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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JESSE JOERGER, 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.

IES RESIDENTIAL, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CVRI2205490

Honorable Harold W. Hopp
Department 1

CLASS ACTION

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

[Declaration of Class Counsel
(Joanna Ghosh); Declaration of Class
Representative (Jesse Joerger); Declaration
of Settlement Administrator (Taylor
Mitzner); and [Proposed] Final Approval
Order and Judgment filed concurrently
herewith]

Date: April 3, 2024
Time: 8:30 a.m.
Department: 1

Complaint Filed: December 16, 2022
FAC Filed: October 9, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 3, 2024, in Department 1 of the above-entitled
2 Court, located at 4050 Main Street, Riverside, California 92501, Plaintiff Jesse Joerger
3 (“Plaintiff”) will and hereby does move for an order granting final approval of:

4 1. The Joint Stipulation of Class Action and PAGA Settlement and Release
5 (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the Settlement is
6 fair, adequate, and reasonable, including because:

- 7 • A Net Settlement Amount of approximately **\$263,318.00** will be fully distributed to
8 the Class Members who did not submit timely and valid Requests for Exclusion from
9 the Class Settlement (“Settlement Class Members”), *i.e.* to 159 Settlement Class
10 Members;
- 11 • **No Objections** to the Class Settlement were submitted to the settlement
12 administrator, Phoenix Class Action Administration Solutions (“Settlement
13 Administrator” or “Phoenix”); and
- 14 • Only a small number of Class Members requested exclusion (*i.e.* opted out) of the
15 Class Settlement (**7 Class Members opted out, which represents only 4.22% of**
16 **the total Class Members**).

17 2. Payment of attorneys’ fees in the amount of **\$198,325.07** to Lawyers *for* Justice,
18 PC (“Class Counsel”), representing thirty-five percent (35%) of the Gross Settlement Amount,¹
19 which is reasonable and justified on a percentage-basis and also based on a lodestar cross-check;

20 3. Payment in the amount of **\$15,000.00** to Class Counsel for reimbursement of
21 litigation costs and expenses;

22 4. Payment in the amount of **\$6,000.00** to the Settlement Administrator, Phoenix
23 Class Action Administration Solutions, for Settlement Administration Costs;

24 5. Payment in the amount of **\$9,000.00** to Plaintiff Jesse Joerger, as Enhancement
25 Payment, for his time and effort in representing the Class and in exchange for providing a
26 general release; and

27
28 ¹ The escalator clause provision in the Settlement Agreement was slightly exceeded, which increased the Gross Settlement Amount from \$547,000.00 to \$566,643.07.

6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, in the amount of **\$75,000.00**, of which seventy-five percent (75%), or **\$56,250.00**, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or **\$18,750.00**, will be paid to the PAGA Aggrieved Employees.

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

This Motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Joanna Ghosh), Class Representative (Jesse Joerger), and Settlement Administrator (Taylor Mitzner of Phoenix) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: March 7, 2024

LAWYERS for JUSTICE, PC

By: _____



Joanna Ghosh
Vartan Madoyan
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Jesse Joerger (“Plaintiff”) seeks final approval of: (1) the Gross Settlement Amount of \$566,643.07;² (2) attorneys’ fees in the amount of \$198,325.07, which is thirty-five percent (35%) of the Gross Settlement Amount, and reimbursement of litigation costs and expenses in the amount of \$15,000.00 (together, “Attorneys’ Fees and Costs”) to Lawyers for Justice, PC (“Class Counsel”); (3) Settlement Administration Costs in the amount of \$6,000.00 to Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”); (4) Class Representative Enhancement Payment in the amount of \$9,000.00 to Plaintiff Jesse Joerger; and (5) allocation of \$75,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Amount”).

Plaintiff seeks relief on behalf of the following Class:

All current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California at any time during the period of October 6, 2018 to November 9, 2023 (“Class” or “Class Members”).³

This matter involved ongoing investigations, informal discovery, review and analysis of extensive information, documents, and data in the course of litigation and mediation, and extensive settlement negotiations and mediation conducted by retired Judge Honorable S. James Otero. This matter has required 377.40 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 awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.

Plaintiff moves for final approval of the Class Representative Enhancement Payment in the amount of \$9,000.00, to compensate Plaintiff for the time and effort that he expended spearheading this lawsuit on behalf of the Class. Plaintiff also moves for final approval of the

² The escalator clause provision in the Settlement Agreement was slightly exceeded, which increased the Gross Settlement Amount from \$547,000 to \$566,643.07. *See* Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”), ¶ 35; Declaration of Taylor Mitzner (“Mitzner Decl.”) ¶ 13.

³ Settlement Agreement” ¶ 6(f). The Preliminary Approval Order is dated November 9, 2023.

1 payment to the Settlement Administrator in the amount of \$6,000.00 for Settlement
2 Administration Costs. Plaintiff also moves for final approval of the allocation of \$75,000.00 for
3 the PAGA Amount, of which \$56,250.00 will be paid to the California Labor Workforce and
4 Development Agency (“LWDA”) for its portion of the PAGA Payment (“LWDA Payment”),
5 and \$18,750.00 will be distributed to all current and former hourly-paid or non-exempt
6 employees who were employed by Defendant IES Residential, Inc. (“Defendant”) within the
7 State of California at any time during the PAGA Period of October 11, 2021 to November 9,
8 2023 (“PAGA Aggrieved Employees”).⁴

9 The requests for Attorneys’ Fees and Costs, Class Representative Enhancement Payment,
10 Settlement Administration Costs, and allocation for the PAGA Amount were fully disclosed in
11 the Notice of Class Action Settlement (“Class Notice”) that was mailed to the Class Members.
12 Most importantly, to date, no Class Members submitted an objection to the Class Settlement or
13 contemplated request for Attorneys’ Fees and Costs, Settlement Administration Costs, or the
14 PAGA Amount. And as of the date of this Motion, only seven (7) Class Members
15 (approximately 4.22% of Class Members) have submitted a timely and valid Request for
16 Exclusion to Phoenix (those Class Members are Raul Farias Onofre, Alan Zamora, Rene D.
17 Martinez, Francisco Dimas Martinez Leon, Nestor Rodriguez, Luis Enrique Rodriguez Torres,
18 and Fidel Torres Tapia).

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

25 In order to efficiently present the Court with adequate information to determine whether
26 to grant final approval of the Settlement and award Attorneys’ Fees and Costs, Class
27 Representative Enhancement Payment, Settlement Administration Costs, and PAGA Amount,

28 ⁴ Settlement Agreement, ¶ 6 (z).

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

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On December 16, 2022, Plaintiff Jesse Joerger filed a Class Action Complaint for Damages in the Riverside County Superior Court (“Court”), thereby commencing the above-captioned lawsuit against Defendant (“Action”).

On June 27, 2023, Plaintiff provided written notice by certified mail to Defendant and by online submission to the LWDA of the specific provisions of the California Labor Code that were violated.

On October, 9, 2023 Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“Operative Complaint”). On October 25, 2023, Defendant filed an Answer to Plaintiff’s First Amended Class Action Complaint.

On September 7, 2023, Raul Farias Onofre and Alan Zamora filed a motion to consolidate their separate case (wherein they alleged class action claims after Plaintiff filed the above-captioned action), or in the alternative to intervene in this matter. Defendant filed its opposition to said motion on September 18, 2023, and Plaintiff Jesse Joerger filed its opposition to said motion on September 20, 2023. On October 26, 2023, the Court ruled that it was premature to decide whether to consolidate the cases until further in the settlement proceedings, and that Raul Farias Onofre and Alan Zamora could protect their interests through the objection and opt-out process. (*See Court’s Ruling on Submitted Matter*, filed on October 26, 2023). Plaintiff notes that Raul Farias Onofre and Alan Zamora have both opted out of the Class Settlement, as have five (5) additional individuals.⁵

Plaintiff’s core allegation is that Defendant violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and PAGA Aggrieved Employees, of, *inter alia*, failing to pay all wages due (including, *inter alia*,

⁵ Settlement Agreement ¶ 20; Mitzner Decl. ¶¶ 8-9.

1 minimum, regular, overtime, and reporting time wages, as a result of rounding, as a result of
2 auto-deduction of time for meal periods, as a result of not properly calculating the regular rate of
3 pay by failing to use non-discretionary, monetary and non-monetary
4 bonus/incentive/production/performance/shift differential pay in the calculation of the regular
5 rate of pay, and as a result of not properly compensating for non-productive time and rest and
6 recovery periods when compensating on a piece-rate basis), failing to provide compliant meal
7 and rest periods and associated premium pay, failing to timely pay wages during employment
8 and upon termination of employment, failing to provide compliant wage statements, failing to
9 maintain requisite payroll records, and failing to reimburse necessary business expenses, and
10 thereby engaged in unfair business practices in violation of California Business and Professions
11 Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff
12 contends that he, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties
13 (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

14 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind
15 associated with any of the allegations in the Action, and further denies that the Action is
16 appropriate for class treatment or representative adjudication for any purpose other than for
17 settlement purposes only. More specifically, Defendant asserts that the proposed class lacks a
18 well-defined community of interest, requiring individualized questions and proof. Defendant
19 further asserts that the company policies at issue in this case are, on their face, compliant with
20 California law. Defendant also asserts that to the extent Class Members and PAGA Aggrieved
21 Employees failed to take their meal periods or took a short or late meal periods, they did so
22 voluntarily and that all applicable meal periods were still provided to them. A detailed
23 *Dunk/Kullar* analysis, including the specifics of Plaintiff's allegations and Defendant's defenses
24 with respect to each claim, were filed with the Court on October 2, 2023 in connection with
25 Plaintiff's Motion for Preliminary Approval, as part of the Declaration of Vartan Madoyan.⁶

26 Plaintiff and Defendant (together, the "Parties") have actively litigated the Action since it
27 was commenced on December 16, 2022. On May 31, 2023 the Parties participated in a formal,

28
⁶ See October 2, 2023 Declaration of Vartan S. Madoyan ¶¶ 26 - 75.

1 full-day mediation conducted by retired judge Honorable S. James Otero, a well-regarded
2 mediator experienced in mediating complex labor and employment matters. With the aid of the
3 mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve
4 the Action in its entirety.

5 On October 3, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action
6 and PAGA Settlement ("Motion for Preliminary Approval") and supporting documents. On
7 November 9, 2023, the Court granted preliminary approval of the Settlement and set the Final
8 Approval Hearing for April 3, 2024.

9 Plaintiff now moves for final approval of the Settlement, Attorneys' Fees and Costs,
10 Class Representative Enhancement Payment, Settlement Administration Costs, and allocation for
11 PAGA Amount.

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

13 Under the terms of the Settlement Agreement, Defendant has agreed to pay a Gross
14 Settlement Amount of \$566,643.07 on a non-reversionary basis.⁷ Subject to approval by the
15 Court, the Net Settlement Amount will be calculated by deducting the following amounts from
16 the Gross Settlement Amount: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in the
17 amount of \$198,325.07, and reimbursement of litigation costs and expenses in the amount of
18 \$15,000.00, to Class Counsel; (2) Class Representative Enhancement Payment in the amount of
19 \$9,000.00 to Plaintiff Jesse Joerger; (3) Settlement Administration Costs in the amount of
20 \$6,000.00 to Phoenix; and (4) PAGA Amount in the amount of \$75,000.00.⁸ The Net Settlement
21 Amount, which is estimated to be \$263,318.00, will be distributed to Settlement Class Members
22 in accordance with the Settlement Agreement, and there is no reversion to Defendant. The
23 PAGA Amount in the amount of \$75,000.00 will be distributed 75% (\$56,250) to the State of
24 California and 25% (\$18,750) to the PAGA Aggrieved Employees.

25 The Settlement Administrator will calculate each Settlement Class Member's share of the
26 Net Settlement Amount ("Individual Settlement Share"), by dividing the final, Court-approved
27

28 ⁷ Settlement Agreement; ¶¶ 6(t), 35.

⁸ *Id.*, ¶¶ 10, 11, 12, 13, and 35.

Net Settlement Amount by the total number of Workweeks of all Settlement Class Members to yield the “Final Workweek Value,” and multiplying each Settlement Class Member’s individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.⁹

The Settlement Administrator will calculate each PAGA Aggrieved Employee’s share of the 25% portion of the PAGA Amount (“Individual PAGA Payment”), by dividing the 25% portion of the PAGA Amount (“PAGA Aggrieved Employee Amount”) by the total number of PAGA Workweeks of all PAGA Aggrieved Employees to yield the “PAGA Workweek Value”, and multiplying each PAGA Aggrieved Employee’s individual PAGA Workweeks by the PAGA Aggrieved Workweek Value to yield his or her Individual PAGA Payment.¹⁰

Class Members had sixty (60) calendar days after the initial mailing of the Notice Packet (i.e. the court-approved Class Notice, Objection Form, and Exclusion Form) by the Settlement Administrator to Class Members, to dispute the number of Compensable Workweeks credited to each of them, opt out of the Class Settlement, and/or object to the Class Settlement (“Response Deadline”).¹¹ The Response Deadline was February 12, 2024, which was then extended by fifteen (15) calendar days, to February 27, 2024, for Class Members who were re-mailed Notice Packets.¹² The Settlement Administrator received seven (7) written requests for exclusion from the Class Settlement and/or Exclusion Forms (together, “Requests for Exclusion”) from Class Members, did not receive any Objection Forms or written objections to the Class Settlement (together, “Objections”) from Class Members, and did not receive any Workweek disputes from Class Members.¹³

Individual Settlement Shares will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2 and eighty percent (80%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable).¹⁴ Individual Settlement Shares will be paid out to Settlement Class Members subject to reduction for the employee’s

⁹ *Id.*, ¶ 6 (r), 14(b).

¹⁰ *Id.*, ¶ 15.

¹¹ *Id.*, ¶ 6(ii).

¹² Mitzner Decl., ¶¶ 7, 10.

¹³ *Id.*, ¶¶ 8, 9, and 11.

¹⁴ Settlement Agreement, ¶ 24.

share of taxes, withholdings, and contribution with respect to the wages portion of the Individual Settlement Shares (the net payment is referred to as “Individual Settlement Payment”).¹⁵ Defendant’s employer share of payroll taxes will be paid by Defendant separately and in addition to the Gross Settlement Amount.¹⁶ Individual PAGA Payments will be allocated as one hundred percent (100%) penalties to be reported on IRS Form 1099.

Any and all Individual Settlement Payment checks issued to Settlement Class Members and Individual PAGA Payment checks issued to PAGA Aggrieved Employees will remain valid for 180 calendar days from the date of mailing.¹⁷ Thereafter, Individual Settlement Payment and Individual PAGA Payment checks that are not cashed, deposited, or otherwise negotiated within the 180-day period will be canceled, and the funds remaining in the qualified settlement account established by the Settlement Administrator, in connection with canceled checks, will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, for the benefit of those Settlement Class Members and PAGA Aggrieved Employees who did not cash, deposit, or otherwise negotiate their checks until such time that they claim their property.¹⁸ The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash, deposit, or otherwise negotiate their settlement payment checks.¹⁹

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Settlement Administrator, Phoenix, has taken all necessary steps to effectuate the notice and settlement administration process.

On November 30, 2023, Phoenix received the Court-approved text for the Notice Packet,²⁰ and the data file from Defendant which contained each Class Member’s last-known full name, mailing address, telephone number, Social Security Number, start date of employment and

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*, ¶ 19.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Mitzner Decl., ¶ 3.

1 end date of employment (or, if applicable, date of conversion to exempt status) as a non-exempt
2 or hourly-paid employee of Defendant in California during the Class Period and PAGA Period
3 (“Class List”).²¹ The final mailing list contained one hundred sixty-six (166) individuals
4 identified as Class Members.²² On December 3, 2023, Phoenix processed the names and
5 addresses through the National Change of Address Database (“NCOA”) and updated the Class
6 List with any updated addresses located.²³

7 On December 14, 2023, Phoenix mailed the Notice Packet via first class mail, in English
8 and Spanish, to the 166 individuals identified as Class Members in the Class List.²⁴

9 As of the date of this Motion, thirteen (13) Notice Packets were returned to Phoenix as
10 undeliverable.²⁵ Therefore, the Response Deadline was extended from February 12, 2024, to
11 February 27, 2024 in order to process said Notice Packets for re-mailing. Eleven (11) of said
12 Notice Packets were remailed after locating alternate addresses, one (1) Notice Packet was
13 returned a second time, and thus a total of only three (3) Notice Packets were undeliverable.²⁶

14 As of the date of this Motion, the Settlement Administrator has not received any
15 Objections or any Workweeks Disputes, and has received seven (7) Requests for Exclusion from
16 Class Members.²⁷

17 To date, there are 159 (166 - 7) Class Members who did not submit a timely and valid
18 Request for Exclusion, and are therefore, deemed to be Settlement Class Members.²⁸ Pursuant to
19 the terms of the Settlement, the Net Settlement Amount of approximately \$263,318.00 will be
20 distributed to Settlement Class Members, and the 25% share of the PAGA Amount of
21 \$18,750.00 will be distributed to PAGA Aggrieved Employees in accordance with the terms of
22 the Settlement.²⁹ The highest Individual Settlement Payment is currently estimated to be
23

24 ²¹ Mitzner Decl., ¶ 4.

25 ²² *Id.*

26 ²³ *Id.*, ¶ 5.

27 ²⁴ *Id.*, ¶ 6.

28 ²⁵ *Id.*, ¶ 7.

²⁶ *Id.*

²⁷ *Id.*, ¶¶ 8, 9 and 11.

²⁸ *Id.*, ¶ 12.

²⁹ *Id.*, ¶ 14, 16.

\$8,723.64, the lowest amount is currently estimated to be \$4.69, and the average amount is currently estimated to be \$1,656.09.³⁰ The highest Individual PAGA Payment is currently estimated to be at least \$512.39 and the average amount is currently estimated to be at least \$206.04.³¹

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT AGREEMENT.

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

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

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could

³⁰ *Id.*, ¶ 15.

³¹ *Id.*, ¶ 16.

1 have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and
2 reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain
3 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful.
4 *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is
5 substantially narrower than it would be if the case were to be successfully litigated, that is no bar
6 to a class settlement because the public interest may indeed be served by a voluntary settlement
7 in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

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

10 Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope
11 of the claims, and were preparing for class certification and trial.³² Class Counsel conducted
12 significant investigation and informal discovery into the facts of the case, including and not
13 limited to, the exchange, review, and analysis of a large volume of information, documents, and
14 data obtained from Plaintiff, Defendant, and other sources.³³ The volume of information,
15 documents, and data Class Counsel reviewed and analyzed included and was not limited to:
16 Plaintiff’s employment records, a detailed sampling of Plaintiff’s, class members’, and aggrieved
17 employees’ timekeeping, payroll, and reimbursement data, Defendant’s Employee Handbook
18 and wage and hour policies, earning statements, company policy acknowledgements, internal
19 memoranda, job descriptions, and other operations and employment policies, practices, and
20 procedures documents, among other information and documents.³⁴ Class Counsel also
21 developed damages, violation, and penalties valuation models in connection with the mediation
22 and settlement negotiations, and met and conferred with Defendant’s counsel on numerous
23 occasions, e.g., to discuss issues relating to the pleadings, case management, motion practice,
24 informal discovery, and production of documents and data in the course of litigation and
25 mediation and settlement negotiations.³⁵ Class Counsel also engaged in case strategy and

26
27 ³² Declaration of Joanna Ghosh (“Ghosh Decl.”), ¶ 5-9.

28 ³³ *Id.* at ¶ 7.

³⁴ *Id.*

³⁵ *Id.*

1 analysis, drafted the pleadings, motion-related papers, mediation brief, and settlement-related
2 papers, and prepared for and attended court proceedings and mediation and settlement
3 negotiations, among other tasks.³⁶

4 After conducting significant investigation and informal discovery into the facts of the
5 case, the Parties participated in a formal, full-day mediation conducted by retired Judge
6 Honorable S. James Otero, a well-regarded mediator experienced in mediating complex labor
7 and employment matters.³⁷ Prior to and during mediation and settlement discussions, the Parties
8 exchanged information and data, and discussed various aspects of the case, including and not
9 limited to, the risks and delays of further litigation, the risks and expenses to the Parties of
10 proceeding with class certification, representative adjudication, and trial, the law relating to class
11 certification, manageability, off-the-clock theory, rounding, regular rates of pay, meal and rest
12 periods (including, *inter alia*, on premises breaks), piece-rate compensation, expense
13 reimbursements, recordkeeping and wage statement requirements, representative PAGA claims
14 and penalties, and wage-and-hour law and enforcement, the evidence produced and analyzed,
15 and the possibility of appeals, among other things.³⁸ During all settlement discussions, the
16 Parties conducted their negotiations at arm's length in an adversarial position.³⁹ Arriving at a
17 settlement that was acceptable to the Parties was not easy.⁴⁰ Defendant and its counsel felt very
18 strongly about Defendant's ability to prevail on the merits and to obtain a denial of class
19 certification, while Plaintiff and Class Counsel believed that class certification would be
20 obtained and Plaintiff would prevail at trial.⁴¹ After conducting significant informal discovery
21 and investigations, extensive settlement negotiations, and with the aid of the mediator's
22 evaluation, the Parties agreed that the matter was well-suited for settlement given the legal issues
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24
25

26 ³⁶ *Id.*

27 ³⁷ *Id.* at ¶ 9.

28 ³⁸ *Id.* at ¶ 8.

³⁹ *Id.* at ¶ 9.

⁴⁰ *Id.*

⁴¹ *Id.*

1 relating to Plaintiff's principal claims, as well as the costs and risks to the Parties that would
2 attend further litigation.⁴²

3 The Settlement takes into account the strengths and weaknesses of each side's position
4 and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.⁴³
5 Class Counsel also reviewed and analyzed a large volume of information, documents, and data
6 obtained from Plaintiff, Defendant, and other sources, and performed significant research into
7 the law concerning class certification, manageability, off-the-clock theory, rounding, regular
8 rates of pay, meal and rest periods (including, *inter alia*, on premises breaks), piece-rate
9 compensation, expense reimbursements, recordkeeping and wage statement requirements,
10 representative PAGA claims and penalties, wage-and-hour law and enforcement, Plaintiff's
11 claims and allegations, and Defendant's defenses, as well as facts discovered.⁴⁴ The Settlement
12 was based on this large volume of facts, evidence, and investigation.⁴⁵ Additionally, Class
13 Counsel has extensive experience in handling complex wage-and-hour matters, including
14 significant experience in employment class action litigation.⁴⁶

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 \$566,643.07,
18 represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in
19 litigating the claims through certification proceedings, trial, and/or appeals.⁴⁷ The Settlement
20 was calculated using information and data uncovered through extensive case investigation,
21 informal discovery, and the exchange of information in the context of mediation.⁴⁸ Had the
22 action not settled, Defendant would have vigorously challenged class certification, manageability
23 of representative adjudication, and liability. Defendant contended that individualized questions
24

25 ⁴² *Id.* at ¶¶ 7-9.

26 ⁴³ *Id.*

27 ⁴⁴ *Id.*

28 ⁴⁵ *Id.*

⁴⁶ *Id.* at ¶¶ 15-22.

⁴⁷ *Id.*, ¶¶ 7-9 & 24.

⁴⁸ *Id.*, ¶¶ 7-9.

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 Plaintiff's claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendant also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiff's claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The risks of further litigation include a determination that the claims are unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of formal discovery, including and not limited to, depositions of Defendant's Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Formal discovery, and disputes in connection with formal discovery, would have certainly cost the Parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class, PAGA Aggrieved Employees, and State of California here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

It would be grossly inefficient for the members of the Class (consisting of over 150 current and former employees) to bring individual actions to recover from Defendant for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the

incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

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

The Settlement, which provides for a Gross Settlement Amount of \$566,643.07, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the course of litigation and mediation and settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

Even after deducting attorneys' fees in the amount of \$198,325.07, litigation costs and expenses in the amount of \$15,000.00, Class Representative Enhancement Payment in the amount of \$9,000.00, Settlement Administration Costs in the amount of \$6,000.00, and PAGA Amount in the amount of \$75,000.00 from the Gross Settlement Amount, the Net Settlement Amount is currently estimated to be \$263,318.00.⁴⁹ Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out without any reversion to Defendant, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Settlement Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks during the Class Period credited to him or her and each PAGA Aggrieved Employee will be paid a *pro rate* share of the 25% share of the PAGA Amount, based on the number of PAGA Workweeks during the PAGA Period credited to him or her. The Settlement Class Members consist of 159 individuals and the PAGA Aggrieved Employees consist of 91 individuals.⁵⁰ The highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be \$8,723.64 and the average Individual Settlement Payment is currently estimated to be \$1,656.09.⁵¹ The highest Individual PAGA Payment to a PAGA Aggrieved Employee is currently estimated to be at least \$512.39 and the average Individual PAGA Payment is currently

⁴⁹ Mitzner Decl., ¶ 14.

⁵⁰ *Id.*, ¶ 12, 16.

⁵¹ *Id.*, ¶ 15.

1 estimated to be at least \$206.04.⁵² These are significant individual recoveries, particularly in light
2 of the risks of litigation.

3 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational
4 basis [to warrant approval], particularly if recommended by experienced and competent class
5 counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
6 127 F.Supp.2d 418, 429–30 (Cited by *Rivas v. City of Manhattan Beach* (2023) Cal. Super.
7 LEXIS 31236 *1, *13.) The *pro rata* allocation here is a fair and reasonable way to distribute
8 the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the
9 Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class
10 Members, PAGA Aggrieved Employees, and State of California.⁵³ Although the
11 recommendations of Class Counsel are not conclusive, the Court can properly take the
12 recommendations into account, particularly if Class Counsel appears to be competent, has
13 experience with this type of litigation, and significant discovery and investigation have been
14 completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) §
15 11.47. Accordingly, the Court should grant final approval of the Settlement.

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

17 Class Counsel has extensive experience in employment class action law and complex
18 wage-and-hour litigation.⁵⁴ Lawyers for Justice, PC has been appointed class counsel in
19 numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in
20 California.⁵⁵ Both parties’ counsel were capable of assessing the strengths and weaknesses of
21 the claims against Defendant and the benefits of the Settlement under the circumstances of the
22 case and in the context of a private, consensual settlement agreement.

23 ///

24 ///

25 ///

26 _____
27 ⁵² *Id.*, ¶ 16.

28 ⁵³ Ghosh Decl., ¶ 25.

⁵⁴ *Id.*, ¶¶ 15-22.

⁵⁵ *Id.*

1 **E. No Class Members Have Objected to the Class Settlement and Only A Small**
2 **Percentage Opted Out of the Class Settlement.**

3 The Settlement has been well received by the Class – *no Class Members have objected*
4 *to the Class Settlement and only 4.22% Class Member opted out of the Class Settlement.*⁵⁶ No
5 objections have been made as to the Gross Settlement Amount or requested Attorneys’ Fees and
6 Costs, Class Representative Enhancement Payment, Settlement Administration Costs, or the
7 allocation for PAGA Amount. California courts have consistently found that a small number of
8 objectors indicates the class’s support for a settlement and strongly favors final approval.
9 *Wershba, supra*, 91 Cal.App.4th at 250–51 (final approval granted despite 20 objectors); 7-
10 *Eleven Owners, supra*, 85 Cal.App.4th at 1152–53 (final approval granted despite 9 objectors).

11 Here, there are no objectors, and only a small number of Class Members who have
12 requested to opt out of the Class Settlement, which speaks volumes about the fairness,
13 reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is
14 presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the
15 Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

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

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

19 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
20 decisions will “‘not be disturbed on appeal absent a manifest abuse of discretion.’” *Lealao v.*
21 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
22 1132 (The “experienced trial judge is the best judge of the value of professional services
23 rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.
24 Where the amount of a settlement is a “certain easily calculable sum of money,” California
25 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and
26 Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also*
27 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808.

28 ⁵⁶ Mitzner Decl., ¶¶ 8-9.

1 The percentage-of-the-benefit approach is preferred in class and representative actions because
2 “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao*,
3 *supra*, 82 Cal.App.4th at 49.

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

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

22 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
23 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th
24 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494
25 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
26 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
27 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
28 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”

1 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found contingency fees
2 in a range, up to 40 percent, in marketplace was appropriate in class actions); *see also Laffitte*, 1
3 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

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

5 California and federal courts have long recognized that an appropriate method for
6 determining the award of attorneys' fees is based on a percentage of the total value of benefits
7 made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van*
8 *Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886
9 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
10 *Priest* (1977) 20 Cal.3d 25, 34.⁵⁷ The purpose of this equitable doctrine is to spread litigation
11 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
12 entire burden alone. *See Vincent, supra*, 557 F.2d at 769.

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

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

27
28 ⁵⁷ 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.

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

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

Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount of \$566,643.07 on a non-reversionary basis. The requested attorneys’ fees are thirty-five percent (35%) of the total value of the monetary settlement. In light of Class Counsel’s successful prosecution and resolution of the case, the requested attorneys’ fees are appropriate and reasonable.

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

The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. A named plaintiff's agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiff. If the named plaintiff has employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiff. In this case, Plaintiff has agreed to a contingency fee of at least thirty-five percent (35%) of the recovery.⁵⁸

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

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

Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class, PAGA Aggrieved Employees, and the State of California and the results achieved justify an

⁵⁸ Ghosh Decl., ¶ 10.

attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiff and Class Counsel. Thus, the requested attorneys' fees are appropriate.

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

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

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The award of attorneys' fees in the amount of \$198,325.07 (which is 35% of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination 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 this matter to a successful conclusion on behalf of the Class, PAGA Aggrieved Employees, and the State of California. Moreover, as demonstrated in the supporting

1 declarations, Class Counsel has extensive experience in the handling of class actions and
2 complex litigation matters.⁵⁹

3 As outlined in the Declarations of Joanna Ghosh, Class Counsel has fully and actively
4 participated in litigation of this case.⁶⁰ Class Counsel conducted significant investigation and
5 informal discovery into the factual and legal issues, Defendant's business and its operations, and
6 employment policies, practices, procedures. Class Counsel engaged in the review and analysis
7 of a large volume of information, documents, and data obtained from Plaintiff, Defendant, and
8 other sources.⁶¹ Class Counsel also researched applicable law, developed damages, violation,
9 and penalties valuation models, and met and conferred with Defendant's counsel on numerous
10 occasions, e.g., to discuss issues relating to the pleadings, case management, motion practice,
11 informal discovery, and production of documents and data in the course of litigation and
12 mediation and settlement negotiations.⁶² Class Counsel also drafted the pleadings, motion-
13 related papers, mediation brief, and settlement-related papers, and prepared for and attended
14 court proceedings and mediation and settlement negotiations, among other tasks.⁶³

15 Class Counsel has dedicated staffing and monetary resources necessary to prosecute this
16 matter diligently and with maximum efficiency and has fully and actively participated in the
17 litigation process. The Attorney Task and Time Chart, which is attached as **EXHIBIT A** to the
18 accompanying Declaration of Joanna Ghosh, sets forth in detail the hours that attorneys at
19 Lawyers *for* Justice, PC have spent performing tasks on behalf of Plaintiff, the Class, PAGA
20 Aggrieved Employees, and the State of California.⁶⁴ The Attorney Task and Time Chart is
21 thorough and comprehensive, and was prepared so that the Court can peruse it without having to
22 set forth each and every task in the body of this Motion. The Court is respectfully referred to the
23 chart, which sets forth the history of the work performed by Class Counsel, commencing with
24 the pre-filing analysis and research, and continuing up to settlement and final approval.

25 _____
26 ⁵⁹ *Id.*, ¶¶ 15-22.

27 ⁶⁰ *Id.*, Exh. A.

28 ⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

Attorneys at Lawyers for Justice, PC have spent 377.40 hours performing tasks and to obtain a significant recovery on behalf of Plaintiff, the Class, PAGA Aggrieved Employees, and the State of California.⁶⁵ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the case 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. Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and in connection with mediation and settlement negotiations. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendant did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Joanna Ghosh, Class Counsel used their extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁶⁶

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

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

⁶⁵ *Id.*, ¶¶ 13-14, Exh A.

⁶⁶ *Id.*, ¶¶ 15-21.

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

10 As a result of this litigation and extensive settlement negotiations, Defendant agreed to
11 pay a Gross Settlement Amount of \$566,643.07 to settle the matter. After deducting the
12 attorneys' fees (\$198,325.07 (\$191,450.00 + escalator increase \$6,875.07), litigation costs and
13 expenses (\$15,000.00), Class Representative Enhancement Payment (\$9,000.00), Settlement
14 Administration Costs (\$6,000.00), and PAGA Amount (\$75,000.00) from the Gross Settlement
15 Amount, it is currently estimated that the Net Settlement Amount is approximately
16 \$263,318.00.⁶⁷ The Net Settlement Amount will be fully distributed to Settlement Class
17 Members and the PAGA Aggrieved Employee Amount of \$18,750 will be fully distributed to
18 PAGA Aggrieved Employees, in accordance with the terms of the Settlement Agreement. The
19 highest Individual Settlement Payment to a Settlement Class Member is currently estimated to be
20 \$8,723.64 and the average Individual Settlement Payment is currently estimated to be
21 \$1,656.09.⁶⁸ The highest Individual PAGA Payment to a PAGA Aggrieved Employee is
22 currently estimated to be at least \$512.39 and the average Individual PAGA Payment is currently
23 estimated to be at least \$206.04.⁶⁹ The Settlement offers significant monetary relief to the
24 Settlement Class Members and PAGA Aggrieved Employees.

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27 ⁶⁷ Mitzner Decl., ¶ 14.

28 ⁶⁸ *Id.*, ¶ 15.

⁶⁹ *Id.*, ¶ 16.

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

2 Plaintiff entered into a contingency fee agreement with Class Counsel, and the
3 representation of the Class provided by Class Counsel has been wholly contingent. Class
4 Counsel took on the case without knowing whether any recovery would be obtained. Class
5 Counsel has invested 377.40 hours of time to obtain relief on behalf of Plaintiff, the Class,
6 PAGA Aggrieved Employees, and the State of California.⁷⁰ Class Counsel has also incurred
7 litigation costs and expenses in the amount of \$15,315.00.⁷¹

8 Class Counsel has borne all of the risks and costs of litigation and will not receive any
9 compensation until recovery is obtained.⁷² Class Counsel is well-experienced in wage-and-hour
10 class action and complex litigation and used that experience to obtain a great result.⁷³ The skill
11 and determination that Class Counsel has shown, along with the results obtained, justify the
12 requested Attorneys' Fees and Costs. Considering the amounts requested, the work performed,
13 and the risks incurred, the requested fees and costs are reasonable and should be awarded.

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

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

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

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27 ⁷⁰ Ghosh Decl., ¶ 13, Exh. A.

⁷¹ See Section VII, *infra*.

28 ⁷² Ghosh Decl., ¶ 23.

⁷³ See *id.*, ¶¶ 15-22.

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

2 The results achieved, in light of the difficulties inherent in similar cases and the specific
3 difficulties faced in this matter, are considerable. The Settlement has yielded a positive response
4 from the Class Members—no Class Members objected to the Class Settlement and only a small
5 percentage (4.22%) opted out of the Class Settlement.⁷⁴

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

11 Here, the results achieved and obtained on behalf of Plaintiff, the Class, the PAGA
12 Aggrieved Employees, and the State of California are reasonable in light of the risks inherent in
13 further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides
14 for a Gross Settlement Amount of \$566,643.07.⁷⁵ The Gross Settlement Amount will be fully
15 paid out, in accordance with the terms of the Settlement Agreement. The highest Individual
16 Settlement Payment to a Settlement Class Member is currently estimated to be \$8,723.64 and the
17 average Individual Settlement Payment is currently estimated to be \$1,656.09.⁷⁶ The highest
18 Individual PAGA Payment to a PAGA Aggrieved Employee is currently estimated to be at least
19 \$512.39 and the average Individual PAGA Payment is currently estimated to be at least
20 \$206.04.⁷⁷

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

22 Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys’
23 knowledge, skills, and experience in bringing this case to a successful conclusion. Class Counsel
24 has years of complex and class action litigation experience, has recovered millions of dollars on
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27 ⁷⁴ Mitzner Decl., ¶¶ 8-9.

28 ⁷⁵ Ghosh Decl., ¶¶ 5-8.

⁷⁶ *Id.*, ¶ 15.

⁷⁷ *Id.*, ¶ 16.

1 behalf of thousands of individuals in California, and has successfully handled numerous
2 significant wage-and-hour class action and complex cases.⁷⁸

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

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

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

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

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

23 As discussed above, the case was highly contested and required a significant amount of
24 time and labor. Defendant made it clear very early on that it disputed all of the allegations of the
25 case and disputed that the matter was appropriate for class or representative treatment.
26 Defendant raised affirmative defenses and denied liability, and the pursuit of this matter involved
27 gathering and analyzing information and data not from Plaintiff, Defendant, and other sources.

28 ⁷⁸ Ghosh Decl., ¶¶ 15-22.

1 The handling of the case involved a great amount of effort, and also required and involved the
2 exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in
3 employment class actions and complex wage-and-hour litigation. Long and difficult battles
4 would have followed as the case moved toward certification and trial, including taking and
5 defending depositions of Defendant's Person Most Knowledgeable designees, percipient
6 witnesses, and experts, propounding discovery requests and conducting additional document
7 production, and engaging in extensive motion practice. As Class Counsel geared up for these
8 battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter
9 through mediation.

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

14 As discussed above in Section VI.C.1, *infra*, attached to the Declaration of Joanna Ghosh
15 is a task and time chart that sets forth in detail the numerous tasks that attorneys at Lawyers *for*
16 Justice, PC performed on behalf of Plaintiff, the Class, PAGA Aggrieved Employees, and the
17 State of California and the time required for completing those tasks.⁷⁹ The chart demonstrates
18 that attorneys at Lawyers *for* Justice, PC have spent a total of 377.40 hours litigating the case and
19 finalizing the Settlement.⁸⁰ In light of the facts and circumstances of the case, as well as the
20 results that Class Counsel has achieved on behalf of Plaintiff, the Class Members, PAGA
21 Aggrieved Employees, and the State of California, Class Counsel has spent a reasonable number
22 of hours on this matter. In addition, Class Counsel will continue to perform work on this matter
23 through the date of final approval and in connection with the implementation of the Settlement.

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28 ⁷⁹ See Ghosh Decl., Exh. A.

⁸⁰ *Id.*, ¶¶ 13-14.

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 this case, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this matter has precluded other employment. Here, Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$566,643.07.

As set forth in the Declaration of Joanna Ghosh, the work performed in this matter, the background of Lawyers for Justice, PC, as well as the individual backgrounds, training, and experience of the attorneys who worked on this matter, support a reasonable blended hourly rate of compensation of \$800 per hour for services provided by Class Counsel.⁸¹ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least \$800 per hour for legal service performed, by courts of this state.⁸² 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, PAGA Aggrieved Employees, and the State of California justify the requested attorneys' fees.

Applying the blended rate of \$800 per hour to 377.40 hours would place a reasonable value of \$301,920.00 as Class Counsel's base lodestar for the work performed in this matter. Taking into consideration the attorneys who performed work in this matter, and their hours and

⁸¹ *Id.*, ¶ 14.

⁸² *Id.*

hourly rates, results in a reasonable value of \$434,458.00 as Class Counsel's base lodestar for the work performed in this matter. However, Class Counsel only seek attorneys' fees in the amount of \$198,325.07, which is thirty-five percent (35%) of the total recovery, as provided for by the Settlement Agreement.

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

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiff respectfully requests that the Court grant final approval of, and award, attorneys' fees in the amount of \$198,325.07 to Class Counsel.

VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE, AND SHOULD BE APPROVED.

The Settlement provides for reimbursement of litigation costs and expenses of up to \$15,000.00. As set forth in the Declaration of Joanna Ghosh, Class Counsel has expended \$15,315.00 on mediation fees, filing fees, service and courier fees, and printing and postage fees.

1 However, Class Counsel only seeks reimbursement of \$15,000.00 in litigation costs and
2 expenses incurred in this matter.⁸³ This amount was reasonable and necessary in the prosecution
3 of the case and to obtain the Settlement. Accordingly, Plaintiff requests that the Court award
4 litigation costs and expenses in the amount of \$15,000.00 to Class Counsel.

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

7 As set forth in the accompanying Phoenix Declaration, the total costs incurred and to be
8 incurred by Phoenix for the notice and settlement administration process are \$6,000.00.⁸⁴ The
9 costs incurred and to be incurred include, but are not limited to, expenses for formatting,
10 translating, printing, and mailing the Notice Packet in English and Spanish to the Class
11 Members; performing skip-trace searches on Notice Packets returned as undeliverable; re-
12 mailing the Notice Packets to any updated addresses located by skip-trace search; receiving,
13 reviewing, and processing Requests for Exclusion, Objections, and Workweeks Disputes (if
14 any); handling inquiries from Class Members regarding the Settlement; calculating Individual
15 Settlement Payments and Individual PAGA Payments and preparing the associated tax forms;
16 and transmitting payments, among other things.⁸⁵

17 Accordingly, the Court should grant final approval of payment to Phoenix, a necessary
18 third-party for handling of the notice and settlement process, in the amount of \$6,000.00.

19 **IX. THE REQUESTED ENHANCEMENT PAYMENT IS FAIR AND REASONABLE,**
20 **AND SHOULD BE APPROVED.**

21 The Settlement provides for a Class Representative Enhancement Payment in the amount
22 of \$9,000.00 to Plaintiff Jesse Joerger to compensate Plaintiff for the time and effort that he
23 expended on behalf of the Class. The requested Class Representative Enhancement Payment is
24 both common and reasonable and should be awarded.

25 In determining whether to make such enhancement payments, courts consider the
26 following factors: (1) the risk to the class representative in commencing suit, both financial and

27 ⁸³ *Id.*, ¶ 23.

28 ⁸⁴ Mitzner Decl., ¶¶ 19-23.

⁸⁵ *Id.*, ¶¶ 2 and 19-23.

otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Class Representative Enhancement Payment is fair and appropriate because Plaintiff has been, and continues to be, actively engaged in the litigation of his case, constantly checking in on the status of court proceedings in his lawsuit and spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence necessary to attempt to prove the allegations.⁸⁶ Plaintiff was available whenever Class Counsel needed him and actively tried to obtain, and gave, information to support the pursuit of the claims.⁸⁷ Plaintiff spent numerous hours speaking with Class Counsel about his claims, describing his work experiences with Defendant, and gathering and reviewing documents.⁸⁸ These services merit the requested Class Representative Enhancement Payment to Plaintiff, who has not received any compensation for his efforts on behalf of the Class Members, PAGA Aggrieved Employees, and the State of California to date.⁸⁹

The requested Class Representative Enhancement Payment was fully disclosed in the Class Notice that was mailed to the Class Members. No objections were made with regards to the requested Class Representative Enhancement Payment. Accordingly, it is appropriate and just for Plaintiff Jesse Joerger to receive \$9,000.00 as a reasonable Class Representative Enhancement Payment, in addition to his individual settlement payments, for his services on behalf of the Class, the State of California, and PAGA Aggrieved Employees.

X. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and award Attorneys' Fees and Costs, Class Representative

⁸⁶ Ghosh Decl., ¶ 24; Declaration of Jesse Joerger ("Joerger Decl."), ¶¶ 2-5.

⁸⁷ Ghosh Decl., ¶ 24; Joerger Decl., ¶¶ 3-5.

⁸⁸ Ghosh Decl., ¶ 24; Joerger Decl., ¶¶ 3-5.

⁸⁹ Joerger Decl., ¶ 6.

Enhancement Payment, Settlement Administration Costs, and allocation for the PAGA Amount, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: March 7, 2024

LAWYERS for JUSTICE, PC

By:



Joanna Ghosh
Vartan Madoyan
Attorneys for Plaintiff and the Class