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

CANDON LOVETT, KENNITH BOOZE,
DEARTIS SUDDUTH, JONATHAN GIRVIN,
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;

Plaintiffs,

vs.

WONDER ICE CREAM, INC., a California
corporation; WONDER ICE CREAM
COMPANY, LLC, an unknown business
entity; WIC, LLC, an unknown business entity;
WONDER ICE CREAM, LLC, an unknown
business entity, and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG21109738

Honorable Evelio Grillo
Department 21

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
CLASS COUNSEL FEES AND COSTS,
AND SERVICE AWARDS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representatives (Candon Lovett, Kenneth
Booze, DeArtis Sudduth, and Jonathan
Girvin); Declaration of Settlement
Administrator (Yami Burns); and [Proposed]
Final Approval Order and Judgment filed
concurrently herewith]

Date: December 1, 2023
Time: 9:00 AM
Department: 21

Complaint Filed: August 4, 2021
FAC Filed: September 1, 2021
SAC Filed: June 15, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 1, 2023 at 9:00 a.m., in Department 21 of
2 the above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Candon
3 Lovett (“Plaintiff Lovett”), Kennith Booze (“Plaintiff Booze”), Deartis Sudduth (“Plaintiff
4 Sudduth”), and Jonathan Girvin (“Plaintiff Girvin”) (together, “Plaintiffs”) will and hereby do
5 move for an order granting final approval of:

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

- 9 • A Net Settlement Amount of approximately **\$547,617.17** will be fully distributed to the
10 Class Members who do not submit a valid and timely Opt-Out of the Settlement
11 (“Settlement Class Member”);
12 • **No Objections** were submitted to the settlement administrator, Phoenix Class Action
13 Administration Solutions (“Phoenix or “Settlement Administrator”);
14 • **No Requests for Exclusion** were submitted to the Settlement Administrator;

15 2. Payment in the amount of **\$385,000.00** to Lawyers for Justice, PC (“Class
16 Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount, for attorneys’
17 fees, which is reasonable and justified on a percentage-basis and also based on a lodestar cross-
18 check;

19 3. Payment in the amount of **\$15,782.83** to Class Counsel for reimbursement of
20 litigation costs and expenses;

21 4. Payment in the amount of **\$11,600.00** to the Settlement Administrator, for
22 Settlement Administration Expenses;

23 5. Payment in the amount of **\$10,000.00** to Plaintiffs Candon Lovett, Kennith Booze,
24 Deartis Sudduth, and Johnathan Girvin, as a Service Award, for their time and effort in
25 representing the Class; and

26 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
27 California Labor Code section 2698, *et seq.*, in the amount of \$100,000.00, of which seventy-five
28 percent (75%), or **\$75,000.00**, will be paid to the California Labor and Workforce Development

Agency and twenty-five percent (25%), or **\$25,000.00**, will be distributed on a *pro rata* basis to Aggrieved Employees based on their Workweeks during the PAGA Period.

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

This motion is based upon the following Memorandum of Points and Authorities; the Declaration of Class Counsel (Edwin Aiwazian), Class Representatives (Candon Lovett, Kenneth Booze, Deartis Sudduth, and Jonathan Girvin), and Settlement Administrator (Yami Burns of Phoenix) in support thereof; the pleadings and other records on file with the Court in these matters; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: November 6, 2023

LAWYERS for JUSTICE, PC

By: *Giovani Pimentel*
Giovani Pimentel
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Candon Lovett, Kenneth Booze, Deartis Sudduth, and Jonathan Girvin (“Plaintiffs”) seek final approval of: (1) the Gross Settlement Amount of \$1,100,000.00; (2) attorneys’ fees in the amount of \$385,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$15,782.83 (“Class Counsel Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Expenses in the amount of \$11,600.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Service Awards in the amount of \$10,000 to Plaintiffs Candon Lovett, Kenneth Booze, Deartis Sudduth, and Jonathan Girvin; and (5) allocation of \$100,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiffs seeks relief on behalf of the following Class:

All of Defendant’s current and former non-exempt employees in the State of California and all salaried sales employees who worked for Defendant in the State of California as DSD Route Sales Representatives, or other similar positions, classified under the outside salesperson exemption, during the Class Period (“Class” or “Class Members”).¹

The matters involved ongoing investigations, informal discovery, review and analysis of a volume of documents and data in the course of mediation and settlement negotiations. The cases have required **601.30** hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents thirty-five percent (35%) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically

¹ First Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), § I.10. “Class Period” is defined as the period of time from August 4, 2017 through Preliminary Approval, subject to Section II. 15 of the Settlement Agreement. Section II. 15 of the Settlement Agreement includes an Escalator Clause that provides in pertinent part that, if the number of Workweeks for all Class Members during the Class Period exceeds 31,993 by more than 12.5% (i.e., if the number of Workweeks exceed 35,992), then at Defendant’s option, either (a) the Class Period and PAGA Period will end on the last day that the total Workweeks do not exceed 35,992 Workweeks or (b) the Gross Settlement Amount will increase on a proportional basis to the extent the threshold is exceeded. The Settlement Administrator confirmed that the Workweeks during the Class Period, using the date that the Court granted preliminary approval of the Settlement, exceeded the threshold set in the Escalator Clause and triggered the Escalator Clause. Thereafter, Defendant elected to end the Class Period and PAGA Period on March 31, 2023 (the last day that the total Workweeks do not exceed 35,992; the Settlement Administrator confirmed that with the Class Period and PAGA Period ending on March 31, 2023, the Workweeks count during the Class Period is now 35,970. See Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 9.

1 awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys' fees are also
2 supported under the lodestar cross-check method.

3 Plaintiffs move for final approval of the Service Awards in the amount of \$10,000.00 each,
4 to compensate Plaintiffs for the time and effort that they expended spearheading this lawsuit on
5 behalf of the Class. Plaintiffs also move for final approval of the payment to the Settlement
6 Administrator in the amount of \$11,600.00 for Settlement Administration Costs. Plaintiffs also
7 move for final approval of the allocation of \$100,000.00 for the PAGA Penalties, of which seventy-
8 five percent (75%), or \$75,000.00 ("LWDA Payment"), will be paid to the California Labor
9 Workforce and Development Agency ("LWDA") for its portion of the PAGA Penalties, and
10 twenty-five percent (25%), or \$25,000.00 ("Aggrieved Employee Amount"), will be distributed
11 on a *pro rata* basis to all of Defendant's current and former non-exempt employees in the State of
12 California and all salaried sales employees who worked for Defendant in the State of California as
13 DSD Route Sales Representatives, or other similar positions, classified under the outside
14 salesperson exemption, during the PAGA Period ("Aggrieved Employees").²

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

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

27
28 ² Settlement Agreement, § I.32. "PAGA Period" is defined as the period from August 4, 2020 through Preliminary
Approval, subject to Section II. 15 of the Settlement Agreement. Pursuant to Section II. 15 of the Settlement
Agreement, the Defendant has agreed to end the PAGA Period on March 31, 2023. *See supra* note 1.

1 In order to efficiently present the Court with adequate information to determine whether to
2 grant final approval of the Settlement and award Class Counsel Fees and Costs, Service Awards,
3 Settlement Administration Costs, and PAGA Penalties, Plaintiffs also move for an order permitting
4 the filing of this single consolidated memorandum, although it exceeds the page limit established
5 by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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

7 Defendant Wonder Ice Cream, Inc. erroneously named as Wonder Ice Cream Company,
8 LLC, WIC, LLC, and Wonder Ice Cream, LLC (“Defendant”) manufactures specialty ice cream
9 products under various trademarks, maintains a fleet of ice cream delivery vehicles, and delivers
10 ice cream products to customers. Defendant is headquartered in Santa Clara, California and
11 delivers products throughout Northern California. Plaintiffs Candon Lovett (“Plaintiff Lovett”),
12 Kenneth Booze (“Plaintiff Booze”), DeArtis Sudduth (“Plaintiff Sudduth”), and Jonathan Girvin
13 (“Plaintiff Girvin”) are all former employees of Defendant.

14 On August 4, 2021, Plaintiffs Lovett and Booze filed a Class Action Complaint for
15 Damages in the Alameda County Superior Court (“Court”), thereby commencing the above-
16 captioned lawsuit (“*Lovett Action*”).

17 On September 1, 2021, Plaintiffs Lovett, Booze, and Sudduth filed a First Amended Class
18 Action Complaint for Damages in the Action, which added Plaintiff Sudduth as a named plaintiff.

19 On November 18, 2021, Defendant filed an Answer to Plaintiffs Lovett and Booze’s Class
20 Action Complaint.

21 On April 28, 2022, Plaintiff Girvin filed a Class Action Complaint for Restitution initiating
22 the action entitled *Jonathan Girvin v. Wonder Ice Cream Company, LLC, et al.*, in the Superior
23 Court of California for the County of Santa Clara, Case No. 22CV397371 (“*Girvin Action*”).

24 Together, the *Lovett Action* and the *Girvin Action* are referred to as the “Actions.”

25 On September 21, 2022, Plaintiff Sudduth provided written notice to the LWDA by online
26 submission and to Defendant by certified mail, of the specific provisions of the California Labor
27 Code that Defendant allegedly violated (“Sudduth LWDA Letter”).
28

1 On October 5, 2022, Plaintiff Lovett provided written notice to the LWDA by online
2 submission and to Defendant by certified mail, of the specific provisions of the California Labor
3 Code that Defendant allegedly violated (“Lovett LWDA Letter”).

4 On October 5, 2022, Plaintiff Booze provided written notice to the LWDA by online
5 submission and to Defendant by certified mail, of the specific provisions of the California Labor
6 Code that Defendant allegedly violated (“Booze LWDA Letter”).

7 On October 5, 2022, Plaintiff Girvin provided written notice to the LWDA by online
8 submission and to Defendant by certified mail, of the specific provisions of the California Labor
9 Code that Defendant allegedly violated (“Girvin LWDA Letter”).

10 Collectively, the Sudduth LWDA Letter, Lovett LWDA Letter, Booze LWDA Letter, and
11 Girvin LWDA Letter are referred to as the “LWDA Letters.”

12 In order to implement the Settlement, the Parties agreed to file a Second Amended Class
13 Action Complaint for Damages & Enforcement Under the Private Attorneys General Act,
14 California Labor Code § 2698, Et Seq. (“Second Amended Complaint” or “Operative Complaint”)
15 in the *Lovett* Action, which, *inter alia*, adds Plaintiff Girvin as a named plaintiff and adds a cause
16 of action under PAGA. On February 22, 2023, the Parties filed a Joint Stipulation Granting
17 Plaintiffs Leave to File Second Amended Complaint; and [Proposed] Order Thereon in the *Lovett*
18 Action. On June 15, 2023, Plaintiffs filed the Second Amended Complaint.

19 Plaintiffs' core allegation is that Defendant has violated the California Labor Code by
20 engaging in a uniform practice and procedure, with respect to Plaintiffs and the Class Members,
21 of, *inter alia*, failing to pay minimum, overtime, and double time wages, failing to provide
22 compliant meal and rest periods and associated premium pay, failing to timely pay wages and
23 associated waiting time penalties, failing to maintain accurate payroll records, failing to provide
24 compliant wage statements, failure to provide a day of rest, and failing to reimburse necessary
25 business-related expenses, and thereby engaged in unfair business practices under the California
26 Business and Professions Code section 17200, et seq. and conduct that gives rise to penalties
27 pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*,
28

1 unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’
2 fees.

3 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
4 associated with any of the allegations in the Operative Complaint, and further denies that the cases
5 are appropriate for class treatment or representative adjudication for any purpose other than for
6 settlement purposes only.

7 The Parties have actively litigated the Actions since the Actions were commenced on
8 August 4, 2021 and April 28, 2022, respectively. On September 7, 2022, the Parties participated
9 in a formal, full-day mediation conducted by Francis J. Ortman III, Esq., a well-regarded mediator
10 experienced in mediating complex labor and employment matters. With the aid of the mediator’s
11 evaluation, the Parties ultimately reached the Settlement described herein to resolve the Actions
12 in their entirety.

13 On March 15, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action
14 Settlement and PAGA Settlement with supporting documents (“Motion for Preliminary
15 Approval”). On May 26, 2023, the Court entered an Order Granting Plaintiffs’ Motion for
16 Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby
17 preliminarily approving the terms of the Settlement, the Class Notice, and the proposed
18 administration procedures and associated deadlines.

19 On or about July 21, 2023, Defendant discovered that the settlement administrator mailed
20 Class Notices that incorrectly reported the number of workweeks that each class member
21 worked, as hourly or salaries employees or both. On August 18, 2023, the Parties submitted a
22 Joint Stipulation to Amend Putative Class Members Settlement Notices. On August 28, 2023,
23 the Court entered into an Order for the parties to amend the Putative Class Members Settlement
24 Notices. On September 18, 2023, the settlement administrator mailed Corrective Class Notice
25 Cover Letters and Amended Class Notice of Class Action Settlement (“Amended Class Notice”).

26 Plaintiffs now move for final approval of the Settlement, Class Counsel Fees and Costs,
27 Service Awards, Settlement Administration Costs, and allocation for PAGA Penalties.

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

Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross Settlement Amount of \$1,100,000.00 on a non-reversionary basis, and separately the amounts necessary to pay its Employer Taxes, within thirty (30) calendar days of the Effective Date.³ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Fees and Costs, consisting of attorneys' fees in the amount of \$385,000.00 and reimbursement of litigation costs and expenses in the amount of \$15,782.83, to Class Counsel; (2) Service Awards in the amount of \$10,000.00 each (a total of \$40,000.00) to Plaintiffs Candon Lovett, Kenneth Booze, Deartis Sudduth, and Jonathan Girvin ; (3) Settlement Administration Expenses in the amount of \$11,600.00 to Phoenix; and (4) PAGA Penalties in the amount of \$100,000.00.⁴ The Net Settlement Amount, which is estimated to be \$547,617.17, will be distributed in accordance with the Settlement Agreement, and there is no reversion to Defendant.⁵

The Settlement Administrator will calculate each Participating Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share")⁶, in accordance with the Settlement Agreement and as follows: After Preliminary Approval, the Settlement Administrator will (i) determine the Workweeks of each Class Member; (ii) multiply the Salaried Workweeks of each Class Member by two (2) to yield the Class Member's "Weighted Salaried Workweeks" and add the Class Member's number of Non-exempt Workweeks, resulting in the Class Member's "Total Weighted Workweeks;" (iii) divide the Net Settlement Amount by the Total Weighted Workweeks of all Class Members to yield the "Estimated Workweek Value;" and (iv) multiply each Class Member's individual Total Weighted Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive

³ *Id.*, § II.13

⁴ *Id.*, §§ I.7., I.42., I.44, and I.31.

⁵ This amount is higher than the amount stated in Paragraph 16 of the accompanying Declaration of Yami Burns Regarding Notice and Administration ("Phoenix Declaration" or "Phoenix Decl.") because the Settlement Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of \$17,000.00, which is allocated under the Settlement. However, Class Counsel seek the amount of only \$15,782.83 for reimbursement of litigation costs and expenses, and the difference of \$1,217.17 will remain part of the Net Settlement Amount.

⁶ *Id.*, § I.22.

under the Class Settlement.⁷ After Final Approval, the Settlement Administrator will divide the final Net Settlement Amount by the Total Weighted Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiply each Settlement Class Member’s individual Total Weighted Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁸

The Settlement Administrator will calculate each PAGA Group Member’s *pro rata* share of the Aggrieved Employee Amount (“Individual PAGA Payment”)⁹ as follows: The Settlement Administrator will (i) determine the Workweeks of each Aggrieved Employee during the PAGA Period; (ii) multiply the Salaried Workweeks of each Aggrieved Employee during the PAGA Period by two (2) to yield the Aggrieved Employee’s “Weighted Salaried PAGA Workweeks” and add the Aggrieved Employee’s number of Non-exempt Workweeks during the PAGA Period, resulting in the Aggrieved Employee’s “Total Weighted PAGA Workweeks;” (iii) divide the Aggrieved Employee Amount by the Total Weighted PAGA Workweeks of all Aggrieved Employees to yield the “Estimated PAGA Workweek Value;” and (iv) multiply each Aggrieved Employee’s individual Total Weighted PAGA Workweeks by the Estimated PAGA Workweek Value to yield his or her estimated Individual PAGA Payment that he or she is eligible to receive under the PAGA Settlement.¹⁰

Class Members had forty-five (45) calendar days after the Settlement Administrator mailed the Class Notice (“Response Deadline”) to Class Members to submit an Opt-Out Request, submit an Objection, and/or submit a Workweek Dispute.¹¹ On August 28, 2023, the Court entered into an Order for the parties to amend the Putative Class Members Settlement Notices. On September

⁷ Settlement Agreement, § II.12(a)(i). “Workweeks” is defined as Non-exempt Workweeks and Salaried Workweeks, which will be calculated by the Settlement Administrator, based on Class Members’ and Aggrieved Employees’ dates worked during the Class Period as non-exempt employee or salaried employee of Defendant as a DSD Route Sales Representative, or other similar position, classified under the outside salesperson exemption in the State of California, as any week worked by a Class Member or Aggrieved Employee for Defendant during the period of seven (7) calendar days, commencing with Sunday at 12:00 a.m. *See id.*, § I.48. “Class Settlement” is defined as the settlement and resolution of all Released Class Claims. *See id.*, § I.11.

⁸ *Id.*, § II.12(a)(ii).

⁹ *Id.*, § I.20.

¹⁰ *Id.*, § II.12(b). “PAGA Settlement” is defined as the settlement and resolution of all Released PAGA Claims. *Id.*, § I.35.

¹¹ *Id.*, § I.40.

1 18, 2023, the settlement administrator mailed Corrective Class Notice Cover Letters and Amended
2 Class Notice.¹² The Response Deadline was extended to October 18, 2023, 30 calendar days after
3 the remailing of the Amended Class Notice.¹³ The Settlement Administrator has not received any
4 written requests by a Class Member to exclude himself or herself from the Class Settlement (“Opt-
5 Out Request”), written disputes (“Workweeks Dispute”) to Workweeks, or objections to the Class
6 Settlement from Class Members.¹⁴

7 Each Individual Settlement Share will be allocated as follows: one-third (1/3) wages, which
8 will be reported to an IRS Form W-2 by the Settlement Administrator, and two-thirds (2/3) interest,
9 penalties, and non-wage damages, which will be reported on IRS Form 1099 by the Settlement
10 Administrator.¹⁵ The Settlement Administrator will withhold (and remit to the appropriate taxing
11 authorities) the employee’s share of taxes and withholdings with respect to the wages portion of
12 the Individual Settlement Shares, and issue checks to Settlement Class Members for their
13 Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these
14 taxes and withholdings).¹⁶ Each Individual PAGA Payment will be allocated as one hundred
15 percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the
16 Settlement Administrator.¹⁷ Defendant will be responsible for the employer’s share of the taxes on
17 the wages portion of the Individual Settlement Shares, which will be pay by Defendant separately
18 and in addition to the Gross Settlement Amount.¹⁸ The Settlement Administrator shall provide, as
19 appropriate, an IRS Form W-2 and IRS Form 1099, and any other tax documentation required by
20 law, to each Settlement Class Member and Aggrieved Employee.¹⁹

21 The Settlement Administrator shall distribute the following payments: Within seven (7)
22 calendar days of the funding of the Gross Settlement Amount and Employer Taxes: Individual
23 Settlement Shares to Settlement Class Members, Individual PAGA Payments to Aggrieved
24

25 ¹² Phoenix Decl., ¶ 8.

26 ¹³ *Id.*, ¶ 9.

27 ¹⁴ *Id.*, ¶¶ 12, 13, and 14.

28 ¹⁵ *Id.*, § II.12(c).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Employees, LWDA Payment to the LWDA, Service Awards to the Named Plaintiffs, Settlement Administration Costs to itself, and the Class Counsel Fees and Costs to Class Counsel.²⁰

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.²¹ All funds associated with such canceled checks will be transmitted to the *cy pres*, California Rural Legal Assistance, Inc., pursuant to California Code of Civil Procedure section 384.²²

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's May 26, 2023 Preliminary Approval Order.

On May 24, 2023, Phoenix received the Court-approved text for the Class Notice.²³

On June 16, 2023, Phoenix received a mailing list from Defendant's counsel that contained each Class Member's full name, last known mailing address, Social Security Number, dates of employment, and workweeks for each Class Member ("Class List") during the Class Period.²⁴ The Class Data contained information for four hundred seventy-seven (477) individuals identified as Class Members.²⁵ Phoenix processed the names and addresses through the National Change of Address Database ("NCOA") and updated the Class Data with any updated addresses located.²⁶

On July 7, 2023, Phoenix mailed the Class Notice via U.S. first class mail, in English and Spanish, to all four hundred seventy-seven (477) Class Members on the Class List.²⁷

On September 18, 2023, Phoenix re-mailed the Amended Class Notice, along with a Corrective Class Notice Cover Letter, via U.S. first class mail, in English and Spanish, to all four hundred seventy-seven (477) Class Members on the Class List.²⁸

²⁰ *Id.*, § II.13.

²¹ Settlement Agreement, § II.12(f).

²² *Ibid.*

²³ Phoenix Decl., ¶ 4.

²⁴ *Id.*, ¶ 5.

²⁵ *Ibid.*

²⁶ *Id.*, ¶ 6.

²⁷ *Id.*, ¶ 7.

²⁸ *Id.*, ¶ 7

As of the date of this Motion, no Class Notices were returned with a forwarding address.²⁹ Phoenix performed a skip-trace search on the seventy-three (73) Class Notices that were returned to Phoenix without forwarding addresses, located an updated address for forty-nine (49) Class Members, and promptly re-mailed the Class Notice to the updated addresses.³⁰ As of the date of this declaration, twenty-four (24) Notices remain undeliverable since an updated address could not be obtained via skip trace.³¹

As of the date of this Motion, the Settlement Administrator has not received any Opt-Out Requests, Objections to the Class Settlement, or Workweek Disputes.³²

To date, there are four hundred seventy-seven (477) Class Members who did not submit a timely and valid Opt-Out Request, and are therefore, deemed to be Settlement Class Members, representing 100% of the class.³³ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$547,617.17 will be distributed to Settlement Class Members in accordance with the terms of the Settlement.³⁴ The highest Individual Settlement Payment is currently estimated to be at least \$7,705.37 and the average Individual Settlement Payment is currently estimated to be at least \$1,155.18.³⁵ The highest Individual PAGA Payment is currently estimated to be \$211.16, and the average Individual PAGA Payment is currently estimated to be \$103.31.³⁶

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

²⁹ Phoenix Decl., ¶ 10.

³⁰ Ibid.

³¹ *Id.*, ¶ 11.

³² *Id.*, ¶¶ 12, 13 and 14.

³³ *Id.*, ¶ 15.

³⁴ *Id.*, ¶ 17. See n.5, *supra*.

³⁵ *Id.*, ¶ 18. The actual average and highest Individual Settlement Payments 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 \$17,000.00 (the difference between the amount sought and the amount authorized under the Settlement, \$15,782.83, will be part of the Net Settlement Amount). See n.7, *supra*.

³⁶ *Id.*, ¶ 18.

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

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

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

15 The proponent of the settlement has the burden to show that it is fair and reasonable.
16 *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness
17 exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2)
18 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
19 counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk,*
20 *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any
21 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute.
22 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The
23 inquiry is not whether the settlement agreement is the best one that class members could have
24 possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable."
25 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent
26 of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*,
27 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower
28 than it would be if the case were to be successfully litigated, that is no bar to a class settlement
because the public interest may indeed be served by a voluntary settlement in which each side
gives ground in the interest of avoiding prolonged litigation. *Ibid.*

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

3 The parties actively litigated the cases since they were commenced on August 4, 2021 and
4 April 28, 2022. Class Counsel investigated the veracity, strength, and scope of the claims, and
5 was preparing these matters for class certification and trial prior to reaching the Settlement.³⁷ The
6 parties conducted significant investigation and informal discovery regarding the facts of the cases,
7 exchanging a volume of documents, information, and data in the course of litigation and in
8 connection with mediation and settlement negotiations.³⁸ Class Counsel also reviewed and
9 analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and
10 other sources.³⁹ The information, documents, and data reviewed and analyzed by Class Counsel
11 included, and were not limited to Plaintiffs’ employment records, a sampling of Class Members’
12 time and pay data, job descriptions, and employment and operations policies, practices, and
13 procedures documents, among other information and documents.⁴⁰ Class Counsel interviewed
14 Plaintiffs and conducted investigations to gather facts and circumstances surrounding Plaintiffs
15 and putative class members’ employment and to identify potential witnesses.⁴¹ Class Counsel
16 developed liability, damages, and penalties valuation models in connection with mediation and
17 settlement negotiations, and met and conferred with Defendant’s counsel on numerous occasions,
18 e.g., to discuss issues relating to the pleadings, case management, the production of information,
19 documents, and data in the course of litigation and in connection with mediation and settlement
20 negotiations, as well as mediation and settlement negotiation.⁴² Other work performed by Class
21 Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and
22 revising pleadings, the mediation brief; and settlement documents; and preparing for and/or
23 attending court proceedings and mediation and settlement negotiations, among other tasks.⁴³

24
25

³⁷ Declaration of Edwin Aiwazian (“Aiwazian Decl.”), ¶ 6.

26 ³⁸ Ibid..

27 ³⁹ Ibid.

28 ⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid..

⁴³ Ibid.

After conducting significant informal discovery and investigation into the facts of the cases, a formal, full-day mediation was conducted by Francis J. Ortman III, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.⁴⁴ In the course of mediation and settlement negotiations, 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; the risks to the parties of proceeding with class certification and trial; the law relating to class certification, off-the-clock theory, meal and rest periods, waivers, representative PAGA claims and penalties, and wage-and-hour law and enforcement; misclassification theory, exemptions, the evidence produced and analyzed; and the possibility of appeals, among other things.⁴⁵ During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.⁴⁶ Arriving at a settlement that was acceptable to the parties was not easy.⁴⁷ Defendant and its counsel felt very strongly about Defendant's ability to prevail on the merits and to avoid class certification and representative adjudication.⁴⁸ Meanwhile, Plaintiffs and Class Counsel disagreed with these contentions and believed that they would be able to obtain class certification and prevail at trial.⁴⁹ After conducting significant informal discovery and investigations, extensive settlement negotiations, and with the aid of the mediator's evaluation, the parties agreed that the matters were 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.⁵⁰

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 had the opportunity to interview, and obtain information from Plaintiffs and other Class Members.⁵¹ Class Counsel also reviewed and analyzed a volume of information, documents, and data produced by Plaintiffs, Defendant, and other sources, and performed research into the law

⁴⁴ *Id.*, ¶ 8.

⁴⁵ Aiwazian Decl. ¶ 8.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Aiwazian Decl., ¶ 6.

concerning certification, manageability, off-the-clock work, misclassification, exemptions, meal and rest periods, waivers, rounding, representative PAGA claims and penalties, wage-and-hour law and enforcement, Plaintiffs' claims and allegations, and Defendant's defenses thereto, as well as facts discovered.⁵² The Settlement was based on this volume of facts, evidence, and investigation.⁵³ Additionally, Class Counsel has extensive experience in handling complex wage-and-hour cases, including significant experience in employment class action litigation.⁵⁴

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

The Settlement, which provides for a Gross Settlement Amount of \$1,100,000.00, 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.⁵⁵ The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations.⁵⁶ Had the actions not settled, Defendant would have vigorously challenged class certification, 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 a class 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 the matters had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might

⁵² Aiwazian Decl., ¶ 7.

⁵³ Ibid.

⁵⁴ *Id.*, ¶¶ 13.

⁵⁵ *Id.*, ¶¶ 8.

⁵⁶ Ibid.

1 have been less money available for Class Members after all was said and done. This is not just an
2 abstract contention. The risks and expenses of further litigation outweighed any benefit that might
3 have been gained otherwise. These risks of further litigation include a determination that the
4 claims were unsuitable for class treatment and/or representative adjudication, class de-certification
5 after certification of a class, allowing a jury to decide the claims asserted in the cases, and the real
6 possibility of no recovery after years of litigation. Additionally, the parties were moving into the
7 phase of the litigation where they would have to conduct a significant amount of discovery,
8 including and not limited to, depositions of Defendant's Person Most Knowledgeable designees,
9 expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and
10 former employees throughout the State of California. Discovery disputes would have certainly
11 arisen, which would have cost the parties additional time and money. In contrast, the Settlement
12 provides real and significant benefits for the Class here and now, while avoiding the further
13 expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

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

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

21 The Settlement, which provides for a Gross Settlement Amount of \$1,100,000.00,
22 represents a fair, reasonable, and adequate resolution of the cases. The Settlement was calculated
23 using information and data uncovered through extensive case investigation, informal discovery,
24 and the exchange of information in the context of preparing for mediation and conducting ongoing
25 settlement negotiations. The Settlement takes into account the potential risks and rewards inherent
26 in any case and, in particular, in these cases. Moreover, considering all of the facts in these cases,
27 the Gross Settlement Amount represents a considerable recovery.

28 Even after deducting attorneys' fees in the amount of \$385,000.00, litigation costs and

1 expenses in the amount of \$15,782.83, Service Awards in the amount of \$10,000.00 each to
2 Plaintiffs Lovett, Booze, Sudduth, and Girvin (for a combined total of \$40,000), Settlement
3 Administration Costs in the amount of \$11,600.00, and PAGA Penalties in the amount of
4 \$100,000.00 from the Gross Settlement Amount of \$1,100,000.00, the Net Settlement Amount is
5 currently estimated to be \$547,617.17.⁵⁷ Under the Settlement Agreement, the Gross Settlement
6 Amount will be fully paid out without any reversion to Defendant, in accordance with the terms
7 of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid
8 a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to
9 him or her. To date, there are four hundred seventy-seven (477) Settlement Class Members,
10 representing 100% of the Class Members.⁵⁸ The highest Individual Settlement Payment to a
11 Settlement Class Member is currently estimated to be \$7,705.37 and the average Individual
12 Settlement Payment is currently estimated to be \$1,155.18.⁵⁹ The highest Individual PAGA
13 Payment to a PAGA Group Member is current estimated to be \$211.16 and the average Individual
14 PAGA Payment is currently estimated to be \$103.31.⁶⁰ These are significant individual recoveries,
15 particularly in light of the risks of litigation.

16 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
17 basis [to warrant approval], particularly if recommended by experienced and competent class
18 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
19 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute
20 the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
21 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class
22 Members.⁶¹ Although the recommendations of Class Counsel are not conclusive, the Court can
23 properly take the recommendations into account, particularly if Class Counsel appears to be
24 competent, has experience with this type of litigation, and significant discovery and investigation
25

26 ⁵⁷ Phoenix Decl., ¶ 17. See n.5, *supra*.

27 ⁵⁸ *Id.*, ¶ 15.

28 ⁵⁹ *Id.*, ¶ 18.

⁶⁰ *Id.*, ¶ 19.

⁶¹ Aiwasian Decl., ¶ 22.

1 have been completed, as is these cases here. Conte & Newberg, *Newberg on Class Actions* (4th
2 Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

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

4 Class Counsel has extensive experience in employment class action law and complex
5 wage-and-hour litigation.⁶² Lawyers for Justice, PC has been appointed class counsel in numerous
6 complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁶³
7 Both parties' counsel were capable of assessing the strengths and weaknesses of the Class
8 Members' claims against Defendant and the benefits of the Settlement under the circumstances of
9 the cases and in the context of a private, consensual settlement agreement.

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

11 The Settlement has been well received by the Class – *not a single Class Member objected*
12 *to or opted out of the Settlement.*⁶⁴ Specifically, no objections have been made as to the Gross
13 Settlement Amount or requested Class Counsel Fees and Costs, Service Awards, Settlement
14 Administration Costs, or the allocation for PAGA Penalties. California courts have consistently
15 found that a small number of objectors indicates the class' support for a settlement and strongly
16 favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite
17 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite
18 9 objectors).

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

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

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

26
27 ⁶² *Id.*, ¶¶ 16, 17 and 18.

28 ⁶³ *Ibid.*

⁶⁴ Phoenix Decl., ¶¶ 12 and 13.

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

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

22 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
23 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
24 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
25 at 1270). It is not an abuse of discretion to choose one method over another as long as the method
26 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
27 marketplace. In cases where class members present claims against a settlement amount and the
28

1 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
2 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

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

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

14 California and federal courts have long recognized that an appropriate method for
15 determining the award of attorneys' fees is based on a percentage of the total value of benefits
16 made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*
17 *Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886
18 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
19 *Priest* (1977) 20 Cal.3d 25, 34.⁶⁵ The purpose of this equitable doctrine is to spread litigation costs
20 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
21 burden alone. *See Vincent, supra*, 557 F.2d at 769.

22 When a litigant's efforts result in a settlement from which others may derive benefits, the
23 litigant may require the passive beneficiaries to compensate those whose efforts brought about the
24 settlement. *See*, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting
25 attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties
26 enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine.

27
28 ⁶⁵ 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 See *Serrano*, *supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317;
2 *Vincent*, *supra*, 557 F.2d at 769.

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

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

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

25 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
26 Amount of \$1,100,000.00 on a non-reversionary basis. The requested attorneys' fees are thirty-
27 five percent (35%) of the total value of the monetary settlement. In light of Class Counsel's
28

1 successful prosecution and resolution of these cases, the requested attorneys' fees are appropriate
2 and reasonable.

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

10 The percentage method is consistent with, and is intended to mirror, the practice in the
11 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
12 arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful
13 evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to
14 the class is to review the consideration agreed to be paid by the named plaintiffs. If the named
15 plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for
16 the members of the class, who will enjoy the benefits of the settlement without incurring the risks
17 of bringing the claim, to pay less than the named plaintiffs. In these cases, Plaintiffs have each
18 agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁶⁶

19 Furthermore, a percentage-fee award is not dependent on a determination of the actual
20 amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In
21 *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is
22 equitable that [the attorney's] compensation and expenses should come from the entire fund saved
23 for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944)
24 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be
25 calculated on the basis of the total fund made available rather than the actual payments made to
26 the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant
27

28 ⁶⁶ Aiwazian Decl., ¶ 10.

1 or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client
2 is entitled to a reasonable attorneys’ fee from the fund as a whole”).

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

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

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

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

23 Each and every one of these factors favors the attorneys’ fees sought here; however, some
24 of the most relevant factors to this Court’s fee determination will be addressed herein. The award
25 of attorneys’ fees in the amount of \$385,000.00 (which is 35% of the Gross Settlement Amount)
26 is commensurate with the time, effort, and expense dedicated to these cases, the contingent nature
27 of Class Counsel’s fee and the risks taken in commencing these cases, the skill and determination
28

required, the results that Class Counsel has achieved, and the value of the settlement that Class Counsel has obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring these matters to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declaration, Class Counsel has extensive experience in the handling of class actions and complex litigation matters.⁶⁷

As outlined in the Declaration of Edwin Aiwasian, Class Counsel has fully and actively participated in litigation of these cases.⁶⁸ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendant's business, and its operations and employment policies, practices, and procedures.⁶⁹ During the litigation of the actions, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; reviewed and analyzed a volume of pages of documents and data obtained from Defendant, Plaintiffs, and other sources; and prepared damages, penalties, and valuation calculations.⁷⁰ Class Counsel also met and conferred with Defendant's counsel over the issues relating to pleadings, case management, and production of information, documents, and data in the course of litigation as well as mediation and settlement negotiations, and prepared for and participated in the mediation and settlement negotiations, among other tasks.⁷¹

Class Counsel has dedicated staffing and monetary resources necessary to prosecute these matters diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as "**EXHIBIT A**" to the accompanying Declaration of Edwin Aiwasian, sets forth in detail the hours that Class Counsel has spent performing tasks on behalf of Plaintiffs, the Class, and the State of California.⁷² The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can

⁶⁷ Aiwasian Decl., ¶¶ 16, 17, and 18.

⁶⁸ *Id.*, Exh. A.

⁶⁹ *Id.*, ¶ 7 & Exh. A.

⁷⁰ *Ibid.*

⁷¹ *Id.*, 6.

⁷² Aiwasian Decl., Exh. A.

peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Attorneys at Lawyers for Justice, PC have spent **601.30** hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs and the Class.⁷³ These hours were required to bring these matters to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating these cases, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate these 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 these cases, during the litigation, and prior to and during mediation and ongoing settlement negotiations. Class Counsel took steps to prepare these matters for class certification and representative adjudication and had every intention of taking these cases to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Edwin Aiwasian, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation cases in order to obtain the Settlement with maximum efficiency.⁷⁴

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

The Settlement represents an excellent resolution of the actions, given the risks inherent in litigating these cases through certification proceedings, trial, and/or appeals. Had these cases not settled, Defendant would have vigorously challenged certifiability, manageability of

⁷³ *Id.*, ¶ 12.

⁷⁴ Aiwasian Decl., ¶¶ 16, 17, and 18.

representative adjudication, and liability. Defendant, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing these cases for trial would have been expensive for the parties.

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

As a result of this litigation and extensive settlement negotiations, Defendant agreed to pay a Gross Settlement Amount of \$1,100,000.00 to settle these matters. After deducting the attorneys' fees (\$385,000.00), litigation costs and expenses (\$15,782.83), Service Awards (\$10,000.00 each; \$40,000.00 total), Settlement Administration Costs (\$11,600.00), and PAGA Penalties (\$100,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$547,617.17.⁷⁵ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$7,705.37 and the average Individual Settlement Payment is currently estimated to be \$1,155.18.⁷⁶ The highest Individual PAGA Payment is currently estimated to be \$211.16, and the average Individual PAGA Payment is currently estimated to be \$103.31.⁷⁷ The Settlement offers significant monetary relief to the Settlement Class Members.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs 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

⁷⁵ Phoenix Decl., ¶ 17. See n.5, supra.

⁷⁶ *Id.*, ¶ 18.

⁷⁷ *Id.*, ¶ 19.

took on these cases without knowing whether any recovery would be obtained. Class Counsel has invested **601.30** hours of time to obtain relief on behalf of Plaintiffs, the Class, and the State of California.⁷⁸ Class Counsel has also incurred litigation costs and expenses in the amount of \$15,782.83.⁷⁹

Lawyers for Justice, PC has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁸⁰ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁸¹ The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Fees and Costs. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated these cases on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel has devoted to litigating these cases would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in these matters, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to or opted out of the Settlement.⁸²

⁷⁸ Aiwasian Decl., ¶ 12.

⁷⁹ See Part ¶ 5.

⁸⁰ Aiwasian Decl., ¶ 20.

⁸¹ See *id.*, ¶¶ 16, 17, and 18.

⁸² Phoenix Decl., ¶¶ 12 and 13.

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

Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating these matters. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$1,100,000.00.⁸³ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$7,705.37 and the average Individual Settlement Payment is currently estimated to be \$1,155.18.⁸⁴ The highest Individual PAGA Payment is currently estimated to be \$211.16, and the average Individual PAGA Payment is currently estimated to be \$103.31.⁸⁵

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

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’ knowledge, skills, and experience in bringing these cases to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁸⁶

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

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining

⁸³ Aiwasian Decl., ¶ 10.

⁸⁴ Phoenix Decl., ¶ 18.

⁸⁵ *Id.*, ¶ 19.

⁸⁶ Aiwasian Decl., ¶¶ 16, 17, and 18.

that “[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court’s reasonableness determination”); see also, e.g., *Vizcaino*, 290 F.3d at 1050 (“[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.”). Importantly, “the lodestar calculation . . . does not override the trial court’s primary determination of the fee as a percentage” of the settlement amount and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte, supra*, 1 Cal.5th at 505.

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

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

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

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

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

As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Edwin Aiwasian is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁸⁷ The chart demonstrates that Class Counsel has spent a total of **601.30** hours litigating these cases and finalizing the Settlement.⁸⁸ In light of the facts and circumstances of these cases, as well as the results that Class Counsel has achieved on behalf of Plaintiffs and the Class Members, Class Counsel has spent a reasonable number of hours on these matters. In addition, Class Counsel will continue to perform work on these matters through the date of final approval and in connection with the implementation of the Settlement.

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

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id.*

Class Counsel has been actively involved in these cases, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful

⁸⁷ See Aiwasian Decl., Exh. A.

⁸⁸ *Id.*, ¶ 12.

in reaching a settlement of \$1,100,000.00.

As set forth in the Declaration of Edwin Aiwarzian, the professional backgrounds and experience of Class Counsel support a reasonable hourly rate of compensation of at least \$700 per hour for services provided by Class Counsel.⁸⁹ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$700 per hour for legal service performed, by courts of this state.⁹⁰ While the circumstances of every case is unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the blended hourly rate of \$700 per hour to **601.30** hours would place a reasonable value of \$420,910.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$385,000.00, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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 \$17,000.00. As set forth in the Declaration of Edwin Aiwarzian, Class Counsel has incurred a total

⁸⁹ Aiwarzian Decl., ¶ 13.

⁹⁰ For example, final approval of the class and representative action settlement in *David Dugan v. TEC Equipment, Inc., et al.* (Los Angeles Superior Court Case No. 19STCV01591) was granted on July 8, 2021, and the award of attorneys' fees involved compensation at the rate of \$936.47 per hour; final approval of the class and representative action settlement in *Larry Greenwood, et al. v. Scan Health Plan* (Los Angeles Superior Court Case No. BC715157) was granted on April 20, 2021, and the award of attorneys' fees involved compensation at the rate of \$919.57 per hour; final approval of the class action settlement in *Thereasa Carrozzella v. Basalite Concrete Products, LLC* (Sacramento County Superior Court Case No. 34-2017-00220214-CU-OE-GDS) was granted on February 21, 2020, and the award of attorneys' fees involved an hourly rate of \$766.05; final approval of the class and representative action settlement in *Alice Rutledge, et al. v. Healthport Technologies, LLC* (Alameda County Superior Court Case No. RG16835813) was granted on June 11, 2019, and the award of attorneys' fees involved compensation at the rate of \$764.82 per hour; final approval of the class and representative action settlement in *Seth Swan v. Pace Supply Corp.* (Sonoma County Superior Court Case No. SCV258764) was granted on February 6, 2019, and the award of attorneys' fees involved compensation at the rate of \$855.96 per hour; 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 compensation at the rate of \$831.38 per hour; 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 compensation at the rate of \$780.77 per hour; and 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 compensation at the rate of \$845.64. *Id.*, ¶ 13.

of \$15,782.83 in litigation costs and expenses.⁹¹ This amount was reasonable and necessary in the prosecution of these cases and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.⁹² The cost savings of \$1,217.17 will be part of the Net Settlement Amount, which will be distributed to the Settlement Class Members in accordance with the Settlement.⁹³ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$15,782.83 to Class Counsel.

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

As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be incurred by Phoenix for the notice and settlement administration process are \$11,600.00.⁹⁴ The costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, translating, and mailing the Class Notice to the Class Members in both English and Spanish; mailing of the Amended Class Notice; performing skip-trace searches on Class Notices returned as undeliverable; re-mailing the Class Notices to any updated addresses located by skip-trace search; receiving, reviewing, and processing Opt-Out Requests, objections, and Workweeks Disputes (if any); handling inquiries from Class Members regarding the Settlement; calculating Individual Settlement Shares and preparing the associated tax forms; calculating Individual PAGA Payments; and transmitting payments, among other things.⁹⁵

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 \$11,600.00.

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

The Settlement provides for a Service Payment in the amount of \$10,00.00 each to Plaintiffs Candon Lovett, Kenneth Booze, Deartis Sudduth, and Jonathan Girvin to compensate

⁹¹ Aiwasian Decl., ¶ 20.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Phoenix Decl., ¶ 21.

⁹⁵ *Id.*, ¶ 3.

1 Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Service
2 Payment is both common and reasonable and should be awarded.

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

10 The requested Service Awards are fair and appropriate because Plaintiffs spent a
11 substantial amount of time and effort producing relevant documents and past employment records,
12 as well as providing the facts and evidence necessary to attempt to prove the allegations.⁹⁶
13 Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and
14 gave, information that would benefit the Class.⁹⁷ Plaintiffs spent numerous hours speaking with
15 Class Counsel about their claims, describing their work experiences with Defendant, and gathering
16 and reviewing documents.⁹⁸ These services merit the requested Service Awards to Plaintiffs, who
17 have not received any compensation for their efforts on behalf of the Class Members to date.⁹⁹

18 The requested Service Awards were fully disclosed in the Class Notice that was mailed to
19 the Class Members. No objections were made with regards to the requested Service Awards.
20 Accordingly, it is appropriate and just for Plaintiffs Candon Lovett, Kennith Booze, Deartis
21 Sudduth, and Jonathan Girvin to receive \$10,000.00 as reasonable Service Awards for their
22 services on behalf of the Class, Aggrieved Employees, and the State of California., in addition to
23 their individual settlement payments.

24 **X. CONCLUSION**

25
26 ⁹⁶ Aiwazian Decl., ¶ 21; Declaration of Candon Lovett (“Lovett Decl.”), ¶¶ 2-5; Declaration of Kennith Booze (“Booze
27 Decl.”), ¶¶ 2-5; Declaration of DeArtis Sudduth (“Sudduth Decl.”), ¶¶ 2-5; Declaration of Jonathan Girvin (“Girvin
28 Decl.”), ¶¶ 2-5.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Lovett Decl., ¶ 8; Booze Decl., ¶ 8; Sudduth Decl., ¶ 8; Girvin Decl., ¶ 8.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Fees and Costs, Service Awards, Settlement Administration Costs, and allocation for the PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: November 6, 2023

LAWYERS for JUSTICE, PC

Giovani Pimentel

By: _____

Giovani Pimentel
Attorneys for Plaintiffs and the Class