also moves for final approval of the payment to the Settlement Administrator
4 in the amount of \$12,000.00 for Settlement Administration Costs. Plaintiff also moves for final
5 approval of the allocation of \$200,000.00 for the PAGA Penalties, of which \$150,000.00 will be
6 paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion of
7 the PAGA Penalties (“LWDA Payment”), and \$50,000.00 will be part of the Net Settlement
8 Amount that will be distributed to Class Members who did not submit a timely and valid Request
9 for Exclusion (“Settlement Class Members”).

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

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

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

28 //

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

2 Defendant Majco, LLC (d/b/a Big Brand Tires & Services formerly known as Majco, Inc.)
3 (“Defendant”) is a company that provides tire and auto repair services in twenty locations
4 throughout the central and southern regions of California. Plaintiff Manuel Salcedo is a former
5 employee of Defendant.

6 On March 3, 2021, Plaintiff filed a Class Action Complaint for Damages in the Ventura
7 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

8 On November 9, 2021, Plaintiff provided written notice to the LWDA and Defendant,
9 giving notice of his intent to pursue a representative action pursuant to the Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”), on behalf of himself and the State of California.

11 On November 7, 2022, Plaintiff filed a First Amended Class Action Complaint for
12 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698,
13 Et Seq. (“Operative 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, of,
16 *inter alia*, failing to pay minimum and overtime wages, failing to provide compliant meal and rest
17 periods and associated premium pay, failing to timely pay wages and associated waiting time
18 penalties, failing to maintain accurate payroll records, failing to provide compliant wage
19 statements, and failing to reimburse necessary business-related expenses, and thereby engaged in
20 unfair business practices under the California Business and Professions Code section 17200, *et*
21 *seq.* and conduct that gives to penalties recoverable under the Private Attorneys General Act of
22 2004 (California Labor Code sections 2698, *et seq.*) (PAGA).

23 On December 9, 2022, Defendant filed an Answer to Plaintiff’s Operative Complaint.

24 Defendant has denied, and continues to deny, any liability or wrongdoing of any kind
25 associated with any of the allegations in the case, and further denies that the case is appropriate for
26 class or representative treatment for any purpose other than for settlement.

27 ///

28 ///

The parties have actively litigated the matter since it was commenced March 3, 2021. The parties conducted significant informal discovery and exchanged thousands of pages of documents and data. On November 5, 2021, the parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq. (the “Mediator”), a well-regarded mediator experienced in mediating complex labor and employment matters. After conducting significant informal discovery and investigation into the facts of the case and with the aid of the Mediator’s evaluation, the parties ultimately reached the Settlement described herein to resolve the case in its entirety.

On September 2, 2022, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents. On December 5, 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 Payment, 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 Maximum Settlement Amount of \$1,200,000.00 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 thirty-five percent (35%) of the Maximum Settlement Amount (\$420,000.00) and reimbursement of litigation costs and expenses in the amount of \$17,632.68, to Class Counsel; (2) Enhancement Payment in the amount of \$7,500.00 to Plaintiff Manuel Salcedo; (3) Settlement Administration Costs in the amount of \$12,000.00 to Phoenix; and (4) LWDA Payment in the amount of \$150,000.00 for its seventy-five percent (75%) share of the PAGA Penalties.⁴ The Net Settlement Amount, which is estimated to be \$592,867.32, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁵

³ Settlement Agreement, ¶ 9.b.

⁴ *Id.*, ¶¶ 10, 11, 12, and 13.

⁵ This amount is higher than the amount stated in Paragraph 12 of the accompanying Declaration of Jarrod Salinas

The Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") by dividing the Net Settlement Amount by the number of weeks each Settlement Class Member was employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Workweeks") to yield the "Final Workweek Value," and then multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value.⁶

Class Members had forty-five (45) calendar days after the initial mailing of the Class Notice to Class Members to submit a dispute as to the number of Workweeks credited to each of them, opt out of the settlement, and/or object to the Settlement ("Response Deadline").⁷ The Response Deadline was January 20, 2023.⁸ The Settlement Administrator has received one (1) timely letter submitted by a Class Member indicating a request to be excluded from the Settlement ("Request for Exclusion").⁹ The Settlement Administrator has not received any written objections to the Settlement ("Notices of Objection") or any disputes regarding credited Workweeks from Class Members.¹⁰

Each Individual Settlement Share will be allocated as follows: twenty-five percent (25%) wages, to be reported on IRS Form W-2; and seventy-five percent (75%) as penalties, interest, and non-wage damages, to be reported on IRS Form 1099 (if applicable).¹¹ The Settlement Administrator will withhold (and remit to the appropriate taxing authorities) the employee's share of taxes and withholdings with respect the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).¹² The Settlement

Regarding 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 \$35,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only \$17,632.68 for reimbursement of litigation costs and expenses, and the difference of \$17,367.32 will remain part of the Net Settlement Amount.

⁶ Settlement Agreement, ¶¶ 6.ee and 14.b.

⁷ *Id.*, ¶¶ 6.aa, 18, 20, and 22.

⁸ Phoenix Decl., ¶¶ 8, 9, and 10, Exh. A.

⁹ *Id.*, ¶ 8.

¹⁰ *Id.*, ¶¶ 9 and 10.

¹¹ Settlement Agreement, ¶ 25.

¹² *Ibid.*

Administrator shall also remit the employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") to the appropriate taxing authorities.¹³

Each Individual Settlement Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be cancelled.¹⁴ Pursuant to California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be transmitted to Salvation Army.¹⁵

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 December 5, 2022 Preliminary Approval Order.

On November 29, 2022, Phoenix received a data file from Defendant's counsel that contained each Class Member's last-known full name, mailing address, Social Security number, telephone number, and start and end dates worked as an hourly-paid or non-exempt employee of Defendant in California during the Class Period ("Class Data and List").¹⁶ The Class Data and List contained information for 1,317 individuals identified as Class Members.¹⁷ Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data and List with any updated addresses located.¹⁸

On December 6, 2022, Phoenix mailed the Class Notice via first class mail in English and Spanish to 1,317 individuals identified as Class Members in the Class Data and List.¹⁹

As of the date of this Motion, one hundred fifteen (115) Class Notices were returned as undeliverable without forwarding addresses.²⁰ Phoenix performed a skip-trace search on the one hundred fifteen (115) Class Notices that were returned to Phoenix without forwarding addresses,

¹³ Settlement Agreement, ¶¶ 6.l and 25.

¹⁴ *Id.*, ¶ 19.

¹⁵ *Ibid.*

¹⁶ Phoenix Decl., ¶ 3.

¹⁷ *Ibid.*

¹⁸ *Id.*, ¶ 5.

¹⁹ *Id.*, ¶ 11.

²⁰ *Id.*, ¶ 6.

located an updated address for one hundred nine (109) Class Members, and promptly re-mailed the Class Notice to the updated addresses.²¹ Six (6) Class Notices were returned to Phoenix as undeliverable a second time.²² Ultimately, twelve (12) 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.²³

One individual who was included in the Class Data and List submitted a valid and timely Request for Exclusion.²⁴

As of the date of this Motion, the Settlement Administrator has not received any Notices of Objection or disputes regarding Workweeks from Class Members.²⁵

To date, there are 1,316 Class Members who did not submit a timely and valid Request for Exclusion, and are therefore, deemed to be Settlement Class Members, representing 99.92% of the Class.²⁶ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$592,867.32 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.²⁷ The highest Individual Settlement Share is currently estimated to be \$1,900.22 and the average Individual Settlement Share is currently estimated to be \$434.70.²⁸ These amounts are subject to reduction for the employee's and employer's share of Employer Taxes.

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:

²¹ Phoenix Decl., ¶ 6.

²² Ibid.

²³ Ibid.

²⁴ *Id.*, ¶ 8.

²⁵ *Id.*, ¶¶ 9 and 10.

²⁶ *Id.*, ¶ 11.

²⁷ *Id.*, ¶ 12; see also, n.5, *supra*.

²⁸ *Id.*, ¶ 13. The actual average and highest Individual Settlement Shares 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 \$35,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$17,367.32, will be part of the Net Settlement Amount). See n.5, *supra*.

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, supra*, 162 Cal.App.4th at 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

The parties actively litigated the Action since it was commenced on March 3, 2021. Prior to reaching the Settlement, counsel for the parties investigated the veracity, strength, and scope of

the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁹ The parties conducted significant informal discovery and investigation into the facts of the case, and also informally exchanged a large volume of information, documents, and data throughout the course of litigation and in connection with mediation and settlement.³⁰ Class Counsel also had the opportunity to interview and obtain information from Plaintiff and other Class Members and reviewed and analyzed a large volume of information, documents and data obtained from Plaintiff, Defendant, and other sources.³¹ The information, documents, and data reviewed and analyzed by Class Counsel included, and was not limited to, employment records of Plaintiff and other Class Members, a detailed sampling of Class Members' time and pay data, redacted class data list, multiple iterations of Defendant's Employee Handbook, sample arbitration agreements, internal emails and memoranda, and operations and employment practices, policies, and procedures documents (including but not limited to meal period policy, missed punches form, meal and rest break attestation forms, meal period waivers, among other information and documents).³² Class Counsel researched applicable law, developed liability, damages, and penalties valuation models in connection with mediation and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings and the production of information, documents, and data in the course of litigation, as well as mediation and settlement negotiations.³³ Class Counsel also drafted pleadings and the mediation brief, prepared for and attended court proceedings, prepared for and participated in mediation and settlement negotiations, among other tasks.³⁴

After conducting significant informal discovery and investigation into the facts of the case, the parties participated in a formal, full-day mediation conducted by Paul Grossman, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.³⁵ In the course of mediation and settlement discussions, the parties exchanged information and documents,

²⁹ Declaration of Edwin Aiwazian ("Aiwazian Decl."), ¶ 6.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ *Id.*, ¶ 8.

1 and discussed various aspects of the case, including and not limited to, the risks and delays of
2 further litigation, the risks and expenses to the parties of proceeding with class certification and
3 trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims,
4 arbitration agreements, and wage-and-hour law and enforcement, the evidence produced and
5 analyzed, and the possibility of appeals, among other things.³⁶ During all settlement discussions,
6 the parties conducted their negotiations at arm's length in an adversarial position.³⁷ Arriving at a
7 settlement that was acceptable to the parties was not easy.³⁸ Defendant and its counsel felt strongly
8 about Defendant's ability to prevail on the merits and to avoid class certification and representative
9 adjudication, while Plaintiff and Class Counsel believed that they would be able to obtain class
10 certification and prevail at trial.³⁹ After conducting significant informal discovery and
11 investigations, extensive settlement negotiations, and with the aid of the Mediator's evaluation,
12 the Parties agreed that the matter was well-suited for settlement given the legal issues relating to
13 Plaintiff's principal claims, as well as the costs and risks to the parties that would attend further
14 litigation.⁴⁰

15 The Settlement takes into account the strengths and weaknesses of each side's position and
16 the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class
17 Counsel had the opportunity to interview, and obtain information from Plaintiff and other Class
18 Members.⁴¹ Class Counsel also reviewed and analyzed a large volume of information, documents,
19 and data obtained from Plaintiff, Defendant, or and other sources, and performed significant
20 research into the applicable law which is constantly evolving as it relates to certification, off-the-
21 clock theory, meal and rest periods, representative PAGA claims, arbitration agreements, wage-
22 and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses, as well
23 as facts discovered.⁴² The Settlement was based on this large volume of facts, evidence, and
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25 ³⁶ Aiwazian Decl., ¶ 8.

26 ³⁷ Ibid.

27 ³⁸ Ibid.

28 ³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ *Id.*, ¶ 6.

⁴² Ibid.

investigation.⁴³ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁴⁴

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

The Settlement, which provides for a Maximum Settlement Amount of \$1,200,000.00, 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.⁴⁵ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations.⁴⁶ Had the Action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain

⁴³ *Id.*, ¶¶ 6 and 8.

⁴⁴ *Id.*, ¶¶ 15-18.

⁴⁵ Aiwazian Decl., ¶¶ 8 and 21.

⁴⁶ *Id.*, ¶¶ 5-8.

certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Discovery would have certainly arisen, which would have cost the parties additional time and money. In contrast, the Settlement provides real and significant benefits for the 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.

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

The Settlement, which provides for a Maximum Settlement Amount of \$1,200,000.00, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Maximum Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$420,000.00, litigation costs and expenses in the amount of \$17,632.68, Enhancement Payment in the amount of \$7,500.00, Settlement Administration Costs in the amount of \$12,000.00, and LWDA Payment in the amount of \$150,000.00 from the Maximum Settlement Amount of \$1,200,000.00, the Net Settlement

Amount is currently estimated to be \$592,867.32.⁴⁷ Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class 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 1,316 Settlement Class Members, representing 99.2% of the Class Members.⁴⁸ The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$1,900.22 and the average Individual Settlement Share is currently estimated to be \$434.70.⁴⁹ 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.⁵⁰ 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 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.⁵¹ 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

⁴⁷ Phoenix Decl., ¶ 12; see n.5, *supra*.

⁴⁸ Phoenix Decl., ¶ 11.

⁴⁹ *Id.*, ¶ 13; see n.28, *supra*.

⁵⁰ Aiwazian Decl., ¶ 21.

⁵¹ *Id.*, ¶¶ 15-18.

California.⁵² 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 the Settlement.*⁵³ 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 Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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*

⁵² Ibid.

⁵³ Phoenix Decl., ¶ 9.

1 Practice Guide, Civil Procedure Before Trial, Chapter 14, § 14:145; *see also Laffitte v. Robert*
2 *Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-
3 of-the-benefit approach is preferred in class and representative actions because “it better
4 approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82
5 Cal.App.4th at 49.

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

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

23 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
24 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
25 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
26 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
27 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
28 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely

1 approve class action attorneys' fees awards "averag[ing] around one-third of the recovery."
2 *Chavez, supra*, 162 Cal.App.4th at 66 n.11 (lower court found 20 to 40 percent range of
3 contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488
4 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

6 California and federal courts have long recognized that an appropriate method for
7 determining the award of attorneys' fees is based on a percentage of the total value of benefits
8 made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*
9 *Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886
10 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
11 *Priest* (1977) 20 Cal.3d 25, 34.⁵⁴ The purpose of this equitable doctrine is to spread litigation costs
12 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
13 burden alone. *See Vincent, supra*, 557 F.2d at 769.

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

21 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary
22 settlement that has, by litigation, been preserved or recovered for the benefit of others, has been
23 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The
24 California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a
25 lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-
26 check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and
27

28 ⁵⁴ 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 “[t]he percentage [...] method survives in California.” *Id.* (internal quotes omitted).

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

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

17 Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement
18 Amount of \$1,200,000.00 on a non-reversionary basis. The requested attorneys’ fees are thirty-
19 five percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s
20 successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate and
21 reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁵

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

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

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⁵⁵ Aiwasian Decl., ¶ 9.

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$420,000.00 (which is 35% of the Maximum 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 the Class Members.

1. *Time & Labor.*

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁵⁶

⁵⁶ Aiwasian Decl., ¶¶ 15-18.

As outlined in the Declaration of Edwin Aiwanian, Class Counsel has fully and actively participated in litigation of this case.⁵⁷ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁵⁸ During the litigation of the Action, Class Counsel had the opportunity to interview Plaintiff and other Class Members; reviewed and analyzed a large volume of information, documents, and data obtained from Plaintiff, Defendant, or other sources; and prepared damages/valuation calculations.⁵⁹ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings 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, and prepared for and participated in mediation and settlement negotiations.⁶⁰

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, and the State of California.⁶¹ 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. Attorneys at Lawyers for Justice, PC has spent **416.40** hours performing tasks to obtain a significant recovery in the case.⁶² 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.

⁵⁷ Aiwanian Decl., Exh. A.

⁵⁸ *Id.*, ¶ 6 & Exh. A.

⁵⁹ *Id.*, ¶ 6.

⁶⁰ *Ibid.*

⁶¹ *Id.*, Exh. A.

⁶² *Id.*, ¶ 11.

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

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

7 Class Counsel undertook significant investigation, analysis, and research prior to filing this
8 case, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter
9 for class certification and representative adjudication and had every intention of taking the case to
10 trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite
11 all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwarzian,
12 Class Counsel used its extensive experience in the handling of class actions and complex wage-
13 and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶³

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

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

21 The Settlement at this stage is preferred over continued litigation because such resolutions
22 save time and money that would otherwise go to litigation. The risks and expenses of further
23 litigation outweighed any benefit that might have been gained otherwise. The Settlement provides
24 an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation
25 involving expert discovery, trial preparation, class certification proceedings, and appellate review
26 of those proceedings. The Settlement offers present relief and/or recovery to Settlement Class
27

28 ⁶³ Aiwarzian Decl., ¶¶ 15-18.

Members and the State of California 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 \$1,200,000.00 to settle the matter. After deducting the attorneys' fees (\$420,000.00), litigation costs and expenses (\$17,632.68), Enhancement Payment (\$7,500.00), Settlement Administration Costs (\$12,000.00), and LWDA Payment (\$150,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$592,867.32.⁶⁴ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Share to a Settlement Class Member is currently estimated to be \$1,900.22 and the average Individual Settlement Share is currently estimated to be \$434.70.⁶⁵ The Settlement offers significant monetary relief to the Settlement Class Members.

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 **416.40 hours** of time to obtain relief on behalf of Plaintiff and the Class.⁶⁶ Class Counsel has also incurred litigation costs and expenses in the amount of \$17,632.68.⁶⁷

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁶⁸ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁶⁹ 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.

⁶⁴ Phoenix Decl., ¶ 12; see n.5, *supra*.

⁶⁵ *Id.*, ¶ 13; see n.28, *supra*.

⁶⁶ Aiwasian Decl., ¶ 11, Exh. A.

⁶⁷ See Part VII, *infra*.

⁶⁸ Aiwasian Decl., ¶ 19.

⁶⁹ See *id.*, ¶¶ 15-18.

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 the Settlement, and only one Class Member has opted out of the Settlement.⁷⁰

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

Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Maximum Settlement Amount of \$1,200,000.00.⁷¹ The Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share to a Settlement Class Member is currently

⁷⁰ Phoenix Decl., ¶¶ 8 and 9.

⁷¹ Aiwazian Decl., ¶¶ 5-8.

1 estimated to be \$1,900.22 and the average Individual Settlement Share is currently estimated to be
2 \$434.70.⁷²

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

4 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys'
5 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
6 has years of complex and class action litigation experience, has recovered millions of dollars on
7 behalf of thousands of individuals in California, and has successfully handled numerous significant
8 wage-and-hour class action and complex cases.⁷³

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

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

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

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28 ⁷² Phoenix Decl., ¶ 13; see n.28, *supra*.

⁷³ Aiwazian Decl., ¶¶ 15-18

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

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

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

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

22 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwazian
23 is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed
24 on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁷⁴ The chart
25 demonstrates that Class Counsel has spent a total of 416.40 hours litigating the case and finalizing
26 the Settlement.⁷⁵ In light of the facts and circumstances of the case, as well as the results that Class

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28 ⁷⁴ See Aiwazian Decl., Exh. A.

⁷⁵ Aiwazian Decl., ¶ 11.

Counsel has achieved on behalf of Plaintiff, the other 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 \$1,200,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable blended hourly rate of compensation of at least \$750 per hour for services provided by Class Counsel.⁷⁶ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the hourly rate of at least \$750 for legal services performed, by courts of this state.⁷⁷ While the circumstances of every case are unique, the fact

⁷⁶ Aiwarzian Decl., ¶ 12.

⁷⁷ 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.*

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

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

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

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* (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. Defendant raised defenses and denied liability, and the case involved gathering and analyzing information, documents, and data not only from Defendant but also from the Plaintiff, Class Members, and other sources. The handling of this matter involved a great amount of effort, and required the exercise of a high-level of skill, which Class Counsel has as a result of extensive experience in employment class actions and wage-and-hour litigation. Class Counsel has been actively involved in the prosecution of this matter, prior to its commencement and Class Counsel's work has continued all the way up to the present. Class Counsel's dedication to the representation of the Class Members has precluded other employment.

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of its efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel is entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel was successful in achieving substantial results in the form of a settlement of \$1,200,000.00. 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 Aiwasian.⁷⁸ As the chart indicates, Class Counsel has worked 416.40 hours in the pursuit of this matter. The attorney task and time chart presents the entire picture. Applying a reasonable rate of \$750 per hour to 416.40 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$312,300.00 on Class Counsel's services, and applying a modest multiplier of 1.35, the total enhanced lodestar fees are \$421,605.00.⁷⁹ Class Counsel seeks an attorneys' fee award of \$420,000.00 (equal to 35% of the Maximum 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) 396 F.3d

⁷⁸ Aiwasian Decl., Exh. A.

⁷⁹ *Id.*, ¶ 11; *see n.2, supra*.

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 1.35 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 \$420,000.00 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 \$35,000.00. As set forth in the Declaration of Edwin Aiwazian, Class Counsel seeks reimbursement of a total of \$17,632.68 in litigation costs and expenses incurred in this matter.⁸⁰ This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.⁸¹ The cost savings of \$17,367.32 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁸² Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$17,632.68 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 \$12,000.00.⁸³ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; 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

⁸⁰ Aiwazian Decl., ¶ 19

⁸¹ Ibid.

⁸² Ibid.

⁸³ Phoenix Decl., ¶ 15.

processing Requests for Exclusion, Notices of Objection, and Workweeks disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and preparing the associated tax forms; and transmitting payments, among other things.⁸⁴

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 \$12,000.00.

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 Manuel Salcedo. 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 representatives 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 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.⁸⁵ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would facilitate the pursuit of the class and PAGA claims.⁸⁶ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.⁸⁷ These services merit the requested

⁸⁴ Phoenix Decl., ¶ 2.

⁸⁵ Aiwazian Decl., ¶ 20; Declaration of Manuel Salcedo (“Salcedo Decl.”), ¶¶ 3-5.

⁸⁶ Aiwazian Decl., ¶ 20; Salcedo Decl., ¶¶ 3-5.

⁸⁷ Aiwazian Decl., ¶ 20; Salcedo Decl., ¶¶ 2-6.

Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members to date.⁸⁸

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 Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Manuel Salcedo to receive \$7,500.00 as a reasonable Enhancement Payment, in addition to his Individual Settlement Payment, for his services on behalf of the Class.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award the Attorneys' Fees and Costs, Enhancement Payment, 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: March 1, 2023

LAWYERS for JUSTICE, PC

By:



Annabel Blanchard
Attorneys for Plaintiff and the Class

⁸⁸ Salcedo Decl., ¶ 8.