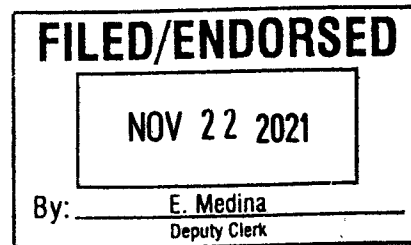


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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

EDWARD ALCANTAR, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

AEROJET ROCKETDYNE, INC., an Ohio
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 31-2020-00281224

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

Date: December 16, 2021
Time: 9:00 a.m.
Dept.: 54

Complaint Filed: June 29, 2020
FAC Filed: July 12, 2021

BY FAX

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

2 **PLEASE TAKE NOTICE** that on December 16, 2021, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Christopher E. Krueger, judge
4 presiding, in Department 54 of the above referenced Court, located at 720 9th Street,
5 Sacramento, California 95814, Plaintiff Edward Alcantar (“Plaintiff”) will and hereby does seek
6 an Order:

7 1. Granting final approval to the Settlement Agreement and Release (“Settlement
8 Agreement”) in this action;

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

11 3. Approving Plaintiff’s request for an Incentive Award 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
14 approximately 35% of the \$450,000.00 class settlement amount, or \$157,500.00, and
15 reimbursement of litigation costs of \$12,219.94 pursuant to the terms of the Settlement
16 Agreement;

17 5. Approving Plaintiff’s request for payment of the settlement administration costs
18 to Phoenix Settlement Administrators in the amount of \$7,950.00 pursuant to the terms of the
19 Settlement Agreement;

20 6. Approving Plaintiff’s request for payment to the Labor & Workforce
21 Development Agency of \$30,000.00 pursuant to the terms of the Settlement Agreement; and

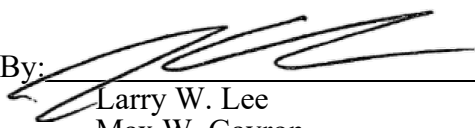
22 7. Entering final judgment as to all members of the Settlement Class in this action.

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 to the settlement and only one opt-out, 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 Edward Alcantar, and Elizabeth Kruckenberg of Phoenix Settlement Administrators, upon the
4 oral arguments of counsel (should there be any), and on the complete records and file herein.

5
6 DATED: November 22, 2021

DIVERSITY LAW GROUP, P.C.

7
8 By: 

Larry W. Lee

9 Max W. Gavron

10 Attorneys for Plaintiff, the Class, and Aggrieved
11 Employees
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<i>Manual for Complex Litigation Fourth</i> (Fed. Judicial Center 2004) (“MCL”), § 21.6	14, 15

1 **I. INTRODUCTION**

2 On June 29, 2020, Plaintiff Edward Alcantar (“Plaintiff”) filed a class and representative
3 action complaint against Defendant Aerojet Rocketdyne, Inc. (“Defendant”) in the Superior
4 Court of California for the County of Sacramento. The complaint alleged class and representative
5 action claims for violation of Labor Code §§ 226(a) and 2698, *et seq.*, the Private Attorneys
6 General Act (“PAGA”), asserting that the wage statements provided to Plaintiff failed to identify
7 the applicable rates of pay and number of hours worked for shift differential wages, and sought
8 damages, penalties, attorneys’ fees, and costs.

9 Plaintiff now seeks the Court’s final approval of the Settlement Agreement and Release
10 (“Settlement Agreement”). The Settlement Agreement provides for a \$450,000.00 fund to be
11 created for the benefit of the Class, from which attorneys’ fees, litigation costs, incentive award
12 to the named Plaintiff, payment to the California Labor and Workforce Development Agency
13 (“LWDA”), and costs of settlement administration are to be paid. The net settlement fund after
14 these deductions will be paid to all Class Members.

15 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval
16 Motion. This Court preliminarily approved this Settlement on September 7, 2021, directing
17 distribution of Notice of Class Action Settlement (“Settlement Class Notice”) and scheduling the
18 hearing for final approval of settlement (the “Preliminary Approval Order”).

19 As directed by the Court, the Settlement Administrator distributed the Notice to 382
20 Class Members. (Declaration of Elizabeth Kruckenberg on behalf of Phoenix Settlement
21 Administrators (“Phoenix”) [“Kruckenberg Decl.”] ¶ 5.) To date, 1 request for exclusion have
22 been received, and 0 objections have been filed.¹ (*Id.* ¶¶ 8.) As such, there is a 99.7%
23 participation rate. Thus, an inference can be made that the Class supports the Court’s Preliminary
24 Approval Order finding that the Settlement Agreement is fair and reasonable.

25
26
27 ¹ The Opt-Out deadline is the same date as the filing date of this Motion. Accordingly, Plaintiff
28 will submit a supplemental declaration from the Administrator in advance of the hearing for the
Court’s consideration, to the extent any additional opt-outs or objections are received.
(Kruckenberg Decl. ¶ 10.)

1 In addition to the results of the notice process, for the same reasons as set forth earlier in
2 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following represent
3 the basic points supporting approval of the Settlement:

- 4 ▪ The Settlement provides a total settlement sum of \$450,000.00;
- 5 ▪ The Settlement is fair given that Settlement Class Members will receive (*after*
6 *deductions for fees, costs, etc.*) a substantial amount of money (on average, each
7 Settlement Class Member will receive approximately \$609.79) (*See* Kruckenberg
8 Decl. ¶ 12);
- 9 ▪ Class Members did not need to submit claim forms to participate in the
10 settlement, but are being paid automatically;
- 11 ▪ The allocation reflects that payment of claims will be paid to all Class Members
12 in proportion to the number of pay periods during which each Class Member was
13 paid shift differential wages or additive pay during the Settlement Class Period;
- 14 ▪ Plaintiff conducted significant investigation in this case, including informal
15 discovery and exchanges of information by Plaintiff and Defendant of class data
16 for the entire class necessary for Plaintiff to fully evaluate this case;
- 17 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained
18 for fees estimated to be \$7,950.00; and
- 19 ▪ California's LWDA will also be the beneficiary of this Settlement as it will
20 receive \$30,000.00, should this Settlement be granted final approval.

21 Accordingly, the Court should grant Final Approval consistent with the Preliminary
22 Approval Order.

23 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
24 **SETTLEMENT**

25 The notice procedures required by the Preliminary Approval Order, have been followed
26 and satisfy all due process rights of Class Members. The Preliminary Approval Order
27 contemplated that the Notice of Class Action Settlement ("Settlement Class Notice"), as
28 approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as
specified in the Settlement. Furthermore, the Preliminary Approval Order contemplated that

1 Phoenix Settlement Administrators would serve as the Settlement Administrator.

2 As clearly stated in the Kruckenberg Declaration, notice was provided to Class Members,
3 as required by the Preliminary Approval Order. On September 21, 2021, the Settlement
4 Administrator received a Class Member mailing list from Defendant's counsel that included 382
5 Class Members. (Kruckenberg Decl. ¶ 3.) On October 8, 2021, each of the persons identified on
6 the mailing list were sent the Settlement Class Notice via first class mail. (*Id.* ¶ 5.) From the date
7 of mailing, 5 Settlement Class Notices were returned due to an incorrect address and 4 were then
8 re-mailed to an updated address after performing an address trace. (*Id.*) As of the date of this
9 filing, 1 Settlement Class Notice remained undeliverable because an updated address could not
10 be located despite skip tracing efforts for the other Notice. (*Id.* ¶ 7.) Further, the Settlement Class
11 Notice provided Class Members with Class Counsel's contact information, where they could
12 further seek information regarding the settlement, leave questions for the Settlement
13 Administrator, and update their address.

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

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

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). Here, the Class is defined as: “all current and former non-
12 exempt employees employed by Defendant in California who received shift differential wages
13 and/or any form of additive pay from April 6, 2019 through September 10, 2020.” There are
14 382 individuals that comprise the Class. (Kruckenberg Decl. ¶ 3.) This is more than the
15 minimum required to certify a class. Within the context of manageability, the issue is whether
16 there exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196
17 Cal.App.3d at 1274-75. Class Members have already been identified by Defendant and notice
18 was provided to all of the above Class Members.

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

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

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

25 “The ultimate question in every case of this type [class actions] is whether...the issues
26 which may be jointly tried, when compared with those requiring separate adjudication, are so
27 numerous and substantial that the maintenance of a class action would be advantageous to the
28 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal.4th 1096,

1 1104-05 (2003).

2 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
3 violated the Labor Code by its failure to provide accurate wage statements. Defendant denies that
4 liability could be established on a class-wide basis and contends instead that liability and
5 damages would need to be conducted on a case-by-case basis.

6 **b. Plaintiff's Claims are Typical of the Class Claims**

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

15 Plaintiff was employed by Defendant and he alleges that he was subjected to the same
16 payroll policies as all other Class Members. Specifically, like other members of the Class,
17 Plaintiff received wage statements that he alleges did not include the applicable rates of pay or
18 number of hours worked for shift differential wages and additive pay. (Declaration of Edward
19 Alcantar ["Alcantar Decl."] ¶ 3.) Plaintiff alleges he was subjected to the same policies and
20 practices as other Class Members. Thus, Plaintiff's claims are typical to those of Class Members.

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

22 The class representative, through qualified counsel, must be capable of "vigorously and
23 tenaciously" protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal.App.3d
24 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any
25 such issues been raised or presented. Plaintiff has taken all necessary steps to represent the
26 interests of the Class, including providing information and documents to his counsel and
27 reviewing pleadings in this case. (Alcantar Decl. ¶ 7.) For such reasons, Plaintiff has adequately
28 represented the Class Members and will continue to do so.

1 **B. Defendant’s Allegations and Unlikelihood of Class Certification**

2 Defendant asserts that individualized issues predominate in this case, including without
3 limitation, whether Defendant provided accurate wage statements in compliance with the law. In
4 any event, even assuming that a class could have been certified, Defendant asserts that Plaintiff
5 would be unable to establish a “knowing and intentional” violation of Labor Code § 226(a), and
6 that Defendant was not required to identify the pay rate or hours worked for shift differential
7 and/or additive pay. Based thereon, Defendant continues to maintain that it is not liable for the
8 allegations made by the Plaintiff.

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

10 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the
11 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
12 involved in not prevailing on one or more of the causes of action or theories alleged in his
13 Complaint, the possibility of non-certification, and potential for appeals. These risks on class
14 certification are compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank*
15 *Nat’l Ass’n*, 59 Cal.4th 1 (2014).

16 Defendant alleges that a class could not have been certified. There is always a risk that
17 the court will not grant certification of the class, wherein the class will not be entitled to any
18 damages. Based on the foregoing, there was a substantial risk that Plaintiff would not have
19 obtained the total amount of damages alleged, and a substantial number of complex issues that
20 would have necessitated significant expenditure of time and expenses. Therefore, the risks,
21 expenses, and complexity of further litigation warrant granting of this Motion.

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

25 Without reiterating the Parties’ showing that the Settlement Agreement and the
26 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
27 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
28 Settlement Agreement was the product of negotiation between highly able and experienced
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.”] ¶ 4.)

2 The results after mailing of the Settlement Class Notice support confirmation of the
3 Court’s preliminary approval of the settlement with final approval of the settlement, as evidenced
4 by the fact that to date, one request for exclusion and no objections to the Settlement have been
5 received. (Kruckenberg Decl. ¶¶ 8-9.) The Court may appropriately infer that the class action
6 settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted
7 an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

8 **E. Under Well-Established Legal Principles, the Court Should Grant Final**
9 **Approval of the Settlement**

10 **1. Standard of Review**

11 On a motion for final approval of a class action settlement under California Code of Civil
12 Procedure § 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement
13 is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625
14 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A
15 settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
16 interests of the class are better served by the settlement than by further litigation.” *See Manual*
17 *for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law
18 favors settlement, particularly in class actions and other complex cases, where substantial
19 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba
20 Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs*
21 *v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d
22 943, 950 (9th Cir. 1976).

23 Although the Court possesses “broad discretion” in determining that a proposed class
24 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
25 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
26 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
27 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court
28 should give due regard to what is otherwise a “private consensual agreement” between the
parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.

1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379 (D. Ariz. 1989), *aff'd sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

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

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

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

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

2. The Settlement is Presumed to Be Fair

The Court should begin its analysis with the presumption that the settlement is fair and 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.

Dunk, 48 Cal.App.4th at 1802; *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.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm’s length. (Gavron Decl. ¶ 5.)

Second, Class Counsel engaged in extensive factual investigation before settling,

1 including reviewing class data. (Gavron Decl. ¶ 4.) Further, Class Counsel is highly experienced
2 in this type of litigation. As shown in the supporting declarations, Class Counsel has significant
3 experience in class actions and employment wage and hour matters. (Gavron Decl. ¶¶ 6-13;
4 Declaration of Larry W. Lee [“Lee Decl.”] ¶¶ 6-8; Declaration of William L. Marder [“Marder
5 Decl.”] ¶¶ 3-8.)

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

7 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
8 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
9 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
10 (3d Cir. 1995) (“present value of the damages plaintiffs would likely recover if successful,
11 appropriately discounted for the risk of not prevailing, should be compared with the amount of
12 the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
13 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 616-17 (N.D. Cal. 1979).

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

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

26 The Settlement Agreement also affords the Class prompt, fair relief while avoiding
27 significant legal and factual battles that otherwise may have prevented the Class from obtaining
28 any recovery at all. While Class Counsel believe the Class Members’ claims are meritorious and

1 can be successfully litigated, they are experienced and fully understand the inherent risks and
2 uncertainty involved with such matters as the resolution of class certification, the outcome of a
3 potential trial, and the outcome of any appeals that would inevitably follow should the Class
4 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
5 settlement. Because the settlement provides immediate and substantial relief, without the
6 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
7 costs—Class Counsel believe that the settlement warrants the Court’s final approval.

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

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

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

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

24 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
25 interest of the Class Members as a whole. (Lee Decl. ¶ 5; Gavron Decl. ¶ 5; Marder Decl. ¶ 2.)
26 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and
27 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
28 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625;

1 *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

2 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
3 **SHOULD BE APPROVED**

4 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
5 settlement funds remain after 180 days, the Parties have agreed that all funds shall be distributed
6 to Legal Aid at Work, in accordance with Code of Civ. Proc. § 384.

7 **V. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE AWARD SHOULD**
8 **BE APPROVED**

9 Class Representative Edward Alcantar requests an incentive award of \$10,000.00.
10 Plaintiff met with Class Counsel, including providing substantive information regarding
11 Defendant's practices. (Alcantar Decl. ¶ 7.) Accordingly, Plaintiff provided invaluable
12 information, evidence, and documents that resulted in this Settlement.

13 In addition to the invaluable services that he provided, Plaintiff took significant risks,
14 both professionally and monetarily, in acting as Class Representative, seeking benefits on behalf
15 of the Class. Because the claims alleged by the Class Representative involved the payment of
16 costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant,
17 had he not prevailed in this action. Moreover, Plaintiff understood that an individual case would
18 have resolved much faster than a class action and involved much less financial risk than a class
19 action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class. (*Id.* ¶ 8.)

20 Also, given that future employers are much less likely to hire individuals who have filed
21 employment-related lawsuits, particularly cases of this nature, the Class Representative also
22 faced significant risk in not being able to find suitable employment, all as a result of filing of this
23 case against Defendant. Plaintiff took these risks upon himself to the benefit of the Class. (*Id.* ¶
24 10.) Class Members did not have to file individual lawsuits and bear the risks of payment of
25 costs if they did not prevail, nor did they have to face the potential for retaliation and not getting
26 future employment had they filed a lawsuit which is a public record. These are significant
27 benefits that weigh in favor of granting the requested enhancement. Moreover, this litigation has
28 resulted in a significantly valuable benefit to the Class, and Plaintiff took on substantial risks in
helping to get this financial benefit to the Class. As such, the enhancement should be awarded to

Plaintiff for his commitment, dedication, and risks taken for this litigation.

Finally, Plaintiff provided a general release and waiver of the protections of Civil Code § 1542. (Settlement Agreement ¶ 21.) This is a more extensive release than that provided by the Class at large, also supporting the request for the award. (Alcantar Decl. ¶ 9.)

Courts have routinely granted approval of settlements containing such incentive awards. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 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 seeks a fee award calculated at thirty-five percent of the total value of the settlement 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 769.

The California Supreme Court has provided guidance regarding the award of attorneys' fees in wage and hour class action settlements. Under California law, the award of attorneys'

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

12 Here, the fee award representing thirty-five percent of the fund clearly falls within that
13 range and is consistent with other rulings of other courts and comprehensive surveys of class
14 action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS
15 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that “courts may award attorney’s fees in the 30-
16 40% range in wage and hour class actions that result in recovery of a common fund under \$10
17 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
18 *Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of
19 class action litigation nationwide conclude that fees in the range sought here are consistent with
20 market rates).

21 The results delivered by Class Counsel also support the requested percentage of the fund.
22 Here, Plaintiff and his counsel secured a \$450,000.00 Settlement and none of the Class Members
23 objected.

24 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
25 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
26 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
27 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
28 Notice specifically notified Class Members that Class Counsel would be seeking \$157,500.00 in

1 attorneys' fees.

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

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

11 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$450,000.00 has been
12 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented
13 far more risk than the usual contingent fee case. Among the risks was the cost inherent in class
14 action litigation, as well as a long battle with a corporate Defendant who had retained a premier
15 and highly experienced defense firm. As such, the requested fee should be awarded.

16 Class Counsel's skill and experience justify the fees requested here. As shown in the
17 supporting declarations, Class Counsel have significant experience in the area of employment
18 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
19 employees in employment matters, particularly wage and hour cases. (Lee Decl. ¶¶ 6-8; Gavron
20 Decl. ¶¶ 11-13; Marder Decl. ¶¶ 3-8.)

21 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
22 the-benefit, namely, no objections by Class Members, commendable conduct by counsel, and
23 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*,
24 82 Cal.App.4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorney's fee
25 with no objections. It is also critical to note that prompt settlement cannot be used to diminish the
26 fee or the enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal.App.4th at 52.
27 According to *Lealao*, courts placed "an extraordinarily high value" on settlement, and counsel
28 should be rewarded, not punished, for achieving this goal in a timely fashion. *Id.*

As explained previously, Defendant maintained that there were significant obstacles.
Thus, the risk involved in this case was quite significant for Plaintiff and his counsel, and in the

face of such risks, the current settlement was still able to be obtained by Plaintiff's counsel.

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 \$157,500.00 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 \$12,219.94 is fair and reasonable. The costs are all litigation related costs. (Lee Decl. ¶ 9, Ex. A.) The authority for the Court to award this is the Parties' Settlement Agreement and Labor Code §§ 226 and 2699. As such, this request should be approved.

VIII. 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, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown on the Declaration of Elizabeth Kruckenberg, the settlement administration fees expended in this matter amount to a total of \$7,950.00, which is the amount that was agreed upon by the Parties. (Kruckenberg Decl. ¶ 13, Ex. B.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

IX. CONCLUSION

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

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

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to Settlement Class Members pursuant to the terms of the Settlement Agreement;

1 3. Approving Plaintiff's request for an incentive award of \$10,000.00, with payment
2 pursuant to the terms of the Settlement Agreement;

3 4. Approving Class Counsel's request for an award to Class Counsel for
4 \$157,500.00 in attorneys' fees and \$12,219.94 in costs with payment pursuant to the terms of the
5 Settlement Agreement;

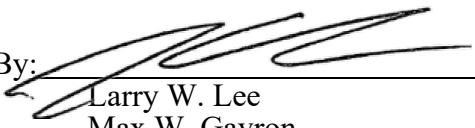
6 5. Approving Plaintiff's request for payment of the settlement administration costs
7 to Phoenix Settlement Administrators in the amount of \$7,950.00 with payment pursuant to the
8 terms of the Settlement Agreement;

9 6. Approving Plaintiff's request for payment to the LWDA for \$30,000.00 with
10 payment pursuant to the terms of the Settlement Agreement; and

11 7. Entering final judgment as to all members of the Class in this action.

12
13 DATED: November 22, 2021

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff, the Class, and Aggrieved
Employees