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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ALONZO SMITH, DAWN WILLIAMS, and
ROMERO REYES, as individuals and on behalf
of all others similarly situated, and as private
attorneys general,

Plaintiffs,

vs.

CLEAN HARBORS ENVIRONMENTAL
SERVICES, INC., a Massachusetts corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00292526

[Hon. Lauri A. Damrell, Department 28]

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

[Filed concurrently with Declaration of Larry W. Lee; Declaration of Simon L. Yang; Declaration of Kyle Nordrehaug; Declaration of Melissa A. Huether; Declaration of Alonzo Smith; Declaration of Dawn Williams; Declaration of Romero Reyes; Declaration of Taylor Mitzner; [Proposed] Order and Final Judgment]

Date: March 10, 2023
Time: 9:00 a.m.
Department: 28

Complaint Filed: January 14, 2021

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TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 10, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 10C, of the above-entitled court located at 720 9th Street, Sacramento, California 95814, Plaintiffs Alonzo Smith, Dawn Williams, and Romero Reyes will and hereby do move for an Order:

1. granting final approval to the Joint Stipulation of Class and Representative Action Settlement Agreement (the “Agreement”) in this action;
2. approving distribution of the settlement funds to Participating Class Members pursuant to the terms of the Agreement;
3. approving Plaintiffs’ requests for service awards of \$10,000.00 to each Class Representative pursuant to the terms of the Agreement;
4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the \$3,000,000.00 Gross Settlement Amount, or \$1,000,000.00, and reimbursement of litigation costs of \$15,781.89, pursuant to the terms of the Agreement;
5. approving Plaintiffs’ request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$15,795.00, pursuant to the terms of the Agreement;
6. approving Plaintiffs’ request for payment to the Labor & Workforce Development Agency of \$75,000.00, pursuant to the terms of the Agreement; and
7. entering final judgment as to all members of the Settlement Class, the PAGA Members, and the State of California (including the Labor and Workforce Development Agency) in this action.

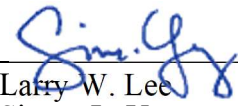
This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for Court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. The overwhelmingly positive Class response, as shown by the lack of objections to the settlement and the fact that only one Class Member opted out, supports that the settlement is fair, reasonable, and adequate, including in light of PAGA’s purposes to remediate

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

3 This motion will be based on the attached Memorandum of Points and Authorities, the
4 supporting Declarations of Larry W. Lee, Simon L. Yang, Kyle Nordrehaug, Melissa A. Huether,
5 Plaintiff Alonzo Smith, Plaintiff Dawn Williams, Plaintiff Romero Reyes, and Taylor Mitzner of
6 Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any), and on
7 the complete records and file herein.

8 DATED: February 15, 2023

DIVERSITY LAW GROUP, P.C.

9
10 By: 
11 Larry W. Lee
12 Simon L. Yang
13 Attorneys for Plaintiff Williams
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On July 28, 2020, Plaintiff Alonzo Smith filed this class action against Defendant, Clean Harbors Environmental Services, Inc. Meanwhile, Plaintiff Dawn Williams had separately filed a class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) against Defendant, and Plaintiff Romero Reyes subsequently also filed a class and PAGA action against Defendant. In the operative Second Amended Complaint, Plaintiffs Smith, Williams, and Reyes collectively allege 12 causes of action for (i) unfair competition, (ii) unpaid overtime, (iii) unpaid minimum wages, (iv) unpaid prevailing wages, (v) unpaid reporting time pay, (vi) meal period violations, (vii) rest period violations, (viii) wage statement violations, (ix) unreimbursed business expenses, (x) untimely payment of wages, (xi) failure to produce employment records, and (xii) penalties under PAGA.

Plaintiffs now seek the Court’s final approval of the Joint Stipulation of Class and Representative Action Settlement Agreement (the “Agreement”). The Agreement provides for a \$3,000,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, service awards to the Class Representatives, payment to the California Labor and Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Participating Class Members and PAGA Members.

The history of this litigation was previously detailed in Plaintiffs’ Preliminary Approval Motion. On November 4, 2022, the Court preliminarily approved this settlement. It directed distribution of the Notice of Proposed Class Action Settlement (“Class Notice”) and scheduled the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Administrator, Phoenix Settlement Administrators, distributed the Class Notice to 1,925 Class Members. Declaration of Taylor Mitzner on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. Four requests for exclusion were received, and no objections were filed. *Id.* ¶¶ 8, 9. As such, there is a 99.79% participation rate. *Id.* ¶ 11. This suggests the Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

In addition to the results of the notice process, the points discussed in Plaintiffs’ Preliminary Approval Motion also support final approval of the settlement:

- The settlement provides a total settlement sum of \$3,000,000.00;

1 process rights of class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
2 (providing “best notice practicable” with description of the litigation and explanation of opt-out rights
3 satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (explaining individual
4 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
5 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating best practicable notice is that
6 which is “reasonably calculated, under all the circumstances, to apprise interested parties of the
7 pendency of the action and afford them an opportunity to present their objections”).

8 Here, Class Members were mailed a notice that explained the settlement and allowed Class
9 Members to seek information, ask questions, and object, if so desired. As such, proper notice has been
10 given to the Class Members. Thus, the Court may determine the fairness and adequacy of the settlement
11 and enter its Order granting final approval, secure in the knowledge that all absent Class Members have
12 been given the opportunity to participate fully in the claims, exclusion, and the approval process.

13 **II. The Fair, Adequate, and Reasonable Settlement Should Be Given Final Approval.**

14 **A. The Strength of the Case and Likelihood of Class Certification Support Approval.**

15 The Court already addressed the requirements for certifying a class for settlement purposes in its
16 Order granting preliminary approval. Plaintiffs briefly address the requirements again here.

17 **1. The Class Is Ascertainable.**

18 “Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size
19 of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County*
20 *Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *see also* Code Civ. Proc. § 382.

21 Here, the Class is defined as: all current and former non-exempt employees of Defendant in the
22 State of California from April 6, 2017 to February 2, 2022 (the “Class Period”). There are 1,925
23 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the minimum required to certify
24 a class. 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 1274-75. Class Members
26 have been identified by Defendant, and notice was already provided to the Class Members.

27 **2. There Is a Community of Interest.**

28 The “community of interest” requirement embodies three separate factors: (1) predominant

1 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
2 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
3 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

4 **a. There Are Predominant Common Questions of Law and Fact.**

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

9 Plaintiffs allege that Defendant, as a matter of its corporate policy, practice, or procedure, failed
10 to pay wages, including minimum wages, overtime wages, prevailing wages, and reporting time pay, to
11 provide compliant meal and rest breaks, to timely pay either earned wages during employment or final
12 wages upon the separation of employment, to provide accurate wage statements, and to reimburse
13 expenses. The class wide impact of Defendant’s allegedly uniform policies satisfies the commonality
14 requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

15 **b. Plaintiffs’ Claims Are Typical of the Class Claims.**

16 A class representative’s claim must be “typical” but not necessarily identical to the claims of
17 other class members; it is sufficient that the representative is similarly situated so that he or she will
18 have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983).
19 Courts look to “whether the action is based on conduct which is not unique to the named Plaintiff” and
20 whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d
21 497, 508 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
22 named representative aligns with the interests of the class.” *Id.* at 508.

23 Plaintiffs were employed by Defendant and allege that they were subjected to the same payroll
24 policies as all other Class Members. For example, like other members of the Class, Plaintiffs were
25 routinely denied meal and rest periods. Declaration of Alonzo Smith (“Smith Decl.”) ¶ 5; Declaration of
26 Dawn Williams (“Williams Decl.”) ¶ 2; Declaration of Romero Reyes (“Reyes Decl.”) ¶ 4. Likewise,
27 Plaintiffs were not paid for all hours worked and recorded. *Id.* Plaintiffs also received wage statements
28 that failed to include the pay period start date or the applicable hourly rates for wages earned. Williams

Decl. ¶ 2. Plaintiffs also were not reimbursed for their business expenses. Smith Decl. ¶ 5. In sum, Plaintiffs alleges they were subjected to the same policies and practices as other Class Members. Plaintiffs' claims thus are typical to those of Class Members.

c. Plaintiffs Adequately Represented the Class.

A class representative, through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834, 846 (1984). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. Plaintiffs have taken all necessary steps to represent the interests of the Class, including providing information and documents to their counsel and reviewing pleadings in this case. Smith Decl. ¶¶ 4-7; Williams Decl. ¶¶ 3-5; Reyes Decl. ¶¶ 4-5. For such reasons, Plaintiffs have adequately represented Class Members.

B. Defendant's Allegations and Position on Class Certification Support Approval.

Defendant asserts that even assuming that a class could have been certified, Plaintiffs would be unable to establish liability. For example, with respect to meal and rest break violations, Defendant contended that (i) there were no violations, (ii) if there were, they were individualized issues not amenable to a representative proceeding, and (iii) employees in any event were already paid premiums. Similarly, with respect to liability from underpaid wages, Defendant again contended individualized issues precluded determining liability on a classwide basis and also that it would not be subject to Section 203 penalties, based on a good faith defense. Based thereon, Defendant continues to maintain that it is not liable for the allegations made by Plaintiffs.

C. Risks, Expenses, and Complexity of Further Litigation Support Approval.

Plaintiffs believe that a class can be certified. However, Plaintiffs also believe in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and potential for appeals.

There is always a risk that the court will not grant certification of the class. As Defendant alleges that a class could not have been certified, there was at least a substantial risk that Plaintiffs would not have obtained the total amount of damages alleged, and a substantial number of complex issues that

would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this motion.

**D. The Settlement Terms and Negotiation—as Well as the Class Member Response—
All Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.**

Without reiterating the details in the Preliminary Approval Motion showing that the Agreement (and the negotiation process that led up to it) is fair and adequate, the Parties highlight the following facts. The 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 had carefully analyzed. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5; Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”) ¶ 11; Declaration of Melissa A. Huether (“Huether Decl.”) ¶ 3.

Since preliminary approval, only four requests for exclusion and zero objections to the settlement have been received since the Class Notice was mailed. The Class Member response suggests the Court’s preliminary approval of the settlement should now be granted final approval. Admin Decl. ¶¶ 8-9. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

III. Well-Established Legal Principles Support Final Approval of the Settlement.

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

Although the Court possesses “broad discretion” in determining that a proposed class action

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

10 As the Court of Appeal has cautioned:

11 It cannot be overemphasized that neither the trial court in approving the settlement nor
12 this Court in reviewing that approval have the right or duty to reach any ultimate
13 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
14 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.

15 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

16 A court’s review and approval of a PAGA settlement is subject to a similar standard as that for
17 class action settlement approval. A court should evaluate a PAGA settlement to determine whether it is
18 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
19 deter future ones, and to maximize enforcement of state labor laws. *Moniz v. Adecco USA, Inc.*, 72 Cal.
20 App. 5th 56, 77 (2021).

21 **A. The Settlement is Presumed to Be Fair**

22 The Court should begin with the presumption that the settlement is fair and should be approved:

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

26 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).

27 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
28 previously noted in the application for Preliminary Approval, this current settlement was negotiated at

1 arm's length. Lee Decl. ¶¶ 4-5; Nordrehaug Decl. ¶ 11. Class Counsel engaged in extensive factual
2 investigation before settling, including the exchange of formal and informal discovery and class data
3 enabling Class Counsel to evaluate the full extent of Defendant's potential liability. Lee Decl. ¶ 4.
4 Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting
5 declarations, Class Counsel has significant experience in class actions and employment wage and hour
6 matters. *Id.* ¶¶ 6-8; Nordrehaug Decl. ¶¶ 3-5; Huether Decl. ¶¶ 4-8.

7 **B. Two-Way Costs and Other Risks Inherent in Litigation Favor Final Approval.**

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

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

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

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

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

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

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

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

21 **D. The Opinion of Experienced Counsel Favors Final Approval.**

22 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
23 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. Lee
24 Decl. ¶ 5; Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2; Nordrehaug Decl. ¶ 11; Huether Decl. ¶ 3.
25 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and well-
26 informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the
27 Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at
28 18; *Boyd*, 485 F. Supp. at 617; *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

1 **IV. The Proposed Payments and Procedures Should Be Approved.**

2 **A. The Proposed Procedure for Uncashed Settlement Checks Should Be Approved.**

3 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
4 funds remain after 180 days, the Parties have agreed that the funds (upon the expiration date) would
5 escheat to the State Controller Unclaimed Property Fund in the name of the Participating Class Member.
6 None of the settlement funds will revert to Defendant or be diverted to a *cy pres* recipient.

7 **B. The Proposed PAGA Allocation Should Be Approved.**

8 Obtaining a \$75,000.00 payment for the LWDA “is fair, reasonable, and adequate in view of
9 PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
10 enforcement of state labor laws.” *Moniz*, 72 Cal. App. 5th at 77. While a \$75,000.00 recovery for the
11 State serves PAGA’s purposes, here it must also be remembered that the vast majority of PAGA
12 penalties that Plaintiffs contended were at issue were Section 210 penalties, which may be recovered as
13 either class claims or PAGA claims. Lab. Code § 210(c) (“An employee is only entitled to either recover
14 the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision
15 (a) of Section 2699, but not both, for the same violation.”). Since Section 210(c) penalties as class
16 recoveries are not subject to discretionary reductions that accompany PAGA recoveries, considering
17 these potential PAGA penalties to be class remedies was in the best interests of the Class.¹

18 **C. The Requested Class Representative Service Award Should Be Approved.**

19 Class Representatives Alonzo Smith, Dawn Williams, and Romero Reyes request service awards
20 of \$10,000.00 each. Plaintiffs met with Class Counsel to provide substantive information regarding
21 Defendant’s practices. Smith Decl. ¶¶ 6-8; Williams Decl. ¶ 3; Reyes Decl. ¶¶ 4-5. Plaintiffs provided
22 invaluable information, evidence, and documents that resulted in this settlement.

23 In addition to the invaluable services that she provided, Plaintiffs took significant risks, both
24 professionally and monetarily, in acting as Class Representative to seek benefits for the Class. Because
25 the claims alleged by the Class Representative involved the payment of costs to the prevailing party,

26
27 ¹ In cases that proceed to judicial awards of PAGA penalties, courts have awarded dramatically reduced
28 PAGA penalties. *E.g.*, *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) (citing an
employer’s “good faith attempts to comply” with the law and awarding 10% of PAGA penalties despite
plaintiff prevailing on the merits). Defendant’s probable arguments as to its “good faith attempts to
comply” with the law thus also warrant a substantial settlement discount.

1 Plaintiffs could have possibly faced paying the costs of Defendant had she not prevailed in this action.
2 Moreover, Plaintiffs understood that individual cases would have resolved much faster than a class
3 action and involved much less financial risk than a class action. Despite this, however, Plaintiffs agreed
4 to pursue this case on behalf of the Class. Smith Decl. ¶ 9; Williams Decl. ¶ 8; Reyes Decl. ¶ 7.

5 Also, given that future employers are much less likely to hire individuals who have filed
6 employment-related lawsuits, particularly cases of this nature, the Class Representative also faces
7 significant risk in not being able to find suitable employment, all as a result of filing of this case against
8 Defendant. Plaintiffs took these risks upon themselves to the benefit of the Class. Smith Decl. ¶ 9;
9 Williams Decl. ¶ 8; Reyes Decl. ¶ 7. Class Members did not have to file individual lawsuits and bear the
10 risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and
11 not getting future employment had they filed a lawsuit which is a public record. These are significant
12 benefits that weigh in favor of granting the requested award. Moreover, this litigation has resulted in a
13 significantly valuable benefit to the Class, and Plaintiffs took on substantial risks in securing this
14 financial benefit to the Class. As such, the award should be granted to Plaintiffs for their commitment,
15 dedication, and risks taken for this litigation.

16 Equally important, Plaintiffs provided general releases and waivers of the protections of Civil
17 Code section 1542. Smith Decl. ¶ 15; Williams Decl. ¶ 9; Reyes Decl. ¶ 8. This is a more extensive
18 release than that provided by the Class at large and also supports the request for the award.²

19 **D. The Requested Attorneys' Fees Should Be Approved.**

20 **1. The Percentage of the Fund Method Supports the Requested Fees.**

21 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
22 successful prosecution and resolution of this action. California state and federal courts have recognized
23 that an appropriate method for determining award of attorneys' fees is based on a percentage of the total

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

1 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
2 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
3 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
4 equitable doctrine is to avoid unjust enrichment to the Class and to “spread litigation costs
5 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
6 alone.” *Vincent*, 557 F.2d at 769.

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

18 First, the fee award representing 33⅓% of the fund clearly falls within that range and is
19 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
20 fee awards. Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in
21 legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7
22 *J. Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
23 “[m]ost fee awards were between 25 percent and 35 percent”).³

24
25 ³ Such an attorneys’ fees award of the fund mimics the market and “is supported by the fact that typical
26 contingency fee agreements provide that class counsel will recover 33% if the case is resolved before
27 trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16
28 n.59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35% of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

1 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
2 Here, Plaintiffs and their counsel secured a \$3,000,000.00 settlement and only 0.21% of the Class chose
3 to opt out. Zero Class Members chose to object.

4 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
5 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
6 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
7 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
8 Class Counsel would be seeking \$1,000,000.00 in attorneys’ fees. Again, there were no objections.

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

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

14 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$3,000,000.00 has been
15 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
16 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
17 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
18 experienced defense firm. For such reasons, Class Counsel’s request for attorneys’ fees in the amount of
19 \$1,000,000.00 is fair, reasonable, and adequate.

20 **2. The Lodestar Cross-Check Supports the Requested Fees.**

21 The amount requested is reasonable for an additional reason. While the primary method
22 employed to determine fees is the percentage method, courts have discretion to use the lodestar method
23 to “cross-check” the amount of fees calculated by way of percentage. The *Laffitte* court emphasized,
24 however, that “the lodestar calculation, when used in this manner, does not override the trial court’s
25 primary determination of the fee as a percentage of the common fund and thus does not impose an
26 absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis
27 added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-
28 check does not trump the primary reliance on the percentage of common fund method”).

1 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even
2 higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Sutter Health*
3 *Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-
4 check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a
5 lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
6 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable
7 range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.⁴
8 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the
9 percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See*
10 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an
11 employment class action case and analyzing the multiplier awarded in over 30 cases).⁵

12 With respect to Plaintiffs’ Counsel’s lodestar, at least 502.85 hours have been expended by Class
13 Counsel litigating this case. Lee Decl. ¶ 10, Ex. B (100.8 hours); Yang Decl. ¶ 8, Ex. A (161.2 hours);
14 Nordrehaug Decl. ¶ 14, Exs. 2-3 (187.95 hours); Huether Decl. ¶¶ 12-16 (52.9 hours), Ex. 2. Moreover,
15 Plaintiffs’ Counsel expects to incur approximately 30.0 hours of anticipated time spent to attend the final
16 approval hearing and secure final approval, as well as after approval to respond to correspondence and
17 phone calls from the administrator, defense counsel, and Class Members. Lee Decl. ¶ 10; Yang Decl. ¶
18 8. The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time
19 records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the
20 number of hours worked on a particular case is sufficient evidence to support an award of attorney fees,
21 even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

22
23
24 ⁴ The intermediate court opinion was affirmed in full by the California Supreme Court in its decision
guiding lower courts on assessing fees.

25 ⁵ Federal district courts applying California law have likewise routinely approved cross-check
26 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
27 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
28 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL
496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

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

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

Here, Plaintiffs' Counsel's hourly rates range from less than \$500 up to \$800. Lee Decl. ¶ 10; Yang Decl. ¶ 7; Nordrehaug Decl. ¶ 14, Exs. 2-3; Huether Decl. ¶¶ 12-16. Plaintiffs' Counsel's skill and experience justify the requested rates. As shown in the supporting declarations, Plaintiffs' Counsel has significant experience in the area of employment and wage and hour class and representative actions. Plaintiffs' Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases on a contingency basis. Lee Decl. ¶¶ 6-8; Yang Decl. ¶¶ 4-6; Nordrehaug Decl. ¶¶ 3-5; Huether Decl. ¶¶ 4-8. Based on the hours and applicable rates, the lodestar for Class Counsel through the finalization of this settlement will be approximately \$358,874.50, based on 532.85 total hours. Lee Decl. ¶ 10; Yang Decl. ¶ 8; Nordrehaug Decl. ¶ 14; Huether Decl. ¶ 10.

Based upon Plaintiffs' counsel's lodestar of \$358,874.50, the requested attorneys' fees result in a multiplier of approximately 2.81, which is reasonable and fair, given the factors described above. Accordingly, the cross-check supports the fee requested.

E. The Court Should Approve the Request for Reimbursement of Costs.

The request for reimbursement of costs, in the amount of \$15,781.89 is fair and reasonable. As set forth in Plaintiffs' counsel's declaration, the costs were all directly incurred in the prosecution of this action. Lee Decl. ¶ 9, Ex. A (\$9,993.11); Nordrehaug Decl. ¶ 16, Exs. 2, 4 (\$3,601.57); Huether Decl. ¶¶ 17-18, Ex. 1 (\$2,187.21). As such, this request should be approved.

Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Taylor, the settlement administration fees expended in this matter amount to a total of \$15,795.00, which is less than the amount that was agreed upon by the Parties. Admin Decl. ¶ 17. For such reasons, Plaintiff requested that the Administrator's fees be approved.

On January 26, 2023, Plaintiffs uploaded the Order Granting Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement to the LWDA’s website. Lee Decl. ¶ 11. Concurrent with the filing of this motion, Plaintiffs also have uploaded the final approval motion to the LWDA. *Id.*

Plaintiffs respectfully submit that the standards for final approval have been met and the terms of the Agreement are fair, adequate, and reasonable. Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed and submitted.

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