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Case #20CV375150
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10 JACOB BLEA, individually, and on behalf
11 of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

12 Plaintiff,

13 v.

14 PACIFIC GROSERVICE INC., a
15 California corporation; PITTSBURG
16 WHOLESALE GROCERS, INC. d/b/a
17 PITCO FOODS, a California corporation;
and DOES 1 through 100, inclusive;

18 Defendants.

Case No.: 20CV375150

Assigned for All Purposes to:
Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEY FEE AWARD, COST AWARD,
AND CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Class Counsel (Douglas Han);
Declaration of Class Representative (Jacob
Blea); Declaration of Settlement Administrator
(Veronica Olivares); and [Proposed] Order and
Judgment filed concurrently herewith]

Hearing Date: June 8, 2023
Hearing Time: 1:30 p.m.
Hearing Place: Department 1

Complaint Filed: December 28, 2020
FAC Filed: May 11, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 8, 2023 at 1:30 p.m., or as soon thereafter as
2 the matter may be heard, before the Honorable Sunil R. Kulkarni in Department 1 of the Santa
3 Clara County Superior Court (Downtown Superior Court), located at 191 North First Street, San
4 Jose, California 95113, Plaintiff Jacob Blea (“Plaintiff”) will and hereby does move this Court
5 to approve:

6 1. The Joint Stipulation and Settlement Agreement (“Settlement Agreement”
7 “Settlement,” or “Agreement”) on the grounds the Settlement Agreement is fair, adequate, and
8 reasonable because:

- 9 • One thousand one hundred thirty-two (1,132) Class Members who did not submit
10 valid and timely requests to exclude themselves from the class action Settlement
11 (“Participating Class Members”) will receive a portion of the Net Settlement
12 Amount;
- 13 • As of April 28, 2023, no objections were submitted;
- 14 • As of April 28, 2023, only four (4) requests for exclusion were submitted;
- 15 • As of April 28, 2023, there are no outstanding disputes;

16 2. The payment of the Attorney Fee Award of \$833,333.33 to Justice Law
17 Corporation (“Class Counsel”) for 859.1 hours of attorney time spent working on the case from
18 pre-filing investigation to the final fairness hearing;

19 3. The payment of the Cost Award of \$15,467.55 to Class Counsel for actual
20 litigation costs and expenses incurred;

21 4. The payment of the Class Representative Enhancement Payment of \$10,000 to
22 Plaintiff;

23 5. The payment of the Administration Costs of \$18,000 to CPT Group, Inc., the
24 Settlement Administrator; and

25 6. The payment of \$100,000 for Private Attorneys General Act of 2004 (“PAGA”)
26 penalties, pursuant to Labor Code section 2699, *et al.*, seventy-five percent (75%) of which
27 (\$75,000) shall be paid to the California Labor and Workforce Development Agency
28 (“LWDA”) and twenty-five percent (25%) of which (\$25,000) shall be distributed to the

1 aggrieved employees eligible to recover the PAGA Payment that consist of all hourly-paid or
2 non-exempt employees employed by Defendants Pacific Groservice Inc. and Pittsburg
3 Wholesale Grocers, Inc. d/b/a Pitco Foods (“Defendants”) within the State of California during
4 the period between August 19, 2019, and July 27, 2022 (“Eligible Aggrieved Employees,”
5 “PAGA Period,” and “PAGA Payment”).

6 This Motion is based on the following Memorandum of Points and Authorities;
7 Declaration of Class Counsel (Douglas Han), Declaration of Class Representative (Jacob Blea),
8 and Declaration of Settlement Administrator (Veronica Olivares) in support thereof; pleadings
9 and other records on file with the Court; and documentary evidence and oral argument as may
10 be presented at the hearing on this motion.

11
12 Dated: May 2, 2023

JUSTICE LAW CORPORATION


13
14 By: 
15 Douglas Han
16 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff seeks final approval of the Gross Settlement Amount of \$2,500,000 inclusive of
4 the: (1) Attorney Fee Award of \$833,333.33; (2) Cost Award of \$15,467.55; (3) Class
5 Representative Enhancement Payment of \$10,000; (4) Administration Costs of \$18,000; and
6 (5) PAGA Payment of \$100,000.

7 This case is seeking relief for all hourly-paid or non-exempt employees employed by
8 Defendants within the State of California during the time period from December 28, 2016, to
9 July 27, 2022, excluding those persons that have signed release agreements (“Class,” “Class
10 Members,” and “Class Period”).

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

12 On August 19, 2020, Plaintiff provided written notice to the LWDA and Defendants.

13 On December 28, 2020, Plaintiff filed a representative PAGA action against Defendants
14 in the Superior Court of California, County of Santa Clara.

15 The Parties remotely attended mediation with the mediator Jeffery A. Ross on April 27,
16 2022, resulting in the settlement of this matter.

17 In line with the settlement, on May 11, 2022, Plaintiff filed a First Amended Complaint
18 adding eight (8) wage-and-hour class action causes of action.

19 On December 9, 2022, the Court granted Preliminary Approval of the Settlement.

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

21 Under the Agreement, the Gross Settlement Amount of \$2,500,000 will be paid by
22 Defendants. The Net Settlement Amount will be calculated by deducting the following from the
23 Gross Settlement Amount: (1) \$833,333.33 as the Attorney Fee Award; (2) \$15,467.55 as the
24 Cost Award; (3) \$10,000 as the Class Representative Enhancement Payment; (4) \$18,000 as the
25 Administration Costs; and (5) \$100,000 as the PAGA Payment.¹

26 _____
27 ¹ (See Settlement Agreement attached as **Exhibit 2** to the Declaration of Douglas Han In
28 Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement filed on

1 The Net Settlement Amount will be made available to Participating Class Members. The
2 Settlement Administrator shall pay each Participating Class Member his or her pro-rata share of
3 the Net Settlement Amount. Individual Settlement Shares will be apportioned twenty percent
4 (20%) as wages and eighty percent (80%) as interest, penalties, and reimbursements.²

5 The Settlement Administrator shall pay each Eligible Aggrieved Employee his or her
6 pro-rata share of the PAGA Payment. Each Eligible Aggrieved Employee’s portion of the
7 PAGA Payment will be allocated as one hundred percent (100%) penalties.³

8 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
9 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
10 eighty (180) calendar days after the checks are mailed to them. Uncashed settlement checks will
11 be paid to the State Controller’s Unclaimed Property Fund in the name of the Class Member.⁴

12 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

13 On December 12, 2022, the Settlement Administrator received the Court-approved
14 Notice Packet. On March 2, 2023, Defendants delivered the Class Data to Settlement
15 Administrator containing data for one thousand one hundred thirty-six (1,136) Class Members.⁵

16 On March 23, 2023, Settlement Administrator mailed Notice Packets to one thousand
17 one hundred thirty-six (1,136) Class Members and indicated that the Response Deadline is May
18 22, 2023.⁶

20 November 8, 2022 (“Settlement Agreement”), §§ I(A), I(C), I(L), I(N), I(V), I(Z), I(CC), III(A),
21 III(F).)

22 ² (*Id.* at § III(F)(5).)

23 ³ (*Id.* at § III(F)(6).)

24 ⁴ (*Id.* at § III(I)(9).)

25 ⁵ (Declaration of Veronica Olivares Regarding Notice and Settlement Administration
26 (“Olivares Decl.”), ¶¶ 5-6.)

27 ⁶ (*Id.* at ¶ 7.)

Category	Notice Packets Mailed	Notice Packets Returned	Notice Packets Remailed	Notice Packets Left Undelivered	Requests for Exclusion	Objections	Written Disputes	Participating Class Members
	1,136	80	61	20	4	0	0	1,132 ⁷

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

The courts have discretion to determine if a settlement is fair and reasonable. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52.) To determine fairness, 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*, at p. 1801.)

The burden is on the proponent to show the settlement is fair and reasonable. (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) A presumption of fairness exists if: “(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 v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) The court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.) The inquiry is not if the settlement is the best one that could have been obtained, but whether the settlement as a whole is “fair, adequate, and reasonable.” (*Chavez v. Netflix, Inc.*, *supra*, 162 Cal.App.4th at p. 55.) A settlement need

⁷ (Olivares Decl., *supra*, at ¶¶ 8-12.)

1 not obtain 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computer,*
2 *Inc., supra*, 91 Cal.App.4th at p. 250.) Even if the relief afforded is narrower than it would be if
3 the case was litigated, that is no bar to a settlement because the public interest may be served by
4 a settlement where both sides give ground to avoid litigation. (*Ibid.*)

5 **A. The Proposed Settlement Resulted from Arm’s-Length Negotiations Based**
6 **Upon Extensive Investigation and Discovery.**

7 Class Counsel actively engaged in this litigation since it was initially filed. Prior to the
8 filing and continuing over the duration of this case, Class Counsel conducted a thorough
9 investigation of the factual and legal issues. Using the information obtained, Class Counsel
10 determined: (1) Class Members’ average hourly rates of pay; (2) number of current and former
11 Class Members employed during the Class Period; (3) number of Class Members employed
12 during the PAGA Period; (4) number of shifts worked by Class Members during the Class
13 Period; (5) number of hours worked during shifts; (6) number, length, and timing of breaks
14 taken; and (7) number of workweeks and pay periods during the Class and PAGA Period.⁸

15 Class Counsel analyzed documents produced and interviewed several putative class
16 members. The information obtained provided a critical understanding of the nature of the work
17 performed by Class Members and the policies, practices, and procedures in place. The
18 information was used in analyzing liability and damages in connection with all phases of the
19 litigation and mediation process, including the strengths and weaknesses of the claims and
20 defenses. Thus, Class Counsel performed an exhaustive investigation into the claims at issue.⁹

21 The Parties participated in mediation on April 27, 2022 with the mediator Jeffrey A.
22 Ross. Under the auspices of the mediator, the Parties reached a settlement of this case. At all
23

24 _____
25 ⁸ (Declaration of Douglas Han in Support of Plaintiff’s Motion for Final Approval of
Class Action Settlement (“Han Decl.”), ¶ 4.)

26 ⁹ (*Id.* at ¶¶ 5-6.)
27
28

1 times, the Parties' negotiations were adversarial and non-collusive.¹⁰

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

3 The Settlement represents a reasonable resolution of this case. Defendants argued Class
4 Members' claims were too disparate for adjudication on a class-wide basis and indicated they
5 would have opposed any motion for class certification. Conversely, Defendants also faced risks
6 if the Court certified the case and allowed a jury to decide on the merits.

7 If this case ended up settling after further litigation, the settlement amount would have
8 considered the additional costs incurred, and there might have been less money available. In
9 contrast, the Settlement provides immediate benefits for Participating Class Members compared
10 to the unpredictable results inherent in going to trial to allow a jury to decide on the merits.
11 Thus, the risk and expense of litigation outweighed any benefit that might have been gained.

12 The Individual Settlement Shares also represent a reasonable recovery for a Class
13 seeking varying amounts. It would be inefficient for a class of current and former employees to
14 bring individual actions to recover from Defendants. The potential recovery for each individual
15 Class Member might not be high enough to provide them with an incentive to sue individually.

16 **C. The Settlement is Fair, Reasonable, and Adequate.**

17 The Settlement was calculated using information and data uncovered through discovery,
18 case investigation, exchange of information prior to and during mediation, and interviewing
19 several putative class members. The Settlement also considers the potential risks and rewards
20 inherent with this case, which convinced Class Counsel to settle instead of going down the trial
21 route. After deducting the above-mentioned payments from the Gross Settlement Amount,
22 Participating Class Members will receive \$1,523,199.12 as the Net Settlement Amount.¹¹

23 At the final approval stage, "[a]n allocation formula need only have a reasonable,
24 rational basis [to warrant approval], particularly if recommended by experienced and competent

25 _____
26 ¹⁰ (Han Decl., *supra*, at ¶ 7.)

27 ¹¹ (Olivares Decl., *supra*, at ¶ 15.)

1 2001) 127 F.Supp.2d 418, 429-30.) Class Counsel believe the Settlement is fair, reasonable, and
2 in the best interest of Class Members.¹² Although the recommendations of Class Counsel are
3 not conclusive, the Court can consider such recommendations if Class Counsel are competent,
4 have experience with this type of litigation, and significant discovery and investigation have
5 been completed. (Conte & Newberg, *Newberg on Class Actions*, § 11.47 (4th Ed).)

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

7 Class Counsel have extensive experience in wage-and-hour class action lawsuits. Class
8 Counsel have been appointed as class counsel in numerous employment class action cases and
9 have recovered millions of dollars for California employees. Both Parties' counsel used their
10 experience to negotiate an excellent settlement.¹³

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

12 The Settlement was well received by the Class because no objections were submitted.¹⁴
13 California courts have found a small number of objectors indicates the class's support for a
14 settlement and strongly favors final approval. (*Wershba v. Apple Computer, Inc.*, *supra*, 91
15 Cal.App.4th at pp. 250-251 (final approval granted despite 20 objectors); *7-Eleven Owners for*
16 *Fair Franchising v. Southland Corp.*, *supra*, 85 Cal.App.4th at pp. 1152-1153 (final approval
17 granted despite 9 objectors).) Therefore, the Settlement is presumed to be fair, reasonable, and
18 adequate. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.)

19 **VI. THE ATTORNEY FEE AWARD REQUESTED BY CLASS COUNSEL SHOULD BE APPROVED.**

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

21 Where the amount of a settlement is a "certain easily calculable sum of money,"
22 California courts may calculate attorneys' fees as a reasonable percentage of the settlement
23 created. (Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14,

24 _____
25 ¹² (Han Decl., *supra*, at ¶ 25.)

26 ¹³ (*Id.* at ¶¶ 15-21; Exhibit 4.)

27 ¹⁴ (Olivares Decl., *supra*, at ¶ 11.)

1 section 14:145; *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1808.) The ultimate goal is
2 the award of a “reasonable” fee to compensate counsel for their efforts, irrespective of the
3 method of calculation. (*Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253,
4 1270; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-8.)

5 Courts have “wide latitude” in assessing the value of attorneys’ fees, and their decisions
6 will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial*
7 *Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The
8 “experienced trial judge is the best judge of the value of professional services rendered in his
9 court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) California
10 law provides attorneys’ fees awards should be equivalent to fees freely negotiated in the legal
11 marketplace and paid in comparable litigation based on the result achieved and risk incurred.
12 (See *Lealao*, at pp. 47, 50.) Fee awards too small will “chill the private enforcement essential to
13 the vindication of many legal rights and obstruct the representative actions that often relieve the
14 courts of the need to separately adjudicate numerous claims.” (*Id.* at p. 53.) Thus, fees in
15 representative actions should consider the probable terms of contingent fee contracts negotiated.
16 (*Id.* at p. 48.) The percentage-of-the-benefit approach is preferred in such cases because “it
17 better approximates the workings of the marketplace than the lodestar approach.” (*Id.* at p. 49.)

18 **B. A Fee Award of a Percentage of the Entire Fund is Appropriate**

19 California and federal courts recognize an appropriate method for determining the award
20 of attorneys’ fees is based on a percentage of the total value of benefits afforded. (*Boeing Co. v.*
21 *Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulty* (1989) 886
22 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v.*
23 *Priest* (1977) 20 Cal.3d 25, 34.)¹⁵ The purpose of this equitable doctrine is to spread litigation
24 costs proportionally among all the beneficiaries. (See *Vincent*, at p. 769.) The Common Fund
25 Doctrine provides when a litigant’s efforts create a fund where others derive benefits, the

26 _____
27 ¹⁵ California Supreme Court urged courts to follow class action federal authority. (*Green v.*
Obledo (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.)

1 litigant may require the passive beneficiaries to compensate those who created the fund. (See
2 R. Pearle, California Attorney Fee Awards (CEB, 1993) § 7A, p. 5-7 (noting that the common
3 fund exception is an equitable doctrine, permitting attorneys' fees and costs to be paid out of the
4 fund or directly on behalf of the other parties enjoying the benefit).) State and Federal courts
5 have embraced this doctrine. (See *Serrano v. Priest*, *supra*, 20 Cal.3d at p. 35; *Crampton v.*
6 *Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at
7 p. 769.) The Court even affirmed the percentage of the common fund method as a proper
8 measure of attorneys' fees. (See *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480.)

9 Compensating class counsel in class litigation on a percentage basis (common fund)
10 makes sense. This is because it: (1) is consistent with the private marketplace where contingent
11 fee attorneys are customarily compensated on such a basis; (2) aligns the interests of class
12 counsel and absent class members in achieving the maximum resolution of the case; and (3)
13 encourages the most efficient and expeditious resolution of the litigation by providing an
14 incentive for early, yet reasonable, settlement. The award in this case meets all those criteria.

15 The percentage method is also consistent with the practice in the private marketplace
16 where contingent fee attorneys typically negotiate percentage fee arrangements. One way to
17 show the value of counsel's work to the class is to review the consideration agreed to be paid.
18 Here, Plaintiff agreed to a contingency fee of thirty-eight percent (38%) of the recovery, which
19 is greater than the amount Class Counsel are seeking.¹⁶

20 Under the terms of the Settlement, Participating Class Members will derive a significant
21 cash benefit. Specifically, Defendants will pay a Gross Settlement Amount of \$2,500,000 from
22 which a Net Settlement Amount of about \$1,523,199.12 will be allocated to Participating Class
23 Members.¹⁷ Therefore, the Attorney Fee Award for Class Counsel's successful prosecution and
24 resolution of this action is appropriate and reasonable under the percentage approach.

25 _____
26 ¹⁶ (Han Decl., *supra*, at ¶ 24.)

27 ¹⁷ (Olivares Decl., *supra*, at ¶ 15.)
28

1 **C. The Requested Attorney Fee Award Is Within the Range of Fees Approved**
2 **in Comparable Common Fund Cases**

3 When assessing an appropriate fee based on a percentage of the fund, “the test is not the
4 maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether
5 the settlement is reasonable under all of the circumstances.” (*Wershba v. Apple Computer, Inc.*,
6 *supra*, 91 Cal.App.4th at p. 250.)

7 Several studies of class action fee awards have found the median common fund fee
8 award is one-third (1/3) of the total settlement fund. (See, e.g., *Chavez v. Netflix, Inc.*, *supra*,
9 162 Cal.App.4th at p. 66, n.11 (numerous studies have shown that “fee awards in class actions
10 average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich,
11 Common Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17
12 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions
13 in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90
14 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of
15 approximately one-third of the total settlement”).)

16 The Attorney Fee Award falls in the mid-range of percentage class fee awards and
17 constitutes fair compensation. The Attorney Fee Award also compensates Class Counsel for
18 their efforts and results achieved for the Class. Considering the exceptional results obtained,
19 extraordinary risks undertaken, difficulty of the litigation, and skill displayed and quality of
20 work (detailed below), the Attorney Fee Award is fair and reasonable.¹⁸

21 The Attorney Fee Award is also in line with awards in similar cases in California and
22 nationwide and demonstrate it is consistent with the market rates. Class Counsel have also been
23 routinely awarded at least thirty-five percent (35%) fee requests or more in similar class action
24 and representative matters throughout California.¹⁹

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26 ¹⁸ (Han Decl., *supra*, at ¶¶ 8-9.)

27 ¹⁹ (*Id.* at ¶ 14.)

1 **D. The Attorney Fee Award Requested by Class Counsel Is Reasonable Based**
2 **on the Factors Considered in the Determination of Fee Awards.**

3 In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve
4 factors in determining if a fee award is reasonable in a common fund case: (1) time and labor;
5 (2) novelty and difficulty of the questions; (3) skill requisite to perform the legal services; (4)
6 preclusion of other employment; (5) customary fee; (6) whether fee is fixed or contingent; (7)
7 time limitation imposed; (8) amount involved and results obtained; (9) experience, reputation
8 and ability of the attorney; (10) undesirability of case; (11) nature and length of the professional
9 relationship; and (12) awards in similar cases.²⁰ (*Camden I Condominium Association, Inc. v.*
10 *Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772.) The court in *Camden* noted “[t]he analysis in a
11 common fund case focuses not on the plaintiffs’ position as ‘prevailing parties,’ but on a
12 showing that the fund conferring a benefit on the class resulted from their efforts” and thus in
13 common fund cases “the monetary results achieved predominate over all other criteria.” (*Id.* at
14 p. 774 (Citing H. Newberg, *Attorney Fee Awards* (1986) § 2.06 at 40-41).)

15 **I. The Exceptional Results Obtained**

16 The results attorneys obtain is an important factor when determining the reasonableness
17 of a percentage-based fee. (See *Laffitte v. Robert Half Internat., Inc.*, *supra*, 1 Cal.5th at p. 489.)
18 Law firms that obtain exceptional results for their clients can and do expect those exceptional
19 results to be reflected in their fees.

20 The results obtained in this matter are excellent as Class Counsel obtained a settlement
21 without the need for extended litigation. If the case went to trial, there was no guarantee either
22 party would have prevailed. Even if the Parties managed to reach a similar settlement at the later
23 stages of this case, it would have been severely undercut by additional expenses incurred. In
24 other words, by negotiating an exceptional settlement before resorting to going to trial, Class
25 Counsel ensured obtaining an optimal result for the Class. Thus, avoiding the uncertainties of

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27 ²⁰ These are also the factors based on which the lodestar is enhanced. (*Cates v. Chiang*
28 (2013) 213 Cal.App.4th 791, 822.)

1 class certification and the responses to the allegations allowed Class Counsel to obtain those
2 excellent results more quickly and surely than if the matter had been litigated to final resolution.
3 Under California law, this factor also supports the requested fee. (See *Lealao v. Beneficial Cal.,*
4 *Inc., supra*, 82 Cal.App.4th at p. 51.)

5 By extension, the excellence of the results is supported by there being no objections to
6 and only four (4) requests for exclusion from the Settlement. With regards to the benefits
7 conferred, the gross *average* Individual Settlement Share to be paid is approximately \$1,345.58,
8 and the gross *highest* Individual Settlement Share to be paid is about \$5,140.04.²¹

9 Finally, the Settlement is an all-in settlement, not a claims-made settlement. This means
10 the benefits to the Class is recoverable without requiring Class Members to make a claim for
11 them (submit a claim form to the settlement administrator). (See *Hopkins v. Stryker Sales Corp.*,
12 No. 11-cv-02786, 2013 WL 496358, at *2 (N.D. Cal. Feb. 6, 2013) (highlighting that class
13 members will not have to submit claim forms to recover their share of the settlement).)

14 **2. The Extraordinary Risk Taken by Class Counsel**

15 Whether or 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 are
17 performed [and] [...] compensates the lawyer not only for the legal services he renders
18 but for the loan of those services. A lawyer who both bears the risk of not being paid and
19 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. (internal quotes and citations omitted)

20 (*Cates v. Chiang, supra*, 213 Cal.App.4th at p. 823.)

21 Plaintiff executed a contingent fee agreement, meaning the representation of the Class
22 has been contingent. So, no recovery for the Class would have meant no compensation for Class
23 Counsel for 859.1 hours of work and \$15,467.55 in out-of-pocket litigation costs incurred.²²

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26 ²¹ (Olivares Decl., *supra*, at ¶¶ 11-12, 16.)

27 ²² (Han Decl., *supra*, at ¶¶ 10, 23.)

1 Moreover, if attorneys assume a significant financial risk for their clients, they have the
2 right to expect greater compensation. Attorneys being paid on an hourly basis as opposed to
3 being paid on a contingent basis are assuming less risks. (See, e.g., *Ketchum v. Moses, supra*, 24
4 Cal.4th at pp. 1132-33.) In other words, the contingent risks undertaken by attorneys is also a
5 significant factor when determining the percentage of the settlement fund to devote to attorneys’
6 fees. (See, e.g., *Laffitte v. Robert Half Internat., Inc., supra*, 1 Cal.5th at p. 504 (noting that trial
7 court had carefully considered risks and contingency involved in awarding 33 and 1/3% fee);
8 *Allapattah Servs. Inc. v. Exxon Corp.* (S.D. Fla. 2006) 454 F. Supp. 2d 1185, 2004-05 (“Factors
9 indicating ‘exceptional success’ include success achieved under unusually difficult or risky
10 circumstances and the size of plaintiffs’ recovery”).)

11 Finally, several factors made this case difficult, thereby contributing to the risks taken.
12 These factors include, among others: (1) difficulties in pinning down job responsibilities, wages
13 paid, and meal and rest breaks taken; (2) size of the Class (over 1,000); (3) several employees
14 working for Defendants through temporary employment agencies; (4) Defendants conducting
15 their business in different locations; (5) myriad of documents that had to be reviewed and
16 analyzed; (6) shifting wage-and-hour laws overlaid by the risks of class certification being
17 denied; and (7) Defendants’ initial firm resistance to the relief requested.²³

18 **3. *The Difficulty of the Litigation***

19 The unsettled nature of the law, number of claims to be litigated, factual complexities
20 underlying the policies and practices in place, and other issues made this case complex and
21 difficult. Yet, Class Counsel overcame these obstacles by obtaining a settlement that is fair,
22 adequate, and reasonable. Class Counsel obtaining an exceptional settlement despite these
23 roadblocks speaks volumes of their skill and experience. (See *Lealao v. Beneficial Cal., Inc.,*
24 *supra*, 82 Cal.App.4th at p. 42 (counsel’s “special skill and experience of counsel” is a relevant
25 factor when determining fee award).)

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27 ²³ (Han Decl., *supra*, at ¶ 8.)

1 This was not a clear-cut case, meaning Class Counsel had to overcome several obstacles.
2 These setbacks included determining the scope of the sizeable Class, determining commonality
3 amongst Class Members, analyzing a surplus of documents gathered, etc. Due to the difficulties
4 and setbacks of this case, Class Counsel devoted substantial hours to this matter. The Task &
5 Time Chart sets forth these hours, allocating the total time to the tasks required to conclude this
6 matter. The chart is thorough, comprehensive, and demonstrates the effort to diligently manage
7 this case. The work commenced with the pre-filing case analysis and research and continues up
8 to the moment of the work for final approval.²⁴

9 4. *The Skill Displayed and Quality of Work*

10 The level of skill displayed and excellent quality of work it produced also justify the fee
11 requested by Class Counsel. As set forth in the declaration of Douglas Han, Class Counsel are
12 skilled and experienced class action litigators and used this experience to obtain the Settlement.

13 The skill required to properly litigate this case is evident in the results achieved and, in
14 the steps, necessary to reach the same. This factor overlaps with many of the prior discussions,
15 including the obvious – a substantial Settlement was finally achieved despite all the obstacles
16 and setbacks described above. For instance, Class Counsel had to undertake the arduous and
17 time-consuming task of collecting documents and locating and interviewing several putative
18 class members. This assisted Class Counsel with finding a commonality amongst Class
19 Members, determining the frequency and extent of the alleged day-to-day violations, and
20 accurately calculating potential damages for mediation purposes. This was no simple task when
21 considering the different job titles, job responsibilities, and documents to review.²⁵

22 Thus, Class Counsel’s accumulated skill and expertise contributed to the Settlement in
23 this case. Under California law, this factor (skills displayed and quality of work) also supports
24 the Attorney Fee Award. (See *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at p. 51.)

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26 ²⁴ (Han Decl., *supra*, at ¶ 10; Exhibit 1.)

27 ²⁵ (*Id.* at ¶ 8.)

1 **E. The Lodestar Methodology Also Justifies Approval of the Requested Fee.**

2 While the percentage-of-the-benefit approach is endorsed as the better approximation of
3 the workings of the marketplace, courts may use the lodestar method to “cross-check”. A court
4 tasked with cross-checking a percentage-based fee considers the reasonableness of the lodestar
5 figure, which is the time spent multiplied by the reasonable hourly compensation of the
6 attorneys involved. (*Serrano v. Priest, supra*, 20 Cal.3d at p. 48.) Afterwards, the court may
7 enhance (or multiply) that figure after considering factors like the novelty and complexity of the
8 issues, skill and expertise of counsel, extent the litigation precluded other employment, and
9 risks involved. (*Id.* at p. 49.)

10 Class Counsel’s hourly rates utilized in the lodestar cross-check are within the range of
11 those charged by comparably qualified attorneys for similar work throughout California.
12 Specifically, Class Counsel’s hourly rates are supported by the 2021 Real Rate Report compiled
13 by Wolter Kluwer that surveyed the hourly rates charged in 2021 by hundreds of attorneys in
14 California. By extension, Class Counsel’s hourly rates are also in line with the Laffey Matrix.²⁶

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

16 In California, counsel is entitled to compensation for every hour reasonably spent on the
17 matter. (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) The reasonableness is assessed by
18 “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery,
19 litigation tactics, and the trial itself[.]” (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79
20 Cal.App.4th 440, 447.)

21 This matter required a significant amount of time and labor. Defendants disputed all
22 claims alleged and disputed the case was appropriate for class certification. The case involved
23 gathering and analyzing data in addition to locating and interviewing several putative class
24 members. In other words, the handling of this matter involved a great amount of effort and
25 required a high level of skill. While Class Counsel was gearing up for battle, Class Counsel

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27 ²⁶ (Han Decl., *supra*, at ¶¶ 11-12; Exhibits 2-3.)

1 undertook intense preparation to resolve the entire matter through mediation. These preparations
2 included, among other things, obtaining additional information from several putative class
3 members, drafting and propounding formal discovery requests, gathering and reviewing a
4 myriad of documents from Defendants and other sources, calculating potential damages for
5 mediation purposes, finding commonality amongst Class Members, etc.

6 The Task & Time Chart evidence the tasks performed to seek all necessary information.
7 The total number of hours worked by Class Counsel in pursuit of the litigation is 859.1 hours.²⁷
8 These hours of work did not go to waste because it resulted in a sizeable settlement of
9 \$2,500,000 with many Class Members receiving Individual Settlement Shares of over \$1,300
10 and some even receiving Individual Settlement Shares exceeding \$5,000.²⁸

11 **2. The Fees Requested Represent a Reasonable Hourly Rate of**
12 **Compensation Considering Class Counsel's Efforts and Experience.**

13 Class Counsel's hourly rates are well within the range of rates charged by comparably
14 qualified attorneys in the Los Angeles County area and the legal profession in general. By
15 extension, Class Counsel's hourly rates are in line with the Laffey Matrix.²⁹

16 Class Counsels' hourly rates are also reasonable for the following reasons: (1) several
17 courts in California have awarded Class Counsel fees at similar rates; (2) comparable hourly
18 rates for similar services have been deemed to be reasonable in several cases throughout
19 California; and (3) several surveys of legal rates have supported Class Counsel's hourly rates
20 (*i.e.*, 2021 Real Rate Report compiled by Wolters Kluwer and the Laffey Matrix). This shows
21 Class Counsel's hourly rates used for the lodestar calculation are well within the range of non-
22 contingent rates charged by comparable attorneys for similar work performed in California.

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25 ²⁷ (Han Decl., *supra*, at ¶ 10; Exhibit 1.)

26 ²⁸ (Olivares Decl., *supra*, at ¶ 16.)

27 ²⁹ (Han Decl., *supra*, at ¶¶ 11-12; Exhibits 2-3.)

1 Furthermore, the California Supreme Court has ruled an attorney fee award higher than
2 the actual fees incurred is proper in contingency cases:

3 “[A] contingent fee contract, since it involves a gamble on the result, may properly
4 provide for a larger compensation than would otherwise be reasonable.” The purpose
5 of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial
incentives for attorneys ... into line with incentives they have to undertake claims for
which they are paid on a fee-for-services basis.

6 (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1132.)

7 Moreover, the California Supreme Court added:

8 The economic rationale for fee enhancement in contingency cases has been explained as
9 follows: “A contingent fee must be higher than a fee for the same legal services paid as
10 they are performed. The contingent fee compensates the lawyer not only for the legal
11 services he renders but for the loan of those services. The implicit interest rate on such a
loan is higher because the risk of default (the loss of the case, which cancels the debt of
the client to the lawyer) is much higher than that of conventional loans.”

12 (*Ketchum v. Moses, supra*, 24 Cal.4th at pp. 1132-33.)

13 “[F]ee enhancements are intended to compensate for the risk of loss generally in
14 contingency cases *as a class*.” (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) In fact, under
15 California law, “[m]ultipliers can range from 2 to 4 or even higher.” (*Wershba v. Apple*
16 *Computer, Inc., supra*, 91 Cal.App.4th at p. 255.) For instance, in *Building a Better Redondo,*
17 *Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 874, the court noted, “[T]he modest
18 multiplier the trial court employed was justified by the contingent nature of counsel’s
19 compensation.” Similarly, the court in *Pulliam v. HNL Automotive Inc.* (2021) 60 Cal.App.5th
20 396, 409 even ruled, “The requested multiplier was modest and it accounted for the risk
21 plaintiff’s counsel took in litigating the case against defendants whom the court found made the
22 case challenging and protracted.” In other words, Class Counsel undertaking this case on a
23 contingent basis and risking no payment justifies the Attorney Fee Award even if it results in a
24 modest multiplier under the lodestar analysis. In addition, the risk of no payment was
25 exacerbated by the obstacles and difficulties Class Counsel encountered, as described above,
26 thereby making this case challenging and protracted. Despite these roadblocks, Class Counsel
27 still achieved an excellent settlement and recovery (gross *average* Individual Settlement Share
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1 of \$1,345.58 and gross *highest* Individual Settlement Share of \$5,140.04).

2 Class Counsel documented base lodestar fees is calculated to be \$622,315. When cross-
3 checked with the Attorney Fee Award, it results in a modest multiplier of 1.34.³⁰ As explained
4 above, this modest multiplier is well within the range of reasonability.

5 **VII. COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR AND REASONABLE.**

6 The Settlement authorizes reimbursement of costs up to \$25,000. The actual litigation
7 costs and expenses incurred total \$15,467.55, which were reasonable and necessary.³¹ Thus,
8 Class Counsel request reimbursement of the above-mentioned costs and expenses.

9 **VIII. PAYMENT TO THE SETTLEMENT ADMINISTRATOR IS FAIR AND REASONABLE.**

10 The total cost for the administration of the notice and settlement process in this case is
11 \$18,000. The costs incurred included performing various duties pursuant to the administration
12 process.³² Thus, the Court should grant final approval of the Administration Costs.

13 **IX. CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE.**

14 The Settlement provides for the Class Representative Enhancement Payment of \$10,000
15 to Plaintiff for the time and effort serving as the class representative.³³ Such enhancement
16 payments are both common and reasonable. (*Vranken v. Atlantic Richfield Co.* (N.D. Cal.
17 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class
18 representative).) The criteria courts may consider include the: (1) risk to the class
19 representatives in commencing suit, both financial and otherwise; (2) notoriety and personal
20 difficulties encountered by the class representatives; (3) amount of time and effort spent by the
21 class representatives; (4) duration of the litigation; and (5) personal benefit (or lack thereof)

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23 ³⁰ (Han Dec., *supra*, at ¶¶ 11, 13.)

24 ³¹ (Han Decl., *supra*, at ¶ 23, Exhibit 5; Settlement Agreement, *supra*, at §§ I(N),
25 III(F)(2).)

26 ³² (Olivares Decl., *supra*, at ¶¶ 3, 18; Settlement Agreement, *supra*, at § III(G).)

27 ³³ (Settlement Agreement, *supra*, at §§ I(L), III(F)(1).)
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1 enjoyed by the class representatives because of the litigation. (*Vranken v. Atlantic Richfield*
2 *Co.*, *supra*, 901 F.Supp. at p. 299.)

3 Plaintiff spent a substantial amount of time and effort in locating and producing relevant
4 documents and past employment records, reviewing relevant documents alongside Class
5 Counsel, and providing the facts and evidence necessary to prove the allegations. Plaintiff was
6 available whenever needed by Class Counsel and actively tried to obtain and provide as much
7 information as possible (*i.e.*, giving the names and contact information of putative class
8 members, speaking to current and former employees of Defendants). In addition, Plaintiff spent
9 numerous hours speaking with Class Counsel about the claims, discussing the work experiences
10 and work environment, helping Class Counsel develop a strategy to obtain additional
11 documents, aiding Class Counsel to determine the importance of the documents produced,
12 discussing the relative strengths of certain allegations, and reviewing the operative complaints,
13 Defendants' answer to the operative complaint, Class Counsel's formal discovery requests, and
14 Settlement Agreement (and exhibits). Plaintiff even prepared for and made himself available all
15 day to participate in and assist with mediation.³⁴

16 Plaintiff was advised of and accepted the risks and sacrifices associated with serving as
17 the class representative (*i.e.*, providing a broader release, risking an adverse judgment for
18 attorneys' fees and costs, losing a potential source of income). Plaintiff is also not related to
19 anyone associated with Class Counsel, has not entered into any undisclosed agreement, and has
20 not received undisclosed compensation. Therefore, Plaintiff elected to serve as the class
21 representative to his own detriment and should be properly compensated.³⁵

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25 ³⁴ (Han Decl., *supra*, at ¶ 22; Declaration of Jacob Blea In Support of Plaintiff's Motion
26 For Final Approval of Class Action Settlement ("Blea Decl."), ¶¶ 6-10.)


27 ³⁵ (Han Decl., *supra*, at ¶ 22; Blea Decl., *supra*, at ¶¶ 11-14.)

1 **X. CONCLUSION**

2 Plaintiff requests the Court grant final approval of the Settlement. Plaintiff further
3 requests the Court enter final judgment and retain continuing jurisdiction over the enforcement
4 and administration of the Settlement.

5
6 Dated: May 2, 2023

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
Attorneys for Plaintiff