

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

V. Andre Sherman (SBN 198684)
GIRARDI & KEESE
1126 Wilshire Boulevard
Los Angeles, California 90017
Tel: (213) 977-0211 / Fax: (213) 481-1554

Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DFT, INC. WAGE AND HOUR CASES

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO.: JCCP4882

Coordinated Actions:

Honorable John Shepard Wiley, Jr.
Department SSC9

ERIC BETANCES vs. DFT, INC. D/B/A
CANNON MANAGEMENT

Superior Court of California, County of Los
Angeles: BC559751

Complaint Filed: October 6, 2014

ROXANA VALDEZ vs. DFT, INC. D/B/A
CANNON MANAGEMENT

Superior Court of California, County of San
Bernardino: CIVDS1605358

Complaint Filed: April 12, 2016

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

[Declarations of Class Counsel
(Edwin Aiwazian and V. Andre Sherman);
Declarations of Class Representatives (Eric
Betances and Roxana Valdez); Declaration of
Settlement Administrator (Elizabeth
Kruckenberg); and [Proposed] Final Approval
Order and Judgment filed concurrently
herewith]

Date: January 18, 2019
Time: 11:00 a.m.
Department: SSC9

1 PLEASE TAKE NOTICE that on January 18, 2019, at 11:00 a.m., in Department SSC9
2 of the above-entitled Court, located at the Spring Street Courthouse, 312 North Spring Street,
3 Los Angeles, California 90012, Plaintiffs Eric Betances and Roxana Valdez ("Plaintiffs") will
4 and hereby do move for an order granting final approval of:

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

- 9 • A Net Settlement Amount of approximately **\$280,929.01** will be fully distributed to
10 the Class Members who have not submitted a timely and valid Request for Exclusion
11 ("Settlement Class Members");
12 • **No objections** to the Settlement have been submitted to the settlement administrator,
13 Phoenix Settlement Administrators ("Settlement Administrator");
14 • **Only four (4) Requests for Exclusion** have been submitted to the Settlement
15 Administrator;

16 2. Attorneys' fees in the amount of **\$192,500.00** to Lawyers for Justice, PC and
17 Girardi & Keese (together, "Class Counsel"), representing thirty-five percent (35%) of the
18 Maximum Settlement Amount, which is reasonable and justified on a percentage-basis and also
19 based on a lodestar cross-check;

20 3. Payment in the amount of **\$24,570.99** to Class Counsel for reimbursement of
21 litigation costs and expenses;

22 4. Payment in the amount of **\$9,500.00** to the Settlement Administrator, Phoenix
23 Settlement Administrators, for Settlement Administration Costs;

24 5. Payment in the amount of **\$7,500.00** to Plaintiff Eric Betances and **\$5,000.00** to
25 Plaintiff Roxana Valdez, as Class Representative Enhancement Payments, for their time and
26 effort in representing the Class; and

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6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, in the amount of **\$30,000.00**, of which seventy-five percent (75%), or \$22,500, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or \$7,500, will be distributed to PAGA Class Members.

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Edwin Aiwarzian and V. Andre Sherman), Class Representatives (Eric Betances and Roxana Valdez), and Settlement Administrator (Elizabeth Kruckenberg) 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: December 26, 2018

LAWYERS for JUSTICE, PC

By:

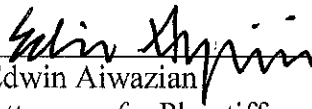

Edwin Aiwarzian
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Eric Betances and Roxana Valdez ("Plaintiffs") seek final approval of: (1) the Maximum Settlement Amount of \$550,000; (2) Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of \$192,500 and reimbursement of litigation costs and expenses in the amount of \$24,570.99, to Lawyers for Justice, PC and Girardi & Keese (together, "Class Counsel"); (3) Settlement Administration Costs in the amount of \$9,500 to Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator"); (4) Class Representative Enhancement Payments in the amount of \$7,500 to Plaintiff Eric Betances and \$5,000 to Plaintiff Roxana Valdez, for a combined amount of \$12,500; and (5) the allocation of \$30,000 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Settlement Amount").

Plaintiffs seek relief on behalf of the following class:

All hourly-paid or non-exempt individuals employed by Defendant DFT, Inc. d/b/a Cannon Management ("Defendant") within the State of California between October 6, 2010 and July 6, 2018 ("Class" or "Class Members").¹

This litigation involved ongoing investigations in two (2) separate actions, extensive formal and informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by Deborah Crandall Saxe, Esq., and extensive settlement negotiations. This matter has required 566.90 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.

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¹ Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement"), § 32.

1 Plaintiffs move for final approval of the Class Representative Enhancement Payments in
2 the amount of \$7,500 to Plaintiff Eric Betances and \$5,000 to Plaintiff Roxana Valdez, for a
3 combined amount of \$12,500, to compensate Plaintiffs for the time and effort that they expended
4 spearheading this lawsuit on behalf of the Class. Plaintiffs also move for final approval of
5 payment to the Settlement Administrator in the amount of \$9,500 for Settlement Administration
6 Costs. Plaintiffs also move for final approval of the allocation of \$30,000 for the PAGA
7 Settlement Amount, of which \$22,500 will be paid to the California Labor Workforce and
8 Development Agency ("LWDA") and \$7,500 will be distributed to Class Members who did not
9 submit a timely and valid Request for Exclusion ("Settlement Class Member(s)") and who were
10 employed by Defendant during the time period between October 6, 2013 and July 6, 2018
11 ("PAGA Class Members").

12 The requests for Attorneys' Fees and Costs, Class Representative Enhancement
13 Payments, and Settlement Administration Costs, and allocation for the PAGA Settlement
14 Amount were fully disclosed in the Notice of Class Action and PAGA Settlement ("Class
15 Notice") that was mailed to the Class Members. Most importantly, as of the date of this motion,
16 *not a single Class Member has objected to the requests for Attorneys' Fees and Costs, Class*
17 *Representative Enhancement Payments, Settlement Administration Costs, or allocation for the*
18 *PAGA Settlement Amount.*

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

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

26 **A. *Betances v. DFT, Inc. D/B/A Cannon Management.***

27 Plaintiff Eric Betances ("Plaintiff Betances") is a former employee of Defendant, a
28 property management company with at least five (5) locations in California, who commenced a

1 putative class action against Defendant on October 6, 2014 in the Los Angeles County Superior
2 Court ("Court"), Case No. BC559751 (the "*Betances* Action"). On November 10, 2014,
3 Defendant filed a Demurrer to the Complaint.

4 On March 17, 2015, Plaintiff Betances filed a First Amended Class Action Complaint for
5 Damages & Enforcement Under the Private Attorneys General Act, California Labor Code §
6 2698, Et Seq. On May 20, 2015, Defendant filed a Demurrer to the First Amended Complaint
7 ("Demurrer"), and on June 1, 2015, Plaintiff Betances filed an opposition to Defendant's
8 Demurrer. On June 5, 2015, Defendant filed a reply in support of the Demurrer.

9 On June 26, 2015, Plaintiff Betances filed a Second Amended Class Action Complaint
10 for Damages & Enforcement under the Private Attorneys General Act, California Labor Code §
11 2698, Et Seq. ("Second Amended Complaint"). On July 27, 2015, Defendant filed an Answer to
12 Plaintiff Betances's Second Amended Complaint.

13 **B. Valdez v. DFT, Inc. D/B/A Cannon Management.**

14 Plaintiff Roxana Valdez ("Plaintiff Valdez") filed a Complaint for Enforcement Under
15 the Private Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendant on
16 April 12, 2016 in the San Bernardino County Superior Court, Case No. CIVDS1605358 (the
17 "*Valdez* Action").

18 On June 13, 2016, Defendant filed a Motion to Permit Filing of Petition for Coordination
19 ("Motion Regarding Petition for Coordination"). On July 12, 2016, the San Bernardino County
20 Superior Court entered an order granting Defendant's Motion Regarding Petition for
21 Coordination.

22 **C. DFT, Inc. Wage and Hour Cases.**

23 On August 4, 2016, Defendant filed a Petition for Coordination seeking the coordination
24 of the *Betances* Action and the *Valdez* Action. On September 27, 2016, the Court entered an
25 order granting Defendant's Petition for Coordination, and the resulting coordinated proceeding
26 (the "Action") was assigned to the Honorable John Shepard Wiley, Jr. as the coordination trial
27 judge.

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1 Plaintiffs' core allegation is that Defendant has violated the California Labor Code by
2 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
3 of, *inter alia*, failing to pay all wages due and owing, failing to provide compliant meal period
4 and rest periods and associated premium pay, failing to timely pay wages during employment
5 and upon termination, failing to provide compliant wage statements, failing to maintain requisite
6 payroll records, and failing to reimburse necessary business expenses, and thereby engaged in
7 unfair business practices in violation of California Business and Professions Code § 17200, *et*
8 *seq.* and owes penalties recoverable under PAGA.

9 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
10 associated with any of the allegations in the lawsuits, and further denies that the lawsuits are
11 appropriate for class treatment and/or representative adjudication for any purpose other than for
12 settlement purposes only.

13 The parties have actively litigated this matter since the *Betances* Action was commenced
14 on October 6, 2014. Both sides propounded and responded to multiple sets of formal written
15 discovery requests, and, pursuant to the Court's order, Plaintiffs filed a brief regarding the
16 appropriate scope of pre-certification and PAGA discovery and supporting documents. The
17 parties took and defended multiple depositions, including the depositions of Plaintiffs and
18 Defendant's Person Most Knowledgeable witness. Counsel for the parties also met and
19 conferred on multiple occasions regarding the pleadings, motion practice, discovery, and
20 production of documents and data prior to mediation. On June 29, 2017, the parties participated
21 in a formal, full-day mediation conducted by the Deborah Crandall Saxe, Esq., a well-regarded
22 mediator experienced in mediating complex labor and employment matters. After conducting
23 extensive investigations, discovery, and settlement negotiations, and with the aid of the
24 mediator's evaluation, the parties reached the Settlement described herein to resolve the lawsuits
25 in their entirety.

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On June 1, 2018, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). On June 13, 2018, a hearing was held on the Motion for Preliminary Approval, during which the Court requested additional information regarding certain points on inquiry. On June 22, 2018, Plaintiffs filed supplemental papers in support of the Motion for Preliminary Approval. On July 6, 2018, the Court entered an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms of the Stipulation of Class Action and PAGA Settlement and Release and Amendment No. 1 to Stipulation of Class Action and PAGA Settlement and Release, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of the Settlement, Attorneys' Fees and Costs, Class Representative Enhancement Payments, Settlement Administration Costs, and PAGA Settlement Amount.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Maximum Settlement Amount of \$550,000 on a non-reversionary basis.² Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) attorneys' fees in the amount of \$192,500 to Class Counsel, which is thirty-five percent (35%) of the Maximum Settlement Amount; (2) reimbursement of litigation costs and expenses in the amount of \$24,570.99 to Class Counsel; (3) Class Representative Enhancement Payments in the amount of \$7,500 to Plaintiff Eric Betances and \$5,000 to Plaintiff Roxana Valdez, for a combined amount of \$12,500; (4) Settlement Administration Costs in the amount of \$9,500 to Phoenix; and (5) PAGA Settlement Amount in the amount of \$30,000.³

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² Settlement Agreement, § 23.

³ *Id.*, §§ 10, 16, 24, 28, 38, 50, 51 & 52; see also Declaration of Elizabeth Kruckenberg on Behalf of Settlement Administrator With Respect to Settlement Notice Administration ("Phoenix Declaration" or "Phoenix Decl."), ¶ 16.

The Net Settlement Amount, which is estimated to be \$280,929.01,⁴ will be fully distributed, and there is no reversion to Defendant.⁵ Each Class Member who does not submit a timely and valid Request for Exclusion (i.e., Settlement Class Member) will be entitled to a *pro rata* share of the Net Settlement Amount (“Settlement Share”) based on the number of weeks of employment that each Settlement Class Member worked as an hourly-paid or non-exempt employee of Defendant within the State of California during the period from October 6, 2010 to July 6, 2018 (“Workweeks”).⁶ The Settlement Administrator will determine the Settlement Share of each Settlement Class Member by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members (“Class Workweeks”), and then multiplying the resulting figure by each Settlement Class Member’s individual Workweeks.⁷

Class Members had until October 4, 2018 (“Response Deadline”) to submit a Request for Exclusion, objection to the Settlement (“Notice of Objection”), or dispute regarding the number of Workweeks or, if applicable, PAGA Workweeks⁸ credited to each of them (“Workweek Dispute”).⁹ As of the date of this Motion, the Settlement Administrator has received four (4) Requests for Exclusion and has not received any Notices of Objection from Class Members.¹⁰

The PAGA Settlement Amount of \$30,000 will be fully distributed as follows: \$22,500 (75% of \$30,000) to be paid to the Labor and Workforce Development Agency (“LWDA”) and \$7,500 (25% of \$30,000) to be paid to PAGA Class Members (i.e., Settlement Class Members who were employed by Defendant during the time period between October 6, 2013 and July 6, 2018).¹¹ Each PAGA Class Member’s share of the PAGA Settlement Amount (“Individual PAGA Payment”) will be calculated by dividing \$7,500 by the total number of PAGA

⁴ This amount is higher than the amount stated in Paragraph 13 of the accompanying Phoenix Declaration because the Settlement Administrator’s calculation assumes that Class Counsel will obtain reimbursement of litigation costs and expenses in the maximum amount of \$30,000, which is allocated under the Settlement. However, Class Counsel seeks reimbursement of litigation costs and expenses in the amount of only \$24,570.99, and the difference of \$5,429.01 will remain a part of the Net Settlement Amount.

⁵ Settlement Agreement, § 24.

⁶ *Id.*, §§ 40 & 41.

⁷ *Id.*, §§ 55(a)-(c).

⁸ “PAGA Workweeks” means the number of weeks of employment that each PAGA Class Member worked as an hourly-paid or non-exempt employee for Defendant within the State of California during the period from October 6, 2013 to July 6, 2018. Settlement Agreement, § 29.

⁹ Phoenix Decl., ¶ 8; Exh. A.

¹⁰ *Id.*, ¶¶ 9 & 10.

¹¹ Settlement Agreement, §§ 28 & 53.

1 Workweeks worked by all PAGA Class Members (“Total PAGA Workweeks”) and then
2 multiplying the resulting figure by each PAGA Class Members’ individual PAGA Workweeks.¹²

3 Individual PAGA Payments to PAGA Class Members will be allocated as penalties, to be
4 reported on IRS Form 1099.¹³ Settlement Shares to Settlement Class Members will be allocated
5 as one-third (1/3) wages, to be reported on IRS Form W-2; one-third (1/3) interest, to be reported
6 on IRS Form 1099; and one-third (1/3) penalties and non-taxable damages, to be reported on IRS
7 Form 1099.¹⁴ Settlement Class Members will be issued payment of their Settlement Shares
8 subject to reduction for the employer’s and employee’s share of payroll taxes and withholdings
9 with respect to the wage portion of the Settlement Shares (“Individual Settlement Payments”),¹⁵
10 and PAGA Class Members will be issued payment of their Individual PAGA Payments without
11 reduction for any taxes or withholdings.¹⁶

12 Checks for payment of Individual Settlement Payments to Settlement Class Members and
13 Individual PAGA Payments to PAGA Class Members will remain valid and negotiable for at
14 least one hundred eighty (180) calendar days from the date they are issued.¹⁷ The funds
15 represented by settlement checks returned as undeliverable and checks that have not been cashed
16 or deposited within the 180-day period will be tendered as follows: twenty-five percent (25%) to
17 the State Treasury for deposit in the Trial Court Improvement and Modernization Fund and
18 seventy-five percent (75%) to the State Treasury for deposit into the Equal Access Fund of the
19 Judicial Branch.¹⁸

20 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

21 The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to
22 effectuate the notice and settlement administration process, as set forth in the Court’s July 6,
23 2018 Preliminary Approval Order.

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25 _____
26 ¹² Settlement Agreement, § 53(b).

27 ¹³ *Id.*, § 71(b).

28 ¹⁴ *Id.*, § 71(a).

¹⁵ *Id.*, §§ 18, 22, 55(d) & 71(a).

¹⁶ Settlement Agreement, § 71(b).

¹⁷ *Id.*, § 69.

¹⁸ *Ibid.*

1 On July 17, 2018, Phoenix received the Court-approved text for the Class Notice from
2 Class Counsel.¹⁹

3 On August 3, 2018, Phoenix received a data file in Microsoft Excel format from
4 Defendant's counsel, containing the full names, last known addresses, Social Security numbers,
5 and dates of employment during the period from October 6, 2010 to July 6, 2018 for Class
6 Members ("Class List").²⁰ The Class List contained information for eight hundred eighty-six
7 (886) individuals identified as Class Members, of which seven hundred nineteen (719) were
8 PAGA Class Members.²¹ Phoenix processed the addresses in the Class List through the National
9 Change of Address Database ("NCOA").²²

10 On August 20, 2018, Phoenix mailed the Class Notice by First-Class U.S. Mail to eight
11 hundred eighty-six (886) Class Members on the Class List.²³

12 As of the date of this motion, one hundred sixty-seven (167) Class Notices were returned
13 to Phoenix by the United States Post Office as undeliverable, of which twenty-seven (27) were
14 returned with forwarding addresses and were promptly re-mailed to the forwarding address.²⁴
15 Phoenix performed an advance address search (i.e., skip-trace) on Class Notices that were
16 returned as undeliverable without forwarding addresses, located one hundred thirty-six (136)
17 updated addresses, and promptly re-mailed the Class Notice to the addresses located.²⁵ Twenty-
18 two (22) Class Notices were returned undeliverable a second time.²⁶ Ultimately, twenty-six (26)
19 Class Notices remain undeliverable because an updated address was not obtained through skip-
20 tracing or the Class Notice was returned undeliverable a second time.²⁷

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24 ¹⁹ Phoenix Decl., ¶ 3.

25 ²⁰ *Id.*, ¶ 4.

26 ²¹ *Ibid.*

27 ²² *Id.*, ¶ 5.

28 ²³ Phoenix Decl., ¶ 6.

²⁴ *Id.*, ¶ 7.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Phoenix Decl., ¶ 7.

The Response Deadline lapsed on October 4, 2018.²⁸ As of the date of this motion, the Settlement Administrator has received four (4) timely and valid Requests for Exclusion, and has not received any Notices of Objection.²⁹ There are no outstanding Workweek Disputes.³⁰

To date, there are eight hundred eighty-two (882) Class Members who have not submitted a timely and valid Request for Exclusion, and are, therefore, deemed to be Settlement Class Members, of which seven hundred fifteen (715) were PAGA Class Members.³¹ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$280,929.01 will be fully distributed to Settlement Class Members, \$7,500 of the PAGA Settlement Amount will be fully distributed to PAGA Class Members, and \$22,500 of the PAGA Settlement Amount will be fully distributed to the LWDA.³² It is currently estimated that the highest Settlement Share allocated to a Settlement Class Member is at least \$1,155.95 and the average Settlement Share is at least \$312.36.³³ In addition, the highest Individual PAGA Payment to be distributed to a PAGA Class Member is \$27.65 and the average Individual PAGA Payment is \$10.43.³⁴

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.

²⁸ Phoenix Decl., ¶ 8.

²⁹ *Id.*, ¶¶ 9 & 10.

³⁰ *Id.*, ¶ 11.

³¹ *Id.*, ¶ 12.

³² Phoenix Decl., ¶ 13; see also, n.4, *supra*.

³³ *Id.*, ¶ 14. The actual average and highest Settlement Shares will be larger than the amounts stated in the Phoenix Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$30,000 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$5,429.01, will be part of the Net Settlement Amount). See n.4, *supra*.

³⁴ *Id.*, ¶ 15.

1 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive
2 and the court is free to engage in a balancing and weighing of the factors depending on the
3 circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.
4 Importantly, “[d]ue regard should be given to what is otherwise a private consensual agreement
5 between the parties.” *Dunk, supra*, 48 Cal.App.4th at 1801.

6 The proponent of the settlement has the burden to show that it is fair and reasonable.
7 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
8 exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2)
9 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
10 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
11 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
12 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
13 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.
14 The inquiry is not whether the settlement agreement is the best one that class members could
15 have possibly obtained, but whether the settlement taken as a whole is “fair, adequate, and
16 reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not
17 obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately,
18 meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords
19 relief that is substantially narrower than it would be if the lawsuit was to be successfully
20 litigated, that is no bar to a class settlement because the public interest may indeed be served by a
21 voluntary settlement in which each side gives ground in the interest of avoiding prolonged
22 litigation. *Id.*

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

25 The parties actively litigated the matter since the *Betances* Action was commenced on
26 October 6, 2014. Counsel for the parties used the pre-mediation time period to investigate the
27 veracity, strength, and scope of the claims, and also to prepare the matter for class certification,
28

1 representative adjudication, and trial.³⁵ The parties conducted extensive formal and informal
2 discovery and investigation into the facts of the cases, and also informally exchanged
3 information and data in preparation for mediation.³⁶ Class Counsel propounded multiple sets of
4 written discovery requests in various forms, reviewed Defendant's responses thereto, noticed the
5 depositions of Defendant's Person Most Knowledgeable designees, and worked with Plaintiff
6 Roxana Valdez to provide responses to form interrogatories and requests for production of
7 documents that were propounded by Defendant.³⁷ Class Counsel prepared for and took the
8 deposition of Defendant's Person Most Knowledgeable designee and prepared for and defended
9 the depositions of both Plaintiffs.³⁸ Class Counsel also interviewed and obtained information
10 from Plaintiffs and other Class Members, including and not limited to the names of potential
11 witnesses, and reviewed and analyzed thousands of pages of documents and data produced by
12 Defendant and obtained through other sources.³⁹ The documents and data reviewed and analyzed
13 by Class Counsel included, and were not limited to, Plaintiffs and other Class Members'
14 employment records, a detailed sampling of Class Members' time and pay data (including, and
15 not limited to, timecards, payroll records, and wage statements), agreements, internal memoranda
16 (including, and not limited to, Defendant's Use of Cell Phones and Personal Digital Assistants
17 (PDA) While Driving memo), forms, job descriptions, and Defendant's operations and
18 employment policies (including, and not limited to, Defendant's Employee Handbook and
19 Defendant's Company Related Driving Policy), practices, and procedures, among other
20 information and documents.⁴⁰ Class Counsel also engaged in motion practice, researched
21 applicable law, developed damages/valuation models in preparation for mediation, and met and
22 conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the
23 pleadings, motion practice, discovery, and production of documents and data prior to
24 mediation.⁴¹

25 ³⁵ Declaration of Edwin Aiwasian ("Aiwasian Decl."), ¶¶ 6-7; Declaration of V. Andre Sherman ("Sherman Decl."),
26 ¶ 5.

27 ³⁶ Aiwasian Decl., ¶ 6; Sherman Decl., ¶ 5.

28 ³⁷ Aiwasian Decl., ¶ 6.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Aiwasian Decl., ¶ 6.

After conducting significant formal and informal discovery and investigation into the facts of the cases, the parties participated in a formal, full-day mediation conducted by Deborah Crandall Saxe, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.⁴² Prior to and during mediation, the parties exchanged information and data, and discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, risks to recovery (including, and not limited to, Defendant's financial condition), the risks and expenses to the parties of proceeding with class certification and/or trial, the law relating to off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, 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.⁴⁵ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to obtain a denial of class certification, while Plaintiffs and Class Counsel believed that class certification would be obtained and Plaintiffs would prevail at trial.⁴⁶ After conducting formal and informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that this matter was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the parties that would attend further litigation.⁴⁷

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel interviewed, and obtained information from Plaintiffs and other Class Members.⁴⁸ Class Counsel also reviewed and analyzed thousands of pages of documents produced by Defendant and obtained through other sources, and performed significant research into the law concerning certification, off-the-clock theory, meal and rest periods, representative PAGA

⁴² Aiwazian Decl., ¶ 9.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Aiwazian Decl., ¶ 9.

⁴⁷ *Ibid.*

⁴⁸ *Id.*, ¶ 6.

claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendant's defenses, as well as facts discovered.⁴⁹ The Settlement was based on this volume of facts, evidence, and investigation.⁵⁰ Additionally, Class Counsel have extensive experience in handling complex wage-and-hour matters, including significant experience in employment class action litigation.⁵¹

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

The Maximum Settlement Amount of \$550,000 represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁵² 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 mediation.⁵³ Had the cases not settled, Defendant would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendant contended that individualized questions of fact predominate over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying the matter and allowing a jury to decide Plaintiffs' 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 the Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a

⁴⁹ Aiwasian Decl., ¶ 6.

⁵⁰ Aiwasian Decl., ¶¶ 6 & 9.

⁵¹ Aiwasian Decl., ¶¶ 17-19; Sherman Decl., ¶¶ 2-4.

⁵² Aiwasian Decl., ¶ 22; Sherman Decl., ¶ 12.

⁵³ Aiwasian Decl., ¶¶ 5-9.

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 action, and the real possibility of no recovery after years of litigation, especially in light of Defendant's financial condition. Additionally, the parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, additional depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Discovery disputes would have certainly arisen, which would have cost the parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Settlement Class Members and PAGA Class Members here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

The Maximum Settlement Amount of \$550,000 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 mediation. 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 cases, the Maximum Settlement Amount represents a considerable recovery.

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Even after deducting attorneys' fees in the amount of \$192,500, litigation costs and expenses of \$24,570.99, Class Representative Enhancement Payments in the combined amount of \$12,500, Settlement Administration Costs in the amount of \$9,500, and the PAGA Settlement Amount in the Amount of \$30,000 from the Maximum Settlement Amount of \$550,000, the Net Settlement Amount is currently estimated to be \$280,929.01.⁵⁴ Under the Settlement Agreement, the Net Settlement Amount and the PAGA Settlement Amount will be fully distributed with no reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, and each PAGA Class Member will be paid a *pro rata* share of twenty-five percent (25%) of the PAGA Settlement Amount (\$22,500), based on the number of Workweeks and/or PAGA Workweeks (if applicable) credited to him or her. To date, there are eight hundred eighty-two (882) Settlement Class Members, representing approximately 99.55% of the Class Members.⁵⁵ It is currently estimated that the highest Settlement Share allocated to a Settlement Class Member is at least \$1,155.95 and the average Settlement Share is at least \$312.36.⁵⁶ In addition, the highest Individual PAGA Payment to a PAGA Class Member is estimated to be \$27.65 and the average PAGA Settlement Share is estimated to be \$10.43.⁵⁷

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.⁵⁸ 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*

⁵⁴ Phoenix Decl., ¶ 13.

⁵⁵ *Id.*, ¶ 12.

⁵⁶ *Id.*, ¶ 14; see n.33, *supra*.

⁵⁷ *Id.*, ¶ 15.

⁵⁸ Aiwasian Decl., ¶ 22; Sherman Decl., ¶ 12.

1 *Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the
2 Settlement.

3 **D. The Class Was Represented by Competent Counsel.**

4 Class Counsel have extensive experience in employment class action law and complex
5 wage-and-hour litigation.⁵⁹ The law firms of Lawyers for Justice, PC and Girardi & Keese have
6 been appointed class counsel in numerous complex wage-and-hour cases, and have recovered
7 millions of dollars for individuals in California.⁶⁰ Both parties' counsel were capable of
8 assessing the strengths and weaknesses of the Class Members' claims against Defendant and the
9 benefits of the Settlement under the circumstances of this matter and in the context of a private,
10 consensual settlement agreement.

11 **E. There Are No Objections to the Settlement.**

12 The Settlement has been well received by the Class – *not a single Class Member has*
13 *objected to the Settlement.*⁶¹ Specifically, no objections have been made as to the Maximum
14 Settlement Amount or requests for Attorneys' Fees and Costs, Class Representative
15 Enhancement Payments, Settlement Administration Costs, or allocation for the PAGA
16 Settlement Amount. California courts have consistently found that a small number of objectors
17 indicates the class' support for a settlement and strongly favors final approval. *Wershba, supra*,
18 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*,
19 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

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

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28 ⁵⁹ Aiwazian Decl., ¶¶ 17-19; Sherman Decl., ¶¶ 2-4.

⁶⁰ Aiwazian Decl., ¶¶ 18-19; Sherman Decl., ¶¶ 2-3.

⁶¹ Phoenix Decl., ¶ 10.

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

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48.

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

10 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
11 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
12 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
13 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
14 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
15 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
16 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”
17 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent
18 range of contingency fee in marketplace was appropriate in class actions).

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

20 California and federal courts have long recognized that an appropriate method for
21 determining the award of attorneys’ fees is based on a percentage of the total value of benefits
22 made available to class members by the settlement. *Boeing Co. v. Van Gemert* (1980) 444 U.S.
23 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v.*
24 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25,
25 34.⁶² The purpose of this equitable doctrine is to spread litigation costs proportionally among all
26
27

28 ⁶² 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 the beneficiaries so that the active beneficiary does not bear the entire burden alone. See
2 *Vincent, supra*, 557 F.2d at 769.

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

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

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

25 When the cases were originally filed, not only were they inescapably contingent, but the
26 prospect of a long drawn-out battle with Defendant represented by experienced counsel, was
27 almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked
28 substantial economic loss if the results were not successful. This substantial risk is the reason

1 that the courts approve the use of the percentage method when a settlement is obtained by the
2 efforts of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49
3 (quotations omitted) (discussing the risks of engaging in litigation without certainty of
4 compensation).

5 Under the terms of the Settlement Agreement, Defendant will pay a Maximum
6 Settlement Amount of \$550,000 on a non-reversionary basis. The requested attorneys' fees
7 award is thirty-five percent (35%) of the total value of the monetary settlement.⁶³ In light of
8 Class Counsel's successful prosecution and resolution of this matter, the requested attorneys'
9 fees are appropriate and reasonable.

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

17 The percentage method is consistent with, and is intended to mirror, the practice in the
18 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
19 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
20 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
21 counsel's work to the class is to review the consideration agreed to be paid by the named
22 plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would
23 indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement
24 without incurring the risks of bringing the claim, to pay less than the named plaintiff. Here,
25 Plaintiffs have each agreed to a contingency fee of at least thirty-five percent (35%) of the
26 recovery.⁶⁴

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28 ⁶³ Settlement Agreement, §§ 10 & 50.

⁶⁴ Aiwazian Decl., ¶ 11.

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

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

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

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

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

case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees award sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$192,500, 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 and State of California.

1. Time & Labor.

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

The work performed in this matter was managed in a manner designed to most effectively utilize the combined skills and attorney power of Class Counsel, while avoiding duplication of efforts. Lawyers for Justice, PC had primary responsibility for case management, drafting the pleadings in the *Betances* Action, propounding and responding to formal written discovery requests, and communicating with Plaintiffs and Class Members.⁶⁵ Girardi & Keese actively participated in all stages of litigation, including conducting legal research and investigation into the facts of the cases, taking and defending depositions, reviewing and analyzing documents produced by Defendant, developing case strategy, and preparing for mediation and settlement negotiations.⁶⁶ The review and analyses of the documents and information produced by Defendant and obtained through other sources involved group effort.⁶⁷ For example, when a

⁶⁵ Aiwasian Decl., ¶ 8.

⁶⁶ Aiwasian Decl., ¶ 8; Sherman Decl., ¶ 5.

⁶⁷ Aiwasian Decl., ¶ 8; Sherman Decl., ¶ 6.

1 volume of documents were produced in the cases, and needed to be analyzed in order to find
2 pertinent documents, information, and data that would be helpful to the case presentation and to
3 class certification issues, attorneys from both firms were assigned that task to ensure that nothing
4 was missed.⁶⁸ Throughout the prosecution of this litigation, Class Counsel have worked together
5 to avoid unnecessary duplication of efforts.⁶⁹

6 As outlined in the Declarations of Edwin Aiwarzian and V. Andre Sherman, Class
7 Counsel have fully and actively participated in this litigation process, including, *inter alia*,
8 engaging in motion practice; interviewing Plaintiffs and other Class Members; propounding
9 formal written discovery requests; preparing for, taking, and defending depositions; conducting
10 legal research and investigation; analyzing thousands of pages of documents and data produced
11 in the cases; participating in case strategy and analysis; drafting, reviewing, and revising
12 pleadings, briefing, and the mediation brief; preparing for and attending court proceedings;
13 undertaking calculations of the value of the claims; preparing for mediation and settlement
14 negotiations; and negotiating the Settlement.⁷⁰ In short, litigating the cases has required the
15 careful and well-thought-out coordination of the efforts of both firms, designed to enable the
16 Class to match the skills of defense.

17 Collectively, Class Counsel have devoted a considerable number of hours to this matter
18 over the course of the litigation. The Attorney Task and Time Chart, which is attached as
19 “EXHIBIT A” to the Declaration of Edwin Aiwarzian and as “EXHIBIT A” to the Declaration
20 of V. Andre Sherman, sets forth in detail the hours that Class Counsel have spent performing
21 tasks on behalf of Plaintiffs, the Class, and State of California. The chart is thorough and
22 comprehensive, and was prepared so that the Court can peruse it without having to set forth each
23 and every task in the body of this motion. The Court is respectfully referred to the chart, which
24 sets forth the history of the work performed by Class Counsel, commencing with the pre-filing
25 case analysis and research, and continuing up to the moment of settlement and final approval.
26 Lawyers for Justice, PC has spent 429.35 hours and Girardi & Keese has spent 137.55 hours

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28 ⁶⁸ Aiwarzian Decl., ¶ 8; Sherman Decl., ¶ 6.

⁶⁹ Aiwarzian Decl., ¶ 8.

⁷⁰ Aiwarzian Decl., ¶ 6; Sherman Decl. ¶ 5.

performing tasks on behalf of Plaintiffs, the Class, and State of California. Collectively, Class Counsel have spent a total of 566.90 hours to obtain a significant recovery in this matter, and these hours were required to bring the matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is 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 the same. Defendant retained well-respected counsel to represent its defenses. More specifically, Defendant and its counsel felt very strongly about Defendant's ability to obtain a denial of certification and to prevail on the merits. Plaintiffs 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 the cases, during the litigation, and prior to mediation. Class Counsel took steps to prepare the matter for class certification and had every intention of taking the Action 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 Declarations of Edwin Aiwasian and V. Andre Sherman, Class Counsel have used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁷¹

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

The Settlement represents an excellent resolution of this matter, given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Had the cases not settled, Defendant would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendant, however, faced risks if the Court certified this matter 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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⁷¹ See Aiwasian Decl., ¶¶ 17-19; Sherman Decl., ¶¶ 2-4.

1 The Settlement at this stage is preferred over continued litigation because such
2 resolutions save time and money that would otherwise go to litigation. The risks and expenses of
3 further litigation outweighed any benefit that might have been gained otherwise. The Settlement
4 provides an immediate recovery, as opposed to an uncertain result in the future after prolonged
5 litigation involving expert discovery, trial preparation, class certification proceedings, and
6 appellate review of those proceedings. The Settlement offers present relief and/or recovery to
7 the Settlement Class Members, PAGA Class Members, and the State of California while
8 avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time
9 in the future, especially in light of Defendant's financial condition.

10 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
11 pay a Maximum Settlement Amount of \$550,000 to settle this matter. After deducting attorneys'
12 fees (\$192,500), litigation costs and expenses (\$24,570.99), Class Representative Enhancement
13 Payments (combined, \$12,500), Settlement Administration Costs (\$9,500), and PAGA
14 Settlement Amount (\$30,000) from the Maximum Settlement Amount, it is currently estimated
15 that the Net Settlement Amount is approximately \$280,929.01.⁷² The Net Settlement Amount
16 will be fully distributed to Settlement Class Members, twenty-five percent (25%) of the PAGA
17 Settlement Amount (\$7,500) will be fully distributed to PAGA Class Members, and seventy-five
18 percent (75%) of the PAGA Settlement Amount (\$22,500) will be fully distributed to the LWDA
19 and State of California, in accordance with the terms of the Settlement Agreement. It is currently
20 estimated that the highest Settlement Share allocated to a Settlement Class Member is at least
21 \$1,155.95 and the average Settlement Share is at least \$312.36.⁷³ In addition, the highest
22 Individual PAGA Payment to be paid to a PAGA Class Member is \$27.65 and the average
23 Individual PAGA Payment is \$10.43.⁷⁴ The Settlement offers significant monetary relief to the
24 Settlement Class Members, PAGA Class Members, and State of California.

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28 ⁷² Phoenix Decl., ¶ 13; see n.4, *supra*.

⁷³ *Id.*, ¶ 14; see n.33, *supra*.

⁷⁴ *Id.*, ¶ 15.

1 4. *Whether the Fee Is Fixed or Contingent.*

2 Plaintiffs entered into a contingency-fee agreement with Class Counsel, and the
3 representation of the Class provided by Class Counsel has been wholly contingent. Class
4 Counsel took on the cases without knowing whether any recovery would be obtained. Class
5 Counsel have collectively invested 566.90 hours of time to obtain relief on behalf of Plaintiffs,
6 the Class Members and PAGA Class Members, and State of California.⁷⁵ Class Counsel have
7 also collectively incurred litigation costs and expenses in the amount of \$24,570.99.⁷⁶

8 Class Counsel have borne all of the risks and costs of litigation and will not receive any
9 compensation until recovery is obtained.⁷⁷ Class Counsel are well-experienced in wage-and-hour
10 class action litigation and used that experience to obtain a great result.⁷⁸ The skill and
11 determination that Class Counsel have shown, along with the results obtained, justify the
12 requested attorneys' fees and costs. Considering the amounts requested, the work performed,
13 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

16 A contingent fee must be higher than a fee for the same legal
17 services paid as they are performed. The contingent fee
18 compensates the lawyer not only for the legal services he renders
19 but for the loan of those services. A lawyer who both bears the risk
20 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.

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

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27 ⁷⁵ Aiwazian Decl., ¶ 12, Exh. A; see also Sherman Decl., ¶ 8.

28 ⁷⁶ See Part VII, *infra*.

⁷⁷ Aiwazian Decl., ¶ 20.

⁷⁸ See *id.*, ¶¶ 17-19; Sherman Decl., ¶¶ 2-4.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this matter, are considerable. The Settlement yielded a positive response
4 from the Class Members—no Class Member objected to the Settlement, and only four (4) Class
5 Members, representing less than 0.5% of the Class, opted out of the Settlement.⁷⁹

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

11 Here, the results achieved and obtained on behalf of Plaintiffs, Settlement Class
12 Members, PAGA Class Members, and the State of California are reasonable in light of the risks
13 inherent in further litigating the cases. Class Counsel’s efforts have resulted in a settlement that
14 provides for a Maximum Settlement Amount of \$550,000. The Net Settlement Amount
15 (currently estimated to be \$280,929.01)⁸⁰ will be fully distributed, twenty-five percent (25%) of
16 the PAGA Settlement Amount will be fully distributed to PAGA Class Members, and seventy-
17 five percent (75%) of the PAGA Settlement Amount will be fully distributed to the LWDA and
18 State of California, in accordance with the terms of the Settlement Agreement. It is currently
19 estimated that the highest Settlement Share allocated to a Settlement Class Member is at least
20 \$1,155.95 and the average Settlement Share is at least \$312.36.⁸¹ In addition, PAGA Class
21 Members will be paid an Individual PAGA Payment from twenty-five percent (25%) of the
22 PAGA Settlement Amount (\$7,500). The highest and average Individual PAGA Payments are
23 \$27.65 and \$10.43, respectively.⁸²

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27 ⁷⁹ Phoenix Decl., ¶¶ 9 & 10.

28 ⁸⁰ *Id.*, ¶ 13; see n.4, *supra*.

⁸¹ *Id.*, ¶ 14; see n.33, *supra*.

⁸² *Id.*, ¶ 15.

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

Both Lawyers for Justice, PC and Girardi & Keese are recognized class action law firms that employed their attorneys' knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel have years of complex and class action litigation experience, have recovered millions of dollars on behalf of thousands of individuals in California, and have successfully handled numerous significant wage-and-hour class action and complex cases.⁸³

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

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

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

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

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.

⁸³ Aiwazian Decl., ¶¶ 17-19; Sherman Decl., ¶¶ 2-4.

As discussed above, the cases were highly contested and required an extensive amount of time and labor. Defendant made it clear very early on that it disputed all of the allegations of the lawsuits and disputed that the actions were appropriate for class or representative treatment. Defendant raised affirmative defenses and denied liability, and the pursuit of the cases involved gathering and analyzing data not only from Defendant but also from the Class Members. The handling of litigation in the cases involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel have as a result of their extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the matter moved toward certification and trial, including taking and defending additional depositions of Defendant's Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional discovery and conducting additional document production, and engaging in extensive additional 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 volume of data and documents that were produced by Defendant and obtained from Plaintiffs and Class Members and through other sources. Class Counsel conducted extensive review and analysis of these documents and data to strategize the cases and to prepare for and attend mediation and engage in settlement discussions.

As discussed above in Part VI.C.1, *infra*, attached to the Declarations of Edwin Aiwasian and V. Andre Sherman is the Attorney Task and Time Chart that sets forth in detail the numerous tasks that each firm performed in the matter and the time required for completing those tasks, and demonstrates the manner in which the firms divided the tasks performed.⁸⁴ The chart indicates that Lawyers for Justice, PC has spent a total of 429.35 hours and that Girardi & Keese has spent a total of 137.55 hours litigating the cases and finalizing the Settlement.⁸⁵ Collectively, Class Counsel have spent a total of 566.90 hours performing tasks on behalf of Plaintiffs, the Class and PAGA Class, and State of California.⁸⁶ In light of the facts and circumstances of the

⁸⁴ Aiwasian Decl., Exh. A; Sherman Decl. Exh. A.

⁸⁵ Aiwasian Decl., ¶ 12; Sherman Decl., ¶ 8.

⁸⁶ Aiwasian Decl., ¶ 12.

cases, as well as the results that Class Counsel have achieved on behalf of Plaintiffs, Settlement Class Members, PAGA Class Members, and State of California, Class Counsel have spent a reasonable number of hours on this matter.

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 matter. 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 matter, prior to the commencement of the *Betances* Action and all the way up to the present, and their dedication to providing representation in the cases 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 \$550,000.

As set forth in the Declarations of Edwin Aiwazian and V. Andre Sherman, 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.⁸⁷ The courts of this state, including and not limited to the Los Angeles County Superior Court, have, on multiple prior occasions, found a rate of at least \$500 to be a reasonable hourly rate of compensation for legal services performed by Lawyers for Justice, PC.⁸⁸ While the circumstances of every case is

⁸⁷ Aiwazian Decl., ¶ 13; Sherman Decl., ¶ 9.

⁸⁸ 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 *Patrick Sinay, et al. v. Essendant Co., et al.* (Los Angeles County Superior Court Case No. BC651043) was granted on September 28, 2018, and the award of attorneys' fees involved a higher hourly rate of \$624.81; final approval of the class and representative action settlement in *Ruben Sanchez, et al. v. CalPortland Company, et al.* (Los Angeles County Superior Court Case No.

unique, the fact remains that the work performed and efforts undertaken by Class Counsel in these matters justify the requested award of attorneys' fees.

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Applying the rate of \$500 per hour to the 566.90 hours of work collectively performed by Class Counsel would place a reasonable value of \$283,450, based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seek attorneys' fees in the amount of \$192,500, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency

BC590426) was granted on August 8, 2018, and the award of attorneys' fees involved a higher hourly rate of \$730.16; 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 *Renee Rivera, et al. v. Farmers and Merchants Bank of Long Beach* (Los Angeles County Superior Court Case No. BC569646) was granted on December 11, 2017, and the award of attorneys' fees involved a higher hourly rate of \$629.96; 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 Aceves v. Cambro Manufacturing Company* (Orange County Superior Court Case No. 30-2015-00810013-CU-OE-CXC) was granted on April 14, 2017; final approval of the class and representative action settlement in *East West 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; final approval of the class and representative action settlement in *Erick Guzman, et al. v. Banana Republic, LLC* (Los Angeles County Superior Court Case No. BC488069) was granted on August 5, 2016; final approval of the class and representative action settlement in *Restoration Hardware Wage & Hour Cases* (Los Angeles County Superior Court Case No. JCCP4794) was granted on April 28, 2016; 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; final approval of the class action settlement in *Anthony Powell v. Fairfield Residential Company, LLC* (Alameda County Superior Court Case No. RG12660811) was granted on August 6, 2014. Aiwasian Decl., ¶ 13.

cases.” *Vizcaino*, 290 F.3d at 1051; *accord Ketchum, supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis.” *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba, supra*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez, supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys’ fees in the amount of \$192,500 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 litigation costs and expenses of up to \$30,000. As set forth in the Declarations of Edwin Aiwazian and V. Andre Sherman, Class Counsel have collectively incurred a total of \$24,570.99 in litigation costs and expenses.⁸⁹ This amount was reasonable and necessary in the prosecution of this matter, and is less than the maximum amount allocated under the Settlement Agreement.⁹⁰ The cost savings of \$5,429.01 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members.⁹¹ Accordingly, Class Counsel requests that the Court award reimbursement of litigation costs and expenses in the amount of \$24,570.99 to Class Counsel, of which \$11,931.73 will be paid to Lawyers for Justice, PC and \$12,639.26 will be paid to Girardi & Keese.

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⁸⁹ Aiwazian Decl., ¶ 20; Sherman Decl., ¶ 11.

⁹⁰ Aiwazian Decl., ¶ 20.

⁹¹ *Ibid.*

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

As set forth in the accompanying Declaration of Elizabeth Kruckenberg, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$9,500.⁹² 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 for undeliverable Class Notices and re-mailing the Class Notice to any updated addresses located; receiving, reviewing, and processing Requests for Exclusion and Notices of Objection; processing Workweek Disputes; handling inquiries from Class Members regarding the Settlement; calculating Settlement Shares and Individual Settlement Payments to Settlement Class Members and Individual PAGA Payments to PAGA Class Members and preparing the associated tax forms; and transmitting payments, among other things.⁹³

Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-party for handling of the notice and settlement process, in the amount of \$9,500.

IX. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for Class Representative Enhancement Payments in the amount of \$7,500 to Plaintiff Eric Betances and \$5,000 to Plaintiff Roxana Valdez, to be paid in addition to their Individual Settlement Payments and Individual PAGA Payments (if applicable), to compensate Plaintiffs for the time and effort that they expended in the cases. The requested Class Representative Enhancement Payments are both common and reasonable, and should be awarded.

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⁹² Phoenix Decl., ¶ 16.

⁹³ *Id.*, ¶ 2.

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

8 The requested Class Representative Enhancement Payments in the amount of \$7,500 to
9 Plaintiff Eric Betances and \$5,000 to Plaintiff Roxana Valdez are fair and appropriate because
10 Plaintiffs spent a substantial amount of time and effort producing relevant documents and past
11 employment records, as well as providing the facts and evidence necessary to attempt to prove
12 the allegations, including and not limited to, preparing for and appearing for full-day depositions
13 and, with respect to Plaintiff Valdez, working with Class Counsel to provide responses to form
14 interrogatories and requests for production of documents that were propounded by Defendant.⁹⁴
15 Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and
16 gave, information that would benefit the Class.⁹⁵ Plaintiffs spent numerous hours speaking with
17 Class Counsel about their claims, describing their work experiences with Defendant, and
18 gathering and reviewing documents.⁹⁶ These services merit the requested Class Representative
19 Enhancement Payments to Plaintiffs, who have not received any compensation for their efforts
20 on behalf of the Class Members to date.⁹⁷

21 The requested Class Representative Enhancement Payments were fully disclosed in the
22 Class Notice that was mailed to the Class Members. No objections were made with regards to
23 the requested Class Representative Enhancement Payments. Accordingly, it is appropriate and
24 just for Plaintiff Eric Betances to receive \$7,500 and Plaintiff Roxana Valdez to receive \$5,000
25 as reasonable Class Representative Enhancement Payments, in addition to their Individual
26

27 ⁹⁴ Aiwazian Decl., ¶ 21; Declaration of Eric Betances ("Betances Decl."), ¶¶ 3-5; Declaration of Roxana Valdez
("Valdez Decl."), ¶¶ 3-5.

28 ⁹⁵ Aiwazian Decl., ¶ 21; Betances Decl., ¶¶ 3-5; Valdez Decl., ¶¶ 3-5.

⁹⁶ Aiwazian Decl., ¶ 21; Betances Decl., ¶¶ 2-6; Valdez Decl., ¶¶ 2-6.

⁹⁷ Betances Decl., ¶ 9; Valdez Decl., ¶ 9.

1 Settlement Payments and Individual PAGA Payments (if applicable), for their services on behalf
2 of the Class.

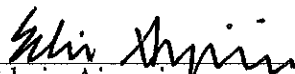
3 **X. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
5 approval of the Settlement, Attorneys' Fees and Costs, Class Representative Enhancement
6 Payments, Settlement Administration Costs, and allocation for the PAGA Settlement Amount, in
7 their entirety, as sought herein.

8 Dated: December 26, 2018

LAWYERS for JUSTICE, PC

9
10 By:


Edwin Aiwarzian
Attorneys for Plaintiffs and the Class