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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BRANDEN BAGGOT, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

FOTO-KEM INDUSTRIES, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV31051

[Hon. William F. Highberger]

**PLAINTIFF'S 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 William L. Marder; Declaration of Branden
Baggot; Declaration of Jodey Lawrence;
[Proposed] Order and Final Judgment]*

Date: November 18, 2021
Time: 11:30 a.m.
Department: 10

Complaint Filed: August 17, 2020

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

PLEASE TAKE NOTICE that on November 18, 2021, at 11:30 a.m., or as soon thereafter as the matter may be heard in Department 10 of the above-entitled court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff, Branden Baggot, will seek an Order:

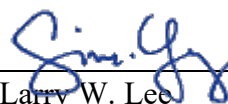
1. granting final approval of the class action settlement pursuant to the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”);
2. approving the requested allocations of (i) \$10,000 to Plaintiff both for his efforts on behalf of the class and State and for his individual release of claims and waiver of Civil Code section 1542; (ii) \$116,666.67 for Class Counsel’s attorneys’ fees and \$10,965.49 for reimbursement of litigation costs; (iii) \$8,500 to Phoenix Settlement Administrators for costs of administering the settlement; and (iv) \$7,500 to the Labor & Workforce Development Agency pursuant to Labor Code section 2699(i);
3. ordering distribution of the settlement funds pursuant to the terms of the Agreement; and
4. entering final judgment.

Without any opposition from Defendant, Foto-Kem Industries, Inc., the Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for the Court’s certification of a class action for settlement purposes. As supported by the positive response after notice to the class (with only two class members opting out of the class and with zero class members submitting written objections to the settlement, the settlement is fair, reasonable, and adequate and thus should be granted final approval.

The Motion is based on this notice, accompanying memorandum of points and authorities, the Agreement and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L. Yang, William L. Marder, Branden Baggot, and Jodey Lawrence, all pleadings and papers on file herein, and any further oral and documentary evidence as may be presented before or at the hearing of this matter.

DATED: October 26, 2021

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF SETTLEMENT

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Branden Baggot, sued Defendant, Foto-Kem Industries, Inc., to remedy his former employer’s alleged failure to pay sick pay wages at the regular rate of pay. Plaintiff obtained an excellent result for 440 current and former employees who earned shift premium wages in workweeks that they also took paid sick leave. The parties agreed to resolve the litigation with a non-reversionary \$350,000 settlement.

The \$350,000 settlement is an excellent result for the Class. It provides each Settlement Class Member to receive, on average, more than \$440, after allocating requested payments for attorneys’ fees and litigation costs, for Plaintiff’s efforts and individual release, for the Labor & Workforce Development Agency (“LWDA”) pursuant to PAGA, and for settlement administration costs.

Following the Court’s June 11, 2021 order preliminarily approving the settlement (the “Preliminary Approval”), a Notice of Class Action Settlement (“Class Notice”) explaining the settlement terms was sent to 442 Class Members. Declaration of Jodey Lawrence on Behalf of Phoenix Settlement Administrators (“Lawrence Decl.”) ¶¶ 3-5. As the response to the Class Notice suggests, the settlement exceeds a fair, adequate, and reasonable result for the Class. The Administrator received just two requests for exclusion from the settlement. *Id.* ¶ 8. It received zero objections to the settlement. *Id.* ¶ 9. There are no outstanding disputes. *Id.* ¶ 10. The Class participation rate thus exceeds 99.5%, and the response to the Class Notice indicates that the Class favors final approval of the preliminarily approved terms of the settlement.

As further discussed below, the Court should grant final approval of the settlement for the benefit of the Class.

Plaintiff’s Motion for Preliminary Approval of Class Action Settlement summarized the history of the litigation. Rather than repeat the history, the following summary highlights previously discussed reasons the settlement should be approved for the benefit of the Class:

- The settlement obtains a non-reversionary \$350,000 settlement payment from Defendant;

- The settlement provides each Settlement Class Member (after all requested deductions for fees, costs, etc.) a substantial amount of money—each Settlement Class Member, on average, would receive more than \$440, Lawrence Decl. ¶ 11;
- Class Members did not need to submit claim forms to participate in the settlement but are being paid automatically;
- The allocation reflects that payment of claims will be paid to Settlement Class Members in proportion to the number of pay periods that each Settlement Class Member was paid shift premium wages and took paid time off during the same pay period;
- Plaintiff conducted significant investigation to fully evaluate this case, including exchanges of information by Plaintiff and Defendant, consideration of and advocacy against Defendant’s various defenses, and review of class data for the entire necessary for Plaintiff;
- A highly regarded administrator, Phoenix Settlement Administrators, was able to administer the settlement for \$8,500—which is \$500 less than the anticipated and preliminarily approved administration costs of \$9,000; and
- As discussed above, the response to the Class Notice supports final approval, with zero written objections and just two requests for exclusion from the settlement, with a Class participation rate thus exceeding 99.5%. Lawrence Decl. ¶¶ 8, 9.

In sum, following the notice process and the lack of any objections and only two opt outs, the Court should confirm its initial finding at the preliminary approval stage that the settlement is fair, adequate, and reasonable, and grant final approval.

DISCUSSION

I. The Settlement Should Be Granted Final Approval for the Benefit of the Class.

A. Class Members Were Provided Proper Notice.

The notice procedures required by the Preliminary Approval have been followed and satisfy all due process rights of Class Members. The Preliminary Approval contemplated that the Class Notice be sent to all Class Members by first class mail, as specified in the Agreement. The Preliminary Approval also appointed Phoenix Settlement Administrators as the Administrator.

1 As the Administrator summarizes, notice was provided to Class Members in accordance with the
2 Preliminary Approval. *See* Lawrence Decl. On June 21, 2021, the Administrator received a Class
3 Member mailing list from Defendant’s counsel that included 442 Class Members. Lawrence Decl. ¶ 3.
4 On or about June 25, 2021, each of the persons identified on the mailing list were sent the Class Notice
5 via first class mail. *Id.* ¶ 4. As part of the administration process, the Administrator re-mailed Class
6 Notice to 13 Class Members using newly updated addresses either from forwarding addresses or after
7 performing a skip-trace using the TransUnion TLOxp, one of the most comprehensive address databases
8 available for skip tracing. *Id.* ¶ 6. As of the date of this filing, only one Class Notice remains
9 undeliverable. *Id.* ¶ 7. Further, the Class Notice provided Class Members with the Class Counsel’s
10 contact information, where they could further seek information regarding the class settlement, leave
11 questions for the Administrator, and update their address.

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

21 Here, Class Members were provided with a mailing regarding the settlement that explained the
22 settlement and allowed Class Members to seek information, ask questions, seek additional forms, and
23 either object or opt out, if so desired. As such, proper notice has been given to the Class Members. As
24 absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and
25 the approval process, the Court may proceed to determine the fairness and adequacy of the settlement
26 and grant final approval.

1 **B. Certification for Settlement Purposes Is Proper.**

2 In order to proceed as a class, there are two requirements which must be met—ascertainability
3 and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704 (1967); *Vasquez v.*
4 *Superior Court*, 4 Cal. 3d 800, 809 (1971) (explaining two basic requirements which must exist to
5 sustain a class action: “[t]he first is existence of an ascertainable class, and the second is a well-defined
6 community of interest in the questions of law and fact involved”). “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*, 29 Cal. 3d. 462, 470 (1981).

10 **1. The Class Is Ascertainable.**

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

15 For purposes of ascertainability, the issue for the class definition concerns whether there exists
16 sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-
17 75. Here, a Class Member is defined as: “any person whom Defendant employed in California as a non-
18 exempt employee who earned shift premium wages in the same workweek he/she took paid time off at
19 any time during the Class Period and did not execute a severance agreement at any time during the Class
20 Period,” with the “Class Period” meaning April 6, 2016, through January 18, 2021. Agreement §§ 1.5,
21 1.7. Class Members have already been identified by Defendant; there are 442 Class Members. Lawrence
22 Decl. ¶ 3. This is far more than the minimum required to certify a class.

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; and (3)
26 class representatives who can adequately represent the class. *Richmond*, 29 Cal. 3d at 470; *Reese v. Wal-*
27 *Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

1 **a. Common questions of law and fact predominate.**

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

6 Here, Plaintiff alleges that Defendant, as a matter of corporate policy, practice, or procedure
7 violated the Labor Code by failing to pay sick pay wages at the regular rate of pay, and thus also by
8 failing to pay all wages no later than the payday for the next regular payroll period after sick leave was
9 taken or upon termination of employment. Declaration of Simon L. Yang (“Yang Decl.”) ¶¶ 2-3.
10 Plaintiff alleges that he and other employees earned shift premium wages, thus increasing their regular
11 rate of pay. Declaration of Branden Baggot (“Baggot Decl.”) ¶ 2. When employees took sick leave in
12 workweeks that they earned shift premium wages, Defendant, as a matter of corporate policy, practice,
13 or procedure, paid sick pay wages at employees’ base rates of pay rather than their regular rates of pay.
14 *Id.* Also as a matter of corporate policy, practice, or procedure, Defendant did not pay underpaid sick
15 pay wages at the end of employees’ employments. *Id.*

16 Based on the narrow, alleged claims, there are few, if any, disputed facts. Common questions of
17 law predominate. Where the employer’s conduct is uniformly directed at a class of employees, as it is
18 here, the class wide impact of the Defendant’s policies satisfies the commonality requirement. *See*
19 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

20 **b. Plaintiff’s claims are typical of the class claims.**

21 The purported class representative’s claim must be “typical” but not necessarily identical to the
22 claims of other class members; it is sufficient that the representative is similarly situated so that he or
23 she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45
24 (1983). Courts look to whether class members have similar injuries, “whether the action is based on
25 conduct which is not unique to the named Plaintiff,” and whether other class members were injured by
26 the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The purpose of the
27 typicality requirement “is to assure that the interest of the named representative aligns with the interests
28 of the class.” *Id.* at 508.a

1 As discussed above, when Plaintiff took sick leave in workweeks that he earned shift premium
2 wages, sick pay wages were paid at his base rate of pay rather than his regular rate of pay and was not
3 paid underpaid sick pay wages at the end of his employment. Baggot Decl. ¶¶ 2–3. In other words,
4 Plaintiff was subjected to the same policies and practices as other Class Members. Thus, Plaintiff’s
5 claims are typical to those of Class Members.

6 **c. Plaintiff adequately represents the Class.**

7 The class representative, through qualified counsel, must be capable of “vigorously and
8 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
9 846 (1984). Here, Plaintiff does not have any interests adverse to the class, nor has any such issues been
10 raised or presented. Baggot Decl. ¶ 3. Plaintiff has taken all necessary steps to represent the interests of
11 the Class, including providing information and documents to Class Counsel and gathering evidence that
12 supported the class claims. *Id.* ¶¶ 4–5. For such reasons, Plaintiff has adequately represented the Class
13 Members and will continue to do so.

14 **C. The Settlement Is More Than Fair, Adequate, and Reasonable and Achieves an**
15 **Excellent Result for the Class.**

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

26 Although the Court possesses “broad discretion” in determining that a proposed class action
27 settlement is fair, “[t]he court’s inquiry ‘must be limited to the extent necessary to reach a reasoned
28 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the

1 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
2 concerned.” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021) (quoting *Officers for*
3 *Justice*, 688 F.2d at 625). Accordingly, the Court should give due regard to what is otherwise a “private
4 consensual agreement” between the parties. *Id.*; *see also* MCL § 21.6 at 309 (“The judicial role in
5 reviewing a proposed settlement is critical, but limited to approving the proposed settlement,
6 disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

7 Likewise, the approval of a class action settlement will only be reversed for a clear abuse of
8 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). As the Court of Appeal
9 has explained:

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

16 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000)
17 (citations and quotations omitted).

18 **1. The applicable standard presumes the settlement is fair.**

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

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

25 *Dunk*, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146;
26 *accord Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) .

27 Here, the settlement warrants a presumption of fairness. First, as previously noted in the
28 Preliminary Approval, the settlement was negotiated at arms’ length, with the use of an experienced
mediator, Gig Kyriacou. Yang Decl. ¶¶ 4–6. Second, Class Counsel engaged in extensive factual
investigation before settling, including reviewing class data. Yang Decl. ¶¶ 4–5. Third, Class Counsel is
highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
significant experience in class actions and employment wage and hour matters. Yang Decl. ¶¶ 10–13;

1 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4–8; Declaration of William L. Marder (“Marder Decl.”)
2 ¶¶ 11–12. Fourth, the percentage of objectors is small, as there are none. Lawrence Decl. ¶ 9.

3 **2. The negotiation of the settlement, agreed upon terms, and response by the**
4 **Class show the settlement is fair, adequate, and reasonable.**

5 Without repeating the Parties’ showing set forth in detail in the Motion for Preliminary Approval
6 of Class Action Settlement, the Parties highlight the following facts. The Agreement was the product of
7 negotiation between able and experienced attorneys on both sides with the assistance of a mediator.
8 Yang Decl. ¶¶ 4-7. The Gross Settlement Amount secures more than 21% of Defendant’s potential
9 liability for the class. *Id.* ¶ 6. When excluding potential liability for waiting-time penalties (as Defendant
10 argues), the Gross Settlement Amount secures almost two times Defendant’s potential non-waiting time
11 penalty liability. *Id.* Because the Complaint alleged focused claims, Settlement Class Members release is
12 likewise limited.

13 The Court previously reviewed the terms of the Agreement and granted Preliminary Approval as
14 they appeared to be fair, adequate, and reasonable. The response to the Class Notice now suggests that
15 the Court’s preliminary approval of the settlement should also be granted final approval. Just two Class
16 Members opted out, and no Class Members submitted a written objection to the settlement. Lawrence
17 Decl. ¶¶ 8–9. Based on the absence of any objection after notice, the Court may appropriately infer that
18 the class action settlement is fair, adequate, and reasonable. *See Class Plaintiff v. City of Seattle*, 955
19 F.2d 1268, 1291 (9th Cir. 1992).

20 **D. Avoiding the Risks of Litigation Benefits the Class and Favor Final Approval.**

21 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness of
22 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
23 prevailing on one or more of the causes of action or theories alleged in the Complaint, the possibility of
24 non-certification and potential for appeals.

25 To wit, Defendant have maintained that there is no liability. Defendant disagrees with Plaintiff
26 about the requirements of the Labor Code. In addition to its defenses on the merits, Defendant also has
27 argued defenses to class certification and that individualized issues predominate in this case, including
28 for example whether employees had used PTO in excess of their paid sick leave entitlement under

1 California law. Based on both defenses to class certification and the merits, Defendant maintains that it
2 is not liable to the Class for the allegations made by the Plaintiff.

3 Plaintiff recognizes that there is always a risk that the court will not grant certification of the
4 class and that the class will not be entitled to any recovery. Based on the foregoing, there was a
5 substantial risk that Plaintiff would not have obtained the total recovery alleged, and reasonable grounds
6 for uncertainty based on disputed legal issues and the possibility of appeals that would have necessitated
7 significant expenditure of time and expenses. Avoiding the risks and uncertainties of further litigation
8 benefits the Class and supports granting final approval.

9 **1. The immediacy and certainty of recovery favor final approval.**

10 To assess the fairness, adequacy, and reasonableness of a class action settlement, courts also
11 weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
12 continued litigation. *E.g., In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) (comparing the
13 “present value of the damages plaintiffs would likely recover if successful ... to the amount of the
14 proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975);
15 *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979). Another factor considered by courts
16 in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers*
17 *for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In applying this factor, the Court must weigh the
18 benefits of the settlement against the expense and delay involved in achieving an equivalent or more
19 favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

20 Here, the settlement affords the Class prompt, fair relief while avoiding significant legal battles
21 that otherwise could delay or even preclude the Class from obtaining any recovery at all. While Class
22 Counsel believe the class claims are meritorious and can be successfully litigated, they are experienced
23 and fully understand the inherent risks and uncertainty involved with such matters as the resolution of
24 class certification, the outcome of a potential trial, and the outcome of any appeals that would inevitably
25 follow should the Class prevail at trial. Class Counsel has also assessed the same risks in connection
26 with the current settlement. Because the settlement provides immediate and substantial relief, without
27 the attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
28 costs—Class Counsel believe that the settlement warrants the Court’s final approval.

1 As there is a risk that the Class Members would be left without a remedy as a practical matter
2 and that courts across the State would have to address the issues presented in a piecemeal, costly, and
3 time-consuming manner, the settlement is consistent with the “overriding public interest in settling and
4 quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950
5 (footnote omitted); *see also* 4 Newberg on Class Actions, at § 11.41.

6 **2. Costs and other risks inherent in litigation favor final approval.**

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

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

18 **3. The opinion of experienced counsel favors final approval.**

19 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of
20 the Class Members as a whole. Yang Decl. ¶¶ 4–7; Lee Decl. ¶ 5. Similarly, counsel for Defendant is in
21 favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair,
22 reasonable, and adequate is entitled to significant weight in determining final approval. *See Officers for*
23 *Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242.

24 **4. No consideration weighs against final approval.**

25 The mediated resolution of this action resulted in a settlement for the benefit of the Class. No
26 applicable consideration weighs against final approval. That in itself favors final approval.

1 **II. The Requested Attorneys' Fees and Costs Award Should Be Approved.**

2 **A. The Attorneys' Fees Are Reasonable.**

3 California state and federal courts have recognized that an appropriate method for determining
4 award of attorneys' fees is based on a percentage of the total value of settlement benefits to Class
5 Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba v. Apple Computer, Inc.*, 91 Cal.
6 App. 4th 224, 254 (2001); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air*
7 *West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). Here, Class Counsel seeks a fee award of 33⅓% of the
8 total value of the settlement for the successful prosecution and resolution of this action.

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

19 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
20 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
21 *Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
22 "[m]ost fee awards were between 25 percent and 35 percent"). An attorneys' fees award of 35% of the
23 fund mimics the market and "is supported by the fact that typical contingency fee agreements provide
24 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried."
25 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
26 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
27 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys' fees award of 35%

1 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
2 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

3 Although 35% of a settlement is within the range of reasonableness for the market in legal
4 services, Class Counsel seeks a fee award of 33⅓% of the total value of the settlement. The request is
5 supported by the results obtained by Class Counsel—requiring Defendant to pay \$350,000 and
6 recovering more than \$440 per Settlement Class Member. Indeed, “the response of the class members to
7 attorneys’ fee notice, though not decisive, is relevant to the ... reasonable determination” regarding fees.
8 *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to
9 suggest that the court’s “approximation of the market” for fees is well supported. *Id.* at 1269. In this
10 case, the Class Notice specifically notified Class Members that Class Counsel would be seeking
11 \$116,666.67 of the settlement fund as attorneys’ fees. No Class Member has objected to the settlement
12 or the requested fees. The Class Member response thus further supports the requested fees.

13 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety.
14 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the
15 successful litigation of this action on behalf of all Class Members. Moreover, while unnecessary to
16 determine the reasonableness of the requested attorneys’ fees, the reasonableness of the requested fees is
17 further supported by a “lodestar cross-check.” *Laffitte*, 1 Cal. 5th at 505. In this matter, attorneys’ fees
18 based on hourly rates actually result in fees of \$111,250—less than 0.5% from the requested fees based
19 on the percentage method. Yang Decl. ¶¶ 14-17 (77.5 hours at \$700 per hour); Lee Decl. ¶¶ 12–13 (41.0
20 hours at \$750 per hour); Marder Decl. ¶¶ 14-16 (25.0 hours at \$750 per hour). For such reasons, Class
21 Counsel’s request for attorneys’ fees in the amount of \$116,666.67 is fair, reasonable, and adequate.

22 **B. The Reasonable Costs Should Be Reimbursed.**

23 The request for reimbursement of costs, in the amount of \$10,965.49 is fair and reasonable. The
24 costs are all litigation-related costs, which have been detailed in the supporting declarations of Class
25 Counsel. Yang Decl. ¶ 18, Ex. C.

26 **III. The Requested Class Representative Award Should Be Approved.**

27 Class Representative Baggot requests an enhancement of \$10,000.00. Plaintiff personally met
28 with Class Counsel on a number of occasions to discuss the case, including providing documents and

1 information regarding Defendant’s practices. Baggot Decl. ¶¶ 7–8. Accordingly, Plaintiff provided
2 invaluable information, evidence, and documents that resulted in a settlement that provides substantial
3 benefit to the class. The requested award is warranted by Plaintiff’s success.

4 The requested award is also warranted by the substantial risks Plaintiff accepted to obtain
5 financial benefit for the Class. In addition to the invaluable services that Plaintiff provided, he took
6 significant risks, both professionally and monetarily, in acting as the Class Representative, seeking
7 benefits on behalf of the Class. Baggot Decl. ¶¶ 9–11. First, because the claims alleged by the Class
8 Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced
9 paying the costs of Defendant, had he not prevailed in this action. Despite this, however, Plaintiff agreed
10 to pursue this case on behalf of the Class. Second, given that future employers are less likely to hire
11 individuals who have filed employment-related lawsuits, the Class Representative also accepted the risk
12 of significant prejudice in future employment. Plaintiff took these risks upon himself to the benefit of
13 the Class.

14 Finally, the requested award is also warranted by the significant rights Plaintiff gave up. As part
15 of the settlement, Plaintiff agreed to provide a full, complete, and general release of his individual
16 claims—something that the Class Members do not have to provide.

17 In sum, Class Members did not have to file individual lawsuits and bear the risks of payment of
18 costs if they did not prevail. They did not have to assist Class Counsel in obtaining the settlement. They
19 do not have to shoulder the potential for prejudice in future employment. They do not have to agree to a
20 general release. Instead, they enjoy their monetary recoveries because Plaintiff did. These are each
21 significant factors that weigh in favor of granting the requested award. As such, the requested award
22 should be approved for Plaintiff’s commitment, dedication, and service on behalf of the Class. Courts
23 have routinely granted approval of settlements containing such enhancements. *See Van Vranken v.*
24 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re*
25 *Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive
26 awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d
27 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enterprise Energy Corp. v.*
28 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each

class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

IV. The Requested Administration Costs Should Be Approved.

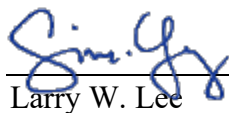
Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix Settlement Administrators, are to be paid out of the settlement fund. As shown on the Declaration of Jodey Lawrence, the class administration fees expended in this matter amount to a total of \$8,500.00. Lawrence Decl. ¶ 14, Ex. B. This is \$500 less than the estimated cost of the administration. As the Administrator diligently performed all requested tasks to ensure due process for Class Members—while controlling and minimizing costs—the administration costs should be approved.

CONCLUSION

Defendant does not oppose the motion for final approval. Upon notice of the settlement, no Settlement Class Member submitted a written objection to the settlement. Only two Class Members did not want to be Settlement Class Members upon final approval (and will not be). All other Settlement Class Members will benefit and, on average, received more than \$440. For the foregoing reasons and for the benefit of the settlement class, Plaintiff respectfully requests that the Court grant final approval.

DATED: October 26, 2021

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