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

ALEXIS SALCIDO-CEJA, 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.

MADRUGA ALVES CAR WASH, INC., a
California corporation; FAST TRACK CAR
WASH, LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No. CV-21-003878

Honorable Stacy Speiller
Department 22

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**

Date: September 6, 2024
Time: 8:30 a.m.
Department: 22

Complaint Filed: July 23, 2021
FAC Filed: November 7, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 6, 2024, at 8:30 a.m., in Department 22 of
2 the above-entitled Court, located at 801 10th Street, Los Angeles, Modesto 95354, Plaintiff Alexis
3 Salcido-Ceja (“Plaintiff” or “Class Representative”) will and hereby does move for an order
4 granting final approval of:

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

- 8 • A Net Settlement Amount of approximately **\$502,174.77** will be fully distributed to all
9 members of the Class Members who do not submit a timely and valid Request for
10 Exclusion (“Settlement Class Members”);
11 • **No Objections or Requests for Exclusion** were submitted to the settlement
12 administrator, Phoenix Settlement Administrators (“Phoenix” or “Settlement
13 Administrator”);

14 2. Payment in the amount of **\$367,500.00** to Lawyers for Justice, PC (“Class
15 Counsel”), representing 35% of the Maximum Settlement Amount, for the Attorneys’ Fees, which
16 is reasonable and justified on a percentage-basis;

17 3. Payment in the amount of **\$14,825.23** to Class Counsel for Litigation Costs;

18 4. Payment in the amount of **\$8,000.00** to the Settlement Administrator for Settlement
19 Administration Costs;

20 5. Payment in the amount of **\$7,500.00** to Plaintiff as an Enhancement Payment, for
21 his time and effort in representing the Class; and

22 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
23 California Labor Code section 2698, *et seq.*, in the amount of **\$150,000.00** (“PAGA Penalties”),
24 of which seventy-five percent (75%), or **\$112,500.00**, will be paid to the California Labor and
25 Workforce Development Agency (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%),
26 or **\$37,500.00**, will be distributed to PAGA Group Members on a *pro rata* basis, based on PAGA
27 Pay Periods during the PAGA Period (“Employee PAGA Amount”).
28

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
2 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 (Elizabeth Parker-Fawley), Class Representative (Alexis Salcido-
6 Ceja) and Settlement Administrator (Kevin Lee of Phoenix Settlement Administrators) in support
7 thereof; the pleadings and other records on file with the Court in this matter; and such evidence
8 and oral argument as may be presented at the hearing on this Motion.

9
10 Dated: August 14, 2024

LAWYERS for JUSTICE, PC

11
12 By: _____

Elizabeth Parker-Fawley
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION.....	1
II.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND	3
III.	SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION.....	4
IV.	THE SETTLEMENT ADMINISTRATION PROCESS	6
V.	THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AND PAGA SETTLEMENT.....	8
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Informal Discovery.	9
B.	The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.	12
C.	The Settlement Is Fair, Reasonable, and Adequate.	13
D.	The Class Was Represented by Competent Counsel.	14
E.	There Are No Objections to the Settlement.....	15
VI.	THE ATTORNEYS’ FEES AND COSTS REQUESTED IS FAIR AND REASONABLE AND SHOULD BE APPROVED.....	15
A.	Legal Standard for Attorneys’ Fees in a Class Action Settlement.....	15
B.	A Fee Award of a Percentage of the Entire Fund Is Appropriate.....	17
C.	The Attorneys’ Fees Requested Is Reasonable Based on the Factors Considered in Determination of Fee Awards.....	20
	1. Time & Labor.	20
	2. The Skill Required to Perform Legal Services Properly.	21
	3. The Value of the Settlement for the Class Members.	22
	4. Whether the Fee Is Fixed or Contingent.	23
	5. The Amount Involved and the Results Achieved.	24
	6. The Reputation and Ability of the Attorneys.....	25

D.	The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.....	25
1.	The Number of Hours Spent on the Litigation was Reasonable.....	25
2.	The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel’s Efforts and Experience...	27
VII.	LITIGATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.	28
VIII.	THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.	29
IX.	THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED.	29
X.	CONCLUSION.....	30

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4 th 1135	9, 15
<i>Apple Computer, Inc. v. Superior Court</i> (2005) 126 Cal.App.4 th 1253	16
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195 .	16
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	17, 19
<i>Camden I Condominium Association, Inc. v. Dunkel</i> (11th Cir. 1991) 946 F.2d 768	20, 24
<i>Cates v. Chiang</i> (2013) 213 Cal.App.4 th 791	23
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4 th 1110	15
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4 th 43	8, 9, 16
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal.App.3d 78	28
<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4 th 545	16
<i>Crampton v. Takegoshi</i> (1993) 17 Cal.App.4 th 308	17
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4 th 1794	8, 15
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	17
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127	
F.Supp.2d 418	14
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	16
<i>Ketchum v. Moses</i> (2001) 24 Cal.4 th 1122	15, 25, 27, 28
<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5 th 480	15, 16, 17, 25
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4 th 19	15, 16, 19
<i>Paul, Johnson, Alston & Hunt v. Gaulty</i> (1989) 886 F.2d 268	17
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	17
<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal.App.4 th 495	28
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	17
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	17
<i>Vizcaino v. Microsoft</i> (9 th Cir. 2002) 290 F.3d 1043	18
<i>Vo v. Las Virgenes Municipal Water Dist.</i> (2000) 79 Cal.App.4 th 440	25
<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	30
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4 th 224	8, 9, 15, 19, 28
<i>Winslow v. Harold G. Ferguson Corp.</i> (1944) 25 Cal.2d 274	19

Statutes

Cal. Lab. Code § 2698	1
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<i>California Practice Guide, Civil Procedure Before Trial</i> , Chapter 14	15
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Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed., 2002) § 14.03	16
<i>Court Awarded Attorney Fees, Report of the Third Circuit Task Force</i> (October 8, 1985) 108	
F.R.D. 237	24
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Alexis Salcido-Ceja (“Plaintiff” or “Class Representative”) seeks final approval of: (1) the Maximum Settlement Amount of \$1,050,000.00¹; (2) attorneys’ fees in the amount of \$367,500.00 which is 35% of the Maximum Settlement Amount², and reimbursement of litigation costs in the amount of \$14,825.23 (together, referred to as the “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$8,000.00 to Phoenix Settlement Administrators (“Phoenix” or “Settlement Administrator”); (4) Enhancement Payment in the amount of \$7,500.00 to Plaintiff; and (5) allocation of \$150,000.00 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 who worked for Defendants within the State of California at any time during the Class Period (“Class” or “Class Members”).³

This matter involved ongoing investigations, informal discovery, review and analysis of a large volume of documents and data prior to and during the formal mediation conducted by the Honorable S. James Otero (Ret.), and settlement negotiations thereafter. This matter has required 440.60 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents 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 50% of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

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 he expended spearheading the lawsuit on behalf of the Class, PAGA Group Members, and the State of California. Plaintiff also moves for final

¹ Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ I(U)

² *Id.*, ¶ XIV.

³ *Id.*, ¶ I(C) “Class Period” means the period from July 23, 2017 through June 25, 2022. *See id.*, ¶ I(F)

⁴ Applying a reasonable rate of \$850 to 440.60 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$361,335.00 on Class Counsel’s services, and Class Counsel seeks an attorneys’ fees award of \$367,500.00.

1 approval of the payment to the Settlement Administrator in the amount of \$8,000.00 for Settlement
2 Administration Costs. Plaintiff also moves for final approval of the allocation of \$150,000.00 for
3 the PAGA Penalties, of which seventy-five percent (75%), i.e., \$112,500.00, will be paid to the
4 California Labor Workforce and Development Agency (“LWDA”) for its portion of the PAGA
5 Penalties (“LWDA Payment”), and twenty-five percent (25%), i.e., \$37,500.00, will be distributed
6 to the PAGA Group Members⁵ (“Employee PAGA Amount”).

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

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

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

25 ///

26 ///

27 ⁵ “PAGA Group Members” means all current and former hourly-paid or non-exempt employees who worked for
28 Defendants within the State of California at any time during the PAGA Period. ¶ I(W)
“PAGA Period” means the period from April 28, 2021 through June 25, 2022. ¶ I(X)

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

2 Defendants operate car washes providing full car wash and polishing services in Madera
3 and Turlock, California. Plaintiff Alexis Salcido-Ceja is a former employee of Defendants.

4 On July 23, 2021, Plaintiff filed a Class Action Complaint for Damages in the Stanislaus
5 County Superior Court (“Court”), thereby commencing the above-captioned lawsuit (“Action”).

6 On April 28, 2022, Plaintiff submitted notice to the California Labor & Workforce
7 Development Agency (“LWDA”) and Defendants of his intent to pursue civil penalties under the
8 Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“LWDA Letter”).

9 On November 7, 2023, Plaintiff filed a First Amended Class Action Complaint for
10 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698,
11 *Et Seq.* (“First Amended Complaint,” or “Operative Complaint”).

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

22 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind
23 associated with any of the allegations in the Action, and further deny that the Action is appropriate
24 for class treatment or representative adjudication for any purpose other than for settlement
25 purposes.

26 The Parties have actively litigated the Action since it commenced on July 23, 2021. On
27 April 26, 2022, the Parties participated in a formal, full-day mediation conducted by Hon. S. James
28 Otero (Ret.), a well-regarded mediator experienced in mediating complex labor and employment

1 matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Agreement
2 described herein to resolve the Action in its entirety.

3 On March 21, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action
4 Settlement and supporting documents ("Motion for Preliminary Approval"). On April 18, 2024,
5 the Court issued a Tentative Order granting Preliminary Approval of the Class Action Settlement.
6 On April 19, 2024, the Hearing on the Motion for Preliminary Approval occurred, and the Court
7 issued a minute order granting the motion. On May 6, 2024, the Court filed an Order Granting
8 Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby
9 preliminarily approving the terms of the Settlement Agreement, the Class Notice, and the
10 proposed administration procedures and associated deadlines.

11 Plaintiff now moves for final approval of Attorneys' Fees and Costs, Enhancement
12 Payment, Settlement Administration Costs, and PAGA Penalties.

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

14 Under the terms of the Settlement Agreement, Defendants have agreed to make a deposit
15 of the Maximum Settlement Amount of \$1,050,000.00 plus an amount sufficient to pay Employer
16 Taxes into an interest-bearing account established by the Settlement Administrator within 21
17 calendar days of the Effective Date.⁶ Subject to approval by the Court, the Net Settlement Amount
18 will be calculated by deducting the following amounts from the Maximum Settlement Amount:
19 (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$367,500.00 and
20 reimbursement of litigation costs and expenses in the amount of \$14,825.23, to Class Counsel; (2)
21 Enhancement Payment in the amount of \$7,5000.00 to Plaintiff; (3) Settlement Administration
22 Costs in the amount of \$8,000.00 to Phoenix; and (4) PAGA Penalties in the amount of

23
24
25
26
27 ⁶ Settlement Agreement, ¶¶ VII, XII(C) "Effective Date" means: the date the Final Approval Order and Judgement is
28 filed, or, solely in the event that there are any objections to the Class Settlement, the later of (a) the last day on which
any appeal might be filed with respect to the Final Approval Order and Judgement, or (b) the date of successful
resolution of any appeal(s) with respect to Final Approval Order and Judgement—including expiration of any time to
seek reconsideration of further review. *Id.* ¶ I(L)

1 \$150,000.00.⁷ The Net Settlement Amount, which is estimated to be \$502,174.77, will be
2 distributed in accordance with the Settlement Agreement and there is no reversion to Defendants.⁸

3 The Settlement Administrator will determine each Settlement Class Member's *pro rata*
4 share of the Net Settlement Amount ("Individual Settlement Share"), according to the following
5 methodology: After Final Approval of the Settlement Agreement, the Settlement Administrator
6 will divide the final Net Settlement Amount by the total number of Workweeks of all Settlement
7 Class Members to yield the "Class Workweek Point Value," and multiply each Settlement Class
8 Member's individual Workweeks by the Class Workweek Point Value to yield his or her
9 Individual Settlement Share.⁹

10 The Settlement Administrator will determine each PAGA Group Members's *pro rata* share
11 of 25% the PAGA Penalties ("Individual PAGA Payment"), according to the following
12 methodology: the Settlement Administrator will divide the PAGA Employee Amount by the total
13 number of PAGA Pay Periods of all PAGA Group Members during the PAGA Period to yield the
14 PAGA Pay Periods Point Value and multiply the PAGA Pay Periods Point Value by the number
15 of PAGA Pay Periods worked by each individual PAGA Group Member during the PAGA Period
16 to yield his or her Individual PAGA Payment.¹⁰

17 Class Members had 45 calendar days from the initial mailing of the Class Notice
18 ("Response Deadline") to submit a Request for Exclusion, Objection and/or dispute of the
19 Workweeks.¹¹ The Response Deadline was July 19, 2024.¹² ***As of the date of this Motion, the***
20 ***Settlement Administrator has not received any written objections to the Class Settlement***
21 ***("Objection") or requests to be excluded from the Class Settlement ("Requests for Exclusion")***
22 ***from Class Members.***¹³

23 _____
24 ⁷ *Id.*, ¶¶ XIV- XVII

25 ⁸ This amount is higher than the amount stated in Paragraph 13 of the accompanying Declaration of Kevin Lee
26 Regarding Notice and Settlement Administration ("Phoenix Declaration" or Phoenix Decl.") because the
Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum
amount of \$20,000.00 allocated under the Settlement Agreement. However, Class Counsel seeks the amount of
\$14,825.23 for litigation costs and expenses, and the difference of \$5,174.77 will be in the Net Settlement Amount.

27 ⁹ Settlement Agreement, ¶ XII(A).

28 ¹⁰ *Id.*, ¶ XII(B).

¹¹ *Id.*, ¶ I(EE).

¹² Phoenix Decl., ¶ 5, Settlement Agreement ¶ I(EE).

¹³ Phoenix Decl., ¶¶ 8-10.

Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁴ Settlement Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").¹⁵ Defendants will pay the Employer Taxes in addition to the Gross Settlement Amount.¹⁶ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Administrator.¹⁷

Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for one-hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.¹⁸ The funds remaining and associated with canceled Individual Settlement Payment and/or Individual PAGA Payments checks will be paid to Legal Aid at Work, after the Court enters an order approving the Parties' stipulation to amend the judgment, which Parties shall prepare and file in accordance with California Code of Civil Procedure section 384.5, *et seq.*¹⁹

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Administrator, Phoenix Settlement Administrators, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's Preliminary Approval Order.

On May 6, 2024, Defendants' counsel provided Phoenix the Class List containing each Class Member's and PAGA Group Members' names, last known mailing address, last known telephone number, the number of Workweeks worked during the Class Period, the number of pay periods worked during the PAGA Period, Social Security numbers, and last known email address ("Class List").²⁰ The Class List contained data for 281 individuals identified as Class Members

¹⁴ Settlement Agreement, ¶ XVI(B).

¹⁵ Settlement Agreement, ¶¶ XVI(A) & I(R)

¹⁶ *Id.*, ¶¶ I(M) & VIII(A)

¹⁷ *Id.*, ¶ XVI.

¹⁸ *Id.*, ¶ XII(D)(3).

¹⁹ *Ibid.*

²⁰ Phoenix Decl., ¶¶ 3 & 11.

1 who worked 12,274 Workweeks, of whom 92 were PAGA Group Members who worked 1,331
2 PAGA Pay Periods.²¹ The mailing addresses contained in the Class List were processed and
3 updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S.
4 Postal Service.²² The NCOA contains requested changes of address filed with the U.S. Postal
5 Service. In the event that any individual had filed a U.S. Postal Service change of address request,
6 the address listed with the NCOA would be utilized in connection with the mailing of the Class
7 Notice.²³

8 On May 24, 2024, Phoenix mailed the Class Notice via U.S. First Class Mail to all 281
9 individuals identified as Class Members in the Class List.²⁴ A total of 28 Class Notices were
10 returned to Phoenix.²⁵ Of these, none were returned with a forwarding address.²⁶ If a Class
11 Member’s Class Notice was returned by the USPS as undeliverable and without a forwarding
12 address, Phoenix performed an advanced address search (i.e. skip trace) on all of these addresses
13 by using TransUnion TLOxp, one of the most comprehensive address databases available for skip
14 tracing. Through the advanced address searches, Phoenix was able to locate 21 updated addresses
15 and Phoenix promptly re-mailed a Class Notice to those updated addresses.²⁷ Ultimately, there are
16 7 Class Notices that remain undeliverable.²⁸

17 As of the date of this Motion, the Administrator has not received any Objections or
18 Requests for Exclusion from Class Members.²⁹

19 To date, there are 281 Class Members who did not submit a timely and valid Request for
20 Exclusion (“Settlement Class Members”), and who will be paid their portion of the Net Settlement
21 Amount.³⁰ Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount of
22 approximately \$502,174.77 will be distributed to Settlement Class Members in accordance with
23

24 ²¹ *Id.*, ¶ 15.

25 ²² *Id.*, ¶ 4.

26 ²³ *Ibid.*

27 ²⁴ Phoenix Decl., ¶ 5.

28 ²⁵ *Id.*, ¶ 6.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Id.*, ¶ 7.

²⁹ *Id.*, ¶¶ 8, 9.

³⁰ *Id.*, ¶ 11.

the terms of the Settlement Agreement. The highest Individual Settlement Share is currently estimated to be \$10,244.50 and the average Individual Settlement Share is currently estimated to be \$1,768.68.³¹ The highest Individual PAGA Payment is currently estimated to be \$873.40 and the average Individual PAGA Payment is currently estimated to be \$407.61.³²

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

³¹ ILYM Decl., ¶ 14. The actual average and highest Individual Settlement Share will be larger than the amounts stated in the ILYM 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 \$20,000 (the difference between the amount sought and the amount authorized under the Settlement, \$5,174.77, will be part of the Net Settlement Amount). See n.8, *supra*.

³² *Id.*, ¶ 15.

1 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry
2 is not whether the settlement agreement is the best one that class members could have possibly
3 obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez*
4 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the
5 damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91
6 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower
7 than it would be if the cases were to be successfully litigated, that is no bar to a class settlement
8 because the public interest may indeed be served by a voluntary settlement in which each side
9 gives ground in the interest of avoiding prolonged litigation. *Id.*

10 **A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon**
11 **Extensive Investigation and Informal Discovery.**

12 The Parties actively litigated the case since the Action commenced on July 23, 2021. Class
13 Counsel conducted significant investigation and informal discovery into the facts of the cases, to
14 assess the veracity, strength, and scope of the claims, and was preparing for class certification and
15 trial prior to reaching the Settlement Agreement.³³

16 The Parties conducted significant informal discovery and investigation into the facts of the
17 case, and informally exchanged a large volume of information, documents, and data throughout
18 the course of the litigation and in connection with the mediation and settlement negotiations.³⁴ The
19 volume of data and documents that Class Counsel reviewed and analyzed by Class Counsel
20 included, but was not limited to: Employee Handbook, detailed sampling of Class Member’s time
21 and pay data, employment records of Plaintiff, Plaintiff’s time and pay data, Plaintiff’s earning
22 statements, internal memoranda, job descriptions, company policy acknowledgements (Agreement
23 and Acknowledgement of Receipt of Alternative Dispute Resolution Policy, Acknowledgement of
24 At-Will Employment, Employee Acknowledgement of Video Surveillance Policy), internal
25 memoranda, operations and employment practices, forms, procedures, and policies (including but
26 not limited to Hazard Communication Training Handbook, Personal Appearance and Attire, Theft,
27 Rewards and Open Door Policy, Window Washing Procedures, Safety at the Car Wash), among

28 ³³ Parker-Fawley Decl., ¶ 6.

³⁴ *Id.* ¶¶ 6-8.

1 other information and documents.³⁵ Class Counsel had the opportunity to interview and obtain
2 information from Plaintiff and percipient witnesses, and reviewed and analyzed a large volume of
3 information, data, and documents obtained from Plaintiff, Defendants, and other sources. On
4 December 2, 2021, Class Counsel propounded multiple sets of written discovery requests on both
5 Defendants (including, but not limited to Form Interrogatories—General (Set One), Special
6 Interrogatories (Sets One and Two), Requests for Production of Documents (Set One), noticed
7 depositions of both Defendants’ person(s) most knowledgeable.³⁶ Class Counsel developed
8 liability, damages, and penalties valuation models in the course of litigation and in connection with
9 the mediations and settlement negotiations, and met and conferred with Defendants’ counsel on
10 numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery,
11 and the production of information, documents, and data in the course of litigation and the
12 mediation and settlement negotiations.³⁷ Class Counsel reviewed and analyzed information,
13 documents, and data obtained from Plaintiff, Defendants, and other sources.³⁸ Other work
14 performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting,
15 reviewing, and revising the pleadings, motion-related papers, mediation brief, and settlement-
16 related papers; and preparing for and attending court proceedings, settlement negotiations, and the
17 mediations, among other tasks.³⁹

18 After conducting informal discovery and investigation into the facts of the cases, the Parties
19 participated in a formal mediation session conducted by Honorable S. James Otero (Ret.), a well-
20 regarded mediator experienced in mediating complex labor and employment matters.⁴⁰ In the
21 course of the mediation and settlement negotiations, the Parties exchanged class information,
22 documents, and data, and discussed all aspects of the cases, including and not limited to, the risks
23 and delays of further litigation, the risks to the Parties of proceeding with class certification and
24 trial, the law relating to class certification, off-the-clock theory, meal and rest periods,

25
26 ³⁵ *Id.* ¶ 6.

27 ³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.*, ¶¶ 6 & 7.

³⁹ *Id.*, ¶ 6.

⁴⁰ *Id.*, ¶ 8.

representative PAGA claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴¹ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴² Arriving at a settlement that was acceptable to the Parties was not easy. Defendants and their counsel felt very strongly about Defendants ability to prevail on the merits and to avoid class certification.⁴³ Defendants and their counsel felt strongly about Defendants' ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁴⁴ After conducting significant informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁴⁵

The Settlement Agreement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel analyzed a large volume of information, documents, and data obtained from Defendants, Plaintiff, and other sources, and performed research regarding applicable law, which is evolving as it relates to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses thereto, as well as facts discovered.⁴⁶ The Settlement Agreement was based on this large volume of facts, evidence, and investigation.⁴⁷ Additionally, Class Counsel have extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁴⁸

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⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Parker-Fawley Decl., ¶ 7.

⁴⁷ *Id.*, ¶¶ 6-8.

⁴⁸ *Id.*, ¶¶ 13-18.

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

3 The Settlement Agreement, which provides for a Maximum Settlement Amount of
4 \$1,050,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks
5 inherent in litigating class and representative claims through certification proceedings, trial, and/or
6 appeals.⁴⁹ The Agreement was calculated using information and data uncovered through extensive
7 case investigation, informal discovery, and the exchange of information in the context of mediation
8 and settlement negotiations.⁵⁰ Had the action not settled, Defendants would have vigorously
9 challenged class certification, manageability of representative adjudication, and liability.
10 Defendants contended that individualized questions of fact predominated over any common issues,
11 and these issues would pose challenges to certification and representative adjudication. Defendants
12 would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-
13 wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the
14 Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or
15 representative basis. Additionally, preparation for trial would have been expensive for all parties.

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

28 ⁴⁹ *Id.*, ¶¶ 8 & 21.

⁵⁰ *Id.*, ¶¶ 6-8.

percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. In contrast, the Settlement Agreement 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 class of 281 current and former employees to bring individual actions to recover from Defendants for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement Agreement, 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 Agreement, which provides for a Maximum Settlement Amount of \$1,050,000.00, represents a fair, reasonable, and adequate resolution of the cases. The Agreement 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 Agreement 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 Gross Settlement Amount represents a considerable recovery.

Even after deducting Attorneys' Fees in the amount of \$367,500.00, Litigation Costs in the amount of \$14,825.23, Enhancement Payment in the amount of \$7,500.00, Settlement Administration Costs in the amount of \$8,000.00, and PAGA Penalties of \$150,000.00 from the Maximum Settlement Amount of \$1,050,000.00, the Net Settlement Amount is currently estimated to be \$502,174.77.⁵¹ Under the Settlement Agreement, the Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. 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 during the Class Period, and each PAGA Group Member will be paid a *pro rata* share of the PAGA Employee Amount, based on the number of PAGA Pay

⁵¹ Phoenix Decl., ¶ 13.

Periods during the PAGA Period credited to him or her.⁵² To date, there are 281 Settlement Class Members, representing one hundred percent (100%) of the Class Members.⁵³ The highest Individual Settlement Share is currently estimated to be \$10,244.50 and the average Individual Settlement Share is currently estimated to be \$1,768.68.⁵⁴ The highest Individual PAGA Payment is currently estimated to be \$873.40 and the average Individual PAGA Payment is currently estimated to be \$407.61.⁵⁵ 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 Agreement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and PAGA Group Members.⁵⁶ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement Agreement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation. Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁵⁷ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class

⁵² Settlement Agreement, ¶ XII(A) & ¶ XII(B) .

⁵³ Phoenix Decl., ¶ 11.

⁵⁴ *Id.*, ¶ 14.

⁵⁵ Phoenix Decl., ¶ 15.

⁵⁶ Parker-Fawley Decl., ¶ 21.

⁵⁷ *Ibid.*

Members' claims against Defendants and the benefits of the Settlement Agreement 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 Agreement has been well received by the Class – *not a single Class Member objected to the Class Settlement.*⁵⁸ Specifically, no objections have been made as to the Maximum Settlement Amount or requested Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, or 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 Agreement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement Agreement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

VI. THE ATTORNEYS' FEES AND COSTS REQUESTED 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

⁵⁸ Phoenix Decl., ¶ 9.

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

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

12 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
13 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
14 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th
15 1253, 1270). It is not an abuse of discretion to choose one method over another as long as the
16 method chosen is applied consistently using percentage figures and/or rates that accurately reflect
17 the marketplace. In cases where class members present claims against a settlement amount and
18 the settlement agreement provides that the defendant agrees to paying the attorneys a percentage
19 of the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

20 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
21 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
22 Ed., 2002) § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
23 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
24 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
25 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
26 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”
27 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent
28 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, 34.⁵⁹ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

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

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

Courts have consistently recognized that class and representative action litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too

⁵⁹ 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 small to economically justify legal action on an individual basis. Accordingly, in determining a
2 reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue
3 such litigation in order to achieve increased access to the judicial system for meritorious claims
4 and to enhance deterrents to wrongdoing. This is especially true in situations where multiple
5 similar alleged wrongs would not be economically feasible to pursue individually, such as here.
6 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

14 Under the terms of the Settlement Agreement, Defendants will pay a Maximum Settlement
15 Amount of \$1,050,000.00 on a non-reversionary basis. The requested attorneys’ fees are 35% of
16 the total value of the monetary settlement. In light of Class Counsel’s successful prosecution and
17 resolution of the cases, the requested attorneys’ fees are appropriate and reasonable.

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

25 The percentage method is consistent with, and is intended to mirror, the practice in the
26 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
27 arrangements with their clients. The named plaintiff’s agreement to pay a contingent fee is
28 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 contingency fees in excess of the amount sought.⁶⁰

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

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

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

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⁶⁰ Parker-Fawley Decl., ¶ 9.

C. **The Attorneys' Fees Requested 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 Attorneys' Fees in the amount of \$367,500.00 (which is 35% of the Maximum Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.⁶¹

As outlined in the Declaration of Elizabeth Parker-Fawley, Class Counsel has fully and actively participated in litigation of the Action.⁶² Prior to commencing the lawsuit, Class Counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.⁶³ During the

⁶¹ Parker-Fawley Decl., ¶¶ 13-18.

⁶² *Id.*, Exh. A.

⁶³ *Id.*, ¶ 5.

litigation of the actions, Class Counsel had the opportunity to interview Plaintiff and other witnesses; reviewed and analyzed a large volume of information, documents and data obtained from Defendants, Plaintiff, and other sources; and prepared liability, damages, penalties, and valuation calculations.⁶⁴ Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, case management, discovery, and the production of information, documents and data, among other things; engaged in settlement negotiations with Defendants' counsel; and prepared for and attended court proceedings, mediation, and settlement negotiations.⁶⁵

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Elizabeth Parker-Fawley, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.⁶⁶ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent 440.60 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the PAGA Group Members, and the State of California.⁶⁷ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the cases is evident not only in the results achieved, but in the steps necessary to reach those results. Defendants retained well-respected counsel to represent its defenses. More specifically, Defendants and their counsel felt very strongly about

⁶⁴ Parker-Fawley Decl., ¶ 6.

⁶⁵ Ibid.

⁶⁶ *Id.*, Exh. A.

⁶⁷ *Id.*, ¶¶ 11 & 12.

Defendants' 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 the mediations. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Elizabeth Parker-Fawley, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Agreement with maximum efficiency.⁶⁸

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

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

The Settlement Agreement 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 Agreement 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 Agreement offers present relief and/or recovery to Settlement Class Members, the State of California, and PAGA Group Members while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

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⁶⁸ Parker-Fawley Decl., ¶¶ 13-18.

As a result of this litigation and settlement negotiations, Defendants agreed to pay a Maximum Settlement Amount of \$1,050,000.00 to settle the matter. After deducting the Attorneys' Fees (\$367,500.00), Litigation Costs (\$14,825.23), Enhancement Payment (\$7,500.00), Settlement Administration Costs (\$8,000.00), and PAGA Penalties (\$150,000.00) from the Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$502,174.77.⁶⁹ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Share is currently estimated to be \$10,244.50 and the average Individual Settlement Share is currently estimated to be \$1,768.68.⁷⁰ The highest Individual PAGA Payment is currently estimated to be \$873.40 and the average Individual PAGA Payment is currently estimated to be \$407.61.⁷¹ The Settlement Agreement offers significant monetary relief to the Settlement Class Members, the State of California, and PAGA Group Members.

4. Whether the Fee Is Fixed or Contingent.

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 have devoted to litigating the case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

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

⁶⁹ Phoenix Decl., ¶ 13.

⁷⁰ *Id.*, ¶ 14.

⁷¹ *Id.*, ¶ 15.

1 took on the case without knowing whether any recovery would be obtained. Class Counsel has
2 invested 440.60 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of
3 California, and PAGA Group Members.⁷² Class Counsel has also incurred litigation costs and
4 expenses in the amount of \$14,825.23.⁷³

5 Class Counsel has borne all of the risks and costs of litigation and will not receive any
6 compensation until recovery is obtained.⁷⁴ Considering the amounts requested, the work
7 performed, and the risks incurred, the requested fees and costs are reasonable and should be
8 awarded.

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

10 The court in *Camden* noted that, “a key element of the common fund case is that fees are
11 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
12 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
13 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
14 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)). The results achieved,
15 in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter,
16 are considerable. The Settlement Agreement has yielded a positive response from the Class
17 Members—no Class Members objected to the Class Settlement.⁷⁵

18 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
19 in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted
20 in a settlement that provides for a Maximum Settlement Amount of \$1,050,000.00.⁷⁶ The
21 Maximum Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
22 Agreement. The highest Individual Settlement Share is currently estimated to be \$10,244.50 and
23 the average Individual Settlement Share is currently estimated to be \$1,768.68.⁷⁷ The highest
24

25
26 ⁷² Parker-Fawley Decl., ¶ 11, Exh. A.

27 ⁷³ *Id.*, ¶ 19, Exh. B.

28 ⁷⁴ *Id.*, ¶ 19.

⁷⁵ Parker-Fawley Decl., ¶ 9.

⁷⁶ Parker-Fawley Decl., ¶ 10.

⁷⁷ Phoenix Decl., ¶ 14.

Individual PAGA Payment is currently estimated to be \$873.40 and the average Individual PAGA Payment is currently estimated to be \$407.61.⁷⁸

6. The Reputation and Ability of the Attorneys.

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

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

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

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

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

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

⁷⁸ *Id.*, ¶ 15.

⁷⁹ Parker-Fawley Decl., ¶¶ 13-18.

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

Class Counsel had to bring together a large volume of information, documents and data that were obtained from Defendants, Plaintiff, and through other sources. Class Counsel conducted extensive review and analysis of the information, documents and data to strategize the action and to prepare for mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Elizabeth Parker-Fawley is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiff and the Class, and the time required for completing those tasks.⁸⁰ The chart demonstrates that Class Counsel has spent a total of 440.60 hours litigating the cases and finalizing the Settlement Agreement.⁸¹ In light of the facts and circumstances of the cases, as well as the results that Class Counsel has achieved in these cases, 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.

⁸⁰ Parker-Fawley Decl., Exh. A.

⁸¹ *Id.*, ¶¶ 11 & 12, Exh. A.

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 matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$1,050,000.00.

As set forth in the Declaration of Elizabeth Parker-Fawley, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation at least \$850 per hour for services provided by Class Counsel.⁸² Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$850 per hour for legal service performed, by courts of this state.⁸³ While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the rate of \$850 per hour to 440.60 hours for services provided by Class Counsel would place a reasonable value of \$374,510.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$367,500.00, which is 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

⁸² *Id.*, ¶ 12.

⁸³ *Ibid.*

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 \$367,500.00 to Class Counsel.

VII. LITIGATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement provides for a Litigation Costs of up to \$20,000.00. As set forth in the Declaration of Elizabeth Parker-Fawley, Class Counsel seeks reimbursement of \$14,825.23 in litigation costs and expenses incurred in this case.⁸⁴ This amount was reasonable and necessary in the prosecution of the cases and to obtain the Agreement.⁸⁵ The cost savings of \$5,174.77, will be part of the Net Settlement Amount, which will be distributed to Settlement Class Members in accordance with the Agreement.⁸⁶ Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of \$14,825.23 to Class Counsel.

⁸⁴ Parker-Fawley Decl., ¶¶ 19, Exh. B.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

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

As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$8,000.00.⁸⁷ The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiff, Class Counsel, Settlement Class Members, and PAGA Group Members; (d) printing and mailing the Class Notice to Class Members; (e) receiving and validating Requests for Exclusion, Objections, and disputes to Workweeks submitted by Class Members and PAGA Group Members; (f) calculating the Employer Taxes and providing appropriate forms and calculations to Defendants; (g) mailing Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks to PAGA Group Members, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Phoenix to perform.⁸⁸

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

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

The Settlement Agreement provides for Enhancement Payment in the amount of \$7,500.00 to Plaintiff to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Payment is 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*

⁸⁷ Phoenix Decl., ¶ 17.

⁸⁸ *Id.*, ¶ 2.

1 *Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a
2 single class representative).

3 The requested Enhancement Payment is fair and appropriate because Plaintiff spent a
4 substantial amount of time and effort producing relevant documents and past employment records,
5 as well as providing the facts and evidence to support the prosecution of the claims.⁸⁹ Plaintiff was
6 available whenever Class Counsel needed him and actively tried to obtain, and gave, information
7 to support the pursuit of the cases.⁹⁰

8 Accordingly, it is appropriate and just for Plaintiff to receive \$7,500.00 as a reasonable
9 Enhancement Payment in addition to his Individual Settlement Payment and Individual PAGA
10 Payment.

11 **X. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
13 of the Settlement Agreement, and award Attorneys' Fees and Costs, Enhancement Payment,
14 Settlement Administration Costs, and PAGA Penalties, in their entirety, as sought herein; and
15 permit the filing of a memorandum that exceeds the page limit.

16 Dated: August 14, 2024

LAWYERS for JUSTICE, PC

17
18 By: _____

Elizabeth Parker-Fawley
Attorneys for Plaintiff

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28 ⁸⁹ Parker-Fawley Decl., ¶ 20; Declaration of Alexis Salcido-Ceja ("Salcido-Ceja Decl.").

⁹⁰ Parker-Fawley Decl., ¶ 20; Salcido-Ceja Decl., ¶¶ 3-5;