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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF KERN

13 EIRON SPROUL, as an individual and on
behalf of all others similarly situated,

14 Plaintiffs,
15

16 v.

17 IKEA DISTRIBUTION SERVICES, INC.,
a Delaware corporation; and DOES 1
18 through 50, inclusive,

19 Defendants.
20
21

CASE NO. BCV-20-101600

[Assigned for all purposes to the Hon. Thomas S.
Clark, Dept. 17]

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

Date: October 18, 2024
Time: 8:30 a.m.
Dept.: 17
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 18, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Thomas S. Clark, judge presiding, in
4 Department 17 of the above referenced Court located at 1415 Truxtun Ave., 3rd Floor,
5 Bakersfield, CA 93301, Plaintiff Eiron Sproul (“Plaintiff”) will seek an Order:

- 6 1. granting final approval to the First Amended Joint Stipulation Re: Class Action
7 Settlement (“Settlement Agreement” or “Settlement”) in this action;
- 8 2. approving distribution of the settlement funds to Class Members pursuant to the terms
9 of the Settlement Agreement;
- 10 3. approving Plaintiff’s request for a service award of \$10,000.00 to Plaintiff pursuant to
11 the terms of the Settlement Agreement;
- 12 4. approving Class Counsel’s request for an award of attorneys’ fees of 33 1/3% of the
13 Total Class Action Settlement Amount, or \$150,000.00, and reimbursement of
14 litigation costs of \$2,498.18 pursuant to the terms of the Agreement;
- 15 5. approving payment of the settlement administration costs to Xpand Legal Consulting
16 in the amount of \$12,500.00, pursuant to the terms of the Agreement;
- 17 6. approving PAGA payment \$33,750.00 (75% to be paid to the Labor Workforce
18 Development Agency and 25% to the PAGA Group Members), pursuant to the terms
19 of the Agreement; and
- 20 7. entering final judgment as to the Class Members, the PAGA Group Members, and the
21 State of California (including the Labor and Workforce Development Agency) in this
22 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. The overwhelmingly positive Class
26 response, as shown by the lack of objections to the settlement and the fact that only one Class
27 Member opted out, supports that the settlement is fair, reasonable, and adequate, including in
28

1 light of PAGA’s purposes to remediate present labor law violations, deter future ones, and to
2 maximize enforcement of state labor laws—and should be granted final approval.

3 This motion will be based on the attached Memorandum of Points and Authorities, the
4 supporting Declarations of William Marder, Dennis Hyun, Jonathan Paul on behalf of Xpand
5 Legal Consulting and Plaintiff, and upon the oral arguments of counsel (should there be any) and
6 on the complete records and file herein.

7
8 DATED: September 19, 2024

POLARIS LAW GROUP
HYUN LEGAL APC

9
10 By: William L. Marder
11 William L. Marder
12 Dennis S. Hyun
13 Attorneys for Plaintiff
14 EIRON SPROUL
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff and Class Representative Eiron Sproul (“Plaintiff” or “Class Representative”)
4 submits this Memorandum in support of the Motion for Final Approval of the First Amended
5 Joint Stipulation Re: Class Action Settlement (“Settlement Agreement” or “Settlement”).¹

6 The settlement entered into by and between Plaintiff and Defendant IKEA Distribution
7 Services, Inc. (“IKEA,” or “Defendant”) (Plaintiff and Defendant are collectively referred to as
8 “Parties”) provides for a Total Class Action Settlement Amount of \$450,000.00 to be created for
9 the benefit of the Class. From the Total Class Action Settlement Amount, attorney’s fees,
10 litigation costs, the enhancement award to Plaintiff, Private Attorneys General Act (“PAGA”)
11 penalties, and the costs of settlement administration are to be paid.

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

14 Per the Court’s June 14, 2024 Order granting Plaintiff’s Motion for Preliminary Approval
15 (“Preliminary Approval Order”), the Settlement Administrator, Xpand Legal Consulting
16 (“Xpand,” or the “Settlement Administrator”), distributed the Class Notice to all 1,179 Class
17 Members. (*See* Declaration of Jonathan Paul (“Admin Decl.”) at ¶ 4). As of the date of the filing
18 of this Motion, only four (4) Notices remain undeliverable because updated addresses could not
19 be obtained via skip trace. (*Id.* at ¶¶ 4-6). There have been *zero* (0) objections filed to the
20 Settlement and only one request for exclusion from the Settlement. (*Id.* at ¶¶ 8-9, Exh. C). Thus,
21 there is a 99.91% participation rate with not a single objection. This favorable response by the
22 Class supports the Court’s Preliminary Approval Order finding that the Settlement was fair,
23 adequate and reasonable, and further supports the granting of this instant Motion.

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26 ¹ On April 4, 2024, the Court denied Plaintiff’s Motion for Preliminary Approval without
27 prejudice and ordered the Parties to amend the Agreement. Thus, on April 17, 2024, the Parties
28 filed the First Amended Joint Stipulation Re: Class Action Settlement, which the Court
preliminarily approved on June 14, 2024.

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 key financial terms of the Settlement:

- 7 ▪ Total Class Action Settlement Amount of \$450,000.00 for a class size of 1,179 and
8 Class Members will be entitled to recover, on average, \$195.08, with the highest
9 award being approximately \$431.68, each after deductions for fees, costs,
10 representative award and the PAGA Allocation (Admin Decl. ¶ 15);
- 11 ▪ Class Counsel's attorneys' fees of \$150,000.00 and reimbursement of litigation
12 costs of \$2,498.18;
- 13 ▪ Class Representative Enhancement of \$10,000.00;
- 14 ▪ Settlement Administration costs of \$12,500.00;
- 15 ▪ PAGA Allocation of \$45,000.00 (75% to be paid to the LWDA and 25% to the
16 PAGA Group Members), pursuant to the terms of the Agreement; and

17 Based on foregoing, the Court should grant Final Approval consistent with the
18 Preliminary Approval Order.

19 **II. THE SETTLEMENT**

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

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

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

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

1 received a Class Member mailing list from Defendant that included 1,179 Class Members, and,
2 on July 25, 2024, each of the persons identified on the mailing list was sent the Notice via first
3 class mail. (Admin Decl. at ¶¶ 4-6). Eighty-nine (89) Notices were returned to Xpand as
4 undeliverable. (*Id.* ¶ 6). Xpand attempted to locate a current mailing address using skip tracing
5 and eighty-five (85) updated addresses were obtained and the Notices were promptly re-mailed to
6 those Class Members via first class mail. (*Id.*) Only four (4) Notices remains undeliverable,
7 because an updated address could not be obtained via skip trace. (*Id.*)

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

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

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

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

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

4 Without reiterating the Parties' showing that the Settlement Agreement and the
5 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
6 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. Since
7 the filing of the case, the Parties engaged in informal discovery resulting in the production of data
8 necessary for Plaintiff to calculate the potential exposure for this matter. The Parties' counsel
9 thereafter engaged in arms' length negotiations, which resulted in this settlement. (Declaration of
10 Dennis Hyun ("Hyun Decl.") at ¶ 8).

11 The results after mailing of the Class Notice support confirmation of the Court's
12 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
13 fact that *there is not a single Class Member who has objected to the current settlement, and*
14 *only one has requested exclusion.* (Admin Decl. at ¶¶ 8-9, Exh. C). Additionally, no Class
15 Members have submitted any disputes regarding their Individual Settlement Amounts. (*Id.*) As
16 such, there is a 99.91% participation rate in the settlement.

17 The Court may appropriately infer that the class action settlement is fair, adequate and
18 reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v.*
19 *City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) The Court should further construe the lack
20 of any objection to this current settlement, as well as only one opt-out, as an indication that Class
21 Members themselves view the settlement as fair, adequate and reasonable.

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

24 **1. Standard of Review**

25 On a motion for final approval of a class action settlement under Civil Code § 1781(f) and
26 Federal Rules of Civil Procedure ("FRCP") Rule 23(e), a court's inquiry is whether the settlement
27 is "fair, adequate and reasonable."² *Officers for Justice v. Civil Serv. Comm'n*, 668 F.2d 615, 625

28 ² Both Civil Code § 1781(f) and FRCP Rule 23 have been expressly authorized by the

1 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A
2 settlement is fair, adequate and reasonable, and therefore merits final approval, when “the
3 interests of the class are better served by the settlement than by further litigation.” *See* Manual
4 for Complex Litigation Fourth (Fed. Judicial Center 2004) (“Manual”), § 21.6 at 309.

5 The law favors settlement, particularly in class actions and other complex cases, where
6 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
7 *See* 4 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d
8 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

20 A court’s approval of a class action settlement will only be reversed for a clear abuse of
21 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also Officers for*
22 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision
23 was a clear abuse of discretion”); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993
24 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
25 1998).

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27
28 California Supreme Court for use in all California class action litigation. *See Vasquez v. Superior Court* (1971) 4 Cal. 3rd 800, 820-821.

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

9 **2. The Settlement Is Presumed To Be Fair**

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

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

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

19 The settlement in the case at bar warrants approval and carries a presumption of fairness.
20 As previously noted in the application for Preliminary Approval, this current settlement was
21 negotiated at arms’ length between highly experienced counsel. (Hyun Decl. at ¶ 8). Class
22 Counsel engaged in sufficient investigation before settling. (*Id.*) Furthermore, Class Counsel is
23 highly experienced in this type of litigation. As shown in the supporting declarations, Class
24 Counsel has significant experience in class actions and employment wage and hour matters.
25 (Hyun Decl. at ¶¶ 3-6; Declaration of William Marder (“Marder Decl.”) at ¶¶ 8-14).

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

28 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

1 inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir.
2 1995) (“present value of the damages plaintiffs would likely recover if successful, appropriately
3 discounted for the risk of not prevailing, should be compared with the amount of the proposed
4 settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 1 53, 157 (3d Cir. 1975); *Boyd*
5 *v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

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

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

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

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

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

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

8 As noted above, continued litigation could have led to appeals on a number of issues. On
9 the other hand, the settlement that was reached provides to all Class Members – regardless of
10 their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval,
11 the Class Members would be left without a remedy as a practical matter and courts across the
12 State would have to address the issues presented here in a piecemeal, costly, and time-consuming
13 manner. The settlement in this case is therefore consistent with the “overriding public interest in
14 settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*
15 *v. Safeco Corp.*, 529 F.2d at 950 (footnote omitted); *see also* 4 Newberg at § 11.41.

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

17 Class Counsel supports the settlement as fair, reasonable and adequate, and in the best
18 interest of the Class Members as a whole. (Hyun Decl. at ¶ 7; Marder Decl. at ¶ 4). Similarly,
19 counsel for Defendant is also in favor of this settlement.

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

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

26 Prior to negotiating the settlement, Class Counsel engaged in significant investigation on a
27 number of topics and categories. Additionally, Defendant produced all of the data necessary to
28 allow Plaintiff’s expert to ascertain and determine the potential amount of damages that

1 Defendant possibly could be liable for if Plaintiff prevailed at trial. (Hyun Decl. at ¶¶ 7-8). As
2 detailed above, each of the factors counsel strongly in favor of final approval of the Settlement by
3 this Court.

4 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
5 **APPROVED**

6 Plaintiff has requested, and Defendant does not oppose, an enhancement of Ten Thousand
7 Dollars (\$10,000.00), pursuant to the terms of the Settlement Agreement. Plaintiff requests that
8 this Court approve such service payment in light of the efforts Plaintiff put into this case, the
9 absence of any objection to his service payment, and the excellent result achieved.

10 As shown in the supporting declarations, the Class Representative spent significant time
11 with Class Counsel on a number of occasions to discuss the case, including providing substantive
12 information regarding Defendant's practices, and providing documents related to her own claims
13 and the claims of the Class. As part of Plaintiff's duties as Class Representative, Plaintiff
14 provided invaluable information, evidence, and documents that resulted in this settlement.
15 (Declaration of Eiron Sproul ("Sproul Decl.") ¶¶ 2-3). Plaintiff also provided a general release,
16 including a waiver of Civil Code § 1542, which was not required of class members. (*Id.* ¶ 7).

17 In addition to the invaluable services the Class Representative provided, he also took a
18 significant risk, both professionally and monetarily, in acting as the Class Representative.
19 Because the claims alleged by Plaintiff involved the payment of costs to the prevailing party,
20 Plaintiff could have possibly faced paying the costs of Defendant had Plaintiff not prevailed in
21 this action. (*Id.* ¶ 6). Moreover, given that future employers are much less likely to hire
22 individuals who have filed suit against their prior employer, particularly cases of this nature,
23 Plaintiff could face negative employment prospects in the future. (*Id.*) The Class Representative
24 assumed such risks and the whole class benefited from this. Class Members did not have to file
25 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
26 have to face the potential for retaliation and not getting future employment had they filed a
27 lawsuit which is a public record. These are significant benefits, even apart from the time the
28

1 Class Representatives had spent working on this case, that weigh in favor of granting the
2 requested enhancement.

3 Courts have routinely granted approval of settlements containing such enhancements. In
4 *League of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that
5 the proposal settlement properly granted the named plaintiffs individual relief. It is “not
6 uncommon for Class Members...to receive special relief in settlement... [The Plaintiff]...had
7 been instrument in prosecuting this lawsuit since the date it was filed.” *Id.* at 1024. In *Kyriazi v.*
8 *Western Elec. Co.*, 527 F. Supp. 18 (D. N. J. 1981), a named plaintiff in a Title VII class action
9 was awarded individual relief of back-pay and interest, reinstatement, punitive damages and
10 counsel fees. Similarly, in *Women’s Committee for Equal Employment Opportunity v. NBC*, 76
11 F.R.D. 173 (S.D.N.Y. 1977), the court approved as fair a settlement that included awards to 16
12 named plaintiffs of virtually all the damages they sought.

13 In *Lo Re v. Chase Manhattan Corp.*, 1979 U. S. Dist. LEXIS 12210, 19 FEP Cas. (BNA)
14 1366 (S.D.N.Y. 1979), the court approved a class representative payment of \$229,000 out of a
15 \$1,579,000 settlement fund to the named plaintiff for his individual claims. One of the factors
16 considered by the court in determining that such payments were fair was the fact that none of the
17 absent Class Members objected to the enhancements. The court held that this fact showed that
18 the Class Members were not offended by these enhancements. *Id.* at 17. In the present case,
19 there are no objections filed by any individual to the requested amounts. As such, one can infer
20 that none of the Class Members have any disagreement with such individual enhancement.
21 Furthermore, and as explained above, the Class Representative took substantial risk in bringing
22 the current benefits to the class.

23 Here, this litigation has resulted in a significantly valuable benefit to the class, and the
24 Class Representative took on substantial risk in helping to get this financial benefit to the class.
25 As such, the enhancement should be awarded to Plaintiff for her commitment, dedication, and
26 risks taken for this litigation. Accordingly, Plaintiff respectfully requests that the Court find the
27 enhancement as fair and reasonable.

28 **V. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED**

1 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the
2 Settlement Agreement and this Motion. The proposed settlement provides substantial benefits to
3 the Class and was reached after adequate investigation and litigation by Class Counsel. Class
4 Counsel and Plaintiff achieved a \$450,000.00 Total Class Action Settlement Amount for the
5 benefit of the Class to compensate the Class for the claims alleged. There have been no
6 objections filed against the Settlement or to Class Counsel's request for attorneys' fees in the
7 amount of \$150,000.00. As more fully detailed below, Class Counsel's request for attorney's
8 fees and reimbursement of costs, is fair, reasonable, and adequate. Accordingly, final approval
9 should be granted.

10 **A. An Award of Attorneys' Fees and Costs is Requested When A Common Fund**
11 **Has Been Created for the Benefit of the Class**

12 Class Counsel's application for an award of attorneys' fees in the amount of \$150,000.00
13 of the \$450,000.00 settlement fund created on behalf of the Class is reasonable and fair. The
14 requested fee represents fair compensation for undertaking complex, risky, expensive, and time-
15 consuming litigation on a contingent basis.

16 Class Counsel seeks a fee award calculated as one-third of the Total Class Action
17 Settlement Amount for the successful prosecution and resolution of this action.

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

26 "We join the overwhelming majority of federal and state courts in holding that when
27 class action litigation establishes a monetary fund for the benefit of the class
28 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. The recognized advantages of the
percentage method—including relative ease of calculation, alignment of incentives

1 between counsel and the class, a better approximation of market conditions in a
2 contingency case, and the encouragement it provides counsel to seek an early
3 settlement and avoid unnecessarily prolonging the litigation—convince us the
percentage method is a valuable tool that should not be denied our trial courts.”

4 *Id.* at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9
5 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately
6 reflects the results achieved than the lodestar method and “establishes reasonable expectations on
7 the part of Plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
8 which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300
9 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases
10 because it allows courts to award fees from the fund in a manner that rewards counsel for success
11 and penalizes it for failure.”).

12 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required; in
13 many cases, performing a cross-check “undermines” one of the primary reasons for using the
14 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
15 discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a
16 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108
17 F.R.D. 237, 258 (1985); *Lealao v. Beneficial Cal. Inc.* 82 Cal.App.4th 19, 29-30 (2000) (citing
18 the recommendations of the Third Circuit Task Force with approval and observing that “[t]he
19 criticisms of the lodestar approach set forth in this Report are now echoed by many authorities,
20 who have been most vocal about the manner in which it exacerbates the problem of ‘cheap
21 settlements’ and burdens already overworked trial judge.”).

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

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

8 The lodestar cross check also supports the award of the requested attorney's fees in this
9 matter. Courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4 or
10 even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Sutter*
11 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier
12 on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5
13 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78
14 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after
15 finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13
16 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.³ Moreover, the Ninth Circuit has cited with
17 approval a comprehensive study of fees awarded by the percentage method showing that the
18 majority of multipliers awarded are "in the 1.5-3.0" range. *See Vizcaino v. Microsoft Corp.*, 290
19 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action
20 case and analyzing the multiplier awarded in over 30 cases).

21 With respect to Plaintiff's Counsel's lodestar, 207 hours have been expended by Class
22 Counsel litigating this case. (Hyun Decl. at ¶ 9, Exh. A; Marder Decl. at ¶ 15, Exh. A).
23 Moreover, Plaintiff's Counsel expects to incur approximately 20 hours of anticipated time spent
24 to attend the final approval hearing and secure final approval, as well as after approval to respond
25 to correspondence and phone calls from the administrator, defense counsel, and Class Members.
26 (Hyun Decl. at ¶ 10; Marder Decl. at ¶ 15).

27 ³ The intermediate court opinion was affirmed in full by the California Supreme Court in its
28 decision guiding lower courts on assessing fees.

1 The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed
2 time records are not required. An attorney's testimony alone may suffice: "Testimony of an
3 attorney as to the number of hours worked on a particular case is sufficient evidence to support an
4 award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal.
5 App. 3d 553, 559 (1986).

6 Reasonable hours include, in addition to time spent during litigation, the time spent before
7 the action is filed, including time spent interviewing the clients, investigating the facts and the
8 law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62
9 (1980). The fee award should also include fees incurred to establish and defend the attorneys' fee
10 claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiffs' Counsel
11 seeks compensation involve only these types of tasks. Thus, the number of hours for which fees
12 are sought is reasonable.

13 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
14 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
15 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
16 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
17 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
18 4th 629, 632-33 (1998).

19 Here, Class Counsel's requested hourly rate is \$850 per hour. (Hyun Decl. at ¶ 10;
20 Marder Decl. at ¶ 15). Plaintiff's Counsel's skill and experience justify the requested rates. As
21 shown in the supporting declarations, Plaintiff's Counsel has significant experience in the area of
22 employment and wage and hour class and representative actions. Plaintiff's Counsel's practice
23 focuses on representing employees in employment matters, particularly wage and hour cases on a
24 contingency basis. (Marder Decl. at ¶¶ 8-14; Hyun Decl. at ¶¶ 3-6). As such, based on the hours
25 and applicable rate, the lodestar for Class Counsel through the finalization of this settlement will
26 be approximately \$192,250.00, based on 227 total hours. (Marder Decl. ¶ 15, Exh. A; Hyun
27 Decl. ¶¶ 9-11, Exh. A).

Based upon Plaintiff's counsel's lodestar of \$192,250.00, the requested attorneys' fees result in a **negative** multiplier. Plaintiff's counsel respectfully submit that said request is reasonable and fair, based on the factors described above. Accordingly, the cross-check supports the fee requested.

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

The request for reimbursement of costs, in the amount of \$2,498.18 is fair and reasonable. (Hyun Decl. at ¶ 12; Marder Decl. at ¶ 16; Ex. B). Pursuant to the terms of the Settlement Agreement, Plaintiff are allowed to seek reimbursement of litigation costs up to a maximum of \$15,000.00. As such, this request should be approved.

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

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator are to be paid from the Total Class Action Settlement Amount. As reflected in the Settlement Administrator's Declaration, the administrative fees for this settlement amounts to \$12,500.00, which include all fees incurred to date, as well as fees required to complete administration of this settlement and post-settlement matters. (Admin Decl. at ¶ 16, Exh. D). For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. PLAINTIFF HAVE PROVIDED NOTICE TO THE LWDA

Concurrently with the filing of this Motion, Plaintiff uploaded this motion and proposed order to the LWDA's website. (Hyun Decl. at ¶ 13).

IX. CONCLUSION

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

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

1. Granting final approval to the proposed Settlement Agreement;

- 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 Class Members who did not opt
10 out.

11
12 DATED: September 19, 2024

POLARIS LAW GROUP
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