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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

BRYANT HARRIS; 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.

TVI, INC. D/B/A SAVERS, VALUE
VILLAGE & VILLAGE DES VALEURS, an
unknown business entity; SAVERS, INC., an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: BC612403

Honorable Carolyn B. Kuhl
Department SSC12

CLASS ACTION

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

[Declarations of Class Counsel
(Edwin Aiwazian and Matthew Righetti);
Declaration of Class Representative (Bryant
Harris); Declaration of Settlement
Administrator (Tina Chiango); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: December 10, 2019
Time: 11:00 a.m.
Department: SSC12

Complaint Filed: March 1, 2016
FAC Filed: May 31, 2016
SAC Filed: December 27, 2018
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 10, 2019, at 11:00 a.m., in Department
2 SSC12 of the above-entitled Court, located at Spring Street Courthouse, 312 North Spring Street,
3 Los Angeles, California 90012, Plaintiff Bryant Harris (“Plaintiff”) will and hereby does move
4 for an order granting final approval of:

5 1. The Joint Stipulation of Class Action and PAGA Settlement and Release and
6 Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement and Release
7 (together, “Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the
8 Settlement is fair, adequate, and reasonable because:

- 9 • A Net Settlement Amount of approximately **\$170,098.09** will be fully distributed to
10 the Class Members who do not timely and validly request exclusion from the
11 Settlement (“Participating Class Members”);
12 • **No objections** to the Settlement have been filed with the Court and submitted to the
13 settlement administrator, RG/2 Claims Administration LLC (“Settlement
14 Administrator”);
15 • **No Requests for Exclusion** have been submitted to the Settlement Administrator;

16 2. Payment in the amount of **\$122,500.00** to Lawyers for Justice, PC and Righetti
17 Glugoski P.C. (together, “Class Counsel”), representing thirty-five percent (35%) of the
18 Maximum Settlement Amount, for attorneys’ fees, which is reasonable and justified on a
19 percentage-basis and also based on a lodestar cross-check;

20 3. Payment in the amount of **\$28,918.91** to Class Counsel for reimbursement of
21 litigation costs and expenses;

22 4. Payment in the amount of **\$5,983.00** to the Settlement Administrator, RG/2
23 Claims Administration LLC, for Settlement Administration Costs;

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

26 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
27 California Labor Code section 2698, *et seq.*, in the amount of **\$20,000.00**, of which seventy-five
28 percent (75%), or \$15,000, will be paid to the California Labor and Workforce Development

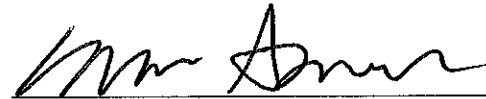
1 Agency and twenty-five percent (25%), or \$5,000, will be part of the Net Settlement Amount for
2 distribution to the Participating Class Members.

3 This motion is based upon the following Memorandum of Points and Authorities; the
4 Declarations of Class Counsel (Edwin Aiwazian and Matthew Righetti), Class Representative
5 (Bryant Harris), and Settlement Administrator (Tina Chiango) in support thereof; the pleadings
6 and other records on file with the Court in this matter; and such evidence and oral argument as
7 may be presented at the hearing on this motion.

8 Dated: November 12, 2019

LAWYERS for JUSTICE, PC

9
10 By:



Edwin Aiwazian

Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Bryant Harris ("Plaintiff") seeks final approval of: (1) the Maximum Settlement Amount of \$350,000; (2) Attorneys' Fees and Costs, consisting of an award of attorneys' fees in the amount of \$122,500 and reimbursement of actual litigation costs and expenses in the amount of \$28,918.09, to Lawyers for Justice, PC and Righetti Glugoski P.C. (together, "Class Counsel"); (2) Enhancement Payment of \$7,500 to Plaintiff; (3) LWDA Payment of \$15,000 (i.e., 75% of the PAGA Settlement Amount of \$20,000); and (4) Settlement Administration Costs, in the amount of \$7,500 to the Settlement Administrator.¹

Plaintiff seeks relief on behalf of the following class:

All individuals employed by Defendants in California as "exempt" Retail Sales Managers at any time during the period from March 1, 2012 through December 31, 2016 ("Class" or "Class Members").²

This litigation involved ongoing investigations, extensive motion practice, formal and informal discovery, review and analysis of a volume of pages of documents and data prior to and during mediation conducted by Paul Grossman, Esq., and extensive settlement negotiations. This matter has required **628.50** hours of attorney time between two (2) law firms serving as Class Counsel. As will be demonstrated herein, the request for an award of attorneys' fees, which represents thirty-five percent (35%) of the Maximum Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Enhancement Payment in the amount of \$7,500 to Plaintiff Bryant Harris to compensate him for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of payment to the Settlement Administrator in the amount of \$5,983 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of \$20,000 for the PAGA

¹ Settlement Agreement, attached as "EXHIBIT 1" to Declaration of Edwin Aiwarzian ("Aiwarzian Decl."), ¶ 25.

² *Id.*, ¶¶ 7 & 13.

1 Settlement Amount, of which \$15,000 will be paid to the California Labor Workforce and
2 Development Agency ("LWDA") for its portion of the PAGA Settlement Amount ("LWDA
3 Payment"), and \$5,000 will be part of the Net Settlement Amount that will be available to pay
4 Class Members who do not timely and validly request exclusion from the Settlement
5 ("Participating Class Members").

6 The requests for Attorneys' Fees and Costs, Enhancement Payment, Settlement
7 Administration Costs, and PAGA Settlement Amount were fully disclosed in the Notice of Class
8 Action Settlement ("Class Notice") that was mailed to the Class Members. Most importantly, as
9 of the date of this motion, *not a single Class Member has objected to the requests for Attorneys'*
10 *Fees and Costs, Enhancement Payment, Settlement Administration Costs, or allocation for*
11 *PAGA Settlement Amount.*

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

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

19 Defendants TVI, Inc. d/b/a Savers, Value Village & Village Des Valeurs and Savers, Inc.
20 ("Defendants") are a global thrift retailer offering clothing, accessories and household goods.
21 Defendants operate over twenty (20) locations in California. Plaintiff Bryant Harris is a former
22 employee of Defendant.

23 On March 1, 2016, Plaintiff Bryant Harris filed a Class Action Complaint for Damages
24 and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et
25 Seq. against Defendants in the Los Angeles County Superior Court ("Court"), Case No.
26 BC612403 (the "Action"). On April 13, 2016, Defendants removed the Action to the United
27 States District Court for the Central District of California ("U.S. District Court"). On May 16,
28

1 2016, pursuant to the stipulation by the parties, the U.S. District Court entered an order
2 remanding the Action to this Court.

3 On May 31, 2016, Plaintiff filed a First Amended Class Action Complaint for Damages
4 and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et
5 Seq. against Defendants. On August 3, 2016, Defendants filed Defendants TVI, Inc. and Savers
6 LLC's First Amended Answer to Plaintiff Bryant Harris' Unverified First Amended Class Action
7 Complaint.

8 On September 19, 2017, Plaintiff filed a Motion for Class Certification and supporting
9 documents. On October 23, 2017, pursuant to stipulation by the parties, the Court entered an
10 order to vacate the hearing on Plaintiff's Motion for Class Certification.

11 On December 27, 2018, pursuant to the stipulation of the parties and the Court's order
12 granting leave thereon Plaintiff filed a Second Amended Class Action Complaint for Damages
13 and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et
14 Seq. ("Operative Complaint") against Defendants.

15 Plaintiff's core allegation is that Defendants have violated the California Labor Code by
16 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members,
17 of, *inter alia*, misclassifying them as exempt and failing to pay overtime wages, failing to
18 provide compliant meal and rest periods and associated premium pay, failing to pay wages and
19 associated waiting time penalties, failing to provide compliant wage statements, failing to
20 maintain complete and accurate payroll records, and failing to reimburse necessary business-
21 related expenses, and thereby engaged in unfair business practices under the California Business
22 and Professions Code and owe penalties recoverable under PAGA.

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

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28 ///

1 The parties have actively litigated this matter since the Action was commenced on March
2 1, 2016. The Parties have conducted significant formal and informal discovery and investigation
3 into the claims. Both sides have propounded and responded to multiple sets of formal written
4 discovery requests in various forms. Class Counsel also prepared for and took the depositions of
5 Defendants' Person Most Knowledgeable designees and prepared for and defended the
6 deposition of Plaintiff. The parties engaged in extensive discussions about the strengths and
7 weaknesses of Plaintiff's claims and Defendants' defenses thereto, to try to resolve the Action.
8 Ultimately, the parties reached the Settlement described herein to resolve this Action in its
9 entirety.

10 On March 29, 2019, Plaintiff filed a Motion for Preliminary Approval of Class Action
11 Settlement ("Motion for Preliminary Approval"). On July 11, 2019, the Court held a hearing
12 on Plaintiff's Motion for Preliminary Approval, during which the Court raised several points
13 on inquiry.

14 On July 22, 2019, the parties executed Amendment No. 1 to Joint Stipulation of Class
15 Action and PAGA Settlement and Release ("Amendment No. 1") in conformity with the
16 Court's instruction at the hearing on Plaintiff's Motion for Preliminary Approval. On July 24,
17 2019, Plaintiff submitted supplemental papers in support of Plaintiff's Motion for Preliminary
18 Approval. On July 30, 2019, the Court entered an Order Granting Preliminary Approval of
19 Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the
20 terms of the Settlement, Class Notice, and proposed administration procedures and associated
21 deadlines.

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

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

25 Under the terms of the Settlement Agreement, Defendants have agreed to pay a
26 Maximum Settlement Amount of \$350,000 on a non-reversionary basis.³ Subject to approval by
27 the Court, the Net Settlement Amount will be calculated by deducting the following amounts
28

³ Settlement Agreement, ¶ 25.

1 from the Maximum Settlement Amount: (1) attorneys' fees in the amount of \$122,500 to Class
2 Counsel, which is thirty-five percent (35%) of the Maximum Settlement Amount; (2)
3 reimbursement of actual litigation costs and expenses in the amount of \$28,918.91 to Class
4 Counsel; (3) Enhancement Payment in the amount of \$7,500 to Plaintiff Bryant Harris; (4)
5 Settlement Administration Costs in the amount of \$5,983 to RG/2 Claims Administration LLC
6 ("RG/2"); and (5) the LWDA's portion of the PAGA Settlement Amount (i.e., LWDA Payment)
7 in the amount of \$15,000.⁴

8 The Net Settlement Amount, which is estimated to be \$170,098.09, will be fully
9 distributed to Class Members who do not timely submit a valid written request to be excluded
10 from the Settlement ("Request for Exclusion") to the Settlement Administrator (i.e., Participating
11 Class Members) without reversion to Defendant.⁵ Each Participating Class Member will be
12 entitled to receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement
13 Share"), based upon the number of weeks each Participating Class Member was employed by
14 Defendants as an "exempt" Retail Sales Manager in California during the period from March 1,
15 2012 through December 31, 2016,⁶ excluding any weeks during which the Participating Class
16 Member was on a leave of absence ("Workweeks").⁷ Individual Settlement Shares will be
17 calculated by dividing the Net Settlement Amount by the total number of Workweeks for all
18 Participating Class Members. and multiplying the result by the Participating Class Member's
19 individual Workweeks.⁸

20 Class Members had forty-five (45) calendar days from the initial mailing of the Class
21 Notice or, in the case of re-mailed Class Notice, additional fifteen (15) calendar days from the
22 45-day deadline ("Response Deadline")⁹, to submit a Request for Exclusion, objection to the
23

24 ⁴ *Id.*, ¶¶ 10, 19, 24, 25, 39, 47-49, 51.

25 ⁵ This amount is higher than the amount stated in Paragraph 15 of the accompanying Declaration of Tina Chiango
26 Regarding Notice to the Class ("RG/2 Declaration" or "RG/2 Decl.") because the Settlement Administrator's
27 calculation assumes that Class Counsel will obtain reimbursement of litigation costs and expenses in the maximum
28 amount of \$35,000, which is allocated under the Settlement. However, Class Counsel seeks reimbursement of
litigation costs and expenses in the amount of only \$28,918.91, and the difference of \$6,081.09 will remain a part of
the Net Settlement Amount.

⁶ Settlement Agreement, ¶ 14.

⁷ *Id.*, ¶ 40.

⁸ Settlement Agreement, ¶ 53(a).

⁹ *Id.*, ¶ 37.

1 Settlement (“Notice of Objection”), and/or dispute regarding the Workweeks credited to each of
2 them to the Settlement Administrator.¹⁰ The Response Deadline was October 11, 2019.¹¹ To
3 date, the Settlement Administrator has not received any timely and valid Requests for Exclusion
4 or Notices of Objection.¹²

5 Each Participating Class Member’s Individual Settlement Share will be allocated as
6 follows: thirty-three and one third percent (33 ⅓ %) as wages, which will be reported on an IRS
7 Form W-2; thirty-three and one third percent (33 ⅓ %) as penalties, which will be reported on an
8 IRS Form 1099; and the remaining thirty-three and one third percent (33 ⅓ %) as interest and
9 other non-wage damages, which will be reported on an IRS Form 1099.¹³ Participating Class
10 Members will be issued payment of their Individual Settlement Share subject to reduction for the
11 employee’s share of taxes and withholdings with respect to the wage portion of each Individual
12 Settlement Share (“Individual Settlement Payment”).¹⁴ The employer’s share of payroll taxes
13 and contributions with respect to the wage portion of the Individual Settlement Shares will be
14 paid by Defendants separately and in addition to the Maximum Settlement Amount.¹⁵

15 Individual Settlement Payment checks issued to Participating Class Members will remain
16 valid and negotiable for one hundred eighty (180) calendar days from the date of issuance and
17 thereafter, will be cancelled.¹⁶ The funds associated with such cancelled checks will be
18 transmitted to The Alliance for Children’s Rights.¹⁷

19 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

20 The Court-appointed Settlement Administrator, RG/2 Claims, has taken all necessary
21 steps to effectuate the notice and settlement administration process, as set forth in the Court’s
22 July 30, 2019 Preliminary Approval Order.

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24 ///

25 ¹⁰ *Id.*, ¶¶ 27, 36, 37, & 60.

26 ¹¹ RG/2 Decl., Exh. A; ¶ 12.

27 ¹² *Id.*, ¶¶ 10 & 11.

28 ¹³ *Id.*, ¶ 68.

¹⁴ Settlement Agreement, ¶ 22.

¹⁵ *Id.*, ¶ 66.

¹⁶ *Id.*, ¶ 61.

¹⁷ *Id.*, ¶ 61.

1 On August 15, 2019, RG/2 Claims received the Court-approved text for the Class Notice
2 from Class Counsel.¹⁸

3 On August 20, 2019, RG/2 Claims received a list from Defendant's counsel, containing
4 the names, mailing addresses, Social Security numbers, and start and end dates of employment
5 for individuals identified as Class Members ("Class Data and List").¹⁹ The Class Data and List
6 contained information for forty (40) individuals identified as Class Members.²⁰ RG/2 Claims
7 processed the addresses in the Class List for Class Members through the National Change of
8 Address Database ("NCOA").²¹

9 On August 27, 2019, RG/2 Claims mailed the Class Notice by First Class U.S. Mail to
10 thirty-nine (39) individuals identified as Class Members.²²

11 After the Class Notices were mailed, the Settlement Administrator was contacted by
12 Defendant's counsel of September 4, 2019 to request that another Class Member who was not
13 identified in the Class Data and List be sent a Class Notice. On September 4, 2019, RG/2 Claims
14 mailed a Class notice to the additional Class Member.²³

15 As of the date of this motion, seven (7) Class Notices were returned to RG/2 Claims by
16 the United States Post Office as undeliverable.²⁴ RG/2 Claims performed a skip-trace search on
17 the Class Notices that were returned as undeliverable without forwarding addresses, located six
18 (6) updated addresses, and promptly re-mailed the Class Notice to the addresses located.²⁵
19 Ultimately, one (1) Class Notice remains undeliverable.²⁶

20 As of the date of this motion, the Settlement Administrator has not received any Requests
21 for Exclusion, Notices of Objections, or Workweeks disputes.²⁷

22 ///

23 ///

24 ¹⁸ RG/2 Decl., ¶ 4.

25 ¹⁹ *Id.*, ¶ 6.

26 ²⁰ *Ibid.*

27 ²¹ *Id.*, ¶ 7.

28 ²² RG/2 Decl., ¶ 8.

²³ *Id.*

²⁴ *Id.*, ¶ 10.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ RG/2 Decl., ¶¶ 11-13.

To date, there are forty (40) Class Members who did not submit timely and valid Requests for Exclusion, and are therefore, deemed to be Participating Class Members.²⁸ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$170,098.09 will be fully distributed.²⁹ It is currently estimated that the highest Individual Settlement Share to a Participating Class Member is at least \$17,061.92 and the average Individual Settlement Share is at least \$4,100.43.³⁰

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

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

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

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Importantly, "[d]ue 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)

²⁸ *Id.*, ¶ 14.

²⁹ *Id.*, ¶ 15; see also, n.5, *supra*.

³⁰ RG/2 Decl., ¶ 16. The actual average and highest Individual Settlement Shares will be larger than the amounts stated in the RG/2 Declaration because the Net Settlement Amount is larger due to Class Counsel's request for a reimbursement of litigation costs and expenses in an amount that is less than \$35,000 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$6,081.09, will be part of the Net Settlement Amount). See n.5, *supra*.

counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement taken as a whole is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the lawsuit was 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 matter since it was commenced on March 1, 2016. Counsel for the parties used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel prepared and filed a motion for class certification.³¹ Prior to reaching the Settlement, Class Counsel conducted significant investigation into the facts of the case and engaged in extensive formal and informal discovery and review and analysis of a volume of documents and data produced by Defendants.³² The volume of data and documents that Class Counsel reviewed and analyzed included, and was not limited to: Plaintiff and other Class Members’ employment records, a detailed sampling of Class Members’ time and pay data (including, but not limited to, timesheets, payroll records, and earning statements), job titles and descriptions, corporate policies (including, but not limited to, several iterations of Defendants’ Human Resources Policies), and Defendants’ operations and employment practices (such as,

³¹ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶¶ 6-7.

³² *Id.*, ¶ 12.

1 Defendants' Weekly Manager and Production Schedules, Production Targets, and Production
2 Quota Reports), procedures (such as, Defendants' Time Keeping and Payroll Procedures), and
3 policies (such as, Defendants' Hours of Work, Overtime and Payday policy, Employee Benefits
4 and Awards policy, and Sick Time and Holiday policy), and non-party witness declarations,
5 among other information and documents.³³

6 Class Counsel interviewed Plaintiff and other Class Members to gather facts and to
7 identify potential witnesses.³⁴ Class Counsel served multiple sets of formal written discovery
8 requests and reviewed Defendants' responses and supplemental responses thereto.³⁵ Class
9 Counsel also worked with Plaintiff to prepare responses to formal written discovery requests
10 which were propounded by Defendants.³⁶ Class Counsel also took three (3) depositions of
11 Defendants' Person Most Knowledgeable designees, and prepared for and defended the
12 deposition of Plaintiff.³⁷ Counsel for the parties also met and conferred on numerous occasions,
13 e.g., to discuss issues relating to the pleadings, jurisdiction, discovery, *Belair-West*
14 administration (which was commenced and completed) contested motion practice, and the
15 production of documents and data.³⁸ Class Counsel also engaged in extensive motion practice,
16 including filing a motion for class certification, and prepared for and attended court proceedings,
17 mediation, and settlement negotiations, among other tasks.³⁹

18 The parties also engaged in extensive settlement negotiations over several months.⁴⁰ Prior
19 to and during the settlement discussions, the parties exchanged class information and engaged in
20 an intensive discussion regarding their evaluations of the Action and various aspects of the
21 Action, including but not limited to, the risks and delays of further litigation, the risks to the
22 parties of proceeding with class certification and representative adjudication, the law relating to
23 misclassification theory, meal and rest periods, wage-and-hour enforcement, and PAGA
24 representative claims, as well as the evidence produced and analyzed, and the possibility of

25 ³³ Aiwazian Decl., ¶ 12.

26 ³⁴ *Ibid.*

27 ³⁵ *Ibid.*

28 ³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Aiwazian Decl., ¶ 11.

1 appeals, among other things.⁴¹ During all settlement discussions, the parties conducted their
2 negotiations at arm's length in an adversarial position.⁴² Arriving at a settlement that was
3 acceptable to both parties was not easy. Defendants and their counsel felt strongly about their
4 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
5 they would be able to obtain class certification and prevail at trial.⁴³ After conducting
6 investigations, the *Belaire-West* notice process, extensive formal and informal discovery,
7 multiple depositions, extensive motion practice, and extensive settlement negotiations, the
8 parties have agreed that this case is well-suited for settlement given the legal issues relating to
9 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further
10 litigation.⁴⁴

11 The Settlement takes into account the strengths and weaknesses of each side's position
12 and the uncertainty of how the case might have concluded at certification and trial.⁴⁵ The parties
13 have had the opportunity to interview and obtain information from their respective witnesses.⁴⁶
14 Counsel for the parties have also reviewed documents and information relating to Plaintiff's and
15 the Class Members' employment with Defendants and performed significant research into the
16 law concerning PAGA representative actions, class certification, misclassification theory, meal
17 and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendants' defenses
18 thereto, as well as facts discovered.⁴⁷ The Parties have reached the Settlement based on this large
19 volume of facts, evidence, and investigation. In addition, Class Counsel have extensive
20 experience in employment class actions, including significant experience in California wage-
21 and-hour litigation.⁴⁸

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25 ⁴¹ *Ibid.*

26 ⁴² *Ibid.*

27 ⁴³ *Id.*, ¶¶ 16-18.

28 ⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Id.*, ¶¶ 11-13, 16-18.

⁴⁸ *Id.*, ¶¶ 6-7.

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

3 The Settlement, which provides for a Maximum Settlement Amount of \$350,000,
4 represents a fair, adequate, and reasonable resolution of this matter, given the risks inherent in
5 litigating class and representative claims through certification proceedings, trial, and/or appeals.⁴⁹
6 The Settlement was calculated using information and data uncovered through extensive case
7 investigation, formal and informal discovery, and the exchange of information in the context of
8 mediation.⁵⁰ Had the Action not settled, Defendants would have vigorously challenged
9 certifiability, manageability of representative adjudication, and liability. Defendants contended
10 that individualized questions of fact predominate over any common issues, and these issues
11 would pose challenges to certification and representative adjudication. Defendants would have
12 likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide
13 and/or representative adjudication. On the other hand, Defendants also faced the risk of the
14 Court certifying the Action 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
16 parties.

17 It is preferable to reach an early resolution of a dispute because such resolutions save
18 time and money that would otherwise go to litigation. If this case had settled after further
19 litigation, the settlement amount would have taken into account the additional costs incurred, and
20 there might have been less money available for the Class Members after all was said and done.
21 This is not just an abstract contention. The risks and expenses of further litigation outweighed
22 any benefit that might have been gained otherwise. These risks of further litigation include a
23 determination that the claims were unsuitable for class treatment and/or representative
24 adjudication, failure to obtain certification, class de-certification after certification of a class,
25 allowing a jury to decide the claims asserted in the Action, and the real possibility of no recovery
26 after years of litigation. Additionally, Plaintiff filed a motion for class certification, and the
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28 ⁴⁹ Aiwazian Decl., ¶¶ 9 & 22.

⁵⁰ *Id.*, ¶¶ 5-9.

1 parties were entering the phase of the litigation where they would have to conduct a significant
2 amount of additional discovery, including and not limited to, additional depositions of expert
3 witnesses and percipient witnesses, such as managers, supervisors, and other current and former
4 employees throughout the State of California. Discovery disputes would have certainly arisen,
5 which would have cost the parties additional time and money. In contrast, the Settlement
6 provides real and significant benefits for the Participating Class Members here and now, while
7 avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of
8 recovery.

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

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

16 The Settlement, which provides for a Maximum Settlement Amount of \$350,000,
17 represents a fair, reasonable, and adequate resolution of the Action. The Settlement was
18 calculated using information and data uncovered through extensive case investigation, formal
19 and informal discovery, and the exchange of information in the context of mediation. The
20 Settlement takes into account the potential risks and rewards inherent in any case and, in
21 particular, in this case. Moreover, considering all of the facts in this matter, the Maximum
22 Settlement Amount represents a considerable recovery for all Participating Class Members.

23 Even after deducting attorneys' fees in the amount of \$122,500, litigation costs and
24 expenses in the amount of \$28,918.91, Enhancement Payment in the amount of \$7,500,
25 Settlement Administration Costs in the amount of \$5,983, and LWDA Payment in the amount
26 of \$15,000 from the Maximum Settlement Amount of \$350,000, the Net Settlement Amount is
27 currently estimated to be \$170,098.09.⁵¹ Under the Settlement Agreement, the Maximum
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⁵¹ RG/2 Decl., ¶ 15.

Settlement Amount will be fully distributed with no reversion to Defendants, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating 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 forty (40) Participating Class Members, representing 100% of the Class Members.⁵² It is currently estimated that the highest Individual Settlement Share to a Participating Class Member is at least \$17,061.92 and the average Individual Settlement Share is at least \$4,100.43.⁵³

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. In light of the above considerations, Class Counsel believe that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members.⁵⁴ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, have experience with this type of litigation, and extensive investigation and discovery 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 have extensive experience in employment class action law and complex wage-and-hour litigation.⁵⁵ The law firms of Lawyers for Justice, PC and Righetti Glugoski P.C. have been appointed class counsel in numerous complex wage-and-hour cases, and have recovered millions of dollars for individuals in California.⁵⁶ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendants and

⁵² *Id.*, ¶ 14.

⁵³ *Id.*, ¶ 16; see n.27, *supra*.

⁵⁴ Aiwazian Decl., ¶ 22; Righetti Decl., ¶ 2-7.

⁵⁵ Aiwazian Decl., ¶¶ 18-19; Righetti Decl., ¶¶ 2-7.

⁵⁶ *Ibid.*

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 has objected to or opted out of the Settlement.*⁵⁷ Specifically, no objections have been made as to the Maximum Settlement Amount or request for Attorneys’ Fees and Costs, Enhancement Payment, Settlement Administration Costs, or the allocation for PAGA Settlement Amount. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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

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

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

⁵⁷ RG/2 Decl., ¶ 11.

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

3 California law provides that an attorneys’ fees award should be equivalent to fees paid in
4 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert*
5 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to
6 a 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
9 will “chill the private enforcement essential to the vindication of many legal rights and obstruct
10 the representative actions that often relieve the courts of the need to separately adjudicate
11 numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and
12 representative actions should approximate the probable terms of a contingent fee contract
13 negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48.

14 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
15 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
16 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126
17 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long
18 as the method chosen is applied consistently using percentage figures and/or rates that accurately
19 reflect the marketplace. In cases where class members present claims against a settlement
20 amount and the settlement agreement provides that the defendant agrees to paying the attorneys a
21 percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82
22 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 v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent
3 range of contingency fee in marketplace was appropriate in class actions).

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

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

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

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

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28 ⁵⁸ 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 Courts have consistently recognized that class and representative action litigation is
2 increasingly necessary to protect the rights of individuals whose injuries and/or damages are too
3 small to economically justify legal action on an individual basis. Accordingly, in determining a
4 reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue
5 such litigation in order to achieve increased access to the judicial system for meritorious claims
6 and to enhance deterrents to wrongdoing. This is especially true in situations where multiple
7 similar alleged wrongs would not be economically feasible to pursue individually, such as here.
8 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

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

17 Under the terms of the Settlement Agreement, Defendants will pay a Maximum
18 Settlement Amount of \$350,000 on a non-reversionary basis. The requested attorneys' fees
19 award is thirty-five percent (35%) of the total value of the monetary settlement. In light of Class
20 Counsel's successful prosecution and resolution of this matter, the requested attorneys' fees are
21 appropriate and 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 award in this case satisfies all of those
28 factors and should be approved on a percentage basis.

1 The percentage method is consistent with, and is intended to mirror, the practice in the
2 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
3 arrangements with their clients. The named plaintiff's agreement to pay a contingent fee is
4 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
5 counsel's work to the class is to review the consideration agreed to be paid by the named
6 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
7 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
8 without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this
9 case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the
10 recovery.⁵⁹

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

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

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⁵⁹ Aiwazian Decl., ¶ 11.

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

5 C. **The Fee Award Requested by Class Counsel Is Reasonable Based on the**
6 **Factors Considered in Determination of Fee Awards.**

7 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors
8 to be considered in determining whether fee awards are reasonable: (1) the time and labor
9 required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform
10 the legal services properly; (4) the preclusion of other employment by the attorneys due to the
11 acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
12 limitation imposed by the client or the circumstances; (8) the amount involved and results
13 obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the
14 case; (11) the nature and length of the professional relationship with the client; and (12) awards
15 in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d
16 768, 772.

17 Each and every one of these factors favors the attorneys' fees award sought here;
18 however, some of the most relevant factors to this Court's fee determination will be addressed
19 herein. The award of attorneys' fees in the amount of \$122,500, which is thirty-five percent
20 (35%) of the Maximum Settlement Amount, is commensurate with the time, effort, and expense
21 dedicated to the Action, the contingent nature of Class Counsel's fee and the risks taken in
22 commencing this case, the skill and determination required, the results that Class Counsel have
23 achieved, and the value of the settlement that Class Counsel have obtained for the Class
24 Members.

25 I. ***Time & Labor.***

26 Two (2) law firms combined their experience and skills, and dedicated the full extent of
27 resources, to litigate and bring this matter to a successful conclusion on behalf of the Class.
28 Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive

1 experience in the handling of class actions and complex litigation matters.

2 The work performed in this matter was managed in a manner designed to most effectively
3 utilize the combined skills and attorney power of Class Counsel, while avoiding duplication of
4 efforts. Lawyers for Justice, PC had primary responsibility for case management, drafting the
5 pleadings and moving papers, propounding and responding to formal written discovery requests,
6 taking and defending depositions, and communicating with Plaintiff and Class Members.⁶⁰
7 Righetti Glugoski P.C. actively participated in all stages of litigation, including conducting legal
8 research and investigation into the facts of the matter, reviewing and analyzing documents
9 produced by Defendants, developing case strategy, and preparing for mediation and settlement
10 negotiations.⁶¹ The review and analyses of the large volume of documents and information
11 produced by Defendants and obtained through other sources involved group effort.⁶² For
12 example, when documents were produced in the Action, and needed to be analyzed in order to
13 find pertinent documents, information, and data that would be helpful to the case presentation
14 and to class certification issues, attorneys from both firms were assigned that task to ensure that
15 nothing was missed.⁶³ Throughout the prosecution of this litigation, Class Counsel have worked
16 together to avoid unnecessary duplication of efforts.⁶⁴

17 As outlined in the Declarations of Edwin Aiwasian and Matthew Righetti, Class Counsel
18 have fully and actively participated in this litigation process, including, *inter alia*, engaging in
19 motion practice; interviewing Plaintiff and other Class Members; propounding formal written
20 discovery requests and reviewing Defendants' responses, supplemental responses, and further
21 supplemental responses thereto; preparing for, taking, and defending depositions; working with
22 Plaintiff to provide responses and supplemental responses to discovery requests propounded by
23 Defendants; engaging in *Belaire-West* notice administration; conducting legal research and
24 investigation; analyzing a volume of documents and data produced in the Action; participating in
25 case strategy and analysis; drafting, reviewing, and revising pleadings, moving papers, and the

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27 ⁶⁰ Aiwasian Decl., ¶ 8.

⁶¹ Aiwasian Decl., ¶ 8; Righetti Decl., ¶ 11.

⁶² Aiwasian Decl., ¶ 8; Righetti Decl., ¶ 11.

⁶³ Aiwasian Decl., ¶ 8; Righetti Decl., ¶ 11.

⁶⁴ Aiwasian Decl., ¶ 8.

1 mediation brief; preparing for and attending court proceedings; undertaking calculations of the
2 value of the claims; preparing for mediation and engaging in extensive settlement negotiations;
3 and negotiating the Settlement.⁶⁵ In short, litigating the Action has required the careful and well-
4 thought-out coordination of the efforts of both firms, designed to enable the Class to match the
5 skills of defense.

6 Collectively, Class Counsel have devoted a considerable number of hours to this matter
7 over the course of the litigation. The Attorney Task and Time Chart, which is attached as
8 “**EXHIBIT A**” to the Declaration of Edwin Aiwarzian, sets forth in detail the hours that Class
9 Counsel have spent performing tasks on behalf of Plaintiff and the Class. The chart is thorough
10 and comprehensive, and was prepared so that the Court can peruse it without having to set forth
11 each and every task in the body of this motion. The Court is respectfully referred to the chart,
12 which sets forth the history of the work performed by Class Counsel, commencing with the pre-
13 filing case analysis and research, and continuing up to the moment of settlement and final
14 approval. Lawyers for Justice, PC has spent 567 hours and Righetti Glugoski P.C. has spent
15 61.50 hours performing tasks in this case. Collectively, Class Counsel have spent a total of
16 628.50 hours to obtain a significant recovery, and these hours were required to bring the Action
17 to its successful conclusion. In light of the value of time expended and the carrying of costs
18 involved in this litigation, the requested attorneys’ fees award is fair, adequate, and reasonable.

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

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

25 Class Counsel undertook significant investigation, analysis, and research prior to filing
26 the lawsuit, during the litigation, and prior to mediation. Class Counsel took steps to prepare the
27 Action for class certification and representative adjudication, filed a motion for class
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⁶⁵ Aiwarzian Decl., ¶ 6; Righetti Decl. ¶ 11.

1 certification, and had every intention of taking the Action to trial on a class-wide basis if
2 Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that
3 had to be overcome, as demonstrated in the Declarations of Edwin Aiwasian and Matthew
4 Righetti, Class Counsel used their extensive experience in the handling of class actions and
5 complex wage-and-hour litigation matters in order to obtain the Settlement with maximum
6 efficiency.⁶⁶

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

8 The Settlement represents an excellent resolution of this case, given the risks inherent in
9 litigating this case through certification proceedings, trial, and/or appeals. Had the Action not
10 settled, Defendants would have vigorously challenged certifiability, manageability of
11 representative adjudication, and liability. Defendants, however, faced risks if the Court certified
12 this case and allowed a jury to decide the claims. Additionally, preparing this case for trial
13 would have been expensive for the parties.

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

22 As a result of this litigation and extensive settlement negotiations, Defendants agreed to
23 pay a Maximum Settlement Amount of \$350,000 to settle this matter. The Maximum Settlement
24 Amount will be fully distributed in accordance with the terms of the Settlement. After deducting
25 attorneys' fees (\$122,500), litigation costs and expenses (\$28,918.91), Enhancement Payment
26 (\$7,500), Settlement Administration Costs (\$5,983), and LWDA Payment (\$7,500) from the
27 Maximum Settlement Amount, it is currently estimated that the Net Settlement Amount to be
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⁶⁶ Aiwasian Decl., ¶¶ 17-19; Righetti Decl., ¶¶ 8-11.

distributed to Participating Class Members is approximately \$170,098.09.⁶⁷ It is currently estimated that the highest Individual Settlement Share to a Participating Class Member is at least \$17,061.92 and the average Individual Settlement Share is at least \$4,100.43.⁶⁸ The Settlement offers significant monetary relief to the Participating 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 have been wholly contingent. Class Counsel took on this case without knowing whether any recovery would be obtained. Class Counsel have collectively invested 628.50 hours of time to obtain relief on behalf of Plaintiff and the Class.⁶⁹ Class Counsel have also collectively incurred litigation costs and expenses in the amount of \$28,918.91.⁷⁰

Class Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁷¹ Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result.⁷² The skill and determination that Class Counsel have shown, along with the results obtained, justify the requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

⁶⁷ RG/2 Decl., ¶ 15; see n.5, *supra*.

⁶⁸ *Id.*, ¶ 16; see n.27, *supra*.

⁶⁹ Aiwasian Decl., ¶ 12, Exh. A; see also Righetti Decl., ¶ 8.

⁷⁰ See Part VII, *infra*.

⁷¹ Aiwasian Decl., ¶ 20.

⁷² See *id.*, ¶¶ 17-19; Righetti Decl., ¶¶ 2-4.

1 *Cates, supra*, 213 Cal.App.4th at 823 (internal quotes and citations omitted). Class Counsel
2 litigated the Action on a contingent basis with all of the concomitant risk factors inherent in such
3 an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel
4 have devoted to litigating the matter would have been for naught, and would not have produced
5 any fee or any reimbursement of costs or expenses.

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

7 The results achieved, in light of the difficulties inherent in similar cases and the specific
8 difficulties faced in this case, are considerable. The Settlement yielded a positive response from
9 the Class Members—no Class Member objected to the Settlement or opted out of the
10 Settlement.⁷³

11 The court in *Camden* noted that “a key element of the common fund case is that fees are
12 [...] taken from the fund [...] and a common fund is itself the measure of success ... [and]
13 represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768,
14 fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8,
15 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

16 Here, the results achieved and obtained on behalf of Plaintiff and the Class are reasonable
17 in light of the risks inherent in further litigating this case. Class Counsel’s efforts have resulted
18 in a settlement that provides for a Maximum Settlement Amount of \$350,000. The Maximum
19 Settlement Amount will be fully paid out, in accordance with the terms of the Settlement
20 Agreement. It is currently estimated that the highest Individual Settlement Share to a
21 Participating Class Member is at least \$17,061.92 and the average Individual Settlement Share is
22 at least \$4,100.43.⁷⁴

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

24 Both Lawyers for Justice, PC and Righetti Glugoski P.C. are recognized class action law
25 firms that employed their attorneys’ knowledge, skills, and experience in bringing this case to a
26 successful conclusion. Class Counsel have years of complex and class action litigation
27

28 ⁷³ RG/2 Decl., ¶¶ 10 & 11.

⁷⁴ RG/2 Decl., ¶ 16; see n.27, *supra*.

1 experience, have recovered millions of dollars on behalf of thousands of individuals in
2 California, and have successfully handled numerous significant wage-and-hour class action and
3 complex cases.⁷⁵

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

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

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

20 **I. *Class Counsel Performed Work for a Reasonable Number of Hours.***

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

24 As discussed above, this case was highly contested and required a significant amount of
25 time and labor. Defendants made it clear very early on that they disputed all of the allegations of
26 the case and disputed that the Action was appropriate for class or representative treatment.
27 Defendants raised affirmative defenses and denied liability, and the pursuit of this case involved
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⁷⁵ Aiwazian Decl., ¶¶ 17-19; Righetti Decl., ¶ 3.

1 gathering and analyzing data not only from Defendants but also from the Class Members. The
2 handling of this litigation involved a great amount of effort, and also required and involved the
3 exercise of a high level of skill, which Class Counsel have as a result of their extensive
4 experience in employment class actions and complex wage-and-hour litigation. Long and
5 difficult battles would have followed as the Action continued through certification and trial,
6 including taking and defending additional depositions of percipient witnesses and experts,
7 propounding additional discovery requests and conducting additional document production, and
8 engaging in additional extensive motion practice. As Class Counsel geared up for these battles,
9 Class Counsel undertook intense preparation in an attempt to resolve the entire matter through
10 mediation.

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

15 As discussed above in Part VI.C.1, *infra*, attached to the Declarations of Edwin Aiwasian
16 and Matthew Righetti is the Attorney Task and Time Chart that sets forth in detail the numerous
17 tasks that each firm performed in the matter and the time required for completing those tasks,
18 and demonstrates the manner in which the firms divided the tasks performed.⁷⁶ The chart
19 indicates that Lawyers for Justice, PC has spent a total of **567 hours** and that Righetti Glugoski
20 P.C. has spent a total of **61.50 hours** litigating the Action and finalizing the Settlement.⁷⁷
21 Collectively, Class Counsel have spent a total of **628.50 hours** performing tasks on behalf of
22 Plaintiff and the Class.⁷⁸ In light of the facts and circumstances of the case, as well as the results
23 that Class Counsel have achieved on behalf of Plaintiff and the Class, Class Counsel have spent a
24 reasonable number of hours on this matter.

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28 ⁷⁶ Aiwasian Decl., Exh. A.

⁷⁷ Aiwasian Decl., ¶ 12; Righetti Decl., ¶ 8.

⁷⁸ Aiwasian Decl., ¶ 12.

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 have been actively involved in this case, prior to the commencement of the action and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel were successful in reaching a settlement of \$350,000.

As set forth in the Declarations of Edwin Aiwarzian and Matthew Righetti, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$500 per hour for services provided by Class Counsel.⁷⁹ Lawyers for justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$500 for legal services, by the courts of this state.⁸⁰ While the circumstances of every case is unique,

⁷⁹ Aiwarzian Decl., ¶ 13; Righetti Decl., ¶ 9.

⁸⁰ For example, 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 a higher hourly rate of \$831.38; approval of the Private Attorneys General Act settlement in *Roberta Robles v. Altamed Health Services Corporation* (Los Angeles County Superior Court Case No. BC639623) was granted on October 31, 2018, and the award of attorneys' fees involved a higher hourly rate of \$602.22; final approval of the class and representative action settlement in *Samuel Guerra, et al. v. Graphic Packaging International, Inc.* (Sacramento County Superior Court Case No. 34-2016-00203789) was granted on June 5, 2018, and the award of attorneys' fees involved a higher hourly rate of \$600; final approval of the class and representative action settlement in *Maryjo Ungerbuhler Anderson v. Boyett Petroleum* (Stanislaus County Superior Court Case No. 2020582) was granted on May 15, 2018, and the award of attorney's fees involved a higher hourly rate of \$780.77; final approval of the class and representative action settlement in *Rebekah Perez, et al. v. Nestlé USA, Inc., et al.* (Alameda County Superior Court Case No. RG15773654) was granted on August 18, 2017; final approval of the class and representative action settlement in *Elizabeth Ortiz, et al. v. Ghirardelli Chocolate Company* (Alameda County Superior Court Case No. RG15764300) was granted on July 19, 2017; 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 a higher hourly rate of \$845.64; final approval of the class and representative action settlement in *Mark*

1 the fact remains that the work performed and efforts undertaken by Class Counsel in this matter
2 justify the requested award of attorneys' fees.

3 The lodestar method as a cross-check to the percentage figure sought strongly supports
4 the reasonableness of the requested attorneys' fees. Applying the rate of \$500 per hour to 628.50
5 hours would place a reasonable value of \$314,250, based on lodestar, for the work performed by
6 Class Counsel. However, Class Counsel only seek attorneys' fees in the amount of \$122,500,
7 which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement
8 Agreement.

9 It also bears noting that a court may apply a multiplier in consideration for risk,
10 efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-
11 check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to
12 compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the
13 established practice in the private legal market of rewarding attorneys for taking the risk of
14 nonpayment by paying them a premium over their normal hourly rates for winning contingency
15 cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk
16 multiplier also serves to bring the financial incentives for enforcing important rights "into line
17 with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services
18 basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2
19 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78
20 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255
21 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases*
22 (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*,
23 *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

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25
26 *Aceves v. Cambro Manufacturing Company* (Orange County Superior Court Case No. 30-2015-00810013-CU-OE-
27 CXC) was granted on April 14, 2017; final approval of the class and representative action settlement in *East West*
28 *Bank Wage and Hour Cases* (San Francisco County Superior Court Case No. CJC-13-004839) was granted on
November 18, 2016; approval of the Private Attorneys General Act settlement in *Tatiana Kemp v. The Irvine*
Company Apartment Communities, Inc. (Orange County Superior Court Case No. 30-2015-00775439) was granted
on November 4, 2016; and final approval of the class and representative action settlement in *Kevin Coonce v.*
Ferguson Enterprises, Inc. (Sacramento County Superior Court Case No. 34-2021-00136285) was granted on May
22, 2014, and the award of attorneys' fees involved a higher hourly rate of \$625. Aiwazian Decl., ¶ 13.

Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$122,500 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 actual litigation costs and expenses of up to \$35,000. As set forth in the Declarations of Edwin Aiwarzian and Matthew Righetti, Class Counsel have collectively incurred a total of \$28,918.91 in litigation costs and expenses.⁸¹ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁸² The cost savings of \$6,081.09 will be part of the Net Settlement Amount, which will be distributed to the Participating Class Members.⁸³ Accordingly, Class Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$28,918.91 to Class Counsel.

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

As set forth in the accompanying Declaration of Tina Chiango, the total costs incurred and to be incurred by RG/2 Claims for the notice and settlement administration process are \$5,983.⁸⁴ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and mailing the Class Notice to the Class Members; performing skip-trace address searches to obtain updated mailing addresses on undeliverable Class Notices and re-mailing Class Notices to any updated addresses located; receiving, reviewing, and processing Requests for Exclusion and Notices of Objection; working with Defendants' counsel to resolve any Workweeks disputes; handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and Individual Settlement Payments and preparing the associated tax forms; and transmitting payments, among other things.⁸⁵

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⁸¹ Aiwarzian Decl., ¶ 20; Righetti Decl., ¶ 11.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ RG/2 Decl., ¶ 15.

⁸⁵ *Id.*, ¶ 3.

Accordingly, the Court should grant final approval of payment to RG/2 Claims, a necessary third-party for handling of the notice and settlement process, in the amount of \$5,983.

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 to Plaintiff Bryant Harris, to be paid in addition to his Individual Settlement Payment, to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Enhancement Payment is both common and reasonable and should be awarded.

In determining whether to make a service payment, 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 representative; (3) the amount of time and efforts spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative 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 in the amount of \$7,500 to Plaintiff Bryant Harris 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, including and not limited to, by way of preparing and appearing for a full-day deposition and working with Class Counsel to provide responses and supplemental responses to multiple sets of discovery requests that were propounded by Defendants.⁸⁶ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information that would benefit the Class.⁸⁷ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendants, and gathering and reviewing documents.⁸⁸ These services merit the requested Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the

⁸⁶ Aiwazian Decl., ¶ 21; Declaration of Bryant Harris ("Harris Decl."), ¶¶ 3-5.

⁸⁷ Aiwazian Decl., ¶ 20; Harris Decl., ¶¶ 3-6.

⁸⁸ Aiwazian Decl., ¶ 20; Harris Decl., ¶¶ 2-6.

1 Class Members to date.⁸⁹

2 The requested Enhancement Payment was fully disclosed in the Class Notice that was
3 mailed to the Class Members. No objections were made with regards to the requested
4 Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Bryant Harris to
5 receive a reasonable Enhancement Payment in the amount of \$7,500, in addition to his
6 Individual Settlement Payment, for his services on behalf of the Class.

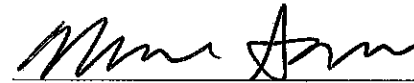
7 **X. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
9 approval of the Settlement, Attorneys' Fees and Costs, Enhancement Payment, Settlement
10 Administration Costs, and allocation for the PAGA Settlement Amount, in their entirety, as
11 sought herein.

12 Dated: November 12, 2019

LAWYERS for JUSTICE, PC

13
14 By:



Edwin Aiwanian
Attorneys for Plaintiff and the Class

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⁸⁹ Harris Decl., ¶ 9.