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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CARLOS MUNGUIA and JOSE ESQUIVEL, as
individuals and on behalf of all others similarly
situated, and as private attorneys general,

Plaintiffs,

vs.

BLUE LINE FOODSERVICE DISTRIBUTION,
INC., a Michigan corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2020-01157719-CU-OE-CXC

[Hon. Lon F. Hurwitz, Department CX103]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Carlos Munguia; Declaration of Jose
Esquivel; Declaration of Lluvia Islas; [Proposed]
Order and Final Judgment]*

Date: October 6, 2023
Time: 1:30 p.m.
Department: CX103

1 **TO THE COURT, DEFENDANT, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 6, 2023, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department CX103 of the above-entitled court located at 751 West Santa Ana
4 Boulevard, Santa Ana California 92701, Plaintiffs Carlos Munguia and Jose Esquivel will and hereby do
5 move for an Order:

- 6 1. granting final approval to the Second Amended Joint Stipulation of Class Action and PAGA
7 Settlement and Release of Claims (the “Agreement”) attached as Exhibit A to the
8 concurrently filed Declaration of Simon L. Yang;
- 9 2. approving distribution of the settlement funds to Settlement Class Members and PAGA
10 Group Members pursuant to the terms of the Agreement;
- 11 3. approving Plaintiffs’ request for a service award of \$10,000.00 to each Class Representative
12 pursuant to the terms of the Agreement;
- 13 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
14 \$250,000.00 Gross Settlement Amount, or \$83,333.33, and reimbursement of litigation costs
15 of \$6,403.21 pursuant to the terms of the Agreement;
- 16 5. approving Plaintiffs’ request for payment of the settlement administration costs to Phoenix
17 Settlement Administrators in the amount of \$6,000.00 pursuant to the terms of the
18 Agreement;
- 19 6. approving Plaintiffs’ request for payment to the Labor & Workforce Development Agency of
20 \$18,750.00 pursuant to the terms of the Agreement; and
- 21 7. entering final judgment as to all members of the Settlement Class in this action.

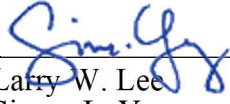
22 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
23 Court approval of the settlement of a purported class action and allows the Court to grant final
24 certification of a class for settlement purposes. The overwhelmingly positive Class response—as shown
25 by the lack of any objections to the settlement and just one opt out—supports that the settlement is fair,
26 reasonable, and adequate, and should be granted final approval.

27 This motion will be based on the attached Memorandum of Points and Authorities, the
28 supporting Declarations of Larry W. Lee, Simon L. Yang, Plaintiffs Carlos Munguia and Jose Esquivel,

1 and Lluvia Islas of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there
2 be any), and on the complete records and file herein.

3 DATED: September 13, 2023

DIVERSITY LAW GROUP, P.C.

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5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On September 28, 2020, Plaintiffs Carlos Munguia and Jose Esquivel initiated this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, Blue Line Foodservice Distribution, Inc. On behalf of a putative class of current and former employees of Defendant in the State of California and as a proxy for the State, the lawsuit alleges that Defendant underpays overtime and sick pay in workweeks in which Plaintiffs and other non-exempt employees also earn incentives, bonuses, or “XATA Pay” (i.e., non-hourly, non-discretionary compensation). It also alleges that whenever Plaintiffs and other non-exempt employees work overtime hours, Defendant issues wage statements that do not accurately itemize and show (i) the overtime rate as 1.5 times the regular rate or (ii) the total hours worked.

Plaintiffs now seeks the Court’s final approval of the Second Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (the “Agreement”). The Agreement provides for a \$250,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, service awards to the Class Representatives, payment to the California Labor and Workforce Development Agency (“LWDA”) and PAGA Group Employees, and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Settlement Class Members.

The history of this litigation was previously detailed in Plaintiffs’ Preliminary Approval Motion. On April 14, 2023, the Court held a hearing on preliminary approval of this settlement. On May 31, 2023, the Court directed distribution of the Notice of Class Action Settlement (“Class Notice”) and scheduled the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Administrator, Phoenix Settlement Administrators, distributed the Class Notice to 115 Class Members. Declaration of Lluvia Islas (“Admin Decl.”) ¶ 4. No objections were submitted. *Id.* ¶ 7. Just one request for exclusion was received. *Id.* ¶ 6. As such, there is a 99.13% participation rate. *Id.* ¶ 9. Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

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

- The settlement provides a total settlement sum of \$250,000.00;

- 1 ▪ The settlement is fair given that Class Members will receive (*after* deductions for fees, costs,
2 etc.) a substantial amount of money (on average, each Settlement Class Member will receive
3 approximately \$958.45, and on average, each PAGA Group Employee will receive
4 approximately \$61.88, *see* Admin Decl. ¶¶ 14, 15);
- 5 ▪ Plaintiffs conducted significant investigation in this case, including formal discovery and
6 informal exchanges of information by Plaintiffs and Defendant of class data for the entire
7 class necessary for Plaintiffs to fully evaluate this case; and
- 8 ▪ California’s LWDA will also be the beneficiary of this settlement as it will receive
9 \$18,750.00, should this settlement be granted final approval.

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

11 DISCUSSION

12 I. Class Members Were Provided Notice of the Settlement.

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

17 As the Admin Declaration states, notice was provided to Class Members, as required by the
18 Preliminary Approval Order. On June 2, 2023, the Administrator received a Class Member mailing list
19 from Defendant’s counsel that included 115 Class Members. Admin Decl. ¶ 2. On June 30, 2023, each
20 of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 4. From
21 the date of mailing, zero Class Notices were returned as undeliverable. *Id.* ¶ 5. The Class Notice enabled
22 Class Members to contact Class Counsel, seek additional information regarding the settlement, leave
23 questions for the Administrator, and update their addresses.

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

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

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

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

8 The Court already addressed the requirements for certifying a class for settlement purposes in its
9 Order granting preliminary approval. Plaintiffs briefly addresses the requirements again here.

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

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

14 Here, “Class Members” include all members of the Regular Rate Subclass and Wage Statement
15 Subclass: (1) “Regular Rate Subclass” means all current and former non-exempt employees of
16 Defendant in the State of California who earned overtime wages or sick pay and non-discretionary
17 compensation in the same workweek at any time from April 6, 2016 through September 1, 2021, and
18 (2) “Wage Statement Subclass” means all current and former non-exempt employees of Defendant in the
19 State of California who were paid overtime wages at any time from April 6, 2019 through September 1,
20 2021. Agreement ¶¶ 7, 35, 42.

21 There are 115 individuals that comprise the Class. Admin Decl. ¶ 4. This is more than the
22 minimum required to certify a class. Within the context of manageability, the issue is whether there
23 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at
24 1274-75. Here, Class Members have already been identified and have already been sent notice.

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

26 The “community of interest” requirement embodies three separate factors: (1) predominant
27 common questions of law or fact; (2) class representatives whose claims are typical; and (3) class
28

1 representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d
2 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

8 Here, Plaintiffs alleges that Defendant, as a matter of common corporate policy, practice, or
9 procedure, violated the Labor Code by failing (i) to pay all owed overtime or sick pay in workweeks in
10 which employees also earned non-hourly, non-discretionary compensation (e.g., incentives, bonuses, or
11 “XATA Pay”), or (ii) to furnish employees with wage statements that itemize and show all applicable
12 hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly
13 rate, and the total hours worked. While Defendant denies that liability could be established on a class-
14 wide basis and contend instead that liability would need to be conducted on a case-by-case basis,
15 common questions predominate Plaintiffs’ theories of liability.

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

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

24 Plaintiffs was employed by Defendant and allege that they were subjected to the same payroll
25 policies and wage statement practices as all other Class Members. Specifically, like other members of
26 the Class, Plaintiffs were provided wage statements that do not itemize and show all applicable hourly
27 rates in effect during the pay period or the total hours worked. Declaration of Carlos Munguia
28 (“Munguia Decl.”) ¶ 2; Declaration of Jose Esquivel (“Esquivel Decl.”) ¶ 2. Similarly, as with other

members of the Class, when Plaintiffs earned overtime or sick pay in workweeks in which they also earned non-hourly, non-discretionary compensation (e.g., incentives, bonuses, or “XATA Pay”), they were paid overtime at 1.5 times their base hourly rate of pay or sick pay at their base hourly rate of pay. Munguia Decl. ¶ 2; Esquivel Decl. ¶ 2. In sum, Plaintiffs allege they were subjected to the same policies and practices as other Class Members. Plaintiffs’ claims thus are typical to those of Class Members.

c. Plaintiffs Adequately Represented the Class.

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

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

Defendant asserts that even assuming that a class could have been certified, Plaintiffs would be unable to establish classwide liability. For example, with respect to wage statement liability, Defendant contended that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations.¹ Likewise, with respect to liability for waiting time penalties, Defendant contended that liability under Section 203 would be subject to additional defenses based on Defendant’s good faith. Finally, with respect to PAGA penalties, Defendant contended that PAGA penalties in any event be subject to discretionary reductions. Based thereon, Defendant continues to maintain that they are not liable for the allegations made by Plaintiffs or for the amounts alleged by Plaintiffs.

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

Plaintiffs believes that a class can be certified. Plaintiffs, however, also believe in the fairness of the settlement when factoring in the uncertainty and risks involved in not prevailing on the theory of liability alleged in the Complaint, the possibility of non-certification, and the potential for appeals.

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 There is always a risk that the court will not grant certification of the class. As Defendant alleges
2 that a class could not have been certified, there was at least a substantial risk that Plaintiffs would not
3 have obtained the total amount of damages alleged, and that a substantial number of complex issues
4 would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
5 and complexity of further litigation warrant granting of this motion.

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

8 Without reiterating the details in the Preliminary Approval Motion showing that the Agreement
9 (and the negotiation process that led up to it) is fair and adequate, Plaintiffs highlight the following facts.
10 The Agreement was the product of negotiation between highly able and experienced attorneys on both
11 sides who possessed the relevant data and extensive legal research which they had carefully analyzed.
12 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

13 Following notice to the Class, not a single objection to the settlement was received. Admin Decl.
14 ¶ 7. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable,
15 given that not a single Class Member has submitted an objection. *See Class Plaintiffs v. City of Seattle*,
16 955 F.2d 1268, 1291 (9th Cir. 1992). Moreover, just one request for exclusion was submitted—while
17 99.13% of the Class seeks to participate in the settlement. *Id.* ¶¶ 6, 9. The Class Member response
18 suggests the preliminarily approved settlement should now be granted final approval.

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

20 On a motion for final approval of a class action settlement under Code of Civil Procedure section
21 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair,
22 adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).
23 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of
24 the class are better served by the settlement than by further litigation.” *See Manual for Complex*
25 *Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement,
26 particularly in class actions and other complex cases, where substantial resources can be conserved by
27 avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg,
28

1 *Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
2 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

13 As the Court of Appeal has cautioned:

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

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

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

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

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

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

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

2 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
3 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
4 arm's length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,
5 including the exchange of formal and informal discovery and class data enabling Class Counsel to
6 evaluate the full extent of Defendant's potential liability. *Id.* ¶ 4. Further, Class Counsel is highly
7 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
8 significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 6-8; Declaration of
9 Simon L. Yang ("Yang Decl.") ¶¶ 5-7.

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

11 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
12 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
13 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("[P]resent
14 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
15 of not prevailing, should be compared with the amount of the proposed settlement."); *Girsh v. Jepson*,
16 521 F.2d 153, 157 (3d Cir. 1975).

17 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been
18 potentially responsible for Defendant's costs. Likewise, any other current or former employees that
19 bring individual claims also would face the uncertainty of prevailing and the possibility of paying costs
20 to Defendant. For that reason, many of these current and former employees likely would not pursue
21 claims. This lawsuit thus achieves a true benefit for the Class that they otherwise might not get or even
22 seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs
23 nor any of the Class Members will be required to pay for Defendant's litigation costs.

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

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

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

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

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

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

25 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
26 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. Lee
27 Decl. ¶ 5; Yang Decl. ¶ 3. Similarly, counsel for Defendant is in favor of this settlement. The
28 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is

entitled to significant weight in determining final approval. *See Officers for Justice*, 688 F.2d at 625; *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

IV. The Proposed Payments and Procedures Should Be Approved.

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

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

B. The Requested Class Representative Service Awards Should Be Approved.

Class Representatives Carlos Munguia and Jose Esquivel request service awards of \$10,000.00 each. The request is reasonable in light of the general releases that the Agreement requires of Plaintiffs. Independently, the request is appropriate in recognition of Plaintiffs' efforts on behalf of the Class.

With respect to the general releases, Plaintiffs did not proceed with litigation of all of their potential claims and instead strategically pursued the targeted claims in this lawsuit to maximize their ability to recover penalties for the Class and for the State. Munguia Decl. ¶ 9 ; Esquivel Decl. ¶ 9. Had Plaintiffs instead pursued all of their individual claims, Plaintiffs could have recovered additional sums. Nonetheless, for the benefit of the Class, Plaintiffs provided a general release and waiver of the protections of Civil Code section 1542 (a more extensive release than that provided by the Class at large)—even though Plaintiffs in other contexts would have sought at least a \$10,000.00 payment in exchange for a general release.

Independently, Plaintiffs actively contributed to the litigation of this case, including by providing information after the start of the litigation that enabled Plaintiffs' Counsel to identify and allege additional claims for unpaid overtime and sick pay and waiting time penalties. Indeed, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement. *Id.*

In addition to the services that they provided and the more than 50.0 hours that they each devoted to the litigation on behalf of the Class, Munguia Decl. ¶ 3; Esquivel Decl. ¶ 3, Plaintiffs took significant risks, both professionally and monetarily, in acting as Class Representatives to seek benefits for the Class. Plaintiffs understood that an individual case would have resolved much faster than a class action

(and involved much less financial risk than a class action). Munguia Decl. ¶ 4; Esquivel Decl. ¶ 4. Indeed, because the claims Plaintiffs alleged involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant had they not prevailed in this action. Despite this, Plaintiffs agreed to pursue this case on behalf of the Class.

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, Plaintiffs also face significant risk in not being able to find suitable employment—due to the filing of this case against Defendant. Plaintiffs took these risks upon themselves to the benefit of the Class. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the requested award. Moreover, this litigation has resulted in a significantly valuable benefit to the Class, and Plaintiffs took on substantial risks in helping to get this financial benefit to the Class. As such, the award should be granted to Plaintiffs for their commitment, dedication, and risks taken for this litigation.²

C. The Requested Attorneys' Fees Should Be Approved.³

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

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

² Courts have routinely granted approval of settlements containing such incentive awards. See *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative).

³ Attorneys' fees in this matter are to be split 65% to Diversity Law Group, P.C. and 35% to Polaris Law Group. Yang Decl. ¶ 10.

1 Indeed, the California Supreme Court has confirmed that the award of attorneys’ fees in common
2 fund wage and hour class action settlements may be based on the percentage method. *See Laffitte v.*
3 *Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
4 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
5 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
6 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
7 created”). Here, the percentage method supports the requested fees.

8 First, the fee award representing 33⅓% of the fund falls within the accepted range of fee awards
9 and is consistent with other rulings of other courts and comprehensive surveys of class action
10 settlements and fee awards. A fee award of 33⅓% of the fund is consistent with “empirical studies [that]
11 show that ... fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix,*
12 *Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008). Indeed, attorneys’ fees awards of up to 35% of the fund are
13 within the expected range. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their*
14 *Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and
15 concluding that “[m]ost fee awards were between 25 percent and 35 percent”).

16 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
17 Here, Plaintiffs and their counsel secured a \$250,000.00 settlement. On average, each Class Member
18 will receive approximately \$1,020.33—a result that led to no objections. Admin Decl. ¶¶ 6-13.

19 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
20 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
21 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
22 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
23 Class Counsel would be seeking \$83,333.33 in attorneys’ fees. Again, there were no objections.

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

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

1 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$250,000.00 has been
2 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
3 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
4 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
5 experienced defense firm. For such reasons, Class Counsel’s request for attorneys’ fees in the amount of
6 \$83,333.33 is fair, reasonable, and adequate.

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

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

16 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even
17 higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).⁴ Indeed, the intermediate
18 court in *Laffitte*—after finding that “2 to 4” is a reasonable range for multipliers on a cross-check—
19 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.⁵ Moreover, the Ninth Circuit has cited
20 with approval a comprehensive study of fees awarded by the percentage method showing that the
21 majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
22 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and
23 analyzing the multiplier awarded in over 30 cases).⁶

24 ⁴ *Accord Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *Sutter*
25 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
26 cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
multiplier without remand).

27 ⁵ The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

28 ⁶ Federal district courts applying California law have likewise routinely approved cross-check
multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor

1 With respect to Class Counsel's lodestar, at least 142.2 hours have been expended by just one of
2 the three Class Counsel litigating this case. Yang Decl. ¶ 9, Ex. B. Moreover, Class Counsel expects to
3 incur approximately 10.0 hours of anticipated time spent to attend the final approval hearing, secure
4 final approval, as well as respond to post-final approval phone calls and correspondence from the
5 Administrator, defense counsel, and Class Members. Yang Decl. ¶ 9. Courts are quite liberal in the
6 evidence required to prove an attorney's hours.⁷

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

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

18 Here, Mr. Yang's hourly rate is \$750. Yang Decl. ¶ 8. Plaintiffs' Counsel's skill and experience
19 justify the requested rates. As shown in the supporting declarations, Plaintiffs' Counsel has significant
20 experience in the area of employment and wage and hour class and representative actions. Plaintiffs'
21 Counsel's practices focus on representing employees in employment matters, particularly wage and hour
22 cases on a contingency basis. Lee Decl. ¶¶ 6-8; Yang Decl. ¶¶ 5-7.

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25 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
26 attorneys' fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL
27 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

28 ⁷ An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours
worked on a particular case is sufficient evidence to support an award of attorney fees, even in the
absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

1 Based on the rate and 152.2 total hours, the lodestar for just one of the three Class Counsel
2 through the finalization of this settlement will be approximately \$114,150.00. Yang Decl. ¶ 9. In sum,
3 the lodestar for just one of the three Class Counsel litigating this matter exceeds the requested attorneys'
4 fees and results in a negative multiplier of approximately 0.73. Again, the requested fees are reasonable
5 and fair, based on the factors described above. The cross-check also supports the requested fees.

6 **D. The Court Should Approve the Request for Reimbursement of Costs.**

7 The request for reimbursement of costs, in the amount of \$6,403.21 is fair and reasonable. As set
8 forth in Plaintiffs' counsel's declaration, the costs were all directly incurred in the prosecution of this
9 action. Lee Decl. ¶ 9, Ex. A. As such, this request should be approved.

10 **E. The Administrator's Fees and Costs Should Be Approved.**

11 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
12 Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Lluvia
13 Islas, the settlement administration fees expended in this matter amount to a total of \$6,000.00. Admin
14 Decl. ¶ 15, Ex. B. For such reasons, it is requested that the Administrator's fees be approved.

15 **V. Notice to the LWDA Has Been Provided.**

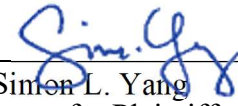
16 On June 1, 2023, Plaintiffs uploaded the Order Granting Plaintiffs' Motion for Preliminary
17 Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 10. Concurrent with the filing
18 of this motion, Plaintiffs also has uploaded the final approval motion to the LWDA. *Id.*

19 **CONCLUSION**

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

23 DATED: September 13, 2023

DIVERSITY LAW GROUP, P.C.

24 By: 

Simon L. Yang

25 Attorneys for Plaintiffs
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On September 13, 2023, I served the following document(s) described as:

- 1. PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 4. DECLARATION OF LLUVIA ISLAS WITH RESPECT TO NOTICE AND SETTLEMENT ADMINISTRATION**
- 5. DECLARATION OF CARLOS MUNGUIA IN SUPPORT OF PLAINTIFFS MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 6. DECLARATION OF JOSE ESQUIVEL IN SUPPORT OF PLAINTIFFS MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 7. [PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

Gregory C. Cheng Carolyn B. Hall Ogletree, Deakins, Nash, Smoak & Stewart, P.C. One Embarcadero Center, Suite 900 San Francisco, California 94111	<i>Attorneys for Defendant Blue Line Foodservice Distribution</i> VIA ELECTRONIC SERVICE THROUGH ONELEGAL E-FILING SYSTEM Gregory.cheng@ogletree.com Carolyn.hall@ogletree.com mayra.padilla@ogletree.com patricia.hernandez@ogletreedeakins.com
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1 Department of Industrial Relations
2 Labor and Workforce Development Agency

VIA ELECTRONIC SERVICE LWDA
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 X BY ELECTRONIC SERVICE: I caused the above-entitled document(s) to be served through the OneLegal E-Filing System at the website www.onelegal.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.

 X BY ELECTRONIC SERVICE: I caused the above-entitled document(s) to be served through the LWDA's Private Attorney General Act (PAGA) – Filing System at the website <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>, addressed to the LWDA as it appears on the electronic service list above. 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 13, 2023, at Los Angeles, California.


Erika Mejia