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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

HARRISON BOMTEMPO, 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.

K1 SPEED, INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No. 22-CIV-03134

Honorable Nicole S. Healy
Department 28

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND RENEWED MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, CLASS COUNSEL FEES AND EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES

Date:	
Time:	
Department:	28
Complaint Filed:	August 2, 2022
FAC Filed:	June 28, 2024
Trial Date:	None Set

PLEASE TAKE NOTICE that on___________________, at ________ a.m./p.m., in Department 28 of the above-entitled Court, located at 800 North Humboldt Street, San Mateo, California 94401, Plaintiff Harison Bomtempo ("Plaintiff" or "Class Representative") will and hereby does move for an order granting final approval of:

1. The Joint Stipulation of Class and PAGA Settlement Agreement and Release ("Agreement," "Settlement," or "Settlement Agreement") on the grounds that the Settlement Agreement is fair, adequate, and reasonable because a **Net Settlement Amount** of approximately **$781,196.86** will be fully distributed to all Class Members who do not submit a timely and valid Opt-Out Notice ("Participating Class Members"), and **no Objections or Opt-Out Notices** were submitted to the Settlement Administrator, ILYM Group, Inc. ("ILYM" or "Settlement Administrator");

2. Payment in the amount of **$523,250.00** to Lawyers *for* Justice, PC ("Class Counsel"), representing thirty-five percent (35%) of the Maximum Settlement Amount, for the attorneys' fees, which is reasonable and justified on a percentage-basis, and also on a lodestar cross-check;

3. Payment in the amount of **$14,603.14** to Class Counsel for litigation costs;

4. Payment in the amount of **$20,950.00** to the Settlement Administrator for Settlement Administration Costs;

5. Payment in the amount of **$5,000.00** to Plaintiff as the Class Representative Service Award, for his time and effort in representing the Class; and

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

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This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Yasmin Hosseini), Class Representative (Harison Bomtempo) and Settlement Administrator (Amanda Howard of ILYM Group, Inc.) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: March 24, 2025

LAWYERS *for* JUSTICE, PC

By:______________________________

Yasmin Hosseini
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Harrison Bomtempo ("Plaintiff" or "Class Representative") seeks final approval of: (1) the Maximum Settlement Amount of $1,495,000.00[1]; (2) attorneys' fees in the amount of $523,250.00, which is thirty-five percent (35%) of the Maximum Settlement Amount[2], and reimbursement of litigation costs in the amount of $14,603.14 (together, "Class Counsel Fees and Expenses") to Lawyers *for* Justice, PC ("Class Counsel")[3]; (3) Settlement Administration Costs in the amount of $20,950.00 to ILYM Group, Inc. ("ILYM" or "Settlement Administrator")[4]; (4) Class Representative Service Award in the amount of $5,000.00 to Plaintiff[5]; 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").[6]

Plaintiff seeks relief on behalf of the following Class:

> All current and former non-exempt employees in California of Defendant during the Class Period ("Class" or "Class Members ").[7]

Plaintiff moves for final approval of Class Counsel Fees and Expenses. This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during the formal mediation, and settlement negotiations thereafter. This matter has required 326.30 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents thirty-five percent (35%) of the Maximum Settlement Amount, is fully supported by the use of the percentage-fee method. The requested attorneys' fees are also supported under the lodestar cross-check method.[8]

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[1] Joint Stipulation of Class Action and PAGA Settlement Agreement and Release ("Settlement Agreement"), § III.A.
[2] *Id.*, § III.B.
[3] *Id.*, § III.B.
[4] *Id.*, § III.E.
[5] *Id.*, § III.D.
[6] *Id.*, § III.C.
[7] *Id.*, § I.D. "Class Period" means the period from August 2, 2018 through February 24, 2024. *See id.*, § I.E.
[8] Applying the individual attorneys' rates to their hours for services provided by Lawyers *for* Justice, PC and a modest multiplier of 2.01, the total enhanced lodestar fees are $525,141.65, and Class Counsel seeks an attorneys' fee award of $523,250.00.

Plaintiff moves for final approval of the Class Representative Service Award in the amount of $5,000.00 to compensate Plaintiff for the time and effort that he expended spearheading the lawsuit on behalf of the Class, PAGA Employees, and the State of California. Plaintiff also moves for final approval of the payment to the Settlement Administrator in the amount of $20,950.00 for Settlement Administration Costs. Plaintiff also moves for final approval of the allocation of $150,000.00 for the PAGA Penalties, of which seventy-five percent (75%), i.e., $112,500.00, will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Penalties ("LWDA Payment"), and twenty-five percent (25%), i.e., $37,500.00, will be distributed to the all current and former non-exempt employees of Defendant in the State of California employed at any time during the time period from May 26, 2021 through February 24, 2024 ("PAGA Employees").

The requests for Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs, and PAGA Penalties were fully disclosed in the Notice of Class Action Settlement ("Class Notice") that was mailed to the Class Members. As of the date of this Motion, *not a single Class Member has opted-out or objected to any aspect of the Class Settlement, including the requested Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs or allocation for the PAGA Penalties.*

The Settlement Agreement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should grant final approval of the Settlement Agreement, and award Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs, and PAGA Penalties in the amounts as fully disclosed to the Class and as requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement Agreement and award Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs, and PAGA Penalties, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum,

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although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant operates indoor Go Kart Racing Tracks around the world. Plaintiff Bomtempo is a former employee of Defendant, at the San Francisco location, who worked from approximately September 2021 to approximately November 2021.

On May 26, 2022, Plaintiff provided notice by electronic upload to the LWDA and written notice by certified mail to Defendant of his intent to pursue civil penalties against Defendant under PAGA for multiple alleged violations of California Labor Code ("PAGA Notice").

On August 2, 2022, Plaintiff filed his Class Action Complaint for Damages against Defendant in San Mateo County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On August 2, 2022, Plaintiff filed his Complaint for Enforcement under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. against Defendant in San Mateo County Superior Court, Case No. 22-CIV-03135 ("PAGA Action").

On June 21, 2024, the Parties filed a Joint Stipulation for Leave to File a First Amended Complaint in the Action, which the Court granted on June 28, 2024. On June 28, 2024, Plaintiff filed the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("Operative Complaint").

On August 7, 2023, the Parties participated in a formal, full-day mediation conducted by Jeffery Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluations, the Parties agreed on monetary terms and some key elements of the Settlement described herein.

On August 17, 2023, Plaintiff propounded multiple sets of discovery including Request for Production of Documents, (Set One); Special Interrogatories, (Sets One and Two); and Form Interrogatories—General (Set One), on Defendant. On August 17, 2023, Plaintiff also noticed the depositions of Defendant's Person Most Knowledgeable regarding job duties and organizational structure of Defendant.

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

On August 19, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action and PAGA Settlement and supporting documents ("Motion for Preliminary Approval").

On September 11, 2024, the Court raised multiple points of inquiry at the hearing on Plaintiff's Motion or Preliminary Approval of Class Action and PAGA Settlement.

On September 25, 2024, Plaintiff filed a [Revised Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement.

On October 2, 2024, Plaintiff filed a [Further Revised Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement.

On October 10, 2024, Plaintiff filed a [Further, Further Revised Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement.

On October 18, 2024, the Court entered an Order Granting Preliminary Approval of Class Action and PAGA Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Settlement Agreement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiff now moves for final approval of Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs, and allocation for PAGA Penalties.

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III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to make a deposit of the Maximum Settlement Amount of $1,495,000.00 and the employer's share of payroll taxes in connection with the wages portion of the Settlement Shares ("Employer Taxes") into a qualified settlement account within forty-five (45) calendar days of the Effective Date or May 31, 2025, whichever is later.[9] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Class Counsel Fees and Expenses, consisting of attorneys' fees in the amount of $523,250.00 and reimbursement of litigation costs and expenses in the amount of $14,603.14, to Class Counsel; (2) Class Representative Service Award in the amount of $5,000.00 to Plaintiff; (3) Settlement Administration Costs in the amount of $20,950.00 to ILYM; and (4) PAGA Penalties in the amount of $150,000.00.[10] The Net Settlement Amount, which is estimated to be $781,196.86 will be distributed in accordance with the Settlement Agreement and there is no reversion to Defendant.[11]

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's *pro rata* share of the available Net Settlement Amount ("Settlement Share"), in accordance with the Settlement Agreement and as follows:

> The Pay Period Value will be established by dividing the Net Settlement Amount by all Pay Periods for the Participating Class Members based on paychecks issued during the Class Period. The Individual Settlement Share for each Participating Class Member will be determined by multiplying the Pay Period Value by each Participating Class Member's individual number of Pay Periods.[12]

The Parties have agreed that the Settlement Administrator will determine each PAGA Employee's *pro rata* share of the PAGA Employee Fund ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows:

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[9] Settlement Agreement, §§ I.L & III.G.1.
[10] *Id*., §§I.Q., III.B., III.C., III.D., III.E.
[11] This amount is higher than the amount stated in Paragraph 14 of the accompanying Declaration of Amanda Howard Regarding Notice and Settlement Administration ("ILYM Declaration" or ILYM Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will seek litigation costs and expenses in the maximum amount of $19,000.00 allocated under the Settlement Agreement. However, Class Counsel seeks the amount of $14,603.14 for litigation costs and expenses, and the difference of $4,396.86 will remain part of the Net Settlement Amount.
[12] *Id*., § III.F.1.

> The PAGA Pay Period Value will be established by dividing the PAGA Employee Fund by all PAGA Pay Periods for the PAGA Employees. The Individual PAGA Settlement Share for each PAGA Employee will be determined by multiplying the PAGA Pay Period Value by each PAGA Employee's individual PAGA Pay Periods.[13]

Class Members had sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline") to submit an Opt-Out Notice, Objection and/or dispute of the Pay Periods.[14] The Response Deadline was January 14, 2025.[15] ***As of the date of this Motion, the Settlement Administrator has not received any written objections to the Class Settlement ("Objection"), Pay Period disputes or requests to be excluded from the Class Settlement ("Opt-Out Notice").*** [16]

Each Settlement Share will be allocated as follows: fifteen percent (15%) as wages ("Wage Component"), which will be reported on an IRS Form W-2; and the remaining eighty-five percent (85%) as interest, penalties, and other non-wage damages ("Non-Wage Component"), which will be reported on an IRS Form 1099.[17] Participating Class Members will be issued payment of their Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the Wage Component of each Settlement Share (the net payment is referred to as an "Individual Settlement Payment").[18] Defendant will pay the Employer Taxes in addition to the Maximum Settlement Amount.[19] Individual PAGA Settlement Shares will be allocated as 100% civil penalties and will be reported on an IRS Form-1099 (if applicable) by the Administrator.[20]

Individual Settlement Payment and Individual PAGA Settlement Share checks will remain valid for one hundred and twenty (120) calendar days from the date the checks are issued, after which point they will be canceled.[21] The funds remaining and associated with canceled checks will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500 *et seq*., in the name of the individual to whom the uncashed check was addressed, and in the same amount as each such individual's

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[13] *Id*., § III.F.3.
[14] *Id*., §§ III.L., III.M.
[15] ILYM Decl., ¶¶ 11-13.
[16] *Ibid.*
[17] Settlement Agreement, § III.F.2.
[18] *Id*., § IIII.F.2.
[19] *Id*., § I.L.
[20] *Id*., § III.F.3.
[21] *Id*., § III.G.4.

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uncashed check, for the benefit of those individuals who did not cash their checks until such time as they claim their property.[22]

IV. THE SETTLEMENT ADMINISTRATION PROCESS

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

On November 1, 2024, Defendant's counsel provided ILYM a data file that contained each Class Member's and PAGA Employee's full name, mailing addresses, telephone numbers, Social Security numbers, start and end dates of employment, and the number of Pay Periods based on dates of employment during the Class Period and during the PAGA Period ("Class Data List").[23] The Class Data List contained data for 2,308 individuals identified as Class Members who worked 42,390 Pay Periods, of whom 1,578 were PAGA Employees who worked 25,701 PAGA Pay Periods.[24] The mailing addresses contained in the Class Data List were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service.[25]

On November 15, 2024, ILYM mailed the Class Notice via U.S. First Class Mail, in English and Spanish, to all 2,308 individuals identified as Class Members in the Class Data List.[26] A total of 258 Class Notices were returned to ILYM.[27] Of these, none were returned with a forwarding address.[28] ILYM performed an advanced address search (i.e. skip trace) on all of these addresses. Through the advanced address searches, ILYM was able to locate 176 updated addresses and ILYM promptly re-mailed a Class Notice to those updated addresses.[29] Ultimately, there are 82 Class Notices that remain undeliverable.[30]

The Settlement Administrator has received zero Opt-Out Notices, zero Objections, and

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[22] *Id*.
[23] ILYM Decl., ¶ 5.
[24] ILYM Decl., ¶¶ 5 & 17.
[25] *Id*., ¶ 6.
[26] *Id*., ¶ 7.
[27] *Id*., ¶ 8.
[28] Ibid.
[29] *Id*., ¶ 9.
[30] *Id*., ¶ 10.

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zero Pay Period disputes from Class Members .[31] Thus, there are 2,308 Class Members who did not submit a timely and valid Opt-Out Notice ("Class Members "), and who will be paid their portion of the Net Settlement Amount.[32] Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount of approximately $781,196.86 will be distributed to Class Members in accordance with the terms of the Settlement Agreement. The highest Settlement Share is currently estimated to be over $2,666.85 and the average Settlement Share is currently estimated to be over $335.49.[33] The highest Individual PAGA Settlement Share is currently estimated to be $106.51 and the average Individual PAGA Settlement Share is currently estimated to be $23.76.[34]

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 Plaintiff's 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*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists

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[31] *Id.*, ¶¶ 11-13.
[32] *Id.*, ¶ 15.
[33] *Id.*, ¶ 16. The actual average and highest 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 is less than $19,000 (the difference between the amount sought and the amount authorized under the Settlement, $4,396.86, will be part of the Net Settlement Amount). See n.8, *supra*.
[34] *Id.*, ¶ 18.

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

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Informal Discovery.</u>

The Parties have actively litigated the case since the Action commenced on August 2, 2022. Class Counsel conducted significant investigation and formal and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement Agreement.[35]

The Parties conducted significant formal and informal discovery and investigation into the facts of the case, and also formally and informally exchanged a large volume of information, documents, and data in connection with the mediation and settlement negotiations.[36] The large volume of documents, data, and information that Class Counsel reviewed and analyzed included, but was not limited to: Plaintiff's employment records, Plaintiff's time and pay data, time and pay data for a sampling of approximately 75% of other Class Members, company policy acknowledgments, forms, procedures and policies (including, but not limited to, Employee

[35] Declaration of Yasmin Hosseini ("Hosseini Decl."), ¶ 6.
[36] Ibid.

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Handbook, Meal Break Waiver, Meal Expense Policy, Meal and Rest Break Policy, Expense Reimbursement Request Form, Track Associate Training Manual, Cashier Commission Agreement, Bonus Program Definitions, K1 Race Gear – Sales Commission Agreement, Corporate Customer Service/Sales Representative Commission Agreement, Sales Manager Commission Agreement, and Corrective Action Form, among other information and documents.[37] Class Counsel propounded multiple sets of written discovery requests on Defendant (including, but not limited to Form Interrogatories—General (Set One), Special Interrogatories (Sets One and Two), and Requests for Production of Documents (Set One)), as well as noticed two separate Person Most Knowledgeable Depositions. The Parties eventually agreed to engage in, and did engage in, extensive informal discovery. Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[38] Class Counsel developed liability, damages, violation, and penalties valuation models in the course of litigation and in connection with the mediations and settlement negotiations, and met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and the production of information, documents, and data in the course of litigation and the mediation and settlement negotiations, and settlement.[39] Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiff, Defendant, and other sources.[40] Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; researching, drafting, reviewing, and revising the pleadings, motion-related papers, mediation brief, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediations, among other tasks.[41]

After conducting formal and informal discovery and investigation into the facts of the cases, the Parties participated in a formal, full-day mediation session conducted by Jeffery Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.[42]

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[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] *Id.*, ¶ 8.

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In the course of the mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, meal and rest periods, reporting time pay, representative PAGA claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[43] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[44] Arriving at a settlement that was acceptable to the Parties was not easy. Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to avoid class certification.[45] Defendant and its counsel felt strongly about Defendant's 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.[46] After conducting significant formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would attend further litigation.[47]

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

The Settlement accounts for the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.[48] The Settlement was calculated using information and data uncovered through extensive case investigation, formal and informal discovery, and the exchange of information, data and documents in the context of mediation and settlement negotiations.[49] Had the action not settled, Defendant would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendant

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[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] *Id.*, ¶¶ 6-8.

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contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and PAGA Employees after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the cases, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional formal discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. 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 such a large class of current and former employees to bring individual actions to recover from Defendant for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement Agreement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

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

The Net Settlement Amount is currently estimated to be $781,196.86.[50] Each Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Pay Periods credited to him or her during the Class Period, and each PAGA Employee will be paid a *pro rata* share of the PAGA Employee Fund, based on the number of PAGA Pay Periods during the PAGA Period credited to him or her.[51] There are 2,308 Class Members, representing 100% of the Class Members.[52] The highest Settlement Share is currently estimated to be at least $2,666.85 and the average Settlement Share is currently estimated to be at least $335.49.[53] The highest Individual PAGA Settlement Share is currently estimated to be $106.51 and the average Individual PAGA Settlement Share is currently estimated to be $23.76.[54] 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 Employees.[55] Although the recommendations of

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[50] ILYM Decl., ¶ 14.
[51] Settlement Agreement, ¶¶ III.F.1., III.F.3.
[52] ILYM Decl., ¶ 15.
[53] ILYM Decl., ¶ 16.
[54] *Id.*, ¶ 18.
[55] Hosseini Decl., ¶ 25.

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. <u>The Class Was Represented by Competent Counsel.</u>

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.[56] Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendant and the benefits of the Settlement Agreement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. <u>There Are No Objections to the Class Settlement.</u>

The Settlement Agreement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***[57] Specifically, no objections have been made as to the Maximum Settlement Amount or requested Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs, or PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class's support for a settlement and strongly favors final approval. *Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors). 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*, 48 Cal.App.4th at 1802.

VI. <u>THE CLASS COUNSEL FEES AND EXPENSES REQUESTED ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

A. <u>Legal Standard for Attorneys' Fees in a Class Action Settlement.</u>

[56] *Id.*, ¶¶ 15-19.
[57] ILYM Decl., ¶¶ 11-13.

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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*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao*, 82 Cal.App.4th at 49.

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

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

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Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of $7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th at 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of $19 million).

B. <u>A Fee Award of a Percentage of the Entire Fund Is Appropriate.</u>

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. Graulty* (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. 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*, 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*, 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). In *Lealao*, the Court of Appeal 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*, 82 Cal.App.4th at

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51; *see also Boeing*, 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.*, 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. *Wershba*, 91 Cal.App.4th at 247.

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

Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement Amount of $1,495,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-five percent (35%) of the total value of the monetary settlement. Class Counsel has obtained a substantial recovery on behalf of Plaintiff, the Class, PAGA Employees, and the State of California, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

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

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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 $523,250.00 (which is thirty-five percent (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. As outlined in the Declaration of Yasmin Hosseini, Class Counsel has fully and actively participated in the ligation of the Action.[58] Moreover, as demonstrated in the supporting declarations, Class Counsel has extensive experience in the handling of class actions and complex litigation cases.[59]

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 Yasmin Hosseini, sets forth in detail the hours that Lawyers *for* Justice, PC has spent performing tasks on behalf of Plaintiff and the Class.[60] 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

[58] Hosseini Decl., ¶¶ 5-8.
[59] *Id.*, ¶¶ 15-19.
[60] *Id.*, Exh. A.

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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 326.30 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, the PAGA Employees, and the State of California.[61] 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. Defendant retained well-respected counsel to represent its defenses. Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this cases, during the litigation, and prior to the mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Yasmin Hosseini, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.[62]

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

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

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[61] *Id.*, ¶¶ 11 & 12.
[62] Hosseini Decl., ¶¶ 15-19.

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 significant monetary relief to the Class Members, the State of California, and PAGA Employes.

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). Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 326.30 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and PAGA Employees.[63] Class Counsel has also incurred litigation costs and expenses in the amount of $14,603.14.[64] Class Counsel has borne all the risks and costs of litigation and will not receive any compensation until recovery is obtained.[65] Considering, the work performed and the risks incurred, the requested fees and costs are reasonable and should be awarded.

5. The Amount Involved and the Results Achieved.

The court in *Camden* noted that, "a key element of the common fund case is that fees are […] taken from the fund […] and a common fund is itself the measure of success … [and] represents the benchmark on which a reasonable fee will be awarded." *Camden*, 946 F. 2d 768, fn. 28 (citing

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[63] Hosseini Decl., ¶ 11, Exh. A.
[64] *Id.*, ¶ 20, Exh. B.
[65] *Id.*, ¶ 20.

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Court Awarded Attorney Fees, Report of the Third Circuit Task Force (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)). The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement Agreement has yielded a positive response from the Class Members —no Class Members opted-out or objected to the Class Settlement.[66]

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.[67]

D. <u>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.</u>

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*, 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*, 1 Cal.5th at 505.

[66] *Id.*, ¶ 3.
[67] *Id.*, ¶¶ 15-19.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum*, 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.

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendant 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. Defendant raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data not only from Defendant 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 Defendant's 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 mediation.

Class Counsel had to bring together a large volume of information, documents and data that were obtained from Defendant, 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 Yasmin Hosseini 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.[68] The chart

[68] Hosseini Decl., Exh. A.

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demonstrates that Class Counsel has spent a total of 326.30 hours litigating the case and finalizing the Settlement.[69] 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.

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*, 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 $1,495,000.00.

As set forth in the Declaration of Yasmin Hosseini, the professional backgrounds and experience of Class Counsel support a reasonable rates of compensation between $575 and $1,495 per hour for services provided by Class Counsel.[70] 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.

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

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[69] *Id*., ¶¶ 11-12, Exh. A.
[70] Hosseini Decl., ¶ 12.

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Even when courts have opted to award fees in settlement fund cases based on time reasonably expended on the action, courts have generally awarded these fees based on the actual time expended (the lodestar) in conjunction with a multiplier of between 2 and 4. *Kerr v. Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67. Such a multiplier is warranted here. Courts frequently apply multipliers to enhance the lodestar to reflect the risks involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino,* 290 F.3d at 1051; accord *Ketchum,* 24 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum,* 24 Cal. 4th at 1132.

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

- The time and labor required
- The skill requisite to perform the legal services properly
- The preclusion of other employment by the attorney due to the acceptance of the case
- The contingent nature of the fee
- The amount involved and results obtained
- The experience, reputation, and ability of the attorney
- Awards in similar cases

Ketchum at 1134.

Adjustment of the base lodestar figure to compute an award of attorneys' fees for a claim under the California Labor Code is appropriate. *See Id.*, at 1135-1136; *Serrano*, 20 Cal.3d at 48-49. "The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba*, 91 Cal.App.4th at 254. In the first stage of the lodestar adjustment method, the trial court determines the reasonable hourly rate of compensation for counsel, which it then multiplies by the

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number of hours the court finds were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum*, 24 Cal.4th at 1131-1132. The lodestar figure is the "basic fee for comparable legal services in the community" based upon the "hourly amount to which attorneys of like skill in the area would typically be entitled." *Id.*, at 1132-1133 (quotation marks and citation omitted).

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

Most importantly, all services were performed by Class Counsel on a contingent basis. Both California and federal courts recognize that attorneys should be compensated for taking on such contingent risks and provided with financial incentives to enforce important rights and protections like those at issue in the matter at hand. *See, e.g., Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all of their efforts and the skill employed, there may be no recovery. Therefore, at a minimum, Class Counsel are entitled to a risk multiplier. The results obtained by way of Class Counsel's efforts are significant here. Class Counsel were successful in achieving substantial results in the form of a settlement of $1,495,000.00. Also, Class Counsel's efforts throughout the matter demonstrate dedication to the interests of the Class Members.

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the matter is well within the range of reasonableness. While handling this matter, Class Counsel devoted the hours in legal time detailed in the task and time chart, which is attached to the Declaration of Yasmin Hosseini. As the chart indicates, Class Counsel worked 326.30 hours in the pursuit of this matter and the base lodestar value based off each attorney's individual hourly

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rate is $261,264.50. Applying a modest multiplier of 2.01, the total enhanced lodestar fees are $525,141.65. Class Counsel seeks an attorneys' fee award of $523,250.00 (equal to thirty-five percent (35%) of the Maximum Settlement Amount). Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even higher." *Wershba*, 91 Cal.App.4th at 255; see also, e.g., *Chavez v. Netflix*, 162 Cal.App.4th at 66 (approving multiplier of 2.5); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*. (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and referring to other cases with cross-check multipliers ranging from 4.5 to 19.6).

Therefore, application of a modest multiplier of 2.01 is warranted, and the lodestar as a cross-check to the percentage figure sought herein, strongly supports the reasonableness of the requested attorneys' fees award. Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of $523,250.00 to Class Counsel.

VII. CLASS COUNSEL EXPENSES ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement provides for litigation costs of up to $19,000.00. As set forth in the Declaration of Yasmin Hosseini, Class Counsel seeks reimbursement of $14,603.14 in litigation costs and expenses incurred in this case.[71] This amount was reasonable and necessary in the prosecution of the cases and to obtain the Agreement.[72] The cost savings of $4,396.86, will be part of the Net Settlement Amount, which will be distributed to Class Members in accordance with the Agreement.[73] Accordingly, Plaintiff requests that the Court award litigation costs and expenses in the amount of $14,603.14 to Class Counsel.

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

[71] Hosseini Decl., ¶ 20, Exh. B.
[72] Ibid.
[73] Ibid.

As set forth in the accompanying ILYM Declaration, the total costs incurred and to be incurred by ILYM for the notice and settlement administration process are $20,950.00.74. The costs incurred and to be incurred include, but are not limited to, (a) translating the mailing documents into Spanish; (b) printing and mailing the Notice of Class Action Settlement, in both English and Spanish (referred to as "Class Notice"); (c) receiving and processing requests for exclusion and objections to the Settlement; (d) resolving Class Members' disputes over the number of pay periods Defendant has record of them working during the Class Period, which was pre-printed on their individualized Class Notice; (e) establishing a QSF account and calculating individual settlement award amounts; (f) processing and mailing settlement award checks; (g) handling tax withholdings as required by the Settlement and the law; (h) preparing, issuing and filing tax returns and other applicable tax forms; (i) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (j) performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to perform.[75]

Accordingly, the Court should grant final approval of payment to ILYM, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of $20,950.00.

IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement provides for a Class Representative Service Award in the amount of $5,000.00 to Plaintiff to compensate Plaintiff for the time and effort that he expended on behalf of the Class. The requested Class Representative Service Award is common and reasonable and should be awarded.

In determining whether to make service awards, 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

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[74] ILYM Decl., ¶ 19.
[75] *Id.* ¶ 3.

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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 Class Representative Service Award 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 to support the prosecution of the claims.[76] Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the cases.[77]

Accordingly, it is appropriate and just for Plaintiff to receive $5,000.00 as a reasonable Class Representative Service Award in addition to his individual settlement payments.

X. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement Agreement, and award Class Counsel Fees and Expenses, Class Representative Service Award, Settlement Administration Costs, and PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: March 24, 2025

LAWYERS *for* JUSTICE, PC

By:____________________________________
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Attorneys for Plaintiff and the Class

[76] Hosseini Decl., ¶ 21; Declaration of Harrison Bomtempo ("Bomtempo Decl."), ¶¶ 3-5.
[77] Hosseini Decl., ¶ 21; Bomtempo Decl., ¶¶ 3-5.

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