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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

VICTORIA TICE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TRADER JOE'S COMPANY, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20CV00892

[Assigned to the Honorable Thomas P. Anderle,
Department 3]

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

Date: September 6, 2023
Time: 10:00 A.M.
Dept.: 3

Complaint Filed: February 14, 2020

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

2 **PLEASE TAKE NOTICE** that on September 6, 2023, at 10:00 A.M., or as soon
3 thereafter as the matter may be heard, before the Honorable Thomas P. Anderle, judge presiding,
4 in Department 3 of the above referenced Court, located at 1100 Anacapa Street, Santa Barbara,
5 California 93101, Plaintiff Victoria Tice (“Plaintiff”) will and hereby does move this Court for
6 an Order

7 1. Granting final approval to the Joint Stipulation of Class Action Settlement
8 (“Stipulation” or “Settlement Agreement”) in this action;

9 2. Approving distribution of the settlement funds to the Class Members pursuant to
10 the terms of the Settlement Agreement;

11 3. Approving Plaintiff’s request for an incentive payment of \$10,000.00 to Plaintiff
12 pursuant to the terms of the Settlement Agreement;

13 4. Approving Class Counsel’s request for an award of attorneys’ fees of one-third of
14 the Gross Settlement Amount, or \$113,333.33, and reimbursement of actual litigation costs of
15 \$52,386.08, pursuant to the terms of the Settlement Agreement;

16 5. Approving Plaintiff’s request for payment of the settlement administration costs
17 to Phoenix Settlement Administrators in the amount of \$11,000.00, pursuant to the terms of the
18 Settlement Agreement;

19 6. Approving Plaintiff’s request for payment to the California Labor & Workforce
20 Development Agency (“LWDA”) for \$18,750.00, pursuant to the California Labor Code Private
21 Attorneys General Act and the terms of the Settlement Agreement; and

22 7. Entering final judgment as to all members of the settlement class in this action.

23 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
24 provides for court approval of the settlement of a purported class action and allows the Court to
25 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
26 response, as shown by the lack of objections and single opt-out to the settlement, there is no
27 question that the settlement is fair, reasonable, and adequate and thus should be granted final
28 approval.

1 This Motion will be based on the attached Memorandum of Points and Authorities and
2 the supporting Declarations of Larry W. Lee, Max W. Gavron, William L. Marder, Plaintiff
3 Victoria Tice, and Taylor Mitzner of Phoenix Settlement Administrators, upon the oral
4 arguments of counsel (should there be any), and on the complete records and file herein.
5

6 DATED: August 14, 2023

DIVERSITY LAW GROUP, P.C.

7
8 By: 
9 Larry W. Lee
10 Max Gavron
11 Attorneys for Plaintiff and the Class
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	9
II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE	10
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL	12
A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class	12
1. The Class is Ascertainable.....	12
2. There is a Community of Interest.....	12
B. Risks, Expenses, and Complexity of Further Litigation	14
C. The Terms, Negotiation, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.....	14
D. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement.....	15
1. Standard of Review.....	15
2. The Settlement is Presumed to Be Fair.....	16
3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval.....	17
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	18
5. The Opinion of Experienced Counsel Favors Final Approval	19
IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED.....	19

V. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT SHOULD BE APPROVED.....	19
VI. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED.....	21
VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS	26
VIII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED.....	26
IX. NOTICE TO THE LWDA	26
X. CONCLUSION	27

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1146 (2000)	16
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	23
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27, 45 (1983)	13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996)	16, 17
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014)	14
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629, 632-33 (1998)	24
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122, 1139 (2001)	25
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (Aug. 11, 2016)	21, 23
<i>Lealao v. Beneficial California, Inc.</i> 82 Cal. App. 4th 19 (2000)	23, 25
<i>Lockheed Martin Corp. v. Superior Court</i> , 29 Cal. 4th 1096, 1104-05 (2003)	13
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553, 559 (1986)	24
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084, 1095 (2000)	24
<i>Reese v. Wal-Mart Stores, Inc.</i> , 73 Cal.App.4th 1225, 1234(1999)	12
<i>Reyes v. San Diego County Board of Supervisors</i> , 196 Cal.App.3d 1263, 1271 (1987)	12
<i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462, 470 (1981)	12
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	21, 25
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 639 (1982)	24
<i>Simons v. Horowitz</i> , 151 Cal.App.3d 834, 846 (1984)	14
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal App.4th 495, 512 (2009)	23
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 255 (2001)	21, 23, 25

Federal Cases

<i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993)	16
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	21
<i>Boyd v. Bank of Am. Corp.</i> , 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)	25

1	<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).....	17, 19
2	<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	20
3	<i>Byrd v. Civil Serv. Comm’n</i> , 459 U.S. 1217 (1983).....	15
4	<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993).....	16
5	<i>City of Detroit v. Grinnell Corp.</i> , 495 F. 2d 448, 470 (2d Cir. 1974).....	22
6	<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268, 1291	15
7	<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	21
8	<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974)	11
9	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980)	17, 19
10	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio	
11	1991)	20
12	<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	21
13	<i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975).....	17, 18
14	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
15	27, 2007)	21
16	<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497, 508 (9th Cir. 1992).....	13
17	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) .	20
18	<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995).....	17
19	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294, 306-307 (3d Cir. 2005).....	23
20	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....	16, 17
21	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998)	16, 19
22	<i>Martin v. AmeriPride Servs.</i> , 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).....	22
23	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314 (1950)	11
24	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54, 62 (1980).....	24
25	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615, 625 (9th Cir. 1982)	15, 16, 18, 19
26	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	11
27	<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261, 1272 (D.C. Cir. 1993)	22
28	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9th Cir. 1976)	15, 19
	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	20

1	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	26
2	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	21
3	<i>Young v. Katz</i> , 447 F.2d 431, 433-34 (5th Cir. 1971).....	18
4	Statutes	
5	California Code of Civil Procedure Section 382	12, 15
6	Civil Code § 1542	20
7	Other Authorities	
8	4 <i>Newberg on Class Actions</i> , 4th § 11.41 (2008)	15, 19
9	Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> ,	
10	7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010)	22
11	<i>Manual for Complex Litigation Fourth</i> (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 30915, 16	
12	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237, 258	
13	(1985).....	23
14	Rules	
15	California Rule of Court 3.769	15

1 **I. INTRODUCTION**

2 Plaintiff Victoria Tice (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action Settlement (“Stipulation” or “Settlement Agreement”). The
4 Settlement Agreement provides for a \$340,000.00 **non-reversionary** fund to be created for the
5 benefit of the Class, from which attorneys’ fees, litigation costs, incentive payment to the named
6 Plaintiff, payment to the California Labor and Workforce Development Agency (“LWDA”), and
7 costs of settlement administration are to be paid. The entire Net Settlement Amount after these
8 deductions will be paid to all Class Members who did not opt-out of the Settlement.

9 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
10 Approval of Class Action Settlement. The Court preliminary approved this settlement on June 3,
11 2023, directing distribution of Notice of Class Action Settlement (“Class Notice”) and
12 scheduling the hearing for final approval of the settlement (the “Preliminary Approval Order”).

13 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
14 Settlement Administrators—distributed the Class Notice to 951 Class Members. Declaration of
15 Taylor Mitzner on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. To date,
16 only a single request for exclusion and zero objections to the settlement have been submitted by
17 Class Members. *Id.* ¶¶ 8, 9. As such, there is a 99.9% participation rate. Thus, in light of the lack
18 of objections and single opt-out, an inference can be made that the Class supports the Court’s
19 Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

20 In addition to the results of the notice process, for the same reasons as set forth earlier in
21 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represents
22 the basic points supporting final approval of the settlement:

- 23 • The settlement provides a total settlement sum of \$340,000.00, which is **non-**
24 **reversionary**;
- 25 • The settlement is fair given that participating Class Members will receive (*after*
26 *deductions for fees, costs, etc.*) a substantial amount of money – on average, approximately
27 \$135.03 to each Participating Class Member (*See* Admin Decl. ¶ 11);
- 28 • Class Members did not need to submit claim forms to participate in the

1 settlement, but are being paid automatically;

2 • The allocation reflects that the Net Settlement Amount will be evenly divided
3 among all Participating Class Members;

4 • Class Counsel conducted significant investigation and litigation in this case,
5 including conducting formal and informal discovery and significant exchanges of information
6 regarding class data for the entire class, as well as documents and information pertaining to
7 Defendant Trader Joe's Company's ("Defendant") policies and practices regarding payment of
8 final wages and use of paycards;

9 • A highly regarded settlement administrator, Phoenix Settlement Administrators,
10 was retained to administer the settlement for approximately \$11,000.00 (*See* Admin Decl. ¶ 15);
11 and

12 • The State of California's LWDA will also be the beneficiary of this settlement, as
13 it will receive \$18,750.00 pursuant to the PAGA, should this settlement be granted final
14 approval.

15 Accordingly, the Court should grant Final Approval consistent with the Preliminary
16 Approval Order.

17 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE**

18 The notice procedures required by the Preliminary Approval Order have been followed
19 and satisfy all due process rights of Class Members. Specifically, the Preliminary Approval
20 Order contemplated that the Class Notice, as approved in the Preliminary Approval Order, be
21 sent to all Class Members by first class mail, as specified in the Settlement Agreement. The
22 Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators
23 would serve as the Settlement Administrator.

24 As clearly stated in the Declaration of Taylor Mitzner, notice was provided to Class
25 Members, as required by the Preliminary Approval Order. On May 18, 2023, the Settlement
26 Administrator received a Class Member mailing list from Defendant's counsel that included 951
27 Class Members. Admin Decl. ¶ 3. On June 5, 2023, the Settlement Administrator mailed the
28 Class Notice to all 951 Class Members on the mailing list via U.S. first class mail. *Id.* ¶ 5. From

1 the date of mailing, seven Class Notices were returned to the Settlement Administrator due to an
2 incorrect address. *Id.* ¶ 6. The Settlement Administrator conducted a National Change of Address
3 (“NCOA”) search to correct and/or update the Class Member addresses and re-mailed the Class
4 Notices to the updated addresses thereto. *Id.* As of the date of this filing, zero Class Notices
5 remain undeliverable. *Id.* ¶ 7.

6 Furthermore, the Class Notice provided Class Members with Class Counsel’s and the
7 Settlement Administrator’s contact information and website, where they could further seek
8 information regarding the settlement, ask questions, review pleadings in the case, and update
9 their address. Admin Decl. ¶ 5, Ex. A.

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

20 Here, all Class Members were provided with a mailing that explained the settlement and
21 allowed Class Members to seek information, ask questions, and exclude themselves and/or object
22 to the settlement, if so desired. As such, proper notice has been given to the Class Members.
23 Thus, the Court may determine the fairness and adequacy of the settlement and enter its Order
24 granting final approval and final judgment as to all Class Members, secure in the knowledge that
25 all absent Class Members have been given the opportunity to participate fully in the settlement,
26 exclusion, and the approval process.

27 //

28 //

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

3 **A. Strength of Plaintiff's Case and Likelihood of Certifying the Class**

4 The Court already addressed the requirements for certifying a class for settlement
5 purposes in its Order granting preliminary approval. Plaintiff briefly addresses the requirements
6 again here.

7 **1. The Class is Ascertainable**

8 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section
9 382 "is determined by examining (1) class definition, (2) the size of the class, and (3) the means
10 available for identifying the class members." *Reyes v. San Diego County Board of Supervisors*,
11 196 Cal. App. 3d 1263, 1271 (1987).

12 Here, the Class includes "all former employees of Defendants who were employed in the
13 State of California at any time during the Class Period who received their final wages on a
14 paycard, but for whom Defendants do not currently have a written authorization for payment of
15 final wages via pay card." There are 951 individuals that comprise the Class. Admin Decl. ¶ 3.
16 This is more than the minimum required to certify a class.

17 Within the context of manageability, the issue is whether there exists sufficient means for
18 identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at pp. 1274-75. Class
19 Members have already been identified by Defendant and notice was provided to all of the above
20 Class Members.

21 **2. There is a Community of Interest**

22 The "community of interest" requirement embodies three separate factors: (1)
23 predominant common questions of law or fact; (2) class representatives whose claims are typical
24 of the class; and (3) class representatives who can adequately represent the class. *Richmond v.*
25 *Dart Industries*, 29 Cal. 3d. 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th
26 1225, 1234 (1999).

27 **a. There are Predominant Common Questions of Law and Fact**

28 "The ultimate question in every case of this type [class actions] is whether...the issues
which may be jointly tried, when compared with those requiring separate adjudication, are so

1 numerous and substantial that the maintenance of a class action would be advantageous to the
2 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096,
3 1104-05 (2003).

4 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
5 issued payment of final wages to separating employees via paycard without authorization. As
6 these are alleged uniform corporate policies, practices, and procedures, the claims can be jointly
7 tried, and thus the predominance requirement is satisfied.

8 **b. Plaintiff’s Claims are Typical of the Class Claims**

9 The purported class representative’s claim must be “typical” but not necessarily identical
10 to the claims of other class members; it is sufficient that the representative is similarly situated so
11 that he or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal.
12 App. 3d 27, 45 (1983). Courts look to whether class members have similar injuries, “whether the
13 action is based on conduct which is not unique to the named Plaintiff,” and whether other class
14 members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508
15 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
16 named representative aligns with the interests of the class.” *Id.* at p. 508.

17 While Defendant denies the allegations, Plaintiff contends that she was subjected to the
18 same payroll policies as all other Class Members. In this regard, Plaintiff was employed by
19 Defendant from about 2011, until about January 27, 2020. Declaration of Victoria Tice (“Tice
20 Decl.”) ¶ 2. Plaintiff contends that, like other members of the Class, she was issued a paycard
21 through which she could purportedly access her final wages. *Id.* ¶ 3. Plaintiff contends that she
22 did not authorize Defendant to pay her wages through this method. Moreover, Plaintiff alleges
23 that she was charged a fee to use the paycard and as a result, was unable to access all wages
24 owed to her. *Id.* In other words, Plaintiff alleges that she was subjected to the same policies and
25 practices as other Class Members. Accordingly, Plaintiff’s claims are aligned with the interests
26 of the Class and typicality is satisfied.

27 **c. Plaintiff Adequately Represented the Class**

28 The class representative, through qualified counsel, must be capable of “vigorously and

1 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
2 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any
3 such issues been raised or presented. Tice Decl. ¶ 6. Plaintiff has taken all necessary steps to
4 represent the interests of the Class, including discussing the lawsuit with her counsel on several
5 occasions, sitting for deposition, searching for and providing information and documents to her
6 counsel, responding to discovery, and reviewing pleadings and the settlement agreement in this
7 case. *Id.* ¶ 5. For such reasons, Plaintiff has adequately represented the Class Members and will
8 continue to do so.

9 **B. Risks, Expenses, and Complexity of Further Litigation**

10 Despite the Court’s ruling originally denying certification, Plaintiff believes that a class
11 could be certified and that she would have prevailed on appeal; however, Plaintiff also believes
12 in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
13 involved in not prevailing on one or more of the causes of action or theories alleged in the
14 operative Complaint, the possibility of non-certification that has already come to fruition, and
15 potential for appeals. These risks on class certification are compounded by the California
16 Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014).

17 Based on the foregoing, there were risks that the class would not be certified even on
18 remand from an eventual appeal, Plaintiff would not have obtained the total amount of penalties
19 alleged, and a substantial number of complex issues would have necessitated significant
20 expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further
21 litigation warrant granting of this Motion.

22 **C. The Terms, Negotiation, and Reception of the Settlement by Class Members**
23 **All Strongly Support the Conclusion that the Settlement is Fair, Adequate,**
and Reasonable

24 Without reiterating the Parties’ showing that the Settlement Agreement and the
25 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
26 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
27 Settlement Agreement was the product of negotiations between highly able and experienced
28 attorneys on both sides who possessed the relevant data and extensive legal research which they

1 had carefully analyzed. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 3. The Parties
2 engaged in arm’s-length negotiations at mediation with a highly experienced and well-known
3 mediator, Gig Kyriacou, Esq., which did not immediately result in settlement. *Id.* Following the
4 failed mediation, the Parties continued to heavily litigate the issues and ultimately arrived at a
5 settlement through continued discussions with Mr. Kyriacou. Gavron Decl. ¶ 4.

6 The results after mailing of the Class Notice support confirmation of the Court’s
7 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
8 fact that only one Class Member opted out and no Class Members submitted a written objections
9 to the settlement. Admin Decl. ¶¶ 8, 9. The Court may appropriately infer that the class action
10 settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted
11 an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

12 **D. Under Well-Established Legal Principles, the Court Should Grant Final**
13 **Approval of the Settlement**

14 **1. Standard of Review**

15 On a motion for final approval of a class action settlement under California Code of Civil
16 Procedure § 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement
17 is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625
18 (9th Cir. 1982), *cert. denied subnom.*; *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A
19 settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
20 interests of the class are better served by the settlement than by further litigation.” *See Manual*
21 *for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law
22 favors settlement, particularly in class actions and other complex cases, where substantial
23 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Alba*
24 *Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class*
25 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*
Corp., 529 F.2d 943, 950 (9th Cir. 1976).

26 Although the Court possesses “broad discretion” in determining that a proposed class
27 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
28 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion

1 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
2 adequate to all concerned. *See Officers for Justice*, 688 F.2d at p. 625. Accordingly, the Court
3 should give due regard to what is otherwise a “private consensual agreement” between the
4 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
5 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d*
6 *sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a
7 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
8 or imposing conditions on it. The judge cannot rewrite the agreement”).

9 A court’s approval of a class action settlement will only be reversed for a clear abuse of
10 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
11 *Justice*, 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision
12 was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar*, 1993
13 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
14 1998).

15 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

16 It cannot be overemphasized that neither the trial court in approving
17 the settlement nor this Court in reviewing that approval have the
18 right or duty to reach any ultimate conclusions on the issues of fact
19 and law which underlie the merits of the dispute. It is well settled
20 that in the judicial consideration of proposed settlements, ‘the [trial]
21 judge does not try out or attempt to decide the merits of the
22 controversy,’ [citation] and the appellate court ‘need not and should
23 not reach any dispositive conclusions on the admittedly unsettled
24 legal issue.

25 85 Cal. App. 4th 1135, 1146 (2000).

26 **2. The Settlement is Presumed to Be Fair**

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

[A] presumption of fairness exists where: (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.

1
2 *Dunk*, 48 Cal. App. 4th at p. 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18
3 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.

4 The settlement in the case at bar warrants approval and carries a presumption of fairness.
5 As previously noted in the application for Preliminary Approval, this current settlement was
6 negotiated at arm's-length after a full day of mediation and subsequent negotiations with an
7 experienced wage-and-hour mediator, Gig Kyriacou, Esq. Gavron Decl. ¶ 5. Additionally, Class
8 Counsel engaged in formal and informal discovery before mediation, including reviewing and
9 analyzing the production of class and payroll data, and information pertaining to Defendant's
10 final wage policies and practices. *Id.* The exchange of discovery allowed Class Counsel to
11 conduct a full analysis of exposure. *Id.*

12 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
13 supporting declarations, Class Counsel have significant experience in class actions and
14 employment wage and hour matters. Gavron Decl. ¶¶ 7-13; Declaration of Larry W. Lee ("Lee
15 Decl.") ¶¶ 6-8; Declaration of William L. Marder ("Marder Decl.") ¶¶ 6-12.

16 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation**
17 **Favor Final Approval**

18 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
19 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
20 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
21 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful,
22 appropriately discounted for the risk of not prevailing, should be compared with the amount of
23 the proposed settlement") (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
24 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

25 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
26 been potentially responsible for Defendant's costs. As such, if other employees of Defendant
27 brought individual claims on the same causes of action, they would each face the uncertainty of
28 prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely
would not be brought by many of these individuals—thus, this lawsuit achieves a true benefit for

1 the class that they might not otherwise get or seek as individuals. Here, given that a fair and
2 reasonable settlement has been reached, neither Plaintiff nor any of the Class Members will be
3 required to pay for Defendant's litigation costs.

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

8 The Settlement Agreement also affords the Class prompt, fair relief while avoiding
9 significant legal and factual battles that otherwise may have prevented the Class from obtaining
10 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious and
11 can be successfully litigated, they are experienced and fully understand the inherent risks and
12 uncertainty involved with such matters as the resolution of class certification, the outcome of a
13 potential trial, and the outcome of any appeals that would inevitably follow should the Class
14 prevail at trial. Class Counsel have also assessed the same risks in connection with the current
15 settlement. Because the settlement provides immediate and substantial relief, without the
16 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
17 costs—Class Counsel believe that the settlement warrants the Court's final approval.

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

20 Another factor considered by courts in approving a settlement is the complexity, expense,
21 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at p. 625; *Girsh*, 521 F.2d
22 at p. 157. In applying this factor, the Court must weigh the benefits of the settlement against the
23 expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v.*
Katz, 447 F.2d 431, 433-34 (5th Cir. 1971).

24 As noted above, continued litigation could have led to appeals on several issues. On the
25 other hand, the settlement that was reached provides to all Class Members—regardless of their
26 means—fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
27 Class Members would be left without a remedy as a practical matter and courts across the State
28 would have to address the issues presented here in a piecemeal, costly, and time-consuming

1 manner. The settlement in this case is therefore consistent with the “overriding public interest in
2 settling and quieting litigation” that is “particularly true in class action suits.” *See Van*
3 *Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case
4 has already involved years of litigation.

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

6 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
7 interest of the Class Members as a whole. Lee Decl. ¶ 4; Gavron Decl. ¶ 5; Marder Decl. ¶ 4.
8 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and
9 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
10 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at p.
11 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.

12 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
13 **SHOULD BE APPROVED**

14 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
15 settlement funds remain after 180 days of the mailing of the Individual Settlement Payment
16 checks, the Parties have agreed that all such uncashed settlement funds shall be distributed to
17 State Bar Justice Gap Fund as a *cy pres* recipient. Class Counsel provided declarations in
18 conjunction with preliminary approval demonstrating they do not have any conflicts of interest
19 with the proposed *cy pres* recipient. *See* Declarations of Max W. Gavron, Larry W. Lee, and
William L. Marder (filed March 13, 2023).

20 **V. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT**
21 **SHOULD BE APPROVED**

22 Class Representative Victoria Tice requests an enhancement payment of \$10,000.00.
23 Plaintiff had numerous discussions regarding the lawsuit with Class Counsel, searched for and
24 provided substantive documents and information regarding Defendant’s policies and practices at
25 issue in this case, and reviewed pleadings and documents in this case. Tice Decl. ¶ 5. On June 9,
26 2021, Plaintiff sat for her deposition. Tice Decl. ¶ 5. She spent significant time with her
27 attorneys discussing the deposition process and preparing for it. *Id.* She also reviewed and
28 responded to written discovery sent by Defendant. *Id.* She estimates that throughout the
pendency of the case she have spent between 30-35 hours assisting class counsel in litigating the

1 case. *Id.* Accordingly, Plaintiff provided invaluable information, evidence, and documents that
2 resulted in this settlement.

3 In addition to the invaluable services that she provided, Plaintiff also took significant
4 risks, both professionally and monetarily, in acting as Class Representative, seeking benefits on
5 behalf of the Class. Tice Decl. ¶ 9. Because the claims alleged by the Class Representative
6 involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying
7 the costs of Defendant, had she not prevailed in this action. *Id.* Despite this, however, Plaintiff
8 agreed to pursue this case on behalf of the Class.

9 Also, given that future employers are much less likely to hire individuals who have filed
10 employment-related lawsuits, particularly cases of this nature, the Class Representative also
11 faced significant risk in not being able to find suitable employment and/or face retaliation from
12 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
13 risks upon herself to the benefit of the Class. Tice Decl. ¶ __. Class Members did not have to file
14 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
15 have to face the potential for retaliation and not getting future employment had they filed a
16 lawsuit which is a public record. These are significant benefits that weigh in favor of granting the
17 requested enhancement. As such, the incentive payment should be awarded to Plaintiff for her
18 commitment, dedication, and risks taken for this litigation.

19 Finally, Plaintiff provided a general release of all claims and a waiver under California
20 Civil Code § 1542, which other Class Members did not have to do. Settlement Agreement ¶
21 III.2.a; Tice Decl. ¶ 10. This is a more extensive release than that provided by the Class at large,
22 also supporting the request for the enhancement.

23 Courts have routinely granted approval of settlements containing such enhancements. *See*
24 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
25 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
26 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
27 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
28 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,

251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative in ERISA case).

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seek a fee award calculated at one-third of the Gross Settlement Amount, or \$113,333.33, for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.

The California Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action settlements in *Laffitte*. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is proper under the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic the market in legal services.").

1 Here, the fee award representing approximately one-third of the fund clearly falls within
2 that range and is consistent with other rulings of other courts and comprehensive surveys of class
3 action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS
4 61796, 23 (S.D. Cal. 2011) (recognizing that “courts may award attorney’s fees in the 30-40%
5 range in wage and hour class actions that result in recovery of a common fund under \$10
6 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
7 *Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of
8 class action litigation nationwide conclude that fees in the range sought here are consistent with
9 market rates). The results delivered by Class Counsel also support the requested percentage of
10 the fund. Here, Plaintiff and her counsel secured a \$340,000.00 non-reversionary common fund
11 settlement.

12 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
13 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
14 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
15 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
16 Notice specifically notified Class Members that Class Counsel would be seeking up to
17 \$113,333.33 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
18 strong favorable response also supports the requested fees.

19 In addition, it is recognized that one of the primary factors justifying an enhanced
20 attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of*
21 *Detroit v. Grinnell Corp.*:

22 No one expects a lawyer whose compensation is contingent upon his
23 success to charge, when successful, as little as he would charge a
24 client who had agreed to pay for his services, regardless of success.
25 Nor, particularly in complicated cases producing large recoveries, is
it just to make a fee depend solely on the reasonable amount of time
expended.

26 495 F.2d 448, 470 (2d Cir. 1974). For Class Counsel, the fees here were wholly contingent in
27 nature and the case presented far more risk than the usual contingent fee case. Among the risks
28 was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a

1 corporate Defendant.

2 As secondary support for the percentage of the fund method, courts have discretion to
3 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
4 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the
5 trial court’s primary determination of the fee as a percentage of the common fund and thus does
6 not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at
7 p. 505; *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar
8 cross-check does not trump the primary reliance on the percentage of common fund method”).

9 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
10 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
11 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
12 court is not necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is
13 aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases,
14 performing a cross-check “undermines” one of the primary reasons for using the percentage
15 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging
16 protracted litigation. *Id.* at p. 506 (finding trial courts “retain the discretion to forgo a lodestar
17 cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108
18 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000)
19 (citing the recommendations of the Third Circuit Task Force with approval and observing that
20 “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many
21 authorities, who have been most vocal about the manner in which it exacerbates the problem of
22 ‘cheap settlements’ and burdens already overworked trial judge”).

23 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
24 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
25 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
26 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
27 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland*
28 *Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The

intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at pp. 881-82. The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

With respect to Class Counsel’s lodestar, to date, at least approximately 318.8 hours have been expended by Class Counsel in this matter. Gavron Decl. ¶ 14, Ex. A; Marder Decl. ¶ 13, Ex. A. Moreover, Class Counsel expects to incur approximately 10 additional hours in finalizing this settlement, including handling any post-approval matters and settlement issues that may arise. Gavron Decl. ¶ 16. Mr. Gavron requests an hourly rate of \$600.00 per hour. Gavron Decl. ¶ 15. Mr. Marder requests an hourly rate of \$800.00 per hour. Marder Decl. ¶ 13. The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class Counsel requests that the court find that these hours were reasonable in this litigation.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney’s skill and experience, the nature of the work performed, the relevant area of expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Class Counsel’s skill and experience justify the requested rate. As shown in the

supporting declarations, Class Counsel have significant experience in the area of employment and wage and hour class actions. Specifically, Class Counsel’s practice focuses on representing employees in employment matters, particularly wage and hour cases. Lee Decl. ¶¶ 6-8; Gavron Decl. ¶¶ 7-13; Marder Decl. ¶ 6-12. As such, based on the hours and applicable rate, the total lodestar to be expended by Class Counsel through finalizing this settlement will be approximately \$204,460.00, based on 328.8 total hours, which includes 10 anticipated hours. Gavron Decl. ¶ 14, Ex. A; Marder Decl. ¶ 13, Ex. A.

Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at p. 48. The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Id.*; *Lealao*, 82 Cal. App. 4th at p. 49. However, this list is not exhaustive and the court can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

It is also critical to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at p. 52 (the promptness of settlement “cannot be used to justify the refusal to apply a multiplier”). According to *Lealao*, courts placed “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for achieving this goal in a timely fashion. *Id.*

Here, Plaintiff’s counsel’s lodestar exceeds the fees requested (\$204,460.00 lodestar compared to \$113,333.33 fees requested). Accordingly, the Court would need to apply a negative multiplier of 0.55 (\$113,333.33/\$204,460.00) to arrive at the requested fees. Gavron Decl. ¶ This demonstrates the amount requested is reasonable and fair, particularly based on the factors described above. *C.f. Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of

2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's request for attorneys' fees in the amount of \$113,333.33 is fair, reasonable, and adequate.

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of costs, in the amount of \$52,386.08 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$55,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel's declaration, the costs were all directly incurred in the prosecution of this action. Gavron Decl. ¶ 18, Ex. B. While this amount may be greater than a typical wage and hour settlement, the costs were necessary to achieve this result as demonstrated by the motion practice surrounding Plaintiff's subpoena to obtain data from Comdata regarding fees incurred by putative class members and/or aggrieved employees. Gavron Decl. ¶ 18. As such, the requested costs should be approved as fair and reasonable.

VIII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown on the Declaration of Taylor Mitzner the settlement administration costs expended in this matter amount to a total of \$11,000.00, which is the amount that was agreed upon by the Parties. Admin Decl. ¶ 15, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

IX. NOTICE TO THE LWDA

Concurrent with the filing of this Motion, Plaintiff provided notice to the LWDA. Gavron Decl. ¶ 19, Ex. C.

1 **X. CONCLUSION**

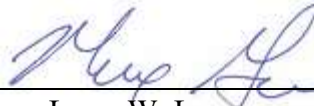
2 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
3 respectfully submits that the standards for final approval have been met and the terms of the
4 Settlement Agreement are fair, adequate, and reasonable.

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

- 7 1. Granting final approval to the proposed Settlement Agreement in this action;
8 2. Approving distribution of the settlement funds to the Participating Class Members
9 pursuant to the terms of the Settlement Agreement;
10 3. Approving Plaintiff's request for an award of the class representative incentive
11 payment of \$10,000.00, with payment pursuant to the terms of the Settlement Agreement;
12 4. Approving Class Counsel's request for an award to Class Counsel for
13 \$113,333.33 in attorneys' fees and \$52,386.08 in costs, with payment pursuant to the terms of
14 the Settlement Agreement;
15 5. Approving Plaintiff's request for payment of the settlement administration costs
16 to Phoenix Settlement Administrators in the amount of \$11,000.00, with payment pursuant to the
17 terms of the Settlement Agreement;
18 6. Approving Plaintiff's request for payment to the LWDA for \$18,750.00, with
19 payment pursuant to the terms of the Settlement Agreement; and
20 7. Entering final Judgment in the form proposed and submitted as to all members of
21 the Class in this action.

22
23 DATED: August 14, 2023

DIVERSITY LAW GROUP, P.C.

24
25 By: 

Larry W. Lee

26 Max Gavron

27 Attorneys for Plaintiff and the Class
28