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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ROMELLO SHEPPARD, 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.

GHIRARDELLI CHOCOLATE COMPANY,
a California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22CV020713
Hon. Somnath Raj Chatterjee, Dept. 21

Reservation ID No: 863551011994

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

**[Filed concurrently with Notice of
Motion and Motion and Declarations
of Joanna Ghosh, Aaron Gundzik,
Romello Sheppard, and Phoenix
Settlement Administrators; [Proposed]
Order and Judgment]**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Romello Sheppard (“Plaintiff”) seeks final approval of: (1) the Gross
4 Settlement Amount of \$3,150,000; (2) attorneys’ fees in the amount of \$1,102,500, which is
5 35% of the Gross Settlement Amount (“Class Counsel Fees Payment”), and reimbursement
6 of litigation costs and expenses in the amount of \$12,908.83 (“Litigation Expenses
7 Payment”) to Lawyers *for* Justice, PC and Gundzik Gundzik Heeger LLP (“Class Counsel”);
8 (3) Settlement Administration Expenses in the amount of \$18,750 to Phoenix Settlement
9 Administrators (“Phoenix” or “Settlement Administrator”); (4) a Service Payment in the
10 amount of \$10,000 to Plaintiff Romello Sheppard; and (5) allocation of \$350,000.00 for
11 penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, et
12 seq. (“PAGA Payment”). First Amended Class and Representative Action Settlement
13 Agreement and Release (“Agreement,” or “Settlement Agreement”), Declaration of Joanna
14 Ghosh (“Ghosh Decl.”), ¶ 2, Ex. A, ¶¶ 42, 43, 58, 59, 60.

15 Plaintiff seeks relief on behalf of the following Class:

16 [A]ll current and former hourly-paid or non-exempt employees who worked for
17 Defendant within the State of California at any time during the Class Period (October
18 27, 2018, through April 19, 2024.

19 This matter involved ongoing investigations, informal discovery, review and analysis
20 of a large volume of documents and data prior to and during mediation conducted by Jeffrey
21 Krivis, Esq., and settlement negotiations thereafter. This matter has required 436.1 hours of
22 attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’
23 fees, which represents 35% of the Gross Settlement Amount, is fully supported by the use of
24 the percentage-fee method. Courts have historically awarded fees of up to fifty percent
25 (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar
26 cross-check method.¹

27
28 ¹ Applying a multiplier of 3.07, the total enhanced lodestar fees are \$1,102,500.

1 Plaintiff moves for final approval of a Service Payment to him in the amount of
2 \$10,000 to compensate Plaintiff for the time and effort that he expended spearheading the
3 lawsuits on behalf of the Class, PAGA Group Members, and the State of California. Plaintiff
4 also moves for final approval of the payment to the Settlement Administrator in the amount
5 of \$18,750 for Settlement Administration Expenses. And, Plaintiff moves for final approval
6 of the allocation of \$350,000.00 for the PAGA Payment, of which 75%, or \$262,500, will be
7 paid to the California Labor Workforce and Development Agency (“LWDA”) for its portion
8 of the PAGA Payment (“LWDA Payment”), and 25%, or \$87,500, will be distributed on a
9 pro rata basis to all current and former non-exempt employees who were employed by
10 Defendant in the State of California (“PAGA Members”) based on their Eligible Pay Periods
11 during the PAGA Period (August 23, 2021, through April 19, 2024). Ghosh Decl., ¶ 2, Ex.
12 A, ¶ 28.

13 The requests for Class Counsel Fees Payment, Litigation Expenses Payment, Service
14 Payment, Settlement Administration Expenses, and allocation for the PAGA Payment were
15 fully disclosed in the Notice of Class Action Settlement (“Class Notice”) that was mailed to
16 the Class Members. Most importantly, as of the date of this Motion, *not a single Class*
17 *Member has objected to any aspect of the Settlement, including the requested Class Counsel*
18 *Fees Payment, Litigation Expenses Payment, Service Payments, Settlement Administration*
19 *Expenses, or allocation for PAGA Payment.*

20 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length,
21 good faith negotiations by experienced counsel presided over by a highly-regarded mediator
22 who is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the
23 Court should grant final approval of the Settlement, and award Class Counsel Fees Payment,
24 Litigation Expenses Payment, Service Payment, Settlement Administration Expenses, and
25 PAGA Payment in the amounts as fully disclosed to the Class and as requested herein.

26 In order to efficiently present the Court with adequate information to determine
27 whether to grant final approval of the Settlement and award Class Counsel Fees Payment,
28 Litigation Expenses Payment, Service Payment, Settlement Administration Expenses, and

1 PAGA Payment, Plaintiff also moves for an order permitting the filing of this single
2 consolidated memorandum, although it exceeds the page limit established by California
3 Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

5 Defendant Ghirardelli Chocolate Company is a well-known purveyor of chocolate
6 throughout the State of California. Plaintiff Romello Sheppard is a former employee of
7 Defendant.

8 On August 23, 2022, Plaintiff provided written notice by online submission to the
9 LWDA and by certified mail to Defendant of the specific provisions of the California Labor
10 Code that were alleged to be violated (“LWDA Notice”). On October 27, 2022, Plaintiff
11 filed his Class Action Complaint for Damages and for violations of the Private Attorneys
12 General Act, California Labor Code § 2698, *et seq.* On July 18, 2024, Plaintiff filed his First
13 Amended Complaint (referred to herein as the “Complaint”), which is the operative pleading
14 and which alleges claims for: (1) Violation of California Labor Code §§ 510 and 1198
15 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid
16 Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest
17 Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1
18 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final
19 Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely
20 Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant
21 Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep
22 Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802
23 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions
24 Code §§ 17200, *et seq.*; (11) Violation of California Labor Code § 2698, *et seq.* (California
25 Labor Code Private Attorneys General Act of 2004); (12) Violation of California Labor
26 Code § 227.3 (Unpaid Vacation at Separation); and (13) Failure to Provide Suitable Seating
27 (IWC Order 1-2001).

1 Defendant has denied and continues to deny any liability and wrongdoing of any
2 kind associated with any of the allegations in the Complaint, and further denies that the
3 allegations in the Complaint are appropriate for class treatment or representative
4 adjudication for any purpose other than for settlement purposes only. The Parties have
5 actively litigated this matter since it commenced in October of 2022. In February of 2024,
6 the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a
7 well-regarded mediator experienced in mediating complex labor and employment matters.
8 With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement
9 described herein to resolve the lawsuit in its entirety.

10 August 21, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action
11 Settlement and supporting documents ("Motion for Preliminary Approval"). On October 4,
12 2024, the Court issued a tentative ruling in which it raised multiple points of inquiry with
13 regard to the Motion for Preliminary Approval. On October 24, 2024, Plaintiff
14 filed the Supplemental Declaration of Aaron C. Gundzik in Support of Plaintiff's Motion for
15 Preliminary Approval of Class Action Settlement, which appended the Parties' First
16 Amended Class and Representative Action Settlement Agreement and Release ("Settlement
17 Agreement" or "Settlement"). On November 8, the Court granted preliminary approval of
18 the Settlement Agreement, thereby preliminarily approving the terms of the Settlement, the
19 Class Notice, and the proposed administration procedures and associated deadlines.
20 Plaintiff now moves for final approval of the Settlement, Class Counsel Fees Payment,
21 Litigation Expenses Payment, Service Payments, Settlement Administration Expenses, and
22 allocation for PAGA Payment.

23 **III. SUMMARY OF SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

24 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross
25 Settlement Amount of \$3,150,000, plus the employer's withholding share of payroll taxes,
26 within twenty calendar days after the Effective Date. Ghosh Decl., ¶ 2, Ex. A, ¶ 55. Subject
27 to approval by the Court, the Net Settlement Amount will be calculated by deducting the
28 following amounts from the Gross Settlement Amount: (1) Class Counsel Fees Payment

1 and Litigation Expenses Payment, consisting of attorneys' fees in the amount of
2 \$1,102,500 and reimbursement of litigation costs and expenses in the amount of \$12,908.83,
3 to Class Counsel; (2) a Service Payment in the amount of \$10,000 to Plaintiff Romello
4 Sheppard; (3) Settlement Administration costs in the amount of \$18, 750 to Phoenix; and a
5 (4) PAGA Penalty in the amount of \$350, 000.00. Ghosh Decl., ¶ 2, Ex. A, ¶¶ 42, 43, 58, 59,
6 60. The Net Settlement Amount, which is estimated to be \$1,655,841.17 will be
7 distributed in accordance with the Settlement Agreement. Ghosh Decl., ¶ 2, Ex. A, ¶ 57.

8 The Settlement Administrator will determine each Participating Class Member's *pro*
9 *rata* share of the Net Settlement Amount ("Individual Settlement Payment"), according to
10 the following methodology: After Final Approval of the Settlement, the Settlement
11 Administrator will divide the Net Settlement Amount by the total number of Eligible
12 Workweeks of all Participating Class Members collectively during the Class Period (the
13 "Final Workweek Total"). The Settlement Administrator will divide the final Net Settlement
14 Amount by the Final Workweek Total to determine the settlement value for each Eligible
15 Workweek (the "Final Workweek Value"). The Settlement Administrator will then multiply
16 the number of Eligible Workweeks of each Participating Class Member during the Class
17 Period by the Final Workweek Value to determine that Participating Class Member's final
18 Individual Settlement Payment. Ghosh Decl., ¶ 2, Ex. A, ¶ 57(b).

19 The Settlement Administrator will determine each PAGA Group Member's *pro rata*
20 share of the 25% portion of the PAGA Payment ("Individual PAGA Payment"), according
21 to the following methodology: The Settlement Administrator will determine the total
22 number of Eligible Pay Periods during the PAGA Period. The "Pay Period Value" will be
23 equal to 25% of the PAGA Payment divided by the total number of Eligible Pay Periods
24 credited to PAGA Members during the PAGA Period. The amount of the Individual PAGA
25 Payment to be paid to each PAGA Member will be determined by multiplying the Pay
26 Period Value by the total number of each PAGA Member's Eligible Pay Periods. Ghosh
27 Decl., ¶ 2, Ex. A, ¶ 58 (a)(c).

1 Class Members had sixty (60) calendar days after the Class Notice is mailed to Class
2 Members (“Response Deadline”) to submit a Request for Exclusion, objection, and/or
3 disputes regarding Workweeks. Ghosh Decl., ¶ 2, Ex. A, ¶ 39. The Response Deadline was
4 February 4, 2025. Declaration of Jarrod Salinas (“Salinas Decl.”), ¶¶ 9-11. As of the date
5 of this Motion, the Settlement Administrator has not received any written objections to the
6 Class Settlement. Salinas Decl., ¶ 10.

7 Each Participating Class Member’s Individual Settlement Payment will be allocated
8 as follows: twenty percent (20%) as wages, which will be reported on an IRS Form W-2;
9 and eighty percent (80%) as penalties, interest and non-wage damages, which will be
10 reported on an IRS form 1099. Ghosh Decl., Ex. A, ¶ 61(a). Any payment for an Individual
11 PAGA Payment will be allocated as 100% penalties and will be reported on an IRS Form-
12 1099, if necessary. *Id.* Employer’s withholding taxes will be paid separately by Defendant in
13 addition to the Gross Settlement Amount. Ghosh Decl., ¶ 2, Ex. A, ¶ 43.

14 Each Individual Settlement Payment and Individual PAGA Payment check will be
15 valid and negotiable for 180 calendar days from the date the checks are issued, and
16 thereafter, shall be canceled. Ghosh Decl., ¶ 2, Ex. A, ¶ 63(a). All funds associated with
17 canceled checks will be transmitted to the *cy pres* recipient, Children’s Advocacy Institute,
18 in accordance with California Code of Civil Procedure section 384. *Id.*

19 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

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

23 On November 15, 2024, 2024, Phoenix received a data file from Defendant’s
24 Counsel that contained each Class Member’s full name, last known mailing address, Social
25 Security Number, and number of Workweeks for each Class Member (collectively, “Class
26 Data”). The final mailing list contained 2,634 individuals identified as Class Members.
27 Salinas Decl., ¶ 3. On November 18, 2024, Phoenix conducted a National Change of
28 Address (“NCOA”) search in an attempt to update the Class Data addresses as accurately as

possible. Salinas Decl., ¶ 4. To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice. *Id.* To the extent that no updated address was found in the NCOA database, the original address provided by Defendant's Counsel was used for the mailing of the Class Notice. *Id.*

On December 6, 2024, Phoenix mailed the Class Notice via U.S. First Class Mail, in English and Spanish, to 2,634 individuals identified as Class Members. Salinas Decl., ¶ 5. After the December 6, 2024, mailing, Phoenix confirmed that one individual was inadvertently left off of the original Class List. Salinas Decl., ¶ 6. Phoenix has added this Class Member to the Class list, increasing the class size to 2,635, and has mailed them a Class Notice. *Id.* Of the 2,635 individuals, 1,578 individuals were identified as PAGA Group Members. Salinas Decl., ¶ 15.

As of the date of this declaration, 26 Class Notices have been returned to Phoenix. Salinas Decl., ¶ 7. For those 26 Class Notices, Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing. *Id.* Of the 26 Class Notices that were skip-traced, 18 updated addresses were obtained and the Class Notice was promptly re-mailed to those Class Members via first class mail. *Id.* Eight (8) Class Notices remain undeliverable. Salinas Decl., ¶ 8.

As of the date of this Motion, the Settlement Administrator has not received any objections to the Class Settlement. Salinas Decl., ¶ 10. As of the date of this Motion, the Settlement Administrator has received only one (1) Request for Exclusion and no Workweek disputes. Salinas Decl., ¶¶ 9, 11.

To date, there are 2,634 Class Members who did not submit a valid and timely Request for Exclusion from the Class Settlement and are therefore deemed Participating Class Members, representing 99.96% of the Class. Salinas Decl., ¶ 12. Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$1,655,841.17 will be distributed to Participating Class Members in accordance with the terms of the Settlement. Salinas Decl., ¶ 13. The highest Individual Settlement Payment to a Participating Class

1 Member is currently estimated to be \$3,487.29, the lowest Individual Settlement Payment to
2 be paid is approximately \$12.15, and the average Individual Settlement Payment to a
3 Participating Class Member is currently estimated to be \$628.64. Salinas Decl., ¶ 14. The
4 highest Individual PAGA Payment to a PAGA Group Member is currently estimated to be
5 \$223.15 and the average Individual PAGA Payment is currently estimated to be \$55.45.
6 Salinas Decl., ¶ 15.

7 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE**
8 **PRELIMINARILY APPROVED CLASS ACTION SETTLEMENT**

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

12 the strength of Defenda' case, the risk, expense, complexity and likely duration
13 of further litigation, the risk of maintaining class action status through trial, the
14 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.

15 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not
16 exclusive and the court is free to engage in a balancing and weighing of the factors
17 depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91
18 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private
19 consensual agreement between the parties." *Dunk, supra*, 48 Cal.App.4th at 1801.

20 The proponent of the settlement has the burden to show that it is fair and reasonable.
21 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of
22 fairness exists where, as here: "(1) the settlement is reached through arm's-length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
24 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
25 objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement,
26 the court need not reach any ultimate conclusions on the issues of fact and law that underlie
27 the merits of the dispute.
28

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

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

13 The Parties actively litigated the case since the lawsuit commenced on October 27,
14 2022. Class Counsel conducted significant investigation and informal discovery into the
15 facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing
16 the matter for class certification and trial prior to reaching the Settlement. Ghosh Decl., ¶¶ 5-
17 10, 13, and Ex. C thereto.

18 The Parties conducted significant informal discovery and investigation into the facts
19 of the cases. Ghosh Decl., ¶¶ 5-10, 13, and Ex. C thereto. The information, documents, and
20 data reviewed and analyzed by Class Counsel included, and were not limited to, Plaintiff’s
21 employment records, a sampling of Class Members’ time and pay data, and documents
22 regarding Defendant’s operations and employment practices, policies, and procedures,
23 among other information and documents. *Id.* Class Counsel developed liability, damages,
24 and penalties valuation models in the course of litigation and in connection with mediation
25 and settlement negotiations and met and conferred with Defendant’s counsel on numerous
26 occasions, e.g., to discuss issues relating to the pleadings, case management, discovery and
27 production of information, documents, and data, and claims evaluation and analysis. Ghosh
28 Decl., ¶ 8.

1 Class Counsel reviewed and analyzed a large volume of information, data, and
2 documents obtained from Plaintiff, Defendant, and other sources, in the course of litigation
3 and in connection with mediation and settlement negotiations. Ghosh Decl., ¶ 8. Other work
4 performed by Class Counsel included, and was not limited to, case strategy and analysis;
5 drafting, reviewing, and revising the pleadings, motion-related papers, the mediation brief,
6 and settlement documents; and preparing for and attending court proceedings and mediation
7 and settlement negotiations, among other tasks. *Id.*

8 After conducting informal discovery and investigation into the facts of the cases, the
9 Parties participated in a formal, full-day mediation conducted in February of 2024 by Jeffrey
10 Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and
11 employment matters. Ghosh Decl., ¶ 10. In the course of mediation and settlement
12 negotiations, the Parties exchanged information, documents, and data, and discussed all
13 aspects of the cases, including and not limited to, the risks and delays of further litigation,
14 the risks to the Parties of proceeding with class certification and trial, the law relating to
15 class certification, manageability, off-the-clock theory, meal and rest periods, on-premises
16 breaks, representative PAGA claims, wage-and-hour law and enforcement, as well as the
17 evidence produced and analyzed, and the possibility of appeals, among other things. *Id.*
18 During all settlement discussions, the Parties conducted their negotiations at arm's length in
19 an adversarial position. *Id.* Arriving at a settlement that was acceptable to the Parties was not
20 easy. *Id.* Defendant contended that individualized questions of fact predominate over any
21 common issues, and these issues would pose challenges to class certification and
22 representative adjudication. *Id.* Defendant and its counsel felt strongly about Defendant's
23 ability to avoid class certification and representative adjudication and prevail on the merits,
24 while Plaintiff and Class Counsel believed that they would be able to obtain relief in court,
25 obtain class certification and prevail at trial. *Id.* After conducting significant informal
26 discovery and investigations, settlement negotiations, and with the aid of the mediator's
27 evaluation, the Parties agreed that the cases were well-suited for settlement given the legal
28

1 issues relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that
2 would attend further litigation. *Id.*

3 The Settlement takes into account the strengths and weaknesses of each side's
4 position and the uncertainty of how the case might have concluded at certification, trial,
5 and/or appeals. Class Counsel analyzed a large volume of information, documents, and data
6 obtained from Defendant, Plaintiff, and other sources, both prior to and after the mediation,
7 and performed research regarding applicable law, which is evolving as it relates to class
8 certification, manageability, off-the-clock theory, meal and rest periods, representative
9 PAGA claims and penalties, wage-and-hour law and enforcement, Plaintiff's claims and
10 allegations, and Defendant's defenses thereto, as well as facts discovered. Ghosh Decl., ¶¶
11 6-10, 13 and Ex. C thereto. The Settlement was based on this large volume of facts,
12 evidence, and investigation. Ghosh Decl., ¶¶ 6-9. Additionally, Class Counsel have
13 extensive experience in handling complex wage-and-hour actions, including significant
14 experience in employment class action litigation. Ghosh Decl., ¶¶16-19.

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

17 The Settlement, which provides for a Gross Settlement Amount of \$3,150,000,
18 represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in
19 litigating class and representative claims through certification proceedings, trial, and/or
20 appeals. Ghosh Decl., ¶ 22. The Settlement was calculated using information and data
21 uncovered through extensive case investigation, informal discovery, and the exchange of
22 information in the context of mediation and ongoing settlement negotiations. Ghosh Decl.,
23 ¶¶ 6-10, 13 and Ex. C thereto. Had the action not settled, Defendant would have vigorously
24 challenged class certification, manageability of representative adjudication, and liability.
25 Defendant contended that individualized questions of fact predominated over any common
26 issues, and these issues would pose challenges to certification and representative
27 adjudication. Defendant would have likely argued again at trial, if any, that Plaintiff's claims
28 were not appropriate for class-wide and/or representative adjudication. On the other hand,

1 Defendant also faced the risk of the Court certifying a class and allowing a jury to decide
2 Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial
3 would have been expensive for all parties. Ghosh Decl., ¶ 10.

4 It is preferable to reach an early resolution of a dispute because such resolutions save
5 time and money that would otherwise go to litigation. If this matter had settled after further
6 litigation, the settlement amount would have taken into account the additional costs
7 incurred, and there might have been less money available for Class Members, PAGA Group
8 Members, and the State of California after all was said and done. This is not just an abstract
9 contention. The risks and expenses of further litigation outweighed any benefit that might
10 have been gained otherwise. Ghosh Decl., ¶ 10. These risks of further litigation include a
11 determination that the claims were unsuitable for class treatment and/or representative
12 adjudication, failure to obtain certification, class de-certification after certification of a class,
13 allowing a jury to decide the claims asserted in the case, and the real possibility of no
14 recovery after years of litigation. *Id.* If the case had not settled, the Parties would have had
15 to conduct a significant amount of additional discovery, including but not limited to,
16 depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and
17 percipient witnesses, such as managers, supervisors, and other current and former employees
18 throughout the State of California. This additional discovery would have cost the Parties
19 significant additional time and money. *Id.* In contrast, the Settlement provides real and
20 significant benefits for the Class Members, the PAGA Group Members, and the State of
21 California, while avoiding the further expenses, risks, and delay of prolonged litigation with
22 only the possibility of recovery.

23 It would be grossly inefficient for such a large class of current and former employees
24 to bring individual actions to recover from Defendant for the alleged violations of wage-and-
25 hour laws. Moreover, the potential individual recovery that could be obtained by a Class
26 Member would not be significant enough to provide him or her with the incentive to sue. By
27 granting final approval of the Settlement, the Court will be approving a resolution that
28

1 provides a certain and substantial recovery for Class Members, the State of California, and
2 PAGA Group Members.

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

4 The Settlement, which provides for a Gross Settlement Amount of \$3,150,000.00,
5 represents a fair, reasonable, and adequate resolution of the cases. The Settlement was
6 calculated using information and data uncovered through extensive case investigation,
7 formal and informal discovery, and the exchange of information in the context of preparing
8 for mediation and conducting ongoing settlement negotiations. Ghosh Decl., ¶¶ 6-10, 13 and
9 Ex. C thereto. The Settlement takes into account the potential risks and rewards inherent in
10 any case and, in particular, in this matter. Ghosh Decl., ¶ 10. Moreover, considering all of
11 the facts in the cases, the Gross Settlement Amount represents a considerable recovery.

12 Even after deducting attorneys' fees in the amount of \$1,102,500, litigation costs and
13 expenses in the amount of \$12,908.83, a \$10,000 Service Payment, Settlement
14 Administration Expenses in the amount of \$18,750, and the PAGA Payment of \$350,000.00
15 from the Gross Settlement Amount of \$3,150,000, the Net Settlement Amount is currently
16 estimated to be \$1,655,841.17. Gundzik Decl., ¶ 5. Under the Settlement Agreement, the
17 Gross Settlement Amount will be fully paid out, in accordance with the terms of the
18 Settlement.

19 As discussed in Section III, *supra*, each Participating Class Member will be paid a
20 *pro rata* share of the Net Settlement Amount, based on the number of Workweeks worked
21 credited to him or her. Ghosh Decl., ¶ 2, Ex. A, ¶ 57(b). To date, there are 2,634,
22 representing 99.96% of the Class Members. Salinas Decl., ¶ 12. The Individual Settlement
23 Payments will range from \$12.15 to \$3,487.29, and the average Individual Settlement
24 Payment is currently estimated to be \$628.64. Salinas Decl., ¶ 14. The highest Individual
25 PAGA Payment to a PAGA Group Member is currently estimated to be \$223.15 and the
26 average Individual PAGA Payment is currently estimated to be \$55.45. Salinas Decl., ¶ 15.
27 These are significant individual recoveries, particularly in light of the risks of litigation.
28

1 At the final approval stage, “[a]n allocation formula need only have a reasonable,
2 rational basis [to warrant approval], particularly if recommended by experienced and
3 competent class counsel.” *In re American Bank Note Holographics, Inc., Securities*
4 *Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair
5 and reasonable way to distribute the Net Settlement Amount. In light of the above
6 considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and
7 adequate, and in the best interest of the Class Members, the State of California, and PAGA
8 Group Members. Ghosh Decl., ¶ 22. Although the recommendations of Class Counsel are
9 not conclusive, the Court can properly take the recommendations into account, particularly
10 if Class Counsel appears to be competent, has experience with this type of litigation, and
11 significant discovery and investigation have been completed, as is the case here. Conte &
12 Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should
13 grant final approval of the Settlement.

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

15 Class Counsel has extensive experience in employment class action law and complex
16 wage-and-hour litigation. Ghosh Decl., ¶¶ 16-19; Gundzik Decl., ¶¶ 15-17. Both Lawyers
17 for Justice, PC and Gundzik Gundzik Heeger LLP have been appointed class counsel in
18 numerous complex wage-and-hour cases and have recovered millions of dollars for
19 individuals in California. *Id.* Both parties’ counsel were capable of assessing the strengths
20 and weaknesses of the Class Members’ claims against Defendant and the benefits of the
21 Settlement under the circumstances of the case and in the context of a private, consensual
22 settlement agreement.

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

24 The Settlement has been well received by the Class – *not a single Class Member*
25 *objected to the Class Settlement.* Salinas Decl., ¶ 10. Specifically, no objections have been
26 made as to the Gross Settlement Amount or requested Class Counsel Fees Payment,
27 Litigation Costs Payment, Service Payment, Settlement Administration Expenses, or the
28 allocation of the PAGA Payment.

1 California courts have consistently found that a small number of objectors indicates
2 the class' support for a settlement and strongly favors final approval. *Wershba, supra*, 91
3 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners,*
4 *supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors). Here, the lack
5 of any objections speaks volumes about the fairness, reasonableness, and adequacy of this
6 Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and
7 adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk,*
8 *supra*, 48 Cal.App.4th at 1802.

9 **VI. THE ATTORNEYS' FEES AWARD REQUESTED BY CLASS COUNSEL IS**
10 **FAIR AND REASONABLE AND SHOULD BE APPROVED**

11 **A. Legal Standard for Attorneys' Fees in a Class Action Settlement**

12 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
13 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao*
14 *v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th
15 1122, 1132 (The "experienced trial judge is the best judge of the value of professional
16 services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180
17 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable
18 sum of money," California courts may calculate attorneys' fees as a reasonable percentage
19 of the settlement. Weil and Brown, California Practice Guide, Civil Procedure Before Trial,
20 Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503;
21 *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in
22 class and representative actions because "it better approximates the workings of the
23 marketplace than the lodestar approach." *Lealao, supra*, 82 Cal.App.4th at 49.

24 California law provides that an attorneys' fees award should be equivalent to fees
25 paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte*
26 *v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an
27 action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the
28 trial court should "ensure that the fee awarded is within the range of fees freely negotiated in

1 the legal marketplace in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee
2 awards that are too small will “chill the private enforcement essential to the vindication of
3 many legal rights and obstruct the representative actions that often relieve the courts of the
4 need to separately adjudicate numerous claims.” *Lealao, supra*, 82 Cal.App.4th at 53.

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

14 Historically, courts have awarded fees as high as fifty percent (50%) of the
15 settlement, depending on the circumstances of the case. *Conte & Newberg, Newberg on*
16 *Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C.
17 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the settlement
18 amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*
19 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount
20 as attorneys’ fees). California courts routinely approve class action attorneys’ fees awards
21 “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162
22 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in
23 marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506
24 (approving fee award of 1/3 of common fund of \$19 million).

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

26 California and federal courts have long recognized that an appropriate method for
27 determining the award of attorneys’ fees is based on a percentage of the total value of
28 benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503;

1 *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v.*
2 *Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977)
3 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.² The purpose of this equitable
4 doctrine is to spread litigation costs proportionally among all the beneficiaries so that the
5 active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at
6 769.

7 When a litigant's efforts result in a settlement from which others may derive
8 benefits, the litigant may require the passive beneficiaries to compensate those whose efforts
9 brought about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) §
10 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on
11 behalf of the other parties enjoying the benefit of the settlement). Both state and federal
12 courts have embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v.*
13 *Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

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

22 Courts have consistently recognized that class and representative action litigation is
23 increasingly necessary to protect the rights of individuals whose injuries and/or damages are
24 too small to economically justify legal action on an individual basis. Accordingly, in
25 determining a reasonable fee award, courts award fees to serve as an economic incentive for
26 lawyers to pursue such litigation in order to achieve increased access to the judicial system

27
28 ² 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 for meritorious claims and to enhance deterrents to wrongdoing. This is especially true in
2 situations where multiple similar alleged wrongs would not be economically feasible to
3 pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at
4 6.

5 By taking on this case on a contingency basis, Class Counsel risked substantial
6 economic loss if the results were not successful. This substantial risk is the reason that the
7 courts approve the use of the percentage method when a settlement is obtained by the efforts
8 of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49
9 (discussing the risks of engaging in litigation without certainty of compensation).

10 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
11 Amount of \$3,150,000 on a non-reversionary basis. The requested attorneys' fees are 35%
12 of the total value of the monetary settlement. In light of Class Counsel's successful
13 prosecution and resolution of the case, the requested attorneys' fees are appropriate and
14 reasonable.

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

22 The percentage method is consistent with, and is intended to mirror, the practice in
23 the private marketplace where contingent-fee attorneys typically negotiate percentage-fee
24 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is
25 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of
26 counsel's work to the class is to review the consideration agreed to be paid by the named
27 plaintiff. If the named plaintiff have employed counsel on a contingency-fee basis, it would
28 indeed be inequitable for the members of the class, who will enjoy the benefits of the

1 settlement without incurring the risks of bringing the claim, to pay less than the named
2 plaintiff.

3 Furthermore, a percentage-fee award is not dependent on a determination of the
4 actual amount claimed by those entitled—it is the creation of the settlement that is the
5 crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court
6 expressly held that “it is equitable that [the attorney’s] compensation and expenses should
7 come from the entire fund saved for all classes concerned before it is distributed.” *Winslow*
8 *v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held
9 that a percentage-based fee “may be calculated on the basis of the total fund made available
10 rather than the actual payments made to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see*
11 *also Boeing, supra*, 444 U.S. at 478 (“a litigant or a lawyer who recovers” a settlement “for
12 the benefit of persons other than himself or his client is entitled to a reasonable attorneys’
13 fee from the fund as a whole”). Based on these precepts, the Court of Appeal in *Wershba v.*
14 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 247 awarded attorneys’ fees based on the
15 total value of the settlement to the class members despite an objection demanding that the
16 fees be awarded based on the exact amount claimed by class members.

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

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

24 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve
25 factors to be considered in determining whether fee awards are reasonable: (1) the time and
26 labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required
27 to perform the legal services properly; (4) the preclusion of other employment by the
28 attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed

1 or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount
2 involved and results obtained; (9) the experience, reputation and ability of the attorney; (10)
3 the undesirability of the case; (11) the nature and length of the professional relationship with
4 the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v.*
5 *Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

6 All of these factors favor the attorneys' fees sought here; however, some of the most
7 relevant factors to this Court's fee determination will be addressed herein. An award of
8 attorneys' fees in the amount of \$1,102,500 (which is 35% of the Gross Settlement Amount)
9 is commensurate with the time, effort, and expense dedicated to the cases, the contingent
10 nature of Class Counsel's fee and the risks taken in commencing the cases, the skill and
11 determination required, the results that Class Counsel have achieved, and the value of the
12 settlement that Class Counsel have obtained for the Class Members.

13 1. Time & Labor Expended

14 Class Counsel used its experience and skills, and dedicated the full extent of
15 resources, to litigate and bring this matter to a successful conclusion on behalf of the Class.
16 Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive
17 experience in the handling of class actions and complex litigation cases. Ghosh Decl., ¶¶ 16-
18 19; Gundzik Decl., ¶¶ 15-17.

19 Class Counsel has fully and actively participated in litigation of the Actions. Ghosh
20 Decl., ¶¶ 6-13, and Ex. C thereto; Gundzik Decl., ¶¶ 18-22, and Ex. C thereto. Prior to
21 commencing the lawsuit, Class Counsel conducted a significant amount of investigation into
22 the factual and legal issues, Defendant's business, and its operations and employment
23 policies, practices, and procedures. Ghosh Decl., ¶ 6. During the pendency of the litigation
24 of the litigation and in preparation for mediation, Class Counsel had the opportunity to
25 review and analyze a large volume of pages of information, documents and data obtained
26 from Defendant, Plaintiff, and other sources, and prepared liability, damages, penalties, and
27 valuation calculations. Ghosh Decl., ¶¶ 7-9. Class Counsel also met and conferred with
28 Defendant's counsel over the issues relating to pleadings, discovery, and the production of

1 information, documents and data, among other things; engaged in settlement negotiations
2 with Defendant's counsel, and prepared for and attended court proceedings, mediation, and
3 settlement negotiations. Ghosh Decl., ¶¶ 7-13, and Ex. C thereto.

4 Class Counsel has dedicated staffing and monetary resources necessary to prosecute
5 this matter diligently and with maximum efficiency and has fully and actively participated in
6 the litigation process. The Task and Time Charts attached as "EXHIBIT A" to the
7 Declaration of Aaron C. Gundzik and "EXHIBIT C" to the Declaration of Joanna Ghosh
8 set forth in detail the hours that Class Counsel has spent performing tasks on behalf of
9 Plaintiff and the Class. Ghosh Decl., ¶ 13, and Ex. C thereto; Gundzik Decl., ¶ 18, and Ex.
10 C thereto. The Task and Time Charts are thorough and comprehensive and were prepared
11 so that the Court can peruse easily the each and every task performed by Class Counsel. The
12 Court is respectfully referred to the chart, which sets forth the history of the work performed
13 by Class Counsel, commencing with the pre-filing analysis and research, and continuing up
14 to settlement and final approval. Lawyers for Justice, PC has spent 311.1 hours on the case
15 and Gundzik Gundzik Heeger LLP will spend 125 hours on the case. In total, Class Counsel
16 will have spent 436.1 hours performing tasks and to obtain a significant recovery on behalf
17 of Plaintiff, the Class, the PAGA Group Members, and the State of California. *Id.* These
18 hours were required to bring this matter to its successful conclusion. In light of the value of
19 time expended and the carrying of costs involved in litigating this case, the requested
20 attorneys' fees are fair, adequate, and reasonable.

21 2. The Skill Required to Perform Legal Services Properly

22 The skill required to properly litigate the cases is evident not only in the results
23 achieved, but in the steps necessary to reach those results. Defendant retained well-respected
24 counsel to represent its defenses. More specifically, Defendant and its counsel felt very
25 strongly about Defendant's ability to obtain a denial of certification and to prevail on the
26 merits. Plaintiff and Class Counsel believed that Plaintiff would have obtained class
27 certification and prevailed at trial.

28 Class Counsel undertook significant investigation, analysis, and research prior to

1 filing this case, during the litigation, and prior to mediation. Class Counsel took steps to
2 prepare the matter for class certification and representative adjudication and had every
3 intention of taking the case to trial on a class-wide basis if Defendant did not offer an
4 appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, Class
5 Counsel used its extensive experience in the handling of class actions and complex wage-
6 and-hour litigation matters in order to obtain the Settlement with maximum efficiency.
7 Ghosh Decl., ¶ 13, and Ex. C thereto; Gundzik Decl., ¶ 18, and Ex. C thereto.

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

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

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

24 As a result of this litigation and settlement negotiations, Defendant agreed to pay a
25 Gross Settlement Amount of \$3,150,000 to settle the matter. After deducting the attorneys'
26 fees (\$1,102,500), litigation costs and expenses (\$12,908.83), a Service Payment to Plaintiff
27 (\$10,000), Settlement Administration Expenses (\$18,750), and PAGA Payment (\$350,000)
28 from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount

will be approximately \$1,655,841.17. Gundzik Decl., ¶ 5. The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Participating Class Member is currently estimated to be \$3,487.29 and the average Individual Settlement Payment is currently estimated to be \$628.64. Salinas Decl., ¶14. The highest Individual PAGA Payment to a PAGA Group Member is currently estimated to be \$223.15 and the average Individual PAGA Payment is currently estimated to be \$55.45. Salinas Decl., ¶15. As such, the Settlement offers significant monetary relief to the Participating Class Members, the State of California, and PAGA Group Members.

4. Whether the Fee Is Fixed or Contingent

Plaintiff entered into a contingency fee agreement with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel will have invested 436.1 hours of time to obtain relief on behalf of Plaintiff, Class Members, the State of California, and PAGA Group Members. Ghosh Decl., ¶ 13, and Ex. C thereto; Gundzik Decl., ¶ 18, and Ex. C thereto. Class Counsel has also incurred litigation costs and expenses in the amount of \$12,908.83. Ghosh Decl., ¶ 20, and Ex. D thereto; Gundzik Decl., ¶ 23, and Ex. B thereto.

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. Ghosh Decl., ¶ 20. Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result. Ghosh Decl., ¶¶ 16-19; Gundzik Decl., ¶¶ 15-17. The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Fees Payment and Litigation Expenses Payment. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

1 A contingent fee must be higher than a fee for the same legal services paid as
2 they are performed. The contingent fee compensates the lawyer not only for
3 the legal services he renders but for the loan of those services. A lawyer who
4 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.

5 *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted).
6 Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors
7 inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time
8 that Class Counsel have devoted to litigating the case would not have produced any fees nor
9 would Class Counsel have been reimbursed for their significant costs and expenses.

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

11 The results achieved, in light of the difficulties inherent in similar cases and the
12 specific difficulties faced in this matter, are considerable. The Settlement has yielded a
13 positive response from the Class Members—no Class Members objected to the Class
14 Settlement. Salinas Decl., ¶ 10.

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

20 Here, the results achieved and obtained on behalf of Plaintiff and the Class are
21 reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s
22 efforts have resulted in a settlement that provides for a Gross Settlement Amount of
23 \$3,150,000. The Gross Settlement Amount will be fully paid out, in accordance with the
24 terms of the Settlement Agreement. The Individual Settlement Payments will range from
25 \$12.15 to \$3,487.29 and the average Individual Settlement Payment is currently estimated to
26 be \$628.64. Salinas Decl., ¶ 14. The highest Individual PAGA Payment to a PAGA Group
27 Member is currently estimated to be \$223.15 and the average Individual PAGA Payment is
28 currently estimated to be \$55.45. Salinas Decl., ¶ 15.

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

2 Lawyers *for* Justice, PC and Gundzik Gundzik Heeger LLP are both recognized class
3 action law firms that employed its attorneys’ knowledge, skills, and experience in bringing
4 this case cases to a successful conclusion. Class Counsel has years of complex and class
5 action litigation experience, have recovered millions of dollars on behalf of thousands of
6 individuals in California, and have successfully handled numerous significant wage-and-
7 hour class action and complex cases. Ghosh Decl., ¶¶ 16-19; Gundzik Decl., ¶¶ 15-17.

8 **D. The Lodestar Methodology Also Justifies Approval of the Requested Fees**

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

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

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

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

28 As discussed above, the case was highly contested and required a significant amount

1 of time and labor. Defendant made it clear very early on that it disputed all of the allegations
2 of the case and disputed that the matter was appropriate for class or representative treatment.
3 Defendant raised affirmative defenses and denied liability, and the pursuit of this case
4 involved gathering and analyzing data not only from Defendant but also from the Class
5 Members. The handling of the case involved a great amount of effort and involved the
6 exercise of a high level of skill, which Class Counsel have as a result of their extensive
7 experience in employment class actions and complex wage-and-hour litigation. Long and
8 difficult battles would have followed as the case moved toward certification and trial,
9 including engaging in extensive motion practice. As Class Counsel geared up for these
10 battles, Class Counsel undertook intense preparation in an attempt to resolve the entire
11 matter through mediation.

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

16 The Time and Task Charts submitted by Class Counsel demonstrate that they will
17 have spent a total of 436.1 hours litigating the cases and finalizing the Settlement. Ghosh
18 Decl., ¶ 13, and Ex. C thereto; Gundzik Decl., ¶ 18, and Ex. C thereto.³ In light of the facts
19 and circumstances of the cases, as well as the results that Class Counsel have achieved on
20 behalf of Plaintiff, Class Members, the PAGA Members, and the State of California, Class
21 Counsel have spent a reasonable number of hours on this matter. In addition, Class Counsel
22 will continue to perform work on this matter through the date of final approval and in
23 connection with the implementation of the Settlement.

24 **2. The Fees Requested Represent a Reasonable Hourly Rate of**
25 **Compensation in Light of Class Counsel's Efforts and Experience**

26 Both California and federal courts recognize that attorneys should be compensated

27
28 ³ The Time and Task Chart submitted by Gundzik Gundzik Heeger LLP does not include the
additional 20 hours that they will be required to spend to bring this matter to conclusion.

1 for providing representation on a contingency basis and for taking on the risks associated
2 with it and that class counsel should be provided with a financial incentive to enforce
3 important rights and protections such as those at issue in this action. See *Ketchum, supra*, 24
4 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice
5 in the private legal market of rewarding attorneys for taking the risk of nonpayment by
6 paying them a premium over their normal hourly rates for winning contingency cases." See
7 *id.*

8 Class Counsel have been actively involved in this matter, prior to its commencement
9 and all the way up to the present, and Class Counsel's dedication to providing representation
10 in these cases has precluded other employment. Here, Class Counsel bore the risk that,
11 despite all of its efforts and skills employed, there could have been no recovery whatsoever.
12 However, through their hard work and skill, Class Counsel were successful in reaching a
13 settlement of \$3,150,000.00.

14 As set forth in the Declarations of Aaron C. Gundzik and Joanna Ghosh, the
15 professional backgrounds and experience of Class Counsel support reasonable hourly rates
16 of compensation of \$750 and \$850. Ghosh Decl., ¶¶ 15-19; Gundzik Decl., ¶¶ 25-28, and
17 Ex. C thereto. Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the
18 firm at the blended rate of at least \$850 per hour for legal service performed, by courts of
19 this state. Lawyers *for* Justice, PC has also been awarded attorneys' fees in the amount of
20 35% of the Gross Settlement Amount by Hon. Tara Desautels of the Alameda Courthouse in
21 *Rochelle Ketchum, et al. v. Alegria Community Living* (Alameda Superior Court Case No.
22 22CV013890, Consolidated Case No.: 22CV013889). Ghosh Decl., ¶ 12. Likewise, Gundzik
23 Gundzik Heeger LLP has been awarded its hourly rates by numerous courts throughout the
24 State. Gundzik Decl., ¶ 28.

25 While the circumstances of every case are unique, the fact remains that the work
26 performed and efforts undertaken by Class Counsel on behalf of the Class Members justify
27 the requested attorneys' fees.

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

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

8 Courts frequently apply multipliers to enhance the lodestar to reflect the risks
9 involved, the complexity of the litigation, and the other relevant facts. *Vizcaino*, 290 F.3d at
10 1051; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most
11 common fee enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the
12 established practice in the private legal market of rewarding attorneys for taking the risk of
13 nonpayment by paying them a premium over their normal hourly rates for winning
14 contingency cases.” *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, 24 Cal.4th at 1132-33. A
15 risk multiplier also serves to bring the financial incentives for enforcing important rights
16 “into line with incentives [attorneys] have to undertake claims for which they are paid on a
17 fee-for-services basis.” *Ketchum*, 24 Cal. 4th at 1132.

18 In determining whether or not to enhance the lodestar, California courts take into
19 account multiple factors such as those discussed in Section See, *Cates* at 822-823. Multiple
20 factors warrant enhancement in this case, including the following:

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

1 *Ketchum* at 1134.

2 Adjustment of the base lodestar figure to compute an award of attorneys' fees for a
3 claim under the California Labor Code is appropriate. See *Id.*, at 1135-1136; *Serrano v.*
4 *Priest* (1977) 20 Cal.3d 25, 48-49. "The lodestar is calculated by multiplying the reasonable
5 hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a
6 multiplier, if appropriate." *Wershba, supra*, 91 Cal.App.4th at 254. In the first stage of the
7 lodestar adjustment method, the trial court determines the reasonable hourly rate of
8 compensation for counsel, which it then multiplies by the number of hours the court finds
9 were reasonably spent preparing the case, to obtain the lodestar figure. *Ketchum, supra*, 24
10 Cal.4th at 1131-1132. The lodestar figure is the "basic fee for comparable legal services in
11 the community" based upon the "hourly amount to which attorneys of like skill in the area
12 would typically be entitled." *Id.*, at 1132-1133 (quotation marks and citation omitted).

13 As discussed above in Section VI.C, this was a highly contested matter which
14 required an extensive amount of time and labor. Defendant raised defenses and denied
15 liability, and the matter involved gathering and analyzing numerous disparate documents.
16 The handling of this matter involved a great amount of effort, and required the exercise of a
17 high-level of skill, which Class Counsel has as a result of extensive experience in
18 employment class actions and wage-and-hour litigation. Class Counsel has been actively
19 involved in the prosecution of this matter since its commencement to the present. Class
20 Counsel's dedication to the representation of the Class Members has precluded other
21 employment.

22 Most importantly, all services were performed by Class Counsel on a contingent
23 basis. Both California and federal courts recognize that attorneys should be compensated for
24 taking on such contingent risks and provided with financial incentives to enforce important
25 rights and protections like those at issue in the matter at hand. See, e.g., *Vizcaino*, 290 F.3d
26 at 1051; *Ketchum*, 24 Cal. 4th at 1132-33. Here, Class Counsel bore the risk that, despite all
27 of their efforts and the skill employed, there could be no recovery. Therefore, at a minimum,
28 Class Counsel is entitled to a risk multiplier.

1 The results obtained by way of Class Counsel's efforts are significant here. Class
2 Counsel were successful in achieving substantial results in the form of a settlement of
3 \$3,150,000 which will be paid to 2,634 Class Members.

4 Courts routinely enhance lodestar amounts based on multipliers that "range from **2 to**
5 **4 or even higher.**" *Wershba, supra*, 91 Cal.App.4th at 255 (emphasis added); *see also, e.g.,*
6 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving **multiplier of 2.5**);
7 *Vizcaino*, 290 F.3d at 1051 (approving **multiplier of 3.65**); *Wal-Mart Stores, Inc. v. Visa*
8 *U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving **multiplier of 3.5**); *Craft v. County*
9 *of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding **multiplier of 5.2**
10 and referring to other cases with cross-check **multipliers ranging from 4.5 to 19.6**).

11 In light of the facts and circumstances surrounding the matter, Class Counsel's fee
12 application is well within the range of reasonableness. While handling this matter, Class
13 Counsel will have devoted the over 436.1 hours in legal time to the case. The detailed Task
14 and Time Charts specify all of the work that the two law firms performed. Ghosh Decl., ¶
15 13, and Ex. C thereto; Gundzik Decl., ¶ 18, and Ex. C thereto. Applying a modest multiplier
16 of 3.07, the total enhanced lodestar fees are \$1,102,500. Class Counsel seek an attorneys'
17 fee award of \$1,102,500 (35% of the Gross Settlement Amount). Far greater multipliers
18 have been awarded in similar cases, and the total amount of fees sought by Class Counsel is
19 also reasonable compared to fees awarded in similar cases.

20 The nature of the work performed, skill exercised, and the outcome in "this matter—
21 which involves an outstanding monetary recovery involving a Gross Settlement Amount of
22 \$3,150,000, with a Net Settlement Amount of \$1,655,841.17 to be paid to Participating
23 Class Members with an average payment of approximately \$628.64. Salinas Decl., ¶ 14.
24 This significant recovery, which also provides for the payment of \$262,500 to the State of
25 California, supports the percentage fee sought and the application of a lodestar multiplier.

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1 **VII. CLASS COUNSEL’S COSTS ARE FAIR AND REASONABLE AND SHOULD**
2 **BE APPROVED**

3 The Settlement provides for reimbursement of litigation costs and expenses of up to
4 \$25,000. Class Counsel seeks reimbursement of \$12,908.83 in litigation costs and expenses
5 incurred in this case. Ghosh Decl., ¶ 20, and Ex. D thereto; Gundzik Decl., ¶ 23, and Ex. B
6 thereto. These amounts are detailed in Class Counsel’s declarations and are reasonable and
7 necessary in light of the work performed in order to achieve the settlement. Accordingly,
8 Plaintiff requests that the Court award litigation costs and expenses in the amount of
9 \$12,908.83 to Class Counsel.

10 **VIII. THE SETTLEMENT ADMINISTRATION EXPENSES ARE FAIR AND**
11 **REASONABLE AND SHOULD BE APPROVED**

12 As set forth in the accompanying Declaration of Jarrod Salinas, the total costs
13 incurred and to be incurred by Phoenix for the notice and settlement administration process
14 are \$18,750. Salinas Decl., ¶ 17, and Ex. B thereto. The costs incurred and to be incurred
15 include, but are not limited to, (i) preparing, translating, printing, and mailing the Class
16 Notice; (ii) responding to inquiries from Class Members and PAGA Group Members; (iii)
17 calculating the number of weeks credited to each Class Member during the Class Period and
18 the number of weeks credited to each PAGA Group Member during the PAGA Period; (iv)
19 determining the validity of Requests for Exclusion, written objections to the Class
20 Settlement, and/or Workweek Disputes; (v) calculating the Net Settlement Amount; (vi)
21 calculating and issuing the Individual Settlement Payments and distributing them to
22 Settlement Class Members and Individual PAGA Payments to PAGA Group Members; (vii)
23 issuing the payments to Class Counsel for the Class Counsel Fees Payment and Litigation
24 Expenses, Plaintiff for the Service Payment, and the employer/employee payroll taxes to the
25 appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement
26 Agreement or as the Parties mutually agree or as the Court orders. *Id.*

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1 Accordingly, the Court should grant final approval of payment to Phoenix for its
2 handling of the notice and settlement process in the amount of \$18,750.

3 **IX. THE REQUESTED SERVICE PAYMENT IS FAIR AND REASONABLE AND**
4 **SHOULD BE APPROVED**

5 The Settlement provides for a Service Payment in the amount of \$10,000 to Plaintiff
6 Romello Sheppard to compensate him for the time and effort that he expended on behalf of
7 the Class and the State of California. The requested Service Payment is reasonable and should
8 be awarded.

9 In determining whether to make service payments, courts consider the following
10 factors: (1) the risk to the class representative in commencing suit, both financial and
11 otherwise; (2) the notoriety and personal difficulties encountered by the class representatives;
12 (3) the amount of time and efforts spent by the class representatives; (4) the duration of the
13 litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as
14 a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294,
15 299 (approving \$50,000 participation award to a single class representative).

16 The requested Service Payment is fair and appropriate because Plaintiff spent a
17 substantial amount of time and effort producing relevant documents and past employment
18 records, as well as providing the facts and evidence to support the prosecution of the claims.
19 Declaration of Romello Sheppard ("Sheppard Decl."), ¶¶ 14-16. Plaintiff was available
20 whenever Class Counsel needed him and actively tried to obtain, and gave, information to
21 support the pursuit of the case. Sheppard Decl., ¶ 15. Plaintiff spent numerous hours speaking
22 with Class Counsel about his claims, describing his work experience with Defendant, and
23 gathering and reviewing documents. Sheppard Decl., ¶¶ 14-16.

24 Accordingly, it is appropriate and just for Plaintiff to receive \$10,000 as a reasonable
25 Service Payment for his service on behalf of the Class, PAGA Members, and the State of
26 California, in addition to his individual settlement payments.

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1 **X. CONCLUSION**

2 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
3 requests that the Court grant final approval of the settlement, award a service payment to
4 named Plaintiff Romello Sheppard in the amount of \$10,000, approve of the payment to the
5 LWDA in the amount of \$262,500 and \$87,500 to the PAGA Members, award attorneys'
6 fees in the amount of \$1,102,500 and Class Counsel's costs in the amount of \$12,908.83,
7 and award the Settlement Administrator its fees in the amount of \$18,750, all of which will
8 be paid from the Gross Settlement Amount.

9 DATED: February 26, 2025

GUNDZIK GUNDZIK HEEGER LLP

10
11 By: 

12 Rebecca G. Gundzik
13 Attorneys for Plaintiff Romello Sheppard,
14 individually and on behalf of all others
15 similarly situated
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