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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

REBECCA PINEDA, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

IPPOLITO INTERNATIONAL L.P.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV001851

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

Date: February 22, 2022

Time: 9:00 a.m.

Dept.: 15

Complaint Filed: July 10, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 22, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Thomas Wills, judge presiding, in Department 15 of the above-referenced Court located at 1200 Aguajito Road, Monterey, California 93940, Plaintiff Rebecca Pineda (“Plaintiff”) will and hereby move this Court for an Order:

1. Granting final approval to the Joint Stipulation of Class Action Settlement (“Settlement”) in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement;
3. Approving Plaintiff’s request for an award of the class representative enhancement payment of \$6,500.00 to Plaintiff pursuant to the terms of the Settlement;
4. Approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class Counsel for 33 1/3% of the \$125,000.00 gross settlement amount, or \$41,666.66, and reimbursement of litigation costs of \$7,366.91, pursuant to the terms of the Settlement;
5. Approving Plaintiff’s request for payment of the claims administration costs to Phoenix Settlement Administrators in the amount of \$3,500.00, pursuant to the terms of the Settlement;
6. Approving Plaintiff’s request for payment to the California Labor & Workforce Development Agency (“LWDA”) for \$7,500.00, pursuant to the terms of the Settlement; and
7. Entering final judgment as to all members of the Settlement Class in this action.

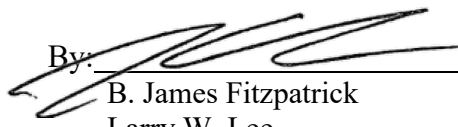
This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, there is 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, B. James Fitzpatrick, Plaintiff Rebecca Pineda, and

Jarrold Salinas of Phoenix Settlement Administrators, the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: January 26, 2022

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: 

B. James Fitzpatrick

Larry W. Lee

Attorneys for Plaintiff,

REBECCA PINEDA, as an individual and on
behalf of all others similarly situated

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1 **I. INTRODUCTION**

2 Plaintiff Rebecca Pineda (“Plaintiff” or “Pineda”) now seeks the Court’s final approval of
3 the Class Action Settlement. In sum, the Settlement provides for a \$125,000.00 **non-**
4 **reversionary** fund to be created for the benefit of the Class, from which attorneys’ fees,
5 litigation costs, enhancement payment to the Plaintiff, payment to the California Labor &
6 Workforce Development Agency (“LWDA”), and costs of claims administration are to be paid.
7 After these deductions are made, the entire net settlement fund will be paid to all Class Members
8 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 November 16, 2021, directing
11 distribution of class notice and scheduling the hearing for final approval of settlement (the
12 “Preliminary Approval Order”). As directed by the Court, the Claims Administrator distributed
13 the class notice to 100 Class Members. (Declaration of Jarrod Salinas (“Salinas Decl.”) at ¶ 7.)
14 The Claims Administrator received only one (1) request for exclusion, which represents 1.0% of
15 the Settlement Class, and zero (0) objections from the Settlement. (Salinas Decl. at ¶¶ 9-10.)
16 Based on the data provided by the Claims Administrator, there is a 99% participation rate by
17 Class Members. Thus, an inference can be made that the Class supports the Court’s Preliminary
18 Approval Order finding that the Settlement Agreement is fair and reasonable.

19 In sum, in light of the claims administration process and the results thereof, the lack of
20 opt-outs, and the amount of class funds being paid out to the Class Members, the Court should
21 confirm its preliminary approval as this process supports the Court’s initial finding that the
22 Settlement is fair and reasonable.

23 In addition to the results of the notice process, for the same reasons as set forth earlier in
24 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent
25 the basic points previously covered that support approval of the Settlement:

- 26 ▪ The Settlement provides a total settlement sum of \$125,000.00 which is **non-**
27 **reversionary**;

- 1 ▪ The Settlement is fair given that all Class Members will receive (*after deductions*
2 *for fees, costs, etc.*) on average, approximately \$590.57 per person (Salinas Decl.
3 at ¶ 11);
- 4 ▪ Class Members did not need to submit claim forms to participate in the
5 settlement, but are being paid automatically;
- 6 ▪ The allocation reflects that payment of claims will be paid to all Class Members
7 on a pro-rata basis, based on the number of wage statements each Class Member
8 received during the Class Period;
- 9 ▪ Plaintiff investigated the claims at issue, including exchanges of information by
10 Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to
11 fully evaluate this case;
- 12 ▪ A highly regarded administrator, Phoenix Settlement Administrators (“Phoenix”),
13 was retained for \$3,500.00; and
- 14 ▪ The LWDA will also be a beneficiary of this Settlement as it will receive
15 \$7,500.00, should this Settlement be granted final approval.

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

18 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
19 **SETTLEMENT.**

20 The notice procedures required by the Preliminary Approval Order have been followed
21 and satisfy all due process rights of Class Members. The Preliminary Approval Order
22 contemplated that the Notice of Class-Action Settlement (the “Notice”) be sent to all Class
23 Members by first class mail, as specified in the Settlement. The Preliminary Approval Order
24 contemplated, further, that Phoenix would serve as the Claims Administrator.

25 As clearly stated in the Salinas Declaration, notice was provided to all Class Members as
26 required by the Preliminary Approval Order. (Salinas Decl. at ¶¶ 4, 7.) On December 9, 2021,
27 the Claims Administrator received a Class Member mailing list from Defendant’s counsel that

1 included 100 Class Members. (Salinas Decl. at ¶ 5.) On December 13, 2021, each of the Class
2 Members were sent the Notice in both English and Spanish via first class mail. (Salinas Decl. at
3 ¶ 7.) As of the date of this filing, all Notices were deliverable. (Salinas Decl. at ¶ 8.) Further,
4 the Notice provided Class Members with Plaintiff’s counsel’s contact information, where they
5 could further seek information regarding the Settlement, leave questions for the Claims
6 Administrator, and update their address. (See Salinas Decl. at ¶ 4, Exh. A.)

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

17 Here, the Class Members were sent a mailing regarding the Settlement that satisfies due
18 process rights. The mailing described the litigation, provided an explanation of the terms of the
19 Settlement, explained Class Members’ rights, allowed Class Members to seek additional
20 information with Class Counsel contact information, and explained ways for Class Members to
21 opt out or object, if so desired. As such, this constitutes proper notice to the Class Members.

22 Accordingly, the Court may proceed to determine the fairness and adequacy of the
23 Settlement and enter its Order granting final approval, secure in the knowledge that all absent
24 Class Members have been given the opportunity to participate fully in the claims, exclusion, and
25 the approval process.

26 ///

27 ///

1 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE,**
2 **AND THUS 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.
6 695, 704.) Under California law, there are two basic requirements which must exist to sustain a
7 class action: “[t]he first is existence of an ascertainable class, and the second is a well-defined
8 community of interest in the questions of law and fact involved.” (*Vasquez v. Superior Court*
9 (1971) 4 Cal. 3d 800, 809.) “The community of interest requirement embodies three factors: (1)
10 predominant common questions of law or fact; (2) class representatives with claims or defenses
11 typical of the class; and (3) class representatives who can adequately represent the class.”
12 (*Richmond v. Dart Industries* (1981) 29 Cal. 3d. 462, 470.)

13 **1. The Class is Ascertainable.**

14 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382
15 is determined by examining “(1) class definition, (2) the size of the class, and (3) the means
16 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*
17 (1987) 196 Cal. App. 3d 1263, 1271.)

18 Here, the Class is defined as: “all current and former employees of Defendant in the State
19 of California who were paid wages at any time during the Class Period (April 2, 2019, through
20 October 31, 2020)” (the “Class”). There are 99 Participating Class Members who will be paid
21 their portion of the Net Settlement Amount. (Salinas Decl. at ¶ 11.) This is far more than the
22 minimum required to certify a class. Within the context of manageability, the issue is whether
23 there exists sufficient means for identifying class members at the remedial stage. (*Reyes, supra*,
24 196 Cal. App. 3d at pp. 1274-75.) Class Members have already been identified by Defendant
25 and Notice has been provided to all of the Class Members. Accordingly, the Class is
26 ascertainable under Code of Civil Procedure § 382.

27 ///

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

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

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

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

12 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
13 violated the California Labor Code by failing to provide accurate itemized wage statements to its
14 employees. Defendant denies that liability could be established on a class-wide basis.
15 Defendant contends instead that liability and damages would need to be conducted on a case-by-
16 case basis, and that Plaintiff’s legal theories lack merit.

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

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

26 Here, Plaintiff was subjected to the same policies and practices as other Class Members.
27 Plaintiff was employed by Defendant as a non-exempt employee. Like other Class Members, the

1 wage statements provided to Plaintiff by Defendant identified only the “Check Date” and
2 “Period Ending Date,” while failing to specify a pay period start date, in violation of Labor Code
3 § 226(a)(6). (Declaration of Rebecca Pineda (“Pineda Decl.”) ¶ 3.) Thus, Plaintiff’s claims are
4 typical to those of Class Members.

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

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

9 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
10 been raised or presented. (Pineda Decl. at ¶ 5.) Plaintiff has taken all necessary steps to
11 represent the interests of the Class, including providing information and documents to her
12 counsel and reviewing pleadings and documents in this case. (Pineda Decl. at ¶¶ 4-5) For such
13 reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

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

15 Defendant asserts that individualized issues predominate in this case. In any event, even
16 assuming that a class could be certified, Defendant asserts that it has complied with all laws.
17 Based thereon, Defendant continues to maintain that it is not liable for the allegations made by
18 Plaintiff.

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

20 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the
21 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
22 involved in not prevailing on one or more of the causes of action or theories alleged in his
23 operative complaint at trial, the possibility of non-certification, the possibility that the Court may
24 award only a small percentage of PAGA penalties, and the potential for any appeals. These risks
25 of class certification are compounded by the California Supreme Court’s holding in *Duran v.*
26 *U.S. Bank Nat’l Ass’n* (2014) 59 Cal. 4th 1.

27 Defendant has maintained that there is no liability. As stated above, Defendant alleges

1 that a class could not have been certified. There is always a risk that the court will not grant
2 certification of the class, wherein the class will not be entitled to any damages. Based on the
3 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of
4 damages and/or penalties alleged, and a substantial amount of complex issues that would have
5 necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and
6 complexity of further litigation warrant granting of this Motion.

7 **D. The Negotiation and Terms of the Settlement, and the Reception of the**
8 **Settlement by Class Members Strongly Support the Conclusion that the**
9 **Settlement is Fair, Adequate, and Reasonable.**

10 Without reiterating the Parties' showing that the Settlement and the negotiation process
11 that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
12 Approval of Class Action Settlement, the Parties highlight several key facts. First, the
13 Settlement was the product of negotiation between highly able and experienced attorneys on both
14 sides who possessed the relevant data and extensive legal research which they had carefully
15 analyzed. (Declaration of Larry W. Lee ("Lee Decl.") ¶ 3.) The Parties also participated in
16 private mediation with an experienced and neutral mediator who helped facilitate settlement
17 negotiations between the Parties. (Lee Decl. at ¶ 4.) Thus, this Settlement is the result of arm's
18 length negotiations, and should be granted final approval.

19 Second, the results after mailing of the Notice also fully support confirmation of the
20 Court's preliminary approval of the Settlement, as evidenced by the 99% participation rate. In
21 other words, only one (1) Class Member requested to be excluded from the Settlement, and zero
22 (0) Class Members filed an objection to the Settlement. (Salinas Decl. at ¶¶ 9-10.) In light of
23 overwhelmingly positive response to the Settlement, the Court may appropriately infer that the
24 Settlement is fair, adequate, and reasonable, when among other reasons, no class members have
25 opted out or objected to it. (*See Chemical Bank v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268,
26 1291 (reaction of class members to the settlement is a factor supporting approval of a class action
27 settlement.)

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

1. Standard of Review

On a motion for final approval of a class action settlement under California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769, a court’s inquiry at this juncture is whether the settlement is “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217.) 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* (Fed. Judicial Center 2004), § 21.6 at p. 309 (“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 Newberg on Class Actions* (2008) 4th § 11.41; *Chemical Bank v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

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

A court’s approval of a class action settlement will only be reversed for a clear abuse of

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

As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146:

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

2. The Settlement is Presumed to Be Fair.

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

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

(*Dunk*, 48 Cal. App. 4th at p. 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at p. 1146; *accord, Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply, supra*, 720 F. Supp. at p. 1387.)

The Settlement here warrants approval and carries a presumption of fairness. As previously noted in the Motion for Preliminary Approval, this Settlement was negotiated at arm’s length between the Parties and their counsel and was facilitated by an experienced and neutral mediator. (Lee Decl. at ¶¶ 3-5.)

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

1 including an extensive review and analysis of class data and information pertaining Defendant’s
2 policies and practices relevant to the class claims. (Lee Decl. at ¶ 3.) Further, Class Counsel is
3 highly experienced in this type of litigation. As shown in the supporting declarations, Class
4 Counsel has significant experience in class actions and employment wage and hour matters.
5 (Lee Decl. ¶¶ 8, 11-13; Declaration of B. James Fitzpatrick (“Fitzpatrick Decl.”) ¶ 3.)

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

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

15 If Plaintiff pursued this case without settlement and not prevail, Plaintiff would be
16 potentially responsible for Defendant’s fees and costs. Likewise, were any individual current or
17 former employees of Defendant bring individual claims on the same causes of action, they would
18 each face the uncertainty of prevailing and the same possibility of becoming liable to pay fees
19 and costs to Defendant. Accordingly, such claims likely would not be brought by many of these
20 current and former employees who make up the Settlement Class. Thus, this lawsuit achieves a
21 true benefit for the Settlement Class that they might not otherwise get or seek as individuals.
22 Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of
23 the Class Members will be required to pay for Defendant’s litigation fees and costs. Thus, the
24 risks undertaken by Class Counsel should be considered a significant factor by the Court in its
25 determination of final approval. The Settlement provides a fair recovery to Class Members, and
26 eliminates the risk of costs to Class Members or the Class Representative.

27 The Settlement also affords finality, avoiding significant legal and factual battles that

1 otherwise may have prevented the Class from obtaining any recovery at all. While Class
2 Counsel believe that the Class Members’ claims are meritorious and can be successfully
3 litigated, counsel are experienced and fully understand the inherent risks and uncertainty
4 involved with such matters including the resolution of class certification, the outcome of a
5 potential trial, and the outcome of any appeals that would inevitably follow should the Class
6 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
7 Settlement. Because the Settlement provides immediate and substantial relief, without the
8 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
9 costs—Class Counsel believe that the Settlement warrants the Court’s final approval.

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

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

17 Here, as noted above, continued litigation could potentially have led to appeals on a
18 number of issues. On the other hand, the Settlement that was reached provides all Class
19 Members—regardless of their means—with fair relief in a prompt and efficient manner. Were
20 the Court to deny final approval, the Class Members would be left without a remedy as a
21 practical matter and courts across the State would have to address the issues presented here in a
22 piecemeal, costly, and time-consuming manner. The Settlement here is therefore consistent with
23 the “overriding public interest in settling and quieting litigation” that is “particularly true in class
24 action suits.” (*See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg at*
25 *§ 11.41.*) Here, this case could have potentially involved years of litigation, as evidenced by the
26 Parties’ litigation record and history in similar wage and hour cases.

27 ///

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 ¶ 5; Fitzpatrick Decl. at ¶ 13.)
4 Similarly, counsel for Defendant is in favor of the Settlement. The endorsement of qualified and
5 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
6 weight by the Court in its final approval determination. (*See Officers for Justice*, 688 F.2d at p.
7 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.)

8 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
9 **APPROVED.**

10 Class Representative Pineda requests an enhancement of \$6,500.00 in accordance with
11 the terms of the Settlement. Plaintiff met with Class Counsel and had several discussions about
12 the case. (Pineda Decl. at ¶ 4.) Plaintiff also provided substantive information and documents
13 regarding Defendant's policies and practices to help support the class claims alleged in this case.
14 (*Id.*) Accordingly, Plaintiff provided invaluable information, evidence, and documents that
15 resulted in this settlement.

16 In addition to the invaluable services that Plaintiff provided, she took significant risks,
17 personally, professionally, and monetarily in acting as the Class Representative, seeking benefits
18 on behalf of the class. (Pineda Decl. at ¶¶ 8-10.) Because the claims alleged by Plaintiff
19 involved the payment of costs to the prevailing party, Plaintiff undertook the risk that she may be
20 required to pay Defendant's fees and costs, in the event that Defendant prevailed in this action.
21 (Pineda Decl. at ¶ 8.) Moreover, Plaintiff understood that an individual case would have resolved
22 much faster than a class action and involved much less financial risk than a class action. Despite
23 this, however, Plaintiff agreed to pursue this case on behalf of the class. (Pineda Decl. at ¶ 10.)
24 Significantly, given that future employers are much less likely to hire individuals who have filed
25 employment-related lawsuits, particularly cases of this nature, Plaintiff also faced significant risk
26 in not being able to find suitable prospective employment, as a result of filing of this case against
27 Defendant. (Pineda Decl. at ¶ 9.)

1 Plaintiff took these risks upon herself for the benefit of the class. Class Members did not
2 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor
3 did they have to face the potential for retaliation and not getting future employment had they
4 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of
5 granting the requested enhancement. Moreover, this litigation has resulted in a significantly
6 valuable benefit to the Class, and Plaintiff took on substantial risks in helping Class Members
7 obtain this financial benefit. As such, the enhancement should be awarded to Plaintiff for her
8 commitment, dedication, and risks taken for this litigation.

9 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED.**

10 Class Counsel seeks a fee award calculated as thirty-three and one-third percent (33
11 1/3%) of the total value of the Settlement for the successful prosecution and resolution of this
12 action. Recently, the California Supreme Court issued its ruling regarding the award of
13 attorney's fees in wage and hour class action settlements. Under California law, the award of
14 attorneys' fees in common fund wage and hour class action settlements should start with the
15 percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the
16 overwhelming majority of federal and state courts in holding that when class action litigation
17 establishes a monetary fund for the benefit of the class members, and the trial court in its
18 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
19 of a reasonable fee by choosing an appropriate percentage of the fund created").) Under the
20 percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a
21 reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) ("When a
22 fee is set by a court rather than by contract, the object is to set it at a level that will approximate
23 what the market will set...The judge, in other words, is trying to mimic the market in legal
24 services").)

25 An award of 33 1/3% of the fund in attorneys' fees "mimics the marketplace" as it is
26 "supported by the fact that typical contingency fee agreements provide that class counsel will
27 recover 33% if the case is resolved before trial and 40% if the case is tried." (*Fernandez v.*

1 *Victoria Secret Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. *16 n. 59 (citing Brickman,
2 *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive*
3 *Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11).) Indeed, “empirical studies [that] show
4 that...fee awards in class actions average around one-third of the recovery.” (*Chavez v. Netflix,*
5 *Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.)

6 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
7 percent of the fund, which is the same percentage of fee award sought in this case. (*Laffitte*, 1
8 Cal. 5th at p. 506.) And this was based on a lodestar amount that required a multiplier of 2.13.
9 (*Id.* at p. 487.) As the Court held, only when the multiplier is “extraordinarily high or low
10 [should] the trial court [] consider whether the percentage method should be adjusted so as to
11 bring the imputed multiplier within a justifiable range.” (*Id.* at p. 505.)

12 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
13 percent of the common fund is consistent with, and in the range of, awards in other class action
14 lawsuits.” (*Laffitte v. Robert Half Int’l* (2014) 231 Cal. App. 4th 860, 871.) Here, the fee award
15 representing 33 1/3% of the fund clearly falls within that range and is consistent with other
16 comprehensive surveys of class action settlements and fee awards. (See Fitzpatrick, *An*
17 *Empirical Study of Class Action Settlements and Their Fee Award* (2010) 7 J. Empirical Leg.
18 Stud. 811, 833 (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards
19 were between 25 percent and 35 percent, with almost no awards more than 35 percent”);
20 Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*
21 (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation
22 nationwide conclude that fees representing one-third of the total recovery is consistent with
23 market rates).)

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

1 Notice specifically notified Class Members that Plaintiff’s Counsel would be seeking \$41,666.66
2 of the settlement fund as attorneys’ fees. To date, no Class Member has objected to the
3 settlement or the request for attorneys’ fees. This strong favorable response also supports the
4 requested fees.

5 When the primary method employed to determine fees is the percentage method, courts
6 have discretion to use the lodestar method to “cross-check” the amount of fees calculated by way
7 of percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when
8 used in this manner, does not override the trial court’s primary determination of the fee as a
9 percentage of the common fund and thus does not impose an absolute maximum or minimum on
10 the potential fee award.” (*Laffitte, supra*, 1 Cal. 5th at p. 505 (emphasis added); *In re Rite Aid*
11 *Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, pp. 306-307 (“[The lodestar cross-check does not
12 trump the primary reliance on the percentage of common fund method”).)

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

27 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to

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

10 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
11 awarded by the percentage method showing that the majority of multipliers awarded are “in the
12 1.5-3.0” range. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (affirming
13 a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
14 over 30 cases).) Federal district courts applying California law have likewise routinely approved
15 cross-check multipliers between 2 and 3 in employment cases. (*See, e.g., Willner v. Manpower*
16 *Inc.* (N.D. Cal. June 22, 2015) No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (affirming a
17 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
18 *N.A.* (N.D. Cal. 2014) 303 F.R.D. 326, 334 (approving attorneys' fees that resulted in lodestar
19 multiplier of 2.83); *Hopkins v. Stryker Sales Corp.* (N.D. Cal. Feb. 6, 2013) No. 11-CV-02786-
20 LHK, 2013 WL 496358, at *5 (approving a multiplier of 2.76 in settlement of Labor Code
21 violations).) Other courts have found even higher multipliers to be reasonable by comparison to
22 other cases. (*See Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113,
23 1125-26 (approving a 5.2 multiplier on a cross-check after surveying a large body of cases
24 affirming a higher multiplier).)

25 With respect to Class Counsel’s lodestar, to date, approximately 96 hours have been
26 expended by Class Counsel in this matter. (Lee Decl. at ¶ 9; Fitzpatrick Decl. at ¶ 7.) Moreover,
27 Class Counsel expects to incur approximately 10 additional hours of attorney time in finalizing

1 this settlement. (Lee Decl. at ¶ 10.) Mr. Lee requests an hourly rate of \$750 per hour, and Mr.
2 Fitzpatrick requests an hourly rate of \$550 per hour. (Lee Decl. at ¶ 11; Fitzpatrick Decl. at ¶ 8.)
3 The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time
4 records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney
5 as to the number of hours worked on a particular case is sufficient evidence to support an award
6 of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182
7 Cal. App. 3d 553, 559.)

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

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

20 Class Counsel's skill and experience justify the requested rate. As shown in the
21 supporting declarations, Class Counsel have significant experience in the area of employment
22 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
23 employees in employment matters, particularly wage and hour cases. (Lee Decl. at ¶ 13;
24 Fitzpatrick Decl. at ¶ 11.) As such, based on the hours and applicable rate, Class Counsel's
25 lodestar amount through finalization of this settlement (without a multiplier) will be anywhere
26 between \$59,000 and \$72,000, depending on which hourly rate is used. (Lee Decl. at ¶ 11;
27 Fitzpatrick Decl. at ¶ 8.)

1 Plaintiff's counsel is aware that this Court is more inclined to allow hourly rates of
2 approximately \$550 per hour. Even under that hourly rate, Plaintiff's lodestar still exceeds
3 \$41,666.66. Here, based upon Plaintiff's counsel's lodestar anywhere between \$59,000 and
4 \$72,000 (depending on which hourly rate is used), there is no need for a multiplier and is further
5 proof that the requested fee is reasonable and fair, particularly based on the factors described
6 above. (*Wershba v. Apple Computer, Inc.* (Ct. App. 2001) 91 Cal. App. 4th 224 (noting that
7 courts using the lodestar method to calculate attorney fees awards in class actions typically apply
8 multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal. Nov. 18, 2014) 2014
9 U.S. Dist. LEXIS 162880 (awarding 33% of the common fund, based on a multiplier of 2.58, in
10 a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8
11 F.Supp.3d 1200, 1210 (awarding 33% of the common fund, based on a multiplier of 2.52).)

12 As such, the requested fee award is fair and reasonable, and should be awarded in its
13 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
14 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
15 Class Counsel's request for attorneys' fees in the amount of \$41,666.66 is fair, reasonable, and
16 adequate.

17 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
18 **OF COSTS.**

19 The request for reimbursement of costs, in the amount of \$7,366.91 is fair and
20 reasonable. The costs are all litigation-related costs, which have been detailed in the supporting
21 declaration of Class Counsel. (*See* Lee Decl. at ¶ 14; Fitzpatrick Decl. at ¶ 9.) The authority for
22 the court to award this is the Parties' Settlement Agreement and the California Labor Code. As
23 such, this request should be approved.

24 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
25 **APPROVED.**

26 Plaintiff also requests that the Court approve \$3,500.00 in administration costs to the
27 Settlement Administrator, Phoenix Settlement Administrators. As detailed in the Declaration of

Mr. Salinas submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Class Member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted and distributed Notices to all 100 Class Members, and have otherwise administered the Settlement. (Salinas Decl. at ¶¶ 3, 7.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. CONCLUSION

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

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

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for an award of the class representative enhancement of \$6,500.00 to Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff Counsel's request for an award to Class Counsel for \$41,666.66 in attorneys' fees and \$7,366.91 in costs with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$3,500.00 with payment pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiff's request for payment to the LWDA for \$7,500.00 with payment pursuant to the terms of the Settlement Agreement; and
7. Entering final judgment as to all members of the Class in this action.

1 DATED: January 26, 2022

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

2
3
4 By. 

B. James Fitzpatrick

Larry W. Lee

Attorneys for Plaintiff,

6 REBECCA PINEDA, as an individual and on
7 behalf of all others similarly situated