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

DEMOND COLE, on behalf himself and
on of all others similarly situated,

Plaintiff,

vs.

CORE-MARK INTERNATIONAL, INC.,
a Texas Corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No.: BCV-20-101228-TSC

*Assigned for All Purposes to Honorable Thomas S.
Clark in Department 17*

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

Date: May 19, 2022
Time: 8:30 a.m.
Dept.: 17

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

2 PLEASE TAKE NOTICE THAT, on May 19, 2022 at 8:30 a.m. before the Honorable
3 Thomas S. Clark, judge presiding in Department 17 of the above-referenced Court, Plaintiff
4 DEMOND COLE ("Plaintiff") will and hereby does move the Court for an Order: (1) granting final
5 approval to the Class of the settlement; (2) fully and finally approving and directing distribution to
6 the Class of the settlement sum pursuant to the terms of the Stipulation and Settlement of Class and
7 Representative Action ("Settlement" or "Settlement Agreement") in this matter, (3) fully and finally
8 approving the Class Representative Enhancement Payment, (4) fully and finally approving the
9 Settlement Administrator's costs, and (5) fully and finally approving the award of attorney's fees
10 and costs.

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

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

23
24 DATED: April 18, 2022

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

25 
26 By: _____
27 Edward W. Choi
Attorneys for Plaintiff and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff and Class Representative DEMOND COLE (“Plaintiff” or “Class
4 Representative”) submits this Memorandum in support of the Motion for Final Approval of the
5 Stipulation and Settlement of Class and Representative Action (“Settlement” or “Settlement
6 Agreement”).

7 The settlement entered into by and between Plaintiff and Defendant CORE-MARK
8 INTERNATIONAL, INC. (“Defendant”) (Plaintiff and Defendant are collectively referred to as
9 “Parties”) provides for a settlement fund of Three Hundred Seventy Five Thousand Dollars
10 (\$375,000.00) (“Gross Settlement Amount” or “Class Settlement Amount”) to be created for the
11 benefit of the Class. From the Class Settlement Amount, attorney’s fees, litigation costs,
12 enhancement payments to Plaintiff, Private Attorneys General Act (“PAGA”) payment, and the
13 costs of settlement administration are to be paid.

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

16 Per the Court’s January 25, 2022 Order Granting Motion for Preliminary Approval
17 (“Preliminary Approval Order”), the Settlement Administrator, Phoenix Settlement
18 Administrator (“Phoenix” and/or “Settlement Administrator”), distributed the Class Notice to all
19 376 Class Members. (*See* Declaration of Jarrod Salinas (“Salinas Decl.”) at ¶5.) As of the date
20 of this filing, 2 Notice Packets are considered undeliverable, because an updated address could
21 not be obtained notwithstanding performing a skip-trace. (*Id.* at ¶7). There have been *zero* (0)
22 objections filed to the Settlement and *zero* (0) requests for exclusion from the Settlement. (*Id.* at
23 ¶¶8-9). Thus, there is a 100% participation rate with not a single objection. This favorable
24 response by the Class supports the Court’s Preliminary Approval Order finding that the
25 Settlement was fair, adequate and reasonable, and further supports the granting of this instant
26 Motion.

27 ///

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

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

- 7 • The Settlement Fund provides a total settlement sum of \$375,000.00 for a class
8 size of 376 and Class Members will be entitled to recover, on average, up to over
9 \$514.82 each after deductions for fees, costs, representative award and PAGA
10 payment (Salinas Decl. ¶ 11);
- 11 • Plaintiff performed adequate investigation of this case, including the production
12 of class data for the entire class necessary for Plaintiff to fully evaluate this case;
13 and
- 14 • A highly regarded Settlement Administrator was retained, Phoenix Settlement
15 Administrators, at a competitive price.

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

18 **II. THE SETTLEMENT**

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

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

22 The Preliminary Approval Order contemplated that the Notice Packet, as approved in the
23 Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the
24 Settlement Agreement. The Preliminary Approval Order contemplated, further, that Phoenix
25 would serve as the Settlement Administrator.

26 As clearly stated in the Declaration of the Settlement Administrator, notice was provided
27 to Class Members as required by the Preliminary Approval Order. The Settlement Administrator

1 received a Class Member mailing list from Defendant that included 376 Class Members, and, on
2 September 20, 2019, each of the persons identified on the mailing list was sent the Notice Packet
3 via first class mail. (Salinas Decl. at ¶¶3-5.) Eighteen (18) Notice Packets were returned to PSA
4 without a forwarding address. For the eighteen (18) Notice Packets returned from the Post Office
5 without a forwarding address, PSA attempted to locate a current mailing address using
6 TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing.
7 Of the eighteen (18) Notice Packets that were skip traced, sixteen (16) updated addresses were
8 obtained and the Notice Packet was promptly re-mailed to those Class Members via first class
9 mail. (*Id.* at ¶6). Only two (2) Notice Packets are considered undeliverable. Specifically, only
10 two (2) out of Notice Packets are undeliverable since an updated address could not be obtained.
11 Thus, there is a 99.46% notice success rate.

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

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

26 The Court, therefore, may proceed to determine the fairness and adequacy of the
27 Settlement, and order its approval, secure in the knowledge that all absent Class Members have

1 been given the opportunity to participate fully in the exclusion, objection, and the approval
2 process.

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

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

8 Without reiterating the Parties' showing that the Settlement Agreement and the
9 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
10 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
11 Agreement was the product of negotiation between highly able and experienced attorneys on
12 both sides, possessed of the relevant data and extensive legal research which they had carefully
13 analyzed. (Declaration of Edward Choi ("Choi Decl.") at ¶¶9-18.) In addition, the resolution of
14 this case was reached only after the production and analysis of class payroll data, and only after a
15 full day of mediation. (*Id.* at ¶¶4-5).

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

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

26 ///

27 ///

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.”¹ *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.”)

26
27

¹ 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 ¶¶11-12.) 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 ¶ 21; 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 Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would 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 Plaintiff 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. Indeed, and the settlement payment to the each Class Member will be on average will be

1 approximately \$514.82 each after deductions for fees, costs, representative award and PAGA
2 payment. (Salinas Decl. at ¶ 11.)

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

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

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

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

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

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 ¶ 9.) 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. Plaintiff 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 Plaintiff to ascertain and determine the potential amount of damages that Defendant
17 possibly could be liable for if Plaintiff prevailed at trial. (Choi Decl. at ¶ 4.) Further, the Parties
18 participated in a private mediation before Michael D. Young, 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 Plaintiff has requested, and Defendant does not oppose, an enhancement of Ten
26 Thousand Dollars (\$10,000.00), pursuant to the terms of the Settlement Agreement. Plaintiff
27 requests that this Court approve such service payment in light of the efforts Plaintiff put into this

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

2 As shown in the supporting declaration, the Class Representative 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 his own claims
5 and the claims of the Class. As part of his duties as Class Representative, Plaintiff provided
6 invaluable information, evidence, and documents that resulted in this settlement.

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

14 The Class Representative 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 Representative 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 Representative 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 Plaintiff for her commitment,
16 dedication, and risks taken for this litigation. Accordingly, the court should find that the
17 enhancement 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 Plaintiff achieved a \$375,000.00 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 \$131,250.00. 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 \$131,250.00
4 of the \$375,000.00 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. California state and federal courts have
9 recognized that an appropriate method for determining award of attorneys’ fees is based on a
10 percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple*
11 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34
12 [Serrano III]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West,*
13 *Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust
14 enrichment to the Class and to “spread litigation costs proportionally among all the beneficiaries
15 so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air West,*
16 *Inc., supra*, 557 F. 2d at 769.

17 Under California law, the award of attorneys’ fees in wage and hour class action
18 settlements is proper under the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th
19 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state courts in
20 holding that when class action litigation establishes a monetary fund for the benefit of the class
21 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
22 the court may determine the amount of a reasonable fee by choosing an appropriate percentage
23 of the fund created.”). Under the percentage of the fund method, the Court’s objective remains to
24 “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th
25 Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it
26 at a level that will approximate what the market will set... The judge, in other words, is trying to
27 mimic the market in legal services.”).

1 An award of thirty-five percent (35%) of the fund in attorneys' fees mimics the
2 marketplace as it "is supported by the fact that typical contingency fee agreements provide that
3 class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried."
4 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008)
5 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and*
6 *Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, "empirical studies
7 [that] show that...fee awards in class actions average around one-third of the recovery." *Chavez*
8 *v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

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

23 Here, it is clear that a settlement fund of \$375,000.00 has been created. For Class
24 Counsel, the fees here were wholly contingent in nature and the case presented far more risk than
25 the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
26 well as a long battle with a corporate Defendant who had retained highly-experienced defense
27 firm. As such, the requested fee of \$131,250.00 should be awarded.

1 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
2 **OF COSTS**

3 The request for reimbursement of costs, in the amount of \$10,428.23 is fair and
4 reasonable. Pursuant to the terms of the Settlement Agreement, Plaintiff is allowed to seek
5 reimbursement of litigation costs up to a maximum of \$30,000.00. To date, Class Counsel has
6 expended a total of \$10,428.23 in litigation related costs. (Choi Decl. at ¶ 22; Exh A; Hyun
7 Decl. ¶ 11; Lee Decl. at ¶ 7; Exh A). As such, this request should be approved.

8 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
9 **APPROVED**

10 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
11 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
12 funds. As shown on the Declaration of Jarrod Salinas, the class administration fees for the
13 administration of the settlement in this matter amounts to Seven Thousand Two Hundred Fifty
14 Dollars (\$7,250.00). (Salinas Decl. at ¶12). For such reasons, it is requested that the Settlement
15 Administrator's fees be approved.

16 **VIII. PLAINTIFF HAS PROVIDED NOTICE TO THE LWDA**

17 On January 5, 2022, Plaintiff uploaded the Preliminary Approval Order to the LWDA's
18 website. (Choi Decl. ¶23; Ex. B). On April 18, 2022, Plaintiff uploaded this motion and
19 proposed order to the LWDA's website. (*Id.* at ¶24; Ex. C).

20 **IX. CONCLUSION**

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

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

- 26 1. Granting final approval to the proposed Settlement Agreement;

27 ///

- 1 2. Approving distribution of the settlement funds pursuant to the terms of the
2 Settlement Agreement;
- 3 3. Approving Plaintiff's request for award of the class representative enhancement
4 with payment pursuant to the terms of the Settlement Agreement;
- 5 4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs
6 with payment pursuant to the terms of the Settlement Agreement;
- 7 5. Approving Plaintiff's request for payment of the settlement administration costs
8 with payment pursuant to the terms of the Settlement Agreement; and
- 9 6. Entering final judgment as to all members of the Settlement Class in this action.

10
11 DATED: April 18, 2022

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

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13 By: 
14 Edward W. Choi
15 Attorneys for Plaintiff and the Class
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