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

MICHAEL TEBBS, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

SUNBELT RENTALS, INC., a North
Carolina corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. S-CV-0044313

**PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

Date: February 27, 2024

Time: 8:30 a.m.

Dept.: 42

Complaint Filed: January 21, 2020

PAUL PARKER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

SUNBELT RENTALS, INC., a North
Carolina corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. S-CV-0047378

Complaint Filed: September 29, 2021

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Attorneys for Plaintiffs and the Class

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT, on February 27, 2024 at 8:30 a.m. before the Honorable
3 Trisha J. Hirashima, judge presiding in Department 42 of the above-referenced Court, Plaintiffs
4 Michael Tebbs and Paul Parker (collectively, “Plaintiffs”) will and hereby do move the Court for an
5 Order: (1) granting final approval to the Class of the settlement; (2) fully and finally approving and
6 directing distribution to the Class of the settlement sum pursuant to the terms of the Class and
7 PAGA Action Settlement Agreement including the First and Second Amendment thereto
8 (collectively referred to as the “Settlement Agreement” or “Agreement”) in this matter, (3) fully and
9 finally approving the Class Representative Enhancement Awards, (4) fully and finally approving
10 the Settlement Administrator’s costs, and (5) fully and finally approving the award of attorney’s
11 fees and costs.

12 This Motion is unopposed by Defendant and made pursuant to Rule 3.769 of the California
13 Rules of Court, which provides for court approval of the settlement of a purported class action and
14 allows the Court to grant final certification of a class for settlement purposes. In light of the
15 overwhelmingly positive response, as shown by the lack of any objections to the settlement, there
16 is no question that the settlement is fair, reasonable and adequate and thus should be granted final
17 approval.

18 This Motion will be based on the Memorandum of Points and Authorities included herein,
19 the [Proposed] Order Granting Final Approval of Settlement and Judgment, upon the class papers
20 previously filed with this Court, and the supporting Declarations of Edward Choi, Larry Lee,
21 William Marder, Dennis Hyun, Plaintiffs Michael Tebbs and Paul Parker, and Kevin Lee of
22 Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any), and
23 on the complete records and file herein.

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1 DATED: February 1, 2024

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

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3 By: _____
4 Edward W. Choi
5 Attorneys for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs and Class Representative Michael Tebbs and Paul Parker (collectively,
4 “Plaintiffs” or “Class Representatives”) submit this Memorandum in support of the Motion for
5 Final Approval of the Class and PAGA Action Settlement Agreement (the “Agreement”)¹.

6 The settlement entered into by and between Plaintiffs and Defendant SUNBELT
7 RENTALS, INC. (“Defendant”) (Plaintiffs and Defendant are collectively referred to as
8 “Parties”) provides for a settlement fund of Nine Hundred Fifty Thousand Dollars (\$950,000.00)
9 (“Gross Settlement Amount”) to be created for the benefit of the Class. From the Class
10 Settlement Amount, attorney’s fees, litigation costs, enhancement awards to Plaintiffs, Private
11 Attorneys General Act (“PAGA”) payment, and the costs of settlement administration are to be
12 paid.

13 The history of this litigation was previously detailed in Plaintiffs’ preliminary approval
14 motion, and thus is incorporated herein.

15 Per the Court’s September 19, 2023 Ruling on Submitted Matter granting Plaintiffs’
16 Motion for Preliminary Approval (“Preliminary Approval Order”), the Settlement Administrator,
17 Phoenix Settlement Administrator (“Phoenix” and/or “Settlement Administrator”), distributed
18 the Class Notice to all 297 Class Members. (*See* Declaration of Kevin Lee (“Admin Decl.”) at
19 ¶5.) As of the date of this filing, *zero* (0) Notices are considered undeliverable, because an
20 updated address could not be obtained notwithstanding performing a skip-trace. (*Id.* at ¶7). There
21 have been *zero* (0) objections filed to the Settlement and *zero* (0) requests for exclusion from the
22 Settlement. (*Id.* at ¶¶8-9)². Thus, there is a 100% participation rate with not a single objection.
23 This favorable response by the Class supports the Court’s Preliminary Approval Order finding
24

25
26 ¹ Pursuant to the Court’s previous rulings, the Settlement Agreement includes two amendments.

27 ² The deadline for class members to request exclusion or object to the Settlement is February 1,
2024. Plaintiffs will file a Supplemental Brief and Admin Declaration after February 1, 2024
with any updates to the number of objections and requests for exclusions, if any.

1 that the Settlement was fair, adequate and reasonable, and further supports the granting of this
2 instant Motion.

3 In sum, as a result of the notice process, and in light of the complete lack of any
4 objections and request for exclusions, the Court may confirm its preliminary approval as this
5 process supports the Court's initial finding that the Settlement is fair, adequate and reasonable.

6 In addition to the results of the notice process, for the same reasons as set forth earlier in
7 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, the following represents
8 the basic points previously covered supporting approval of the Settlement:

- 9 • The Settlement Fund provides a total settlement sum of \$950,000.00 for a class
10 size of 297 and Class Members will be entitled to recover, on average, \$1,696.69,
11 with the highest award being approximately \$3,847.26 each after deductions for
12 fees, costs, representative award and PAGA payment (Admin Decl. ¶ 13);
- 13 • Plaintiffs performed adequate investigation of this case, including the production
14 of class data for the entire class necessary for Plaintiffs to fully evaluate this case;
15 and
- 16 • A highly regarded Settlement Administrator was retained, Phoenix Settlement
17 Administrators, at a competitive price.

18 With this additional information, the Court should grant Final Approval consistent with
19 the Preliminary Approval Order.

20 **II. THE SETTLEMENT**

21 **A. Class Members Were Provided Proper Notice.**

22 The notice procedures required by the Preliminary Approval Order have been followed
23 and satisfy all due process rights of Class Members.

24 The Preliminary Approval Order contemplated that the Notice of Class Action Settlement
25 ("Notice"), as approved in the Preliminary Approval Order, be sent to all Class Members by first
26 class mail, as specified in the Settlement Agreement. The Preliminary Approval Order
27 contemplated, further, that Phoenix would serve as the Settlement Administrator.

1 As clearly stated in the Declaration of the Settlement Administrator, notice was provided
2 to Class Members as required by the Preliminary Approval Order. The Settlement Administrator
3 received a Class Member mailing list from Defendant that included 297 Class Members, and, on
4 January 2, 2024, each of the persons identified on the mailing list was sent the Notice via first
5 class mail. (Admin Decl. at ¶¶3-5.) Zero (0) Notices were returned to PSA. Thus, there is a
6 100% notice success rate.

7 The provision of the notice to Class Members and administration of the settlement as
8 described above meets the requirements for the “best notice practicable” in this case as necessary
9 to protect the due process rights of Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*,
10 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the
11 litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*,
12 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be
13 identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.
14 306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the
15 circumstances, to apprise interested parties of the pendency of the action and afford them an
16 opportunity to present their objections”).

17 Here, the Class Members were provided with a mailing regarding the settlement that
18 explained the settlement, right and process to opt-out or object, and allowed Class Members to
19 seek information, ask questions, and seek additional forms. As such, proper notice has been
20 given to the Class Members.

21 The Court, therefore, may proceed to determine the fairness and adequacy of the
22 Settlement, and order its approval, secure in the knowledge that all absent Class Members have
23 been given the opportunity to participate fully in the exclusion, objection, and the approval
24 process.

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1 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE,**
2 **AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

3 **A. The Terms Of The Settlement, The Negotiation Of The Settlement And The**
4 **Reception Of The Settlement By Class Members All Strongly Support The**
5 **Conclusion That The Settlement Is Fair, Adequate And Reasonable**

6 Without reiterating the Parties' showing that the Settlement Agreement and the
7 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
8 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
9 Agreement was the product of negotiation between highly able and experienced attorneys on
10 both sides, possessed of the relevant data and extensive legal research which they had carefully
11 analyzed. (Declaration of Edward Choi ("Choi Decl.") at ¶4). In addition, the resolution of this
12 case was reached only after a full day of mediation with well-respected mediator, Mark S. Rudy.
13 (*Id.* at ¶5).

14 The results after mailing of the Class Notice support confirmation of the Court's
15 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
16 fact that ***there is not a single Class member who has objected to the current settlement, nor***
17 ***requested exclusion.*** (Admin Decl. at ¶¶8-9). As such, there is a 100% participation rate in the
18 settlement.

19 The Court may appropriately infer that the class action settlement is fair, adequate and
20 reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v.*
21 *City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) The Court should further construe the lack
22 of any objection to this current settlement, as well as there were no opt-outs, as an indication that
23 Class Members themselves view the settlement as fair, adequate and reasonable.

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1 **B. Under Well-Established Legal Principles, the Court Should Grant Final**
2 **Approval to the Settlement**

3 **1. Standard of Review**

4 On a motion for final approval of a class action settlement under Civil Code § 1781(f)
5 and Federal Rules of Civil Procedure (“FRCP”) Rule 23(e), a court’s inquiry is whether the
6 settlement is “fair, adequate and reasonable.”³ *Officers for Justice v. Civil Serv. Comm’n*, 668
7 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217
8 (1983). A settlement is fair, adequate and reasonable, and therefore merits final approval, when
9 “the interests of the class are better served by the settlement than by further litigation.” *See*
10 *Manual for Complex Litigation Fourth* (Fed. Judicial Center 2004) (“Manual”), § 21.6 at 309.

11 The law favors settlement, particularly in class actions and other complex cases, where
12 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
13 *See* 4 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d
14 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

15 Although the Court possesses “broad discretion” in determining that a proposed class
16 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
17 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
18 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
19 adequate to all concerned. *See Officers for Justice, supra* 688 F.2d at 625. Accordingly, the
20 Court should give due regard to what is otherwise a “private consensual agreement” between the
21 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
22 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379 (D. Ariz. 1989), *aff’d*
23 *sub nom.*, *City of Seattle*, 955 F.2d 1268; Manual § 21.6 at 309 (“The judicial role in reviewing a
24 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
25 or imposing conditions on it. The judge cannot rewrite the agreement.”)

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27

³ Both Civil Code § 1781(f) and FRCP Rule 23 have been expressly authorized by the California Supreme Court
for use in all California class action litigation. *See Vasquez v. Superior Court* (1971) 4 Cal. 3rd 800, 820-821.

1 A court's approval of a class action settlement will only be reversed for a clear abuse of
2 discretion. See *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; see also *Officers*
3 *for Justice*, 688 F.2d at 626 ("reverse only upon a strong showing that the district court's
4 decision was a clear abuse of discretion"); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v.*
5 *Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234,
6 1238 (9th Cir. 1998).

7 As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp* cautioned: "[i]t
8 cannot be overemphasized that neither the trial court in approving the settlement nor this Court
9 in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues
10 of fact and law which underlie the merits of the dispute. It is well settled that in the judicial
11 consideration of proposed settlements, 'the [trial] judge does not try out or attempt to decide the
12 merits of the controversy,' [citation] and the appellate court 'need not and should not reach any
13 dispositive conclusions on the admittedly unsettled legal issue.'" *7-Eleven Owners for Fair*
14 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.

15 2. The Settlement Is Presumed To Be Fair

16 The Court should begin its analysis with the presumption that the settlement is fair and
17 should be approved:

18 [A] presumption of fairness exists where : (1) the settlement is reached through
19 arm's-length bargaining; (2) investigation and discovery are sufficient to allow
20 counsel and the court to act intelligently; (3) counsel is experienced in similar
litigation; and (4) the percentage of objectors is small.

21 *Dunk v. Ford Motor Co* (1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair*
22 *Franchising*, 85 Cal. App. 4th at 1146; accord, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,
23 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F Supp at 1387.

24 The settlement in the case at bar warrants approval and carries a presumption of fairness.
25 As previously noted in the application for Preliminary Approval, this current settlement was
26 negotiated at arms' length, and with the assistance an experienced mediator. (Choi Decl. at ¶ 5).
27 Class Counsel engaged in sufficient discovery and in significant investigation before settling.

(*Id.* at ¶4) Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Choi Decl. at ¶ 20; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-6; Declaration of Dennis Hyun (“Hyun Decl.”) at ¶¶ 3-6; Declaration of William Marder (“Marder Decl.”) at ¶ 8).

3. Two-Way Costs and Other Risks Inherent In Continued Litigation
Favor Final Approval

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) (“present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs could have been responsible for Defendant’s costs. As such, should individual, current or former employees of Defendant want to bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by many of these current and former employees—thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs, nor any of the class members will be required to pay for Defendant’s litigation costs.

The risks of this case were weighed by Class Counsel and, should be considered a significant issue by the Court in its determination of final approval. Class Counsel obtained a very substantial settlement for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members or the Class Representative.

1 Indeed, and the Individual Settlement Payments to each Class Member will be approximately
2 \$1,696.69, after deductions for fees, costs, representative award and PAGA payment. (Admin
3 Decl. at ¶ 13.)

4 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding
5 significant legal and factual battles that otherwise may have prevented the Class from obtaining
6 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious and
7 can be successfully litigated, they are experienced and fully understand the inherent risks and
8 uncertainty involved with such matters as the resolution of class certification, the outcome of a
9 potential trial, and the outcome of any appeals that would inevitably follow should the Class
10 prevail at trial.

11 Class Counsel has also assessed the same risks in connection with the current settlement.
12 Because the settlement provides immediate and substantial relief, without the attendant risks and
13 delay of continued litigation – not to mention the threat of litigation fees and costs – Class
14 Counsel believe that the settlement warrants the Court's final approval.

15 **4. The Complexity, Expense and Likely Duration of Continued**
16 **Litigation Against Defendant Favor Final Approval**

17 Another factor considered by courts in approving a settlement is the complexity, expense,
18 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
19 157. In applying this factor, the Court must weigh the benefits of the settlement against the
20 expense and delay involved in achieving an equivalent or more favorable result at trial. *See*
21 *Young v. Katz*, 447 F.2d 431, 433-434 (5th Cir. 1971).

22 As noted above, continued litigation could have led to appeals on a number of issues. On
23 the other hand, the settlement that was reached provides to all Class Members – regardless of
24 their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval,
25 the Class Members would be left without a remedy as a practical matter and courts across the
26 State would have to address the issues presented here in a piecemeal, costly, and time-consuming
27 manner. The settlement in this case is therefore consistent with the “overriding public interest in

1 settling and quieting litigation” that is “particularly true in class action suits.” *See Van*
2 *Bronkhorst v. Safeco Corp.*, 529 F.2d at 950 (footnote omitted); *see also* 4 Newberg at § 11.41.

3 **5. The Opinion of Experienced Counsel Favors Final Approval**

4 Class Counsel supports the settlement as fair, reasonable and adequate, and in the best
5 interest of the Class Members as a whole. (Choi Decl. at ¶ 14) Similarly, counsel for Defendant
6 is also in favor of this settlement.

7 The endorsement of qualified and well-informed counsel of a settlement as fair,
8 reasonable, and adequate is entitled to significant weight by the Court in its final approval
9 determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485
10 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

11 **6. Discovery, Mediation, and the Settlement Discussions Undertaken In**
12 **This Action Favor Final Approval**

13 Prior to negotiating the settlement, Class Counsel engaged in significant investigation on
14 a number of topics and categories. Plaintiffs and Defendant engaged in written discovery and an
15 extensive meet and confer process that resulted in Defendant producing all of the data necessary
16 to allow Plaintiffs to ascertain and determine the potential amount of damages that Defendant
17 possibly could be liable for if Plaintiffs prevailed at trial. (Choi Decl. at ¶4). Further, the Parties
18 participated in a private mediation before Mark S. Rudy, a highly experienced and highly
19 regarded mediator with extensive mediation experience in employment matters, in particular
20 wage and hour class actions. (*Id.* at ¶ 5).

21 As detailed above, each of the factors counsel strongly in favor of final approval of the
22 Settlement by this Court.

23 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
24 **APPROVED**

25 Plaintiffs have each requested, and Defendant does not oppose, an enhancement of Ten
26 Thousand Dollars (\$10,000.00), pursuant to the terms of the Settlement Agreement. Plaintiffs
27 request that this Court approve such service payments in light of the efforts Plaintiffs put into

1 this case, the absence of any objection to their service payment, and the excellent result achieved.

2 As shown in the supporting declarations, the Class Representatives spent significant time
3 with Class Counsel on a number of occasions to discuss the case, including providing substantive
4 information regarding Defendant's practices, and providing documents related to their own
5 claims and the claims of the Class. As part of their duties as Class Representatives, Plaintiffs
6 provided invaluable information, evidence, and documents that resulted in this settlement.

7 In addition to the invaluable services the Class Representatives provided, they also took a
8 significant risk, both professionally and monetarily, in acting as Class Representatives. Because
9 the claims alleged by Plaintiffs involved the payment of costs to the prevailing party, Plaintiffs
10 could have possibly faced paying the costs of Defendant had Plaintiffs not prevailed in this
11 action. Moreover, given that future employers are much less likely to hire individuals who have
12 filed suit against their prior employer, particularly cases of this nature, the Class Representatives
13 could face negative employment prospects in the future.

14 The Class Representatives assumed such risks and the whole class benefited from this.
15 Class Members did not have to file individual lawsuits and bear the risks of payment of costs if
16 they did not prevail, nor did they have to face the potential for retaliation and not getting future
17 employment had they filed a lawsuit which is a public record. These are significant benefits,
18 even apart from the time the Class Representatives had spent working on this case, that weigh in
19 favor of granting the requested enhancement.

20 Courts have routinely granted approval of settlements containing such enhancements. In
21 *League of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that
22 the proposal settlement properly granted the named plaintiffs individual relief. It is "not
23 uncommon for Class Members...to receive special relief in settlement... [The Plaintiff]...had
24 been instrument in prosecuting this lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi v.*
25 *Western Elec. Co.*, 527 F. Supp. 18 (D. N. J. 1981), a named plaintiff in a Title VII class action
26 was awarded individual relief of back-pay and interest, reinstatement, punitive damages and
27 counsel fees. Similarly, in *Women's Committee for Equal Employment Opportunity v. NBC*, 76

1 F.R.D. 173 (SDNY 1977), the court approved as fair a settlement that included awards to 16
2 named plaintiffs of virtually all the damages they sought.

3 In *Lo Re v. Chase Manhattan Corp.*, 1979 U. S. Dist. LEXIS 12210, 19 FEP Cas. (BNA)
4 1366 (SDNY 1979), the court approved a class representative payment of \$229,000 out of a
5 \$1,579,000 settlement fund to the named plaintiff for his individual claims. One of the factors
6 considered by the court in determining that such payments were fair was the fact that none of the
7 absent Class Members objected to the enhancements. The court held that this fact showed that
8 the Class Members were not offended by these enhancements. *Id.* at 17. In the present case,
9 there are no objections filed by any individual to the requested amounts. As such, one can infer
10 that none of the Class Members have any disagreement with such individual enhancement.
11 Furthermore, and as explained above, the Class Representative took substantial risk in bringing
12 the current benefits to the class.

13 Here, this litigation has resulted in a significantly valuable benefit to the class, and the
14 Class Representatives took on substantial risk in helping to get this financial benefit to the class.
15 As such, the enhancement should be awarded to the named Plaintiffs for their commitment,
16 dedication, and risks taken for this litigation. Accordingly, Plaintiffs respectfully request that the
17 Court find the enhancements as fair and reasonable.

18 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

19 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the
20 Settlement Agreement and this Motion. The proposed settlement provides substantial benefits to
21 the Class and was reached after adequate investigation and litigation by Class Counsel. Class
22 Counsel and Plaintiffs achieved a \$950,000.00 Class Settlement Amount for the benefit of the
23 Class to compensate the Class for the claims alleged. There have been no objections filed
24 against the Settlement or to Class Counsel's request for attorneys' fees in the amount of
25 \$332,500.00. As more fully detailed below, Class Counsel's request for attorney's fees and
26 reimbursement of costs, is fair, reasonable, and adequate. Accordingly, final approval should be
27 granted.

1 **A. An Award of Attorneys’ Fees and Costs is Requested When A Common**
2 **Fund Has Been Created for the Benefit of the Class**

3 Class Counsel’s application for an award of attorneys’ fees in the amount of \$332,500.00
4 of the \$950,000.00 settlement fund created on behalf of the Class is reasonable and fair. The
5 requested fee represents fair compensation for undertaking complex, risky, expensive, and time-
6 consuming litigation on a contingent basis.

7 Class Counsel seeks a fee award calculated as 35% of the total value of the Settlement for
8 the successful prosecution and resolution of this action.

9 California state and federal courts routinely award fee awards of one-third of the
10 settlement fund in class actions. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn. 11;
11 *see also Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery”
12 method); *In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming
13 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of
14 fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.*, (2016) 1 Cal.5th 480, 506 (“the
15 percentage of fund method survives in California class action cases...”). Specifically, the *Laffitte*
16 Court held:

17 “We join the overwhelming majority of federal and state courts in holding that when
18 class action litigation establishes a monetary fund for the benefit of the class
19 members, and the trial court in its equitable powers awards class counsel a fee out of
20 that fund, the court may determine the amount of a reasonable fee by choosing an
21 appropriate percentage of the fund created. The recognized advantages of the
22 percentage method—including relative ease of calculation, alignment of incentives
between counsel and the class, a better approximation of market conditions in a
contingency case, and the encouragement it provides counsel to seek an early
settlement and avoid unnecessarily prolonging the litigation—convince us the
percentage method is a valuable tool that should not be denied our trial courts.”

23 *Id.* at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9
24 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately
25 reflects the results achieved than the lodestar method and “establishes reasonable expectations on
26 the part of Plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
27 which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294,

1 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund
2 cases because it allows courts to award fees from the fund in a manner that rewards counsel for
3 success and penalizes it for failure.”).

4 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required;
5 in many cases, performing a cross-check “undermines” one of the primary reasons for using the
6 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
7 discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a
8 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*
9 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of
10 the Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar
11 approach set forth in this Report are now echoed by many authorities, who have been most vocal
12 about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already
13 overworked trial judge.”).

14 Further, “the response of the class members to attorneys’ fee notice, though not decisive,
15 is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1
16 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
17 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the class
18 notice specifically notified class members that Plaintiffs’ Counsel would be seeking thirty-five
19 percent (35%) of the settlement fund as attorneys’ fees. To date, a single class member has not
20 objected to the settlement. This strong favorable response also supports the requested fees.

21 In addition, it is recognized that one of the primary factors justifying an enhanced
22 attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of*
23 *Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974). No one expects a lawyer whose
24 compensation is contingent upon his success to charge, when successful, as little as he would
25 charge a client who had agreed to pay for his services, regardless of success. Nor, particularly in
26 complicated cases producing large recoveries, is it just to make a fee depend solely on the
27 reasonable amount of time expended.

1 Here, it is clear that a settlement fund of \$950,000.00 has been created. For Class
2 Counsel, the fees here were wholly contingent in nature and the case presented far more risk than
3 the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
4 well as a potentially protracted battle with a corporate Defendant who had retained a highly-
5 experienced defense firm. As such, the requested fee of \$332,500.00 should be awarded.

6 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
7 **OF COSTS**

8 The request for reimbursement of costs, in the amount of \$33,582.30 is fair and
9 reasonable. Pursuant to the terms of the Settlement Agreement, Plaintiffs are allowed to seek
10 reimbursement of litigation costs up to a maximum of \$50,000.00. To date, Class Counsel has
11 expended a total of \$33,582.30 in litigation related costs. (Choi Decl. at ¶ 21; Ex. A; Hyun Decl.
12 ¶ 11; Lee Decl. at ¶ 7; Ex. A). As such, this request should be approved.

13 **VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE**
14 **APPROVED**

15 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
16 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
17 funds. As shown on the Declaration of Kevin Lee, the class administration fees for the
18 administration of the settlement in this matter amounts to Ten Thousand Dollars (\$10,000.00).
19 (Admin Decl. at ¶ 16). For such reasons, it is requested that the Settlement Administrator’s fees
20 be approved.

21 **VIII. PLAINTIFFS HAVE PROVIDED NOTICE TO THE LWDA**

22 On October 9, 2023, Plaintiffs uploaded the Preliminary Approval Order to the LWDA’s
23 website. (Choi Decl. ¶22). On January 31, 2024, Plaintiffs uploaded this motion and proposed
24 order to the LWDA’s website. (*Id.* at ¶23; Ex. B).

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1 **IX. CONCLUSION**

2 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs
3 respectfully submit that the standards for final approval have been met, and the terms of the
4 Settlement Agreement are fair, adequate and reasonable.

5 Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form
6 proposed and submitted:

- 7 1. Granting final approval to the proposed Settlement Agreement;
8 2. Approving distribution of the settlement funds pursuant to the terms of the
9 Settlement Agreement;
10 3. Approving Plaintiffs' request for award of the class representatives enhancement
11 with payment pursuant to the terms of the Settlement Agreement;
12 4. Approving Plaintiffs' request for an award of the Class Counsel's fees and costs
13 with payment pursuant to the terms of the Settlement Agreement;
14 5. Approving Plaintiffs' request for payment of the settlement administration costs
15 with payment pursuant to the terms of the Settlement Agreement; and
16 6. Entering final judgment as to all members of the Settlement Class in this action.

17
18 DATED: February 1, 2024

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

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20 By: 
21 Edward W. Choi
22 Attorneys for Plaintiffs and the Class
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