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ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Anita Dhir,
Deputy Clerk

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

SUNSHINE DEERING, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

ROMAN EMPIRE ABA SERVICES, INC.,
a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: RG20072383

[Assigned for all purposes to the Hon. Brad
Seligman, Dept. 23]

CLASS ACTION

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

Hearing Information

Date: October 10, 2023

Time: 3:00 p.m.

Dept.: 23

Reservation ID: A-20072383-001

Complaint Filed: September 2, 2020

Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 10, 2023, at 3:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Brad Seligman, judge presiding, in Department 23 of the above referenced Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiff Sunshine Deering (“Plaintiff”) will and hereby does move the Court for an Order:

(1) Granting final approval to the Joint Stipulation of Class and Representative Action Settlement Agreement (“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 service payment 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 to Class Counsel for one-third of the Total Maximum Settlement Amount, or \$126,666.67, and reimbursement of litigation costs of \$10,838.21, 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 \$12,000.00, pursuant to the terms of the Settlement Agreement;

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

(7) Entering final judgment as to all members of the Settlement Group 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 objections to the settlement and opt-outs, there is no question that the settlement is fair, reasonable and adequate and thus should be granted final approval.

This Motion will be based on the attached Memorandum of Points and Authorities and the supporting Declarations of Larry W. Lee, Nick Rosenthal, Plaintiff Sunshine Deering, and Kevin Lee of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be

any), and on the complete records and file herein.

DATED: September 13, 2023

DIVERSITY LAW GROUP, P.C.

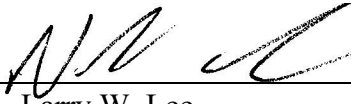
By: 
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Class

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1 **I. INTRODUCTION**

2 Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class and
3 Representative Action Settlement Agreement (“Settlement Agreement”). The Settlement
4 Agreement provides for a \$380,000.00 **non-reversionary** fund to be created for the benefit of the
5 class, from which attorneys’ fees, litigation costs, enhancement payment to the named Plaintiff,
6 payment to the California Labor and Workforce Development Agency (“LWDA”), and costs of
7 settlement administration are to be paid. The entire net settlement fund, after these deductions,
8 will be paid to all class members who did not opt-out of the Settlement.

9 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval
10 Motion. This Court preliminarily approved this Settlement on May 26, 2023, directing distribution
11 of class notice and scheduling the hearing for final approval of settlement (the “Preliminary
12 Approval Order”).

13 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
14 Settlement Administrators—distributed the Notice Packet to 862 class members. (Declaration of
15 Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin Decl.”) at ¶ 5.) To date,
16 **there have been no requests for exclusions, objections, and/or pay period disputes to the**
17 **settlement submitted by any Class Members.** (*Id.* at ¶¶ 8-10.) As such, there is a 100 percent
18 participation rate. Thus, in light of the lack of objections and opt-outs, an inference can be made
19 that the class supports the Court’s Preliminary Approval Order finding that the Settlement
20 Agreement is fair and reasonable.

21 In addition to the results of the notice process, for the same reasons as set forth earlier in
22 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represents
23 the basic points supporting approval of the Settlement:

- 24 ■ The Settlement provides a total settlement sum of \$380,000.00;
- 25 ■ The Settlement is fair given that Settlement Group Members will receive (*after*
26 *deductions for fees, costs, etc.*) a substantial amount of money—on average, approximately
27 \$209.39 to each Settlement Group Member, with the estimated highest individual settlement
28 payment at approximately \$1,760.98 (*See* Admin Decl. at ¶ 14);

1 ▪ Class members did not need to submit claim forms to participate in the settlement,
2 but are being paid automatically;

3 ▪ The allocation reflects that individual settlement payments will be paid to all class
4 members on a *pro rata* basis, in proportion to the number of pay periods each class member was
5 paid wages;

6 ▪ Plaintiff's counsel conducted significant investigation in this case, including formal
7 and informal discovery, as well as sampling of time and payroll records of class members, and
8 exchange of class and PAGA data for the entire class necessary for Plaintiff to fully evaluate this
9 case;

10 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained
11 to administer the settlement for approximately \$12,000.00 (*See* Admin Decl. at ¶ 17); and

12 ▪ The State of California's LWDA will also be the beneficiary of this Settlement as it
13 will receive \$30,000.00 pursuant to the PAGA, should this Settlement be granted final approval.

14 Accordingly, the Court should grant final approval consistent with the Preliminary
15 Approval Order.

16 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
17 **SETTLEMENT**

18 The notice procedures required by the Preliminary Approval Order, have been followed
19 and satisfy all due process rights of class members. Specifically, the Preliminary Approval Order
20 contemplated that the Notice of Class Action Settlement (the "Class Notice"), as approved in the
21 Preliminary Approval Order, be sent to all class members by first class mail, as specified in the
22 Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement
23 Administrators would serve as the Settlement Administrator.

24 As stated in the Declaration of Kevin Lee, notice was provided to class members, as
25 required by the Preliminary Approval Order. On July 18, 2023, the Settlement Administrator
26 received a class member mailing list from Defendant's counsel that included 862 class members.
27 (Admin Decl. at ¶ 3.) Prior to mailing the Class Notice, the Settlement Administrator conducted a
28 National Change of Address (NCOA) search in an attempt to update the class list of addresses as

1 accurately as possible. (*Id.* at ¶ 4.) On July 24, 2023, the Settlement Administrator mailed the
2 Class Notice to all class members on the class list via first class mail. (*Id.* at ¶ 5.) From the date of
3 mailing, 31 Class Notices were returned due to incorrect addresses. (*Id.* at ¶ 6.) The Settlement
4 Administrator conducted skip tracing to update addresses for the 31 Class Notices that were
5 returned. Of the 31 Class Notices that were skip traced, 28 updated addresses were obtained and
6 28 Class Notices were promptly re-mailed via U.S. first class mail. (*Id.*) As of the date of this
7 filing, three (3) Class Notices remain undeliverable. (*Id.* at ¶ 7.) Further, the Class Notice
8 provided class members with Class Counsel’s and the Settlement Administrator’s contact
9 information, where they could further seek information regarding the Settlement, ask questions and
10 review pleadings in the case, and update their address.

11 The provision of sending the notice to class members as described above meets the
12 requirements for the “best notice practicable” in this case as necessary to protect the due process
13 rights of class members. (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12
14 (provision of “best notice practicable” with description of the litigation and explanation of opt-out
15 rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75
16 (individual notice must be sent to class members who can be identified through reasonable means);
17 *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best practicable notice is
18 that which is “reasonably calculated, under all the circumstances, to apprise interested parties of
19 the pendency of the action and afford them an opportunity to present their 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 to
22 the settlement, if so desired. As such, proper notice has been given to the class members. Thus,
23 the Court may determine the fairness and adequacy of the Settlement and enter its Order granting
24 final approval, secure in the knowledge that all absent class members have been given the
25 opportunity to participate fully in the settlement, exclusion, and the approval process.

26 //

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 In order to proceed as a class, there are two requirements which must be met—
5 ascertainability and community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d. 695,
6 704; *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 809.) “The community of interest
7 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
8 representatives with claims or defenses typical of the class; and (3) class representatives who can
9 adequately represent the class.” (*Richmond v. Dart Industries* (1981) 29 Cal. 3d. 462, 470.)

10 **1. The Class is Ascertainable**

11 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section
12 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
13 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*
14 (1987) 196 Cal.App.3d 1263, 1271.)

15 Here, the class (“Settlement Group”) is defined as: “All non-exempt employees who are or
16 previously were employed by Roman Empire ABA Services, Inc. in California during the period
17 of September 2, 2016, through November 30, 2022.” There are 862 individuals that comprise of
18 the class. (Admin Decl. at ¶ 3.) This is far more than the minimum required to certify a class.
19 Within the context of manageability, the issue is whether there exists sufficient means for
20 identifying class members at the remedial stage. (*Reyes*, 196 Cal.App.3d at pp. 1274-75.) Class
21 members have already been identified by Defendant and notice was provided to all of the above
22 class members.

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

24 The “community of interest” requirement embodies three separate factors: (1) predominant
25 common questions of law or fact; (2) class representatives whose claims are typical of the class;
26 and (3) class representatives who can adequately represent the class. (*Richmond*, 29 Cal.3d at p.
27 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1234.)

28 //

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

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

7 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
8 violated the Labor Code by its failure to reimburse business-related expenses in violation of Labor
9 Code § 2802, failure to provide off-duty meal periods in violation of Labor Code §§ 226.7 and
10 512, failure to provide off-duty rest periods in violation of Labor Code § 226.7, and failure to
11 provide accurate, itemized wage statements in violation of Labor Code § 226. Defendant denies
12 that liability could be established on a class-wide basis and contends instead that liability and
13 damages would need to be conducted on a case-by-case basis.

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

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

23 Plaintiff was employed by Defendant and was subjected to the same payroll policies as all
24 other class members. Specifically, like other members of the class, Plaintiff alleges that there was
25 no time set aside in employee schedules for meal or rest periods and that appointments were
26 scheduled in such a manner that taking these periods was not possible. Moreover, Plaintiff alleges
27 that any breaks she was able to take were not legally compliant because she was required to always
28 respond to any work-related calls she received at any time, even when on breaks (Declaration of

1 Sunshine Deering (“Deering Decl.”) at ¶ 3.) As such, Plaintiff alleges that she was not provided
2 with off-duty meal and rest breaks. (*Id.*) Plaintiff also alleges that her wage statements failed to
3 list all applicable hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate. As a result of the violations, the wage statements issued to
5 putative class members did not comply with California law. (*Id.* at ¶ 5.) Plaintiff alleges that she
6 was not reimbursed for costs associated with using her personal cellular phone and vehicle for
7 work-related purposes. (*Id.* at ¶ 4.)

8 In other words, Plaintiff was subjected to the same policies and practices as other class
9 members. Accordingly, Plaintiff’s claims are aligned with the interests of the class and typicality
10 is satisfied.

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

12 The class representative, through qualified counsel, must be capable of “vigorously and
13 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151
14 Cal.App.3d 834, 846.)

15 Here, Plaintiff does not have any interests adverse to the class, nor have any such issues
16 been raised or presented. (Deering Decl. at ¶ 7.) Plaintiff has taken all necessary steps to represent
17 the interests of the class, including conferring with her counsel, providing information and
18 documents to her counsel, and reviewing pleadings in this case. (*Id.* at ¶ 8.) For such reasons,
19 Plaintiff has adequately represented the class members and will continue to do so.

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

21 As previously explained in Plaintiff’s Preliminary Approval Motion, Defendant raises
22 several defenses as to liability on the claims, including as to class certification. In this regard,
23 Defendant asserts that individualized issues predominate in this case, including without limitation,
24 whether Defendant provided opportunities to take meal and rest periods. Defendant also asserts
25 that the meal and rest period claims are not suitable for class treatment because there is no
26 common method of proof to establish liability as its meal and rest period policies are facially
27 compliant. Additionally, Defendant also argues that Plaintiff cannot prove willfulness and as such,
28 Defendant would not be subject to Labor Code section 203 penalties. With respect to the wage

1 statement claim, it is Defendant's position that its wage statements complied with the law, and that
2 employees did not suffer any injury as defined by Labor Code section 226(e). Regarding the
3 section 2802 claim, Defendant maintains that an individual analysis would be required for each
4 employee to determine their "actual expenses." In any event, even assuming that a class could be
5 certified, Defendant asserts that it has complied with all laws. Based thereon, Defendant continues
6 to maintain that it is not liable for the allegations made by the Plaintiff.

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

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

14 Defendant has maintained that there is no liability. As stated above, Defendant alleges that
15 a class could not have been certified. There is always a risk that the court will not grant
16 certification of the class, wherein the class will not be entitled to any damages. Based on the
17 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of
18 damages alleged, and a substantial number of complex issues that would have necessitated
19 significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of
20 further litigation warrant granting of this Motion.

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

23 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
24 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
25 Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement
26 Agreement was the product of negotiations between highly able and experienced attorneys on both
27 sides who possessed the relevant data and extensive legal research which they had carefully
28 analyzed. (Rosenthal Decl. at ¶ 3.) The Parties engaged in arm's length negotiations at mediation

1 and post-mediation negotiations for several months with the assistance of a highly experienced and
2 known mediation, Lisa Klerman. (*Id.* at ¶ 5.)

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

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

12 **1. Standard of Review**

13 On a motion for final approval of a class action settlement under California Code of Civil
14 Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether the
15 settlement is “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir.
16 1982) 688 F.2d 615, 625, *cert. denied subnom., Byrd v. Civil Serv. Comm’n* (1983) 459 U.S.
17 1217.) A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
18 “the interests of the class are better served by the settlement than by further litigation.” (*See*
19 *Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”).) The
20 law favors settlement, particularly in class actions and other complex cases, where substantial
21 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (*See Alba*
22 *Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs*
23 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir.
24 1976) 529 F.2d 943, 950.)

25 Although the Court possesses “broad discretion” in determining that a proposed class
26 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
27 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
28 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
adequate to all concerned. (*See Officers for Justice*, 688 F.2d at p. 625.) Accordingly, the Court

1 should give due regard to what is otherwise a “private consensual agreement” between the parties.
2 (*Id.*; see also *Church v. Consolidated Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840; *In re*
3 *Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, *aff’d sub nom.*; *City*
4 *of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a proposed
5 settlement is critical, but limited to approving the proposed settlement, disapproving it, or
6 imposing conditions on it. The judge cannot rewrite the agreement”).)

7 A court’s approval of a class action settlement will only be reversed for a clear abuse of
8 discretion. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*,
9 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision was a
10 clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar* (9th Cir.
11 1993) 1993 WL 326453; *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

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

13 “It cannot be overemphasized that neither the trial court in approving
14 the settlement nor this Court in reviewing that approval have the right
15 or duty to reach any ultimate conclusions on the issues of fact and law
16 which underlie the merits of the dispute. It is well settled that in the
17 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.’”

18 (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

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

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

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

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

27 The settlement in the case warrants approval and carries a presumption of fairness. As
28 previously noted in the application for Preliminary Approval, this current settlement was
negotiated at arm’s length and facilitated by an experienced wage-and-hour mediator, Lisa

1 Klerman. (Rosenthal Decl. at ¶ 5.)

2 Additionally, Class Counsel engaged in extensive factual investigation before settling,
3 including conduct formal and informal discovery, and reviewing sample class time and payroll
4 records. (*Id.* at ¶ 3.) The exchange of informal and formal discovery allowed Class Counsel to
5 conduct a full analysis of exposure. (*Id.*) Further, Class Counsel is highly experienced in this type
6 of litigation. As shown in the supporting declarations, Class Counsel has significant experience in
7 class actions and employment wage and hour matters. (Rosenthal Decl. at ¶¶ 8, 9; Declaration of
8 Larry W. Lee (“Lee Decl.”) at ¶¶ 7-9.)

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

11 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
12 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
13 inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768,
14 806 (“present value of the damages plaintiffs would likely recover if successful, appropriately
15 discounted for the risk of not prevailing, should be compared with the amount of the proposed
16 settlement”) (internal citations omitted); *Girsh v. Jepsen* (3d Cir. 1975) 521 F.2d 1 53, 157; *Boyd*
17 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.)

18 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
19 been potentially responsible for Defendant’s costs. (Deering Decl. at ¶ 10.) As such, should
20 current or former employees of Defendant bring individual claims on the same causes of action,
21 they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant.
22 Accordingly, such claims likely would not be brought by many of these current and former
23 employees—thus, this lawsuit achieves a true benefit for the class that they might not otherwise
24 get or seek as individuals. Here, given that a fair and reasonable settlement has been reached,
25 neither Plaintiff nor any of the class members will be required to pay for Defendant’s litigation
26 costs.

27 The risks of this case were weighed by Class Counsel and should be considered a
28 significant factor by the Court in its determination of final approval. Class Counsel obtained a

1 very substantial settlement for the class that resulted in a fair recovery which at the same time
2 provides for finality and no risk of costs by the class members or Class Representative.

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

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

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

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

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

2 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
3 interest of the class members as a whole. (Lee Decl. at ¶ 2; Rosenthal Decl. at ¶ 2.) Similarly,
4 counsel for Defendant is in favor of this settlement. The endorsement of qualified and well-
5 informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight
6 by the Court in its final approval determination. (*See Officers for Justice*, 688 F.2d at p. 625; *Ellis*,
7 87 F.R.D. at p. 18; *Boyd*, 485 F.Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.)

8 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
9 **SHOULD BE APPROVED**

10 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
11 settlement funds remain after 180 days, the Parties have agreed that all funds shall be sent to Legal
12 Aid at Work, in accordance with California Civil Procedure section 384. (Rosenthal Decl. at ¶ 16.)

13 **V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
14 **APPROVED**

15 Class Representative Sunshine Deering requests a total enhancement of \$10,000.00.
16 Plaintiff conferred with Class Counsel on numerous occasions, and provided substantive
17 information regarding Defendant's policies and practices at issue in this case. (Deering Decl. at ¶¶
18 7-8.) Accordingly, Plaintiff provided invaluable information, evidence, and documents that
19 resulted in this Settlement.

20 In addition to the invaluable services that she provided, Plaintiff took significant risks, both
21 professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the
22 class. (*Id.* at ¶¶ 10-11) Because the claims alleged by the Class Representative involved the
23 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
24 Defendant, had she not prevailed in this action. (*Id.*) Moreover, Plaintiff understood that an
25 individual case would have resolved much faster than a class action and involved much less
26 financial risk than a class action. Despite this, however, Plaintiff agreed to pursue this case on
27 behalf of the class.

28 Also, given that future employers are much less likely to hire individuals who have filed

1 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
2 significant risk in not being able to find suitable employment, all as a result of filing of this case
3 against Defendant. Plaintiff took these risks upon herself to the benefit of the class. (*Id.*) Class
4 members did not have to file individual lawsuits and bear the risks of payment of costs if they did
5 not prevail, nor did they have to face the potential for retaliation and not getting future
6 employment had they filed a lawsuit which is a public record. These are significant benefits that
7 weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a
8 significantly valuable benefit to the class, and Plaintiff took on substantial risks in helping to get
9 this financial benefit to the class. As such, the enhancement should be awarded to Plaintiff for her
10 commitment, dedication, and risks taken for this litigation.

11 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
12 section 1542, which other Class Members did not have to do. (Settlement Agreement ¶ 31;
13 Deering Decl. at ¶ 12.) This is a more extensive release than that provided by the Class at large,
14 also supporting the request for the enhancement.

15 Courts have routinely granted approval of settlements containing such enhancements. (*See*
16 *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300 (incentive
17 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130
18 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
19 *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913-14 (granting a \$50,000
20 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137
21 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.* (N.D.
22 Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (awarding \$25,000
23 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d
24 1004, 1016 (affirming \$25,000 Incentive award to class representative in ERISA case).

25 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

26 Class Counsel seeks a fee award calculated at one-third of the Total Maximum Settlement
27 Amount, or \$126,666.67, for the successful prosecution and resolution of this action. California
28 state and federal courts have recognized that an appropriate method for determining award of

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

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

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

28 The results delivered by Class Counsel also support the requested percentage of the fund.

1 Here, Plaintiff and her counsel secured a \$380,000.00 non-reversionary common fund settlement.

2 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
3 relevant to the... reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir.
4 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s
5 “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class
6 Notice specifically notified class members that Class Counsel would be seeking \$126,666.67 in
7 attorneys’ fees. To date, no class member has objected to the Settlement. This strong favorable
8 response also supports the requested fees.

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

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

16 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) Here, it is clear that a
17 settlement fund of \$380,000.00 has been created as the entire amount is to be paid out without any
18 reversions. For Class Counsel, the fees here were wholly contingent in nature and the case
19 presented far more risk than the usual contingent fee case. Among the risks was the cost inherent
20 in class action litigation, as well as a long battle with a corporate Defendant. As such, the
21 requested fee should be awarded.

22 As secondary support for the percentage of the fund method, courts have discretion to
23 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
24 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial
25 court’s primary determination of the fee as a percentage of the common fund and thus does not
26 impose an absolute maximum or minimum on the potential fee award.” (*Laffitte*, 1 Cal.5th at p.
27 505; *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 (“[The lodestar cross-
28 check does not trump the primary reliance on the percentage of common fund method”).)

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

15 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
16 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also, e.g.,*
17 *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52
18 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at p. 60 (applying
19 a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d
20 78 (1988) (affirming a 2.34 multiplier without remand).) The intermediate court in *Laffitte*, after
21 finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13
22 multiplier. (*Laffitte*, 231 Cal.App.4th at pp. 881-82.) The intermediate court opinion was affirmed
23 in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

24 With respect to Class Counsel’s lodestar, to date, approximately 130.2 hours have been
25 expended by Class Counsel in this matter. (Lee Decl. at ¶ 10, Ex. A; Rosenthal Decl. ¶ 10, Ex. A.)
26 Moreover, Class Counsel expects to incur approximately 10 additional hours of attorney time in
27 finalizing this settlement. (Rosenthal Decl. at ¶ 11.) Mr. Lee requests an hourly rate of \$800.00
28 per hour. (Lee Decl. at ¶ 11.) Mr. Rosenthal requests an hourly rate of \$700.00 per hour.

1 (Rosenthal Decl. at ¶ 12.) The courts are quite liberal in the evidence required to prove an
2 attorney's hours. Detailed time records are not required. An attorney's testimony alone may
3 suffice: "Testimony of an attorney as to the number of hours worked on a particular case is
4 sufficient evidence to support an award of attorney fees, even in the absence of detailed time
5 records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

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

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

18 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
19 declarations, Class Counsel have significant experience in the area of employment and wage and
20 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in
21 employment matters, particularly wage and hour cases. (Lee Decl. at ¶¶ 7-9; Rosenthal Decl. at ¶¶
22 8, 9.) As such, based on the hours and applicable rate, the total lodestar to be expended by Class
23 Counsel through finalizing this settlement will be approximately \$92,890, based on 130.2 total
24 hours. (Lee Decl. at ¶ 10; Ex. A; Rosenthal Decl. at ¶¶ 10-12, Ex. A.)

25 Once the court establishes the lodestar amount, it may enhance the fee award by a
26 multiplier in order to make an appropriate fee award. (*Serrano III*, 20 Cal.3d at p. 48.) The
27 pertinent factors include the difficulty of the questions involved and the skill in presenting them,
28 the contingent nature of the fee award, the extent to which the litigation precluded other

1 employment, and the percentage-of-the-fund the attorney would have received on the fair market.
2 (*Id.*, *Lealao*, 82 Cal.App.4th at p. 49.) However, this list is not exhaustive and the court can
3 consider other factors it deems important in setting the multiplier. (*Ketchum v. Moses* (2001) 24
4 Cal.4th 1122, 1139.)

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

10 Here based upon Class Counsel’s lodestar of \$92,890, Plaintiff’s request for a multiplier of
11 **1.4** is reasonable and fair, particularly based on the factors described above and that it is *well*
12 *below* the typical range of multipliers awarded by the court. (*Wershba v. Apple Computer, Inc.*
13 (Ct. App. 2001) 91 Cal.App.4th 224 (noting that courts using the lodestar method to calculate
14 attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v.*
15 *Bank of Am. Corp.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the
16 common fund, based on a multiplier of 2.58, in a wage and hour class action settlement);
17 *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of
18 the common fund, based on a multiplier of 2.52).)

19 As such, the requested fee award is fair and reasonable, and should be awarded in its
20 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
21 ensure the successful litigation of this action on behalf of all class members. For such reasons,
22 Class Counsel’s request for attorneys’ fees in the amount of \$126,666.67 is fair, reasonable, and
23 adequate.

24 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
25 **COSTS**

26 The request for reimbursement of costs, in the amount of \$10,838.21 is fair and reasonable.
27 The costs are all litigation related costs. As set forth in Plaintiff’s counsel’s declaration, the costs
28 were all directly incurred in the prosecution of this action, including but not limited to, filing and

1 service fees, court fees, postage fees, and costs associated with mediation. (Rosenthal Decl. at ¶
2 15, Ex. B.) As such, this request should be approved.

3 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
4 **APPROVED**

5 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
6 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds.
7 As shown on the Declaration of Kevin Lee, the settlement administration fees expended in this
8 matter amount to a total of \$12,000.00, which is an amount that was agreed upon by the Parties.
9 (Admin Decl. at ¶ 17, Ex. B.) For such reasons, it is requested that the Settlement Administrator's
10 fees be approved.

11 **IX. CONCLUSION**

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

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

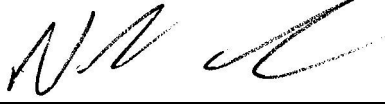
- 17 1. Granting final approval to the proposed Settlement Agreement in this action;
- 18 2. Approving distribution of the settlement funds to the Settlement Group Members
19 pursuant to the terms of the Settlement Agreement;
- 20 3. Approving Plaintiff's request for an award of an enhancement of \$10,000.00, with
21 payment pursuant to the terms of the Settlement Agreement;
- 22 4. Approving Class Counsel's request for an award to Class Counsel for \$126,666.67
23 in attorneys' fees and \$10,838.21 in costs with payment pursuant to the terms of the Settlement
24 Agreement;
- 25 5. Approving Plaintiff's request for payment of the settlement administration costs to
26 Phoenix Settlement Administrators in the amount of \$12,000.00 with payment pursuant to the
27 terms of the Settlement Agreement;
- 28 6. Approving Plaintiff's request for payment to the LWDA for \$30,000.00 with

1 payment pursuant to the terms of the Settlement Agreement; and

2 7. Entering final judgment as to all members of the Settlement Group in this action.

3
4
5 DATED: September 13, 2023

DIVERSITY LAW GROUP, P.C.

6
7 By:  _____

Larry W. Lee

8 Nicholas Rosenthal

9 Attorneys for Plaintiff Sunshine Deering and the
10 Class
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On September 14, 2023, I served the following document(s) described as:

- 1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 4. DECLARATION OF KEVIN LEE REGARDING NOTICE AND SETTLEMENT ADMINISTRATION**
- 5. DECLARATION OF SUNSHINE DEERING IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 6. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT**

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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 14, 2023, at Los Angeles, California.



Erika Mejia