

**Electronically Filed
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JON BETTERTON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ACCENTURE FLEX, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20CV368771

(Assigned to the Honorable Sunil R. Kulkarni,
Department 1)

**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: 1:30 pm
Dept.: 1

Complaint Filed: July 29, 2020
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 16, 2021, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Sunil R. Kulkarni, judge presiding, in Department 1 of the above referenced Court located at 191 North First Street, San Jose, California 95113, Plaintiff Jon Betterton (“Plaintiff”) will and hereby does move this Court for an Order:

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

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

3. Approving Plaintiff’s request for a service award of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

4. Approving Class Counsel’s request for an award of attorneys’ fees of one-third of the Gross Settlement Amount, or \$500,000.00, and reimbursement of actual litigation costs of \$8,341.03, pursuant to the terms of the Settlement Agreement;

5. Approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$9,950.00, pursuant to the terms of the Settlement Agreement;

6. Approving Plaintiff’s request for payment to the California Labor & Workforce Development Agency (“LWDA”) for \$75,000.00 pursuant to the California Labor Code Private Attorneys General Act, pursuant to the terms of the Settlement Agreement; and

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

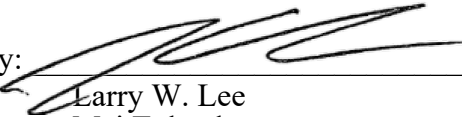
This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown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

1 This Motion will be based on the attached Memorandum of Points and Authorities and
2 the supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, Plaintiff Jon
3 Betterton, and Elizabeth Kruckenberg of Phoenix Settlement Administrators, upon the oral
4 arguments of counsel (should there be any), and on the complete records and file herein.

5 DATED: November 22, 2021

DIVERSITY LAW GROUP, P.C.

7
8 By:



Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and
Aggrieved Employees

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1 **I. INTRODUCTION**

2 Plaintiff Jon Betterton (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action Settlement and Release of Claims (“Stipulation” or “Settlement
4 Agreement”). The Settlement Agreement provides for a \$1,500,000.00 **non-reversionary** fund
5 to be created for the benefit of the Class¹, from which attorneys’ fees, litigation costs, service
6 award to the named Plaintiff, payment to the California Labor and Workforce Development
7 Agency (“LWDA”), and costs of settlement administration are to be paid. The entire Net
8 Settlement Fund after these deductions will be paid to all Class Members who did not opt-out of
9 the Settlement.

10 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
11 Approval of Class Action Settlement. The Court preliminary approved this settlement on August
12 13, 2021, directing distribution of Class Notice and scheduling the hearing for final approval of
13 the settlement (the “Preliminary Approval Order”).

14 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
15 Settlement Administrators—distributed the Class Notice to 621 Class Members². (Declaration of
16 Elizabeth Kruckenberg on behalf of Phoenix Settlement Administrators (“Kruckenberg Decl.”)
17 at ¶ 5.) To date, **there have been no requests for exclusions and/or objections to the**
18 **settlement submitted by any Class Members.** (*Id.* at ¶¶ 8-9.) As such, there is a 100%
19 participation rate. Thus, in light of the lack of objections and opt-outs, an inference can be made
20 that the Class supports the Court’s Preliminary Approval Order finding that the Settlement
21 Agreement is fair and reasonable.

22 ¹ The “Class” as used herein consists of two settlement classes. The Wage Statement Class consists of all
23 current and former non-exempt employees of Defendant in California who were paid shift differential
24 and/or shift premium wages, including without limitation, “ShiftDiff” and/or “ShiftPremPercnt” wages, at
25 any time during April 6, 2019, to and including February 6, 2021 (the “Wage Statement Class”). The
26 Sick Pay Class consists of all non-exempt employees of Defendant in California who were paid non-
27 discretionary incentive remuneration, including without limitation, “ShiftDiff” and/or “ShiftPremPercnt”
wages, and sick pay in the same pay period, and whose employment ended (either voluntarily or
involuntarily) at any time from April 6, 2017, through and including July 31, 2021 (the “Sick Pay Class”).
These two settlement classes, collectively, shall be referred to as the “Class.”

28 ² There are 584 individuals in the Wage Statement Class, and 144 individuals in the Sick Pay Class.
(Kruckenberg Decl. at ¶ 3.)

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 represents
3 the basic points supporting final approval of the settlement:

4 ▪ The settlement provides a total settlement sum of \$1,500,000.00, which is **non-**
5 **reversionary**;

6 ▪ The settlement is fair given that participating Class Members will receive (*after*
7 *deductions for fees, costs, etc.*) a substantial amount of money – on average, approximately
8 \$1,443.98 to each Participating Class Member, with the estimated highest individual settlement
9 payment being approximately **\$4,288.26** (*See* Kruckenberg Decl. at ¶ 11);

10 ▪ Class Members did not need to submit claim forms to participate in the
11 settlement, but are being paid automatically;

12 ▪ The allocation reflects that payment of individual settlement amounts will be paid
13 to (1) Wage Statement Class Members on a *pro rata* basis, in proportion to the number of pay
14 periods each Class Member was paid shift differential and/or shift premium wages between April
15 6, 2019, through and including February 6, 2021; and (2) Sick Pay Class Members on a *per*
16 *capita* basis;

17 ▪ Plaintiff's counsel conducted significant investigation in this case, including
18 conducting informal discovery and significant exchanges of information regarding class data for
19 the entire class, including the number of class members, the number of pay periods at issue, the
20 hourly rates of pay for class members, as well as policy documents and information pertaining to
21 Defendant's policies and practices regarding payment of sick pay wages and the issuance of
22 wage statements;

23 ▪ A highly regarded settlement administrator, Phoenix Settlement Administrators,
24 was retained to administer the settlement for approximately \$9,950.00 (*See* Kruckenberg Decl. at
25 ¶ 12); and

26 ▪ The State of California's LWDA will also be the beneficiary of this settlement, as
27 it will receive \$75,000.00 pursuant to the PAGA, should this settlement be granted final
28 approval.

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

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. Specifically, the Preliminary Approval Order contemplated that the Notice of Class Action Settlement (“Class Notice”), as approved in the Preliminary Approval Order,³ be sent to all Class Members by first class mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Kruckenberg Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On August 25, 2021, the Settlement Administrator received a Class Member mailing list from Defendant’s counsel that included 621 Class Members. (Kruckenberg Decl. at ¶ 3.) Prior to mailing the Class Notice, the Settlement Administrator conducted a National Change of Address (NCOA) search to correct and/or update the class list in case of any address changes. (*Id.* at ¶ 4.) On September 1, 2021, the Settlement Administrator mailed the Class Notice to all 621 Class Members on the mailing list via U.S. first class mail. (*Id.* at ¶ 5.) From the date of mailing, fourteen Class Notice packets (0.02% of all mailed notice packets) were returned to the Settlement Administrator due to incorrect addresses. (*Id.* at ¶ 6.) Three of the returned Class Notice packets were returned with a forwarding address, and thus the Settlement Administrator re-mailed those three Class Notice packets to the forwarding addresses thereto. (*Id.*) For the eleven Class Notice packets that were returned without a forwarding address, the Settlement Administrator conducted skip tracing using TransUnion TLOxp to obtain updated addresses for re-mailing. (*Id.*) Of the eleven Class Notice

³ The Court directed the Parties to make slight modifications to the Class Notice in the Preliminary Approval Order – specifically, (1) that class members need only provide their name (without any other identifying information) when submitting opt-outs, and (2) to add text in the Class Notice regarding remote appearance instructions for the final approval hearing. The Parties have modified the Class Notice pursuant to the Court’s instructions, and Plaintiff’s counsel provided the revised Class Notice to Phoenix Settlement Administrators for purposes of notice dissemination on August 12, 2021. (*See* Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶ 7.)

1 packets that were skip traced, nine updated addresses were obtained and the Settlement
2 Administrator re-mailed the Class Notice packets to those Class Members via U.S. first class
3 mail. (Kruckenberg Decl. at ¶ 6.) As of the date of this filing, only two Class Notices remain
4 undeliverable as no forwarding addresses were provided by the Post Office, and updated
5 addresses could not be obtained via skip tracing. (*Id.* at ¶ 7.)

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

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

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

27 ///

28 ///

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

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

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

7 **1. The Class is Ascertainable**

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

12 Here, the Class is comprised of two settlement classes—the Wage Statement Class and
13 the Sick Pay Class. The Wage Statement Class consists of all current and former non-exempt
14 employees of Defendant in California who were paid shift differential and/or shift premium
15 wages, including without limitation, “ShiftDiff” and/or “ShiftPremPerct” wages, at any time
16 during April 6, 2019, to and including February 6, 2021. The Sick Pay Class consists of all non-
17 exempt employees of Defendant in California who were paid non-discretionary incentive
18 remuneration, including without limitation, “ShiftDiff” and/or “ShiftPremPerct” wages, and
19 sick pay in the same pay period, and whose employment ended (either voluntarily or
20 involuntarily) at any time from April 6, 2017, through and including July 31, 2021. There are
21 584 individuals in the Wage Statement Class, and 144 individuals in the Sick Pay Class, and a
22 collective total of 621 individuals that comprise the Class. (Kruckenberg Decl. at ¶ 3.) This is
23 more than the minimum required to certify a class.

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

28 ///

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

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

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

8 “The ultimate question in every case of this type[, class actions,] is whether...the issues
9 which may be jointly tried, when compared with those requiring separate adjudication, are so
10 numerous and substantial that the maintenance of a class action would be advantageous to the
11 judicial process and to the litigants.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29
12 Cal.4th 1096, 1104-05.)

13 For Plaintiff’s Labor Code § 226(a) claim, Plaintiff alleges that Defendant, as a matter of
14 its corporate policy, practice, or procedure failed to provide accurate wage statements whenever
15 shift differential and/or shift premium wages, such as “ShiftDiff” and/or “ShiftPremPerct”
16 wages, were paid. Specifically, Plaintiff alleges that the wage statements do not correctly
17 identify the applicable hourly rates of pay and number of hours worked used to calculate said
18 shift differential and/or shift premium wages. For Plaintiff’s sick pay regular rate claim, Plaintiff
19 alleges that Defendant, as a matter of its corporate policy, practice, or procedure failed to factor
20 non-discretionary incentives, including “ShiftDiff” and/or “ShiftPremPerct” wages, into the
21 calculation of the regular rate for purposes of paying sick pay wages. As these are alleged
22 uniform corporate policies, practices, and procedures, the claims can be jointly tried and thus the
23 predominance requirement is satisfied.

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

25 The purported class representative’s claim must be “typical” but not necessarily identical
26 to the claims of other class members; it is sufficient that the representative is similarly situated so
27 that he or she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983)
28 145 Cal.App.3d 27, 45.) Courts look to whether class members have similar injuries, “whether

1 the action is based on conduct which is not unique to the named Plaintiff,” and whether other
2 class members were injured by the same conduct. (*Hanon v. Dataproducts Corp.* (9th Cir. 1992)
3 976 F.2d 497, 508.) The purpose of the typicality requirement “is to assure that the interest of
4 the named representative aligns with the interests of the class.” (*Id.* at p. 508.)

5 While Defendant deny the allegations, Plaintiff contends that he was subjected to the
6 same payroll policies as all other Class Members. In this regard, Plaintiff was employed by
7 Defendant as a non-exempt employee from about September 2018, until on or about November
8 23, 2019. (Declaration of Jon Betterton (“Betterton Decl.”) at ¶ 2.) Plaintiff contends that, like
9 other members of the Wage Statement Class, he was routinely paid shift differential and/or shift
10 premium wages, including “ShiftDiff” and “ShiftPremPercent” wages. (*Id.* at ¶ 3.) However,
11 Plaintiff contends that whenever those wages were paid, the corresponding wage statements
12 issued to Plaintiff did not identify the applicable hourly rates of pay and number of hours worked
13 for said wages. (*Id.*) Additionally, Plaintiff contends that like other Sick Pay Class Members, he
14 was also underpaid sick pay wages. (*Id.* at ¶ 4.) Whenever sick pay and non-discretionary
15 incentives were paid to Plaintiff in the same workweek, Plaintiff alleges that Defendant
16 miscalculated the sick pay regular rate such that it failed to include the non-discretionary wages
17 into the calculation of the regular rate or pay. (*Id.*)

18 In other words, Plaintiff alleges that he was subjected to the same policies and practices
19 as other Class Members. Accordingly, Plaintiff’s claims are aligned with the interests of the
20 Class and typicality is satisfied.

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* (1984) 151
24 Cal.App.3d 834, 846.)

25 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
26 been raised or presented. (Betterton Decl. at ¶ 6.) Plaintiff has taken all necessary steps to
27 represent the interests of the Class, including discussing the lawsuit with his counsel on several
28 occasions, searching for and providing information and documents to his counsel, and reviewing

1 pleadings and the settlement agreement in this case. (*Id.* at ¶ 5.) For such reasons, Plaintiff has
2 adequately represented the Class Members and will continue to do so.

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

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

10 Defendant alleges that the classes could not have been certified, given its position that its
11 policies are compliant and any liability would need to be determined on a case-by-case basis.
12 With respect to Plaintiff’s wage statement claim, it is Defendant’s position that its wage
13 statements complied with the law, such that Plaintiff cannot prove “injury” under Labor Code §
14 226(e). Furthermore, Defendant has indicated that it has revised its wage statement practices as
15 of February 6, 2021, which Defendant contends would limit any potential liability. For the sick
16 pay claim, Defendant has asserted that its sick pay policy is compliant with Labor Code § 246
17 and that its policy provides that it pays sick pay under a grandfathered PTO policy. In addition
18 to these defenses, Plaintiff also faces risk with regard to prevailing on class certification of the
19 sick pay regular rate claim, as there is currently no precedent from any California courts for
20 certification of a sick pay regular rate class. Based on the foregoing, there were risks that one or
21 more classes would not be certified, Plaintiff would not have obtained the total amount of
22 penalties alleged, and a substantial amount of complex issues would have necessitated significant
23 expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further
24 litigation warrant granting of this Motion.

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

28 Without reiterating the Parties’ showing that the Settlement Agreement and the
negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for

1 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
2 Settlement Agreement was the product of negotiations between highly able and experienced
3 attorneys on both sides who possessed the relevant data and extensive legal research which they
4 had carefully analyzed. (Tulyathan Decl. at ¶ 3.) The Parties engaged in arm’s length
5 negotiations at mediation with a highly experienced and well-known mediator, Joel Grossman,
6 Esq. (*Id.*)

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

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

16 **1. Standard of Review**

17 On a motion for final approval of a class action settlement under California Code of Civil
18 Procedure § 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement
19 is “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982)
20 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217.) A
21 settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
22 interests of the class are better served by the settlement than by further litigation.” (*See Manual*
23 *for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”).) The law
24 favors settlement, particularly in class actions and other complex cases, where substantial
25 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (*See Alba*
26 *Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class*
27 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.*
28 (9th Cir. 1976) 529 F.2d 943, 950.)

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

12 A court’s approval of a class action settlement will only be reversed for a clear abuse of
13 discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*,
14 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision was a
15 clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar* (9th Cir.
16 1993) 1993 WL 326453; *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

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

18 “It cannot be overemphasized that neither the trial court in
19 approving the settlement nor this Court in reviewing that approval
20 have the right or duty to reach any ultimate conclusions on the
21 issues of fact and law which underlie the merits of the dispute. It is
22 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.’”

23 (*7-Eleven Owners for Fair Franchising v. Southland Corp* (2000) 85 Cal.App.4th 1135, 1146.)

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

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

27 [A] presumption of fairness exists where: (1) the settlement is
28 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

1 (4) the percentage of objectors is small.

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

4 The settlement in the case at bar warrants approval and carries a presumption of fairness.
5 As previously noted in the application for Preliminary Approval, this current settlement was
6 negotiated at arm's length after a full day of mediation with an experienced wage-and-hour
7 mediator, Joel Grossman, Esq. (Tulyathan Decl. at ¶ 3.) Additionally, Class Counsel engaged in
8 informal discovery before mediation, including reviewing and analyzing the production of class
9 and payroll data, and information pertaining to Defendant's sick pay and wage statement policies
10 and practices. (*Id.*) The exchange of informal discovery allowed Class Counsel to conduct a full
11 analysis of exposure. (*Id.*)

12 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
13 supporting declarations, Class Counsel has significant experience in class actions and
14 employment wage and hour matters. (Declaration of Larry W. Lee ("Lee Decl.") at ¶¶ 8-10;
15 Tulyathan Decl. at ¶¶ 10-12; Declaration of William L. Marder ("Marder Decl.") at ¶¶ 7-14.)

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

18 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
19 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
20 the risks inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55
21 F.3d 768, 806 ("present value of the damages plaintiffs would likely recover if successful,
22 appropriately discounted for the risk of not prevailing, should be compared with the amount of
23 the proposed settlement") (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 1
24 53, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.)

25 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
26 been potentially responsible for Defendant's costs. (Betterton Decl. at ¶ 9.) As such, should
27 individual current or former employees of Defendant bring individual claims on the same causes
28 of action, they would each face the uncertainty of prevailing and the possibility of paying costs

1 to Defendant. Accordingly, such claims likely would not be brought by many of these current
2 and former employees—thus, this lawsuit achieves a true benefit for the class that they might not
3 otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been
4 reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant’s
5 litigation costs.

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

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

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

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

27 As noted above, continued litigation could have led to appeals on several issues. On the
28 other hand, the settlement that was reached provides to all Class Members—regardless of their
means—fair relief in a prompt and efficient manner. Were the Court to deny final approval, the

1 Class Members would be left without a remedy as a practical matter and courts across the State
2 would have to address the issues presented here in a piecemeal, costly, and time-consuming
3 manner. The settlement in this case is therefore consistent with the “overriding public interest in
4 settling and quieting litigation” that is “particularly true in class action suits.” (*See Van*
5 *Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* § 11.41.) Here, this case
6 could have involved years of litigation, especially given that the sick pay regular rate claim has
7 never been certified by a California court before.

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

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

15 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS** 16 **SHOULD BE APPROVED**

17 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
18 settlement funds remain after 180 days of the mailing of the individual settlement checks, the
19 Parties have agreed that all such uncashed settlement funds shall be redistributed among the
20 Participating Class Members who cashed their Individual Settlement Payments checks during the
21 first distribution. After 90 days of mailing of the re-distributed checks, any funds attributable to
22 unclaimed, undeliverable, or expired checks shall be deposited with the State of California
23 Unclaimed Property Fund in the name of the Class Member who received the redistribution.

24 **V. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD SHOULD** 25 **BE APPROVED**

26 Class Representative Jon Betterton requests a total enhancement of \$10,000.00. Plaintiff
27 numerous discussions regarding the lawsuit with Class Counsel, searched for and provided
28 substantive documents and information regarding Defendant’s policies and practices at issue in

1 this case, and reviewed pleadings and documents in this case. (Betterton Decl. at ¶ 5.)

2 Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in
3 this settlement.

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

10 Also, given that future employers are much less likely to hire individuals who have filed
11 employment-related lawsuits, particularly cases of this nature, the Class Representative also
12 faced significant risk in not being able to find suitable employment and/or face retaliation from
13 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
14 risks upon himself to the benefit of the Class. (Betterton Decl. at ¶ 9.) Class Members did not
15 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor
16 did they have to face the potential for retaliation and not getting future employment had they
17 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of
18 granting the requested enhancement. Moreover, this litigation has resulted in a significantly
19 valuable benefit to the Class, *i.e.*, average award to Class Members in the amount of \$1,443.98,
20 and the highest award being approximately \$4,288.26, and Plaintiff took on substantial risks in
21 helping to get this financial benefit to the Class. As such, the enhancement should be awarded to
22 Plaintiff for his commitment, dedication, and risks taken for this litigation.

23 Finally, Plaintiff provided a general release of all claims and a waiver under California
24 Civil Code § 1542, which other Class Members did not have to do. (Settlement Agreement ¶
25 II.2.a.; Betterton Decl. at ¶ 10.) This is a more extensive release than that provided by the Class
26 at large, also supporting the request for the enhancement.

27 Courts have routinely granted approval of settlements containing such enhancements.
28 (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300

(incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (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 one-third of the Gross Settlement Amount, or \$500,000.00, 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.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.)

The California Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action settlements in *Laffitte*. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is proper under the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal.5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").) Under the percentage of the

1 fund method, the Court’s objective remains to “mimic the market” in fixing a reasonable fee.
2 (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) (“When a fee is set by a
3 court rather than by contract, the object is to set it at a level that will approximate what the
4 market will set....The judge, in other words, is trying to mimic the market in legal services.”).)

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

14 The results delivered by Class Counsel also support the requested percentage of the fund.
15 Here, Plaintiff and his counsel secured a \$1,500,000.00 non-reversionary common fund
16 settlement.

17 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
18 is relevant to the... reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C.
19 Cir. 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s
20 “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class
21 Notice specifically notified Class Members that Class Counsel would be seeking up to
22 \$500,000.00 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
23 strong favorable response also supports the requested fees.

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

27 No one expects a lawyer whose compensation is contingent upon
28 his success to charge, when successful, as little as he would charge
a client who had agreed to pay for his services, regardless of

1 success. Nor, particularly in complicated cases producing large
2 recoveries, is it just to make a fee depend solely on the reasonable
amount of time expended.

3 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) Here, it is clear that a
4 settlement fund of \$1,500,000.00 has been created as the entire amount is to be paid out without
5 any reversions. For Class Counsel, the fees here were wholly contingent in nature and the case
6 presented far more risk than the usual contingent fee case. Among the risks was the cost inherent
7 in class action litigation, as well as a potentially drawn-out battle with a corporate Defendant.

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

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

1 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
2 4 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also*,
3 *e.g.*, *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52
4 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at p. 60
5 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
6 Cal.App.3d 78 (1988) (affirming a 2.34 multiplier without remand).) The intermediate court in
7 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
8 a 2.13 multiplier. (*Laffitte*, 231 Cal.App.4th at pp. 881-82.) The intermediate court opinion was
9 affirmed in full by the California Supreme Court in its new decision guiding lower courts on
10 assessing fees.

11 With respect to Class Counsel’s lodestar, to date, approximately 309.9 hours have been
12 expended by Class Counsel in this matter. (Lee Decl. at ¶ 11, Ex. A; Tulyathan Decl. at ¶ 13,
13 Ex. A; Marder Decl. at ¶ 15, Ex. A.) Moreover, Class Counsel expects to incur approximately
14 40 additional hours in finalizing this settlement, including handling any post-approval matters
15 and settlement issues that may arise. (Lee Decl. at ¶ 12; Tulyathan Decl. at ¶ 14; Marder Decl. at
16 ¶ 15.) Mr. Lee and Mr. Marder request an hourly rate of \$750.00 per hour. (Lee Decl. at ¶ 13;
17 Marder Decl. at ¶ 15.) Ms. Tulyathan requests an hourly rate of \$500.00. (Tulyathan Decl. at ¶
18 15.) The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed
19 time records are not required. An attorney’s testimony alone may suffice: “Testimony of an
20 attorney as to the number of hours worked on a particular case is sufficient evidence to support
21 an award of attorney fees, even in the absence of detailed time records.” (*Martino v. Denevi*
22 (1986) 182 Cal.App.3d 553, 559.)

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

1 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
2 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
3 1095.) The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
4 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
5 and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61
6 Cal.App.4th 629, 632-33.)

7 Class Counsel's skill and experience justify the requested rate. As shown in the
8 supporting declarations, Class Counsel have significant experience in the area of employment
9 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
10 employees in employment matters, particularly wage and hour cases. (Lee Decl. at ¶¶ 8-10;
11 Tulyathan Decl. at ¶¶ 10-12; Marder Decl. at ¶ 11.) As such, based on the hours and applicable
12 rate, the total lodestar to be expended by Class Counsel through finalizing this settlement will be
13 approximately \$229,975.00, based on 349.9 total hours. (Lee Decl. at ¶¶ 11-13; Ex. A; Tulyathan
14 Decl. at ¶¶ 13-15, Ex. A; Marder Decl. at ¶ 15, Ex. A.)

15 Once the court establishes the lodestar amount, it may enhance the fee award by a
16 multiplier in order to make an appropriate fee award. (*Serrano III*, 20 Cal.3d at p. 48.) The
17 pertinent factors include the difficulty of the questions involved and the skill in presenting them,
18 the contingent nature of the fee award, the extent to which the litigation precluded other
19 employment, and the percentage-of-the-fund the attorney would have received on the fair
20 market. (*Id.*, *Lealao*, 82 Cal.App.4th at p. 49.) However, this list is not exhaustive and the court
21 can consider other factors it deems important in setting the multiplier. (*Ketchum v. Moses* (2001)
22 24 Cal.4th 1122, 1139.)

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

28 Here based upon Plaintiff's counsel's lodestar of \$229,975.00, Plaintiff's request for a

low multiplier of approximately **2.17** is reasonable and fair, particularly based on the factors described above and that it is on the lower spectrum of multipliers awarded by the court. (*Wershba v. Apple Computer, Inc.* (Ct. App. 2001) 91 Cal.App.4th 224 (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the common fund, based on a multiplier of 2.52).)

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's request for attorneys' fees in the amount of \$500,000.00 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 \$8,341.03 is fair and reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek up to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this action, including but not limited to, filing and service fees, postage fees, CourtCall fees, and costs associated with mediation. (Tulyathan Decl. at ¶ 16, Ex. B.) As such, this requested costs should be approved as fair and reasonable.

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 class administration fees expended in this matter amount to a total of \$9,950.00, which is the amount that was agreed upon by the Parties. (Kruckenberg Decl. at ¶ 12, Ex. B.) For such reasons, it is requested that the

Settlement Administrator's fees be approved.

IX. CONCLUSION

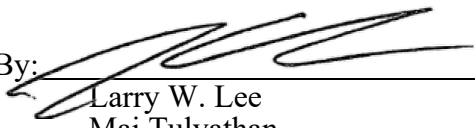
For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff respectfully submits that the standards for final approval have been met and the terms of the Settlement Agreement are fair, adequate, and reasonable.

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 the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for an award of the class representative enhancement of \$10,000.00, with payment pursuant to the terms of the Settlement Agreement;
4. Approving Class Counsel's request for an award to Class Counsel for \$500,000.00 in attorneys' fees and \$8,341.03 in costs, with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$9,950.00, with payment pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiff's request for payment to the LWDA for \$75,000.00, with payment pursuant to the terms of the Settlement Agreement; and
7. Entering final Judgment in the form proposed and submitted as to all members of the Class in this action.

DATED: November 22, 2021

DIVERSITY LAW GROUP, P.C.

By: 

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Mai Tulyathan
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Aggrieved Employees