DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiffs Adams and Tatum

[*Additional Counsel Listed on Following Page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MERCED

JASON ADAMS, RAUL ALVARADO, EMMA SARWAR, SERGIO RODRIGUEZ, and SHENITA TATUM, as private attorneys general and as an individual and on behalf of all others similarly situated, Plaintiffs, vs. SCHOLLE IPN PACKAGING, INC., a Nevada corporation; SCHOLLE PACKAGING, INC., a Nevada corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 20CV-02350 **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 Simon L. Yang; Declaration of William L. Marder; Declaration of Graham B. LippSmith; Declaration of Brian St. John; Declaration of Jason Adams; Declaration of Raul Alvarado; Declaration of Emma Sarwar; Declaration of Sergio Rodriguez; Declaration of Shenita Tatum; Declaration of Yami Burns; [Proposed] Order and Final Judgment*] Date: May 8, 2025 Time: 8:15 a.m. Department: 8 Complaint Filed: August 17, 2020 FAC Filed: August 30, 2024

Edwin Aiwazian (SBN 232943), edwin@calljustice.com
Joanna Ghosh (SBN 272479), joanna@calljustice.com
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Facsimile: (818) 265-1021

Graham B. LippSmith (SBN 221984), g@lippsmith.com
MaryBeth LippSmith (SBN 223573), mb@lippsmith.com
Celene Chan Andrews (SBN 260267), cca@lippsmith.com
Jaclyn L. Anderson (SBN 258609), jla@lippsmith.com
LIPPSMITH LLP
555 S. Flower Street, Suite 3000
Los Angeles, California 90071
Tel: (213) 344-1820 / Fax: (213) 513-2495

Attorneys for Plaintiffs Alvarado, Sarwar, and Rodriguez

TO THE COURT, DEFENDANTS, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 8, 2025, at 8:15 a.m., or as soon thereafter as the matter may be heard in Courtroom 8 of the above-entitled court located at 627 West 21st Street Merced, California 95340, Plaintiffs Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum will and hereby do move for an Order:

1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement (the "Agreement") in this action;
2. approving distribution of the settlement funds to Settlement Class Members pursuant to the terms of the Agreement;
3. approving Plaintiffs' request for a service award of $10,000.00 to each Class Representative pursuant to the terms of the Agreement;
4. approving Class Counsel's request for an award of attorneys' fees of 33⅓% of the $1,957,410.00 Gross Settlement Amount, or $652,470.00, and reimbursement of litigation costs of $21,069.19 pursuant to the terms of the Agreement;
5. approving Plaintiffs' request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of $10,500.00 pursuant to the terms of the Agreement;
6. approving Plaintiffs' request for payment to the Labor & Workforce Development Agency of $90,000.00 pursuant to the terms of the Agreement, and payment to PAGA Employees of $30,000.00 to be distributed pro rata based on the number of relevant pay periods worked; 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. The overwhelmingly positive Class response—as shown by the lack of any objections to the settlement (as well as the 100% class participation rate)—supports that the settlement is fair, reasonable, and adequate, and should be granted final approval.

This motion will be based on the attached Memorandum of Points and Authorities, the supporting Declarations of Simon L. Yang, William L. Marder, Graham B. LippSmith, Brian St. John, Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, Shenita Tatum, and Yami Burns of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: April 16, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________

Simon L. Yang
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

SUMMARY OF MOTION

On a classwide basis and as proxies for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Plaintiffs Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum sued Defendants Scholle Packaging, Inc. and Scholle IPN Packaging, Inc. (now known as SIG Packaging LLC) for (1) unpaid minimum wages and overtime; (2) failure to provide meal and rest periods; (3) unpaid sick pay wages; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; and (6) failure to reimburse business expenses.

Plaintiffs now seek the Court's final approval of the Joint Stipulation of Class Action and PAGA Settlement (the "Agreement"). The Agreement provides for a $1,957,410.00 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 Employees, and costs of settlement administration are to be paid. The net settlement fund remaining after these deductions will be paid to Settlement Class Members.

The history of this litigation was previously detailed in Plaintiffs' Preliminary Approval Motion. On January 9, 2025, the Court granted preliminary approval of this settlement. The Court directed distribution of the Notice of Class Action Settlement ("Class Notice") and scheduled a May 8, 2025 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 671 Class Members. Declaration of Yami Burns on behalf of Phoenix Settlement Administrators ("Admin Decl.") ¶ 5. No objections were made. *Id.* ¶ 9. No requests for exclusion were submitted. *Id.* ¶ 8. As such, there is a 100% participation rate. *Id.* ¶ 11. Based on the Class Member response, an inference can be made that the Class finds the settlement 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 $1,957,410.00;
- The settlement is fair given that Class Members will receive (*after* deductions for fees, costs, etc.) a substantial amount of money (on average, each Settlement Class Member will receive approximately $1,644.37, and each PAGA Employee will additionally receive approximately $53.96, *see* Admin Decl. ¶¶ 14-15);

- The allocation reflects payments to Class Members in proportion to the number of relevant workweeks worked by each Class Member during the Class Period (and pay periods worked by each PAGA Employee during the PAGA Period);

- Plaintiffs conducted significant investigation in this case, including substantial formal and informal discovery and exchanges of information by Plaintiffs and Defendants of class data for the entire class necessary for Plaintiffs to fully evaluate this case; and

- California's LWDA will also be the beneficiary of this settlement as it will receive $90,000.00 if this settlement were to be granted final approval.

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

DISCUSSION

I. Class Members Were Provided Notice of the Settlement.

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that Phoenix Settlement Administrators would serve as the Administrator. As specified in the Agreement, the Preliminary Approval Order also contemplated that the Class Notice would be sent to all Class Members by first class mail, enable Class Members to contact Class Counsel, seek additional information regarding the settlement, leave questions for the Administrator, and update their addresses.

As the Admin Declaration states, notice was provided to Class Members as required by the Preliminary Approval Order. On January 23, 2025, the Administrator received a Class Member mailing list from Defendants' counsel that included 671 Class Members. Admin Decl. ¶ 3. On January 23, 2025, the Administrator conducted a National Change of Address ("NCOA") search to update the Class Member mailing list of addresses as accurately as possible. *Id.* ¶ 4. On February 6, 2025, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id*. ¶ 5. None of the Class Notices were returned as undeliverable. *Id.* ¶¶ 6-7.

Plaintiffs provided the "best notice practicable" in this case as necessary to protect the due process rights of class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (providing "best notice practicable" with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (explaining individual 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").

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

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

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

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

1. The Class Is Ascertainable.

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

Here, the Class includes all current or former hourly-paid non-exempt employees who worked for SIG Packaging LLC, Scholle IPN Packaging, Inc., or Scholle Packaging, Inc. in the State of California at any time from October 24, 2015, through September 28, 2024 (the "Class Period"). Agreement § 1.5. There are 671 individuals that comprise the Class. Admin Decl. ¶ 3.[1] This is more than the minimum required to certify a class. Within the context of manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Here, Class Members have already been identified and have already been sent notice.

2. There Is a Community of Interest.

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

[1] There are also 556 PAGA Employees. Admin Decl. ¶ 15.

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

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

Here, Plaintiffs allege that Defendants, as a matter of common corporate policy, practice, or procedure, allegedly (1) failed to pay minimum wages and overtime; (2) failed to provide meal and rest periods; (3) failed to pay sick pay wages; (4) failed to timely pay wages; (5) failed to provide accurate itemized wage statements; and (6) failed to reimburse business expenses. While Defendants deny that liability could be established on a class-wide basis and contend instead that liability would need to be conducted on a case-by-case basis, common questions as to the legality of Defendants' common wage-and-hour policies and practices predominate Plaintiffs' theories of liability.

b. Plaintiffs' Claims Are Typical of the Class Claims.

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

Plaintiffs were employed by Defendants and allege that they worked under Defendants' common wage-and-hour policies and practices and were compensated based on Defendants' common payroll practices. Declaration of Jason Adams ("Adams Decl.") ¶ 2; Declaration of Raul Alvarado ("Alvarado Decl.") ¶ 2; Declaration of Emma Sarwar ("Sarwar Decl.") ¶ 2; Declaration of Sergio Rodriguez ("Rodriguez Decl.") ¶ 2; Declaration of Shenita Tatum ("Tatum Decl.") ¶ 2. For example, Plaintiffs allege that Defendants failed to correctly calculate their regular rates of pay for purposes paying overtime when they earned overtime and non-discretionary compensation like "Incentive" wages, were not timely paid all due wages, and were not provided accurate itemized wage statements. *Id.* In sum, Plaintiffs allege that 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.

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

B. Defendants' Allegations and Position on Class Certification Support Approval.

Defendants assert that even assuming that a class could have been certified, Plaintiffs would be unable to establish classwide liability. Defendants provided Plaintiffs with information about various defenses, including several based on factual disputes regarding Plaintiffs' allegations. Moreover, even if Plaintiffs prevailed on the merits, Defendants contested the extent of liability. For example, with respect to liability for underpaid wages, overtime, and additional hours of regular rate wages, Defendants contend that there is little evidence of widespread failure to pay wages or overtime and that the violation rate for meal breaks was extremely low. Defendants further contend that they would not be subject to Section 203 penalties, based on good-faith defenses.[2] Likewise, with respect to wage statement liability, Defendants contend that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations. Finally, with respect to PAGA penalties, Defendants contend that the circumstances are such that PAGA penalties would be subject to discretionary reductions. Based thereon, Defendants continue 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 believe 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 theories of

[2] Except as otherwise noted, all "Section" references are to the Labor Code.

liability alleged in the Complaint, the possibility of non-certification, and the potential for appeals.

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

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

Without reiterating the details in the Preliminary Approval Motion showing that the Agreement (and the negotiation process that led up to it) is fair and adequate, Plaintiffs highlight the following facts. The Agreement was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. Declaration of Simon L. Yang ("Yang Decl.") ¶¶ 3-4.

Following notice to the Class, not a single objection to the settlement has been received. Admin Decl. ¶ 9. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992). Indeed, the Class Member response suggests the preliminarily approved settlement should now be granted final approval.

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

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

Although the Court possesses "broad discretion" in determining that a proposed class action 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. *See Officers for Justice*, 688 F.2d at 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*., 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig*., 720 F. Supp. 1379 (D. Ariz. 1989), *aff'd sub nom.; City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 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").

As the Court of Appeal has cautioned:

> 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.

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

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

A. The Settlement is Presumed to Be Fair

The Court should begin 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 v. Ford Motor Co., 48 Cal. App. 4th 1794, 1802 (1996); *accord*, *Ellis v. Naval Air Rework*

Facility, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm's length. Yang Decl. ¶¶ 3-4. Class Counsel engaged in extensive factual investigation before settling, including the exchange of significant formal and informal discovery and class data enabling Class Counsel to evaluate the full extent of Defendants' potential liability. *Id.* ¶ 3. Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 5-9; Declaration of William L. Marder ("Marder Decl.") ¶¶ 3-10; Declaration of Graham B. LippSmith ("LippSmith Decl.") ¶¶ 2-3; Declaration of Brian St. John ("St. John Decl.") ¶¶ 12-16.

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

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

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

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

C. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendants Favor Final Approval.

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

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

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

D. The Opinion of Experienced Counsel Favors Final Approval.

Class Counsel support the settlement as fair, reasonable, and adequate, as in the best interest of the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. Yang Decl. ¶ 4; Marder Decl. ¶ 2; LippSmith Decl. ¶ 9; St. John Decl. ¶ 9. Similarly, counsel for Defendants is in favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *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 Defendants or be diverted to a *cy pres* recipient.

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

Class Representatives Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum each request a service award of $10,000.00. Plaintiffs met with Class Counsel to provide substantive information regarding Defendants' practices. Adams Decl. ¶¶ 3-4; Alvarado Decl. ¶¶ 3-4; Sarwar Decl. ¶¶ 3-4; Rodriguez Decl. ¶¶ 3-4; Tatum Decl. ¶¶ 3-4. Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement. *Id.*

In addition to the invaluable services that they provided and the time they devoted to the litigation on behalf of the Class, Plaintiffs took significant risks, both professionally and monetarily, in acting as Class Representative to seek benefits for the Class. Adams Decl. ¶¶ 3-5; Alvarado Decl. ¶¶ 3-5; Sarwar Decl. ¶¶ 3-5; Rodriguez Decl. ¶¶ 3-5; Tatum Decl. ¶¶ 3-5. Because the claims Plaintiffs alleged involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendants had they not prevailed in this action. Moreover, Plaintiffs understood that individual cases would have resolved much faster than a class action and involved much less financial risk than a class 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 (particularly cases of this nature), the Class Representatives also face significant risk in not being able to find suitable employment—due to the filing of this case against Defendants. 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 awards. 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.

Equally important, Plaintiffs provided general releases and waivers of the protections of Civil Code section 1542. Agreement § 6.3. These are more extensive releases than those provided by the Class at large and also support the request for the awards.[3] Indeed, had Plaintiffs pursued individual claims as opposed to class claims, a general release of Plaintiffs' individual claims would have required a larger payment than the requested service awards.

C. The Requested Attorneys' Fees Should Be Approved.

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 the 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). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

The California Supreme Court has provided guidance regarding the award of attorneys' fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common

[3] 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).

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

First, the fee award representing 33⅓% of the fund clearly falls within that range and is consistent with other rulings of other courts and comprehensive surveys of class action settlements and fee awards. Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal services." *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent").[4]

Second, the results delivered by Class Counsel also support the requested percentage of the fund. Here, Plaintiffs and his counsel secured a $1,957,410.00 settlement and zero Class Members chose to object. No Class Members chose to opt out—resulting in a 100% class participation rate.

Third, "the response of the class members to attorneys' fee notice, though not decisive, is relevant to the … reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the market" for fees is well supported. *Id*. at 1269. Here, the Class Notice specifically notified the Class that Class Counsel would be seeking $652,470.00 in attorneys' fees. Again, there were no objections.

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

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

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

495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of $1,957,410.00 has been created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendants who had retained a premier and highly experienced defense firm. For such reasons, Class Counsel's request for attorneys' fees in the amount of $652,470.00 is fair, reasonable, and adequate.

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

The request for reimbursement of costs, in the amount of $21,069.19 is fair and reasonable. As set forth in Plaintiffs' counsel's declaration, the costs were all directly incurred in the prosecution of this action. Yang Decl. ¶ 10, Exs. A, B ($8,096.43 & $1,574.68); LippSmith Decl. ¶ 10 ($8,570.35); St. John Decl. ¶ 17, Ex. A ($2,827.73). As such, this request should be approved.

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

Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Yami Burns, the settlement administration fees expended in this matter amount to a total of $10,500.00. Admin Decl. ¶ 17, Ex. B. For such reasons, it is requested that the Administrator's fees be approved.

V. Notice to the LWDA Has Been Provided.

On January 10, 2025, Plaintiffs uploaded the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement to the LWDA's website. Yang Decl. ¶ 11. Concurrent with the filing of this motion, Plaintiffs also have uploaded the final approval motion to the LWDA. *Id*.

CONCLUSION

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

DATED: April 16, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Simon L. Yang
Attorneys for Plaintiff