

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
Tel./Fax: (213) 488-6555 / (213) 488-6554

THE CARTER LAW FIRM
Roger R. Carter (State Bar No. 140196)
roger@carterlawfirm.net
23 Corporate Plaza Drive, Suite 150
Newport Beach, California 92660
Tel./Fax: (888) 914-6900 / (949) 629-2501

THE PHELPS LAW GROUP
Marc H. Phelps (State Bar No. 237036)
marc@phelpsllawgroup.com
23 Corporate Plaza Drive, Suite 150
Newport Beach, California 92660
Tel./Fax: (949) 234-8514 / (949) 629-2501

Attorneys for Plaintiff and the Class

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

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

Plaintiffs,

vs.

CONTROL AIR ENTERPRISES LLC, a
Delaware limited liability company; CONTROL
AIR CONDITIONING CORP., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2020-01155488-CU-OE-CXC

[Hon. Lon F. Hurwitz, Department CX103]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Roger C. Carter; Declaration of Marc H.
Phelps; Declaration of Tara Joy; Declaration of
Yami Burns; [Proposed] Order and Final
Judgment]*

Date: August 25, 2023
Time: 1:30 p.m.
Department: CX103

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

2 **PLEASE TAKE NOTICE** that on August 25, 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, Plaintiff, Tara Joy, will and hereby does seek an Order:

- 5 1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement (the
6 “Agreement”) in this action;
- 7 2. approving distribution of the settlement funds to Settlement Class Members pursuant to the
8 terms of the Agreement;
- 9 3. approving Plaintiff’s request for a service award of \$10,000.00 to the Class Representative
10 pursuant to the terms of the Agreement;
- 11 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
12 \$750,000.00 Gross Settlement Amount, or \$250,000.00, and reimbursement of litigation
13 costs of \$7,402.29 pursuant to the terms of the Agreement;
- 14 5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix
15 Settlement Administrators in the amount of \$9,500.00 pursuant to the terms of the
16 Agreement;
- 17 6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency of
18 \$15,000.00 pursuant to the terms of the Agreement; and
- 19 7. entering final judgment as to all members of the Settlement Class in this action.

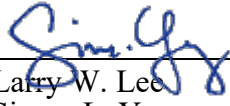
20 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
21 Court approval of the settlement of a purported class action and allows the Court to grant final
22 certification of a class for settlement purposes. The overwhelmingly positive Class response—as shown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

25 This motion will be based on the attached Memorandum of Points and Authorities, the
26 supporting Declarations of Larry W. Lee, Simon L. Yang, Roger C. Carter, Marc H. Phelps, Plaintiff
27
28

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

3 DATED: August 3, 2023

DIVERSITY LAW GROUP, P.C.

4
5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

On August 17, 2020, Plaintiff, Tara Joy, initiated this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendants Control Air Enterprises LLC and Control Air Conditioning Corp. On behalf of a putative class of current and former employees of Defendants in the State of California and as a proxy for the State, the Action pursues class action and PAGA claims for Defendants’ alleged failures to (i) furnish Plaintiff and other employees with wage statements showing the name and address of the legal entity that was their employer and (ii) pay Plaintiff and other employees their accrued vacation or “PTO” when their employments were terminated.

Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”). The Agreement provides for a \$750,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, a service award to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”), 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 Plaintiff’s Preliminary Approval Motion. On April 28, 2023, the Court held a hearing on preliminary approval of this settlement. On May 3, 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 355 Class Members. Declaration of Yami Burns (“Admin Decl.”) ¶ 5. No objections were submitted. *Id.* ¶ 9. Nor were any requests for exclusion received. *Id.* ¶ 8. As such, there is a 100% participation rate. *Id.* ¶ 11. 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 Plaintiff’s Preliminary Approval Motion also support final approval of the settlement:

- The settlement provides a total settlement sum of \$750,000.00;
- 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 \$1,291.01, *see* Admin Decl. ¶¶ 14, 15);

- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Class Members in proportion to the number of relevant workweeks worked by each Class Member during the Class Period;
- Plaintiff conducted significant investigation in this case, including formal discovery and informal exchanges of information by Plaintiff and Defendants of class data for the entire class necessary for Plaintiff to fully evaluate this case; and
- California’s LWDA will also be the beneficiary of this settlement as it will receive \$15,000.00, should this settlement 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. It also contemplated that the Class Notice would be sent to all Class Members by first class mail, as specified in the Agreement.

As the Admin Declaration states, notice was provided to Class Members, as required by the Preliminary Approval Order. On May 12, 2023, the Administrator received a Class Member mailing list from Defendants’ counsel that included 355 Class Members. Admin Decl. ¶ 3. On May 19, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 5. From the date of mailing, four Class Notices were returned and then re-mailed to an updated address obtained after performing an address trace. *Id.* ¶ 6. None of the Class Notices remain undeliverable. *Id.* ¶ 7. The Class Notice enabled Class Members to contact Class Counsel, seek additional information regarding the settlement, leave questions for the Administrator, and update their addresses.

Plaintiff 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

1 which is “reasonably calculated, under all the circumstances, to apprise interested parties of the
2 pendency of the action and afford them an opportunity to present their objections”).

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

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

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

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

12 **1. The Class Is Ascertainable.**

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

16 Here, “Class Members” include all members of the Wage Statement Class and Vacation Class:
17 (1) all non-union employees who were issued wage statements from May 29, 2019, through August 9,
18 2020 (the “Wage Statement Class”); and (2) all employees whose employment with Control Air
19 Conditioning Corp. ended on May 31, 2019 (the “Vacation Class”). Agreement ¶ 7.

20 There are 355 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the
21 minimum required to certify a class. Within the context of manageability, the issue is whether there
22 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at
23 1274-75. Here, Class Members have already been identified and have already been sent notice.

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

25 The “community of interest” requirement embodies three separate factors: (1) predominant
26 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
27 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
28 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

6 Here, Plaintiff alleges that Defendants, as a matter of common corporate policy, practice, or
7 procedure, violated Section 226(a) by failing to furnish employees with wage statements that itemize
8 and show the name and address of the legal entity that was the employer and violated Sections 201-203
9 and 227.3 by failing to pay all accrued wages including accrued vacation upon the end of employment
10 with Control Air Conditioning Corp. on May 31, 2019.¹ While Defendants deny that liability could be
11 established on a class-wide basis and contend instead that liability would need to be conducted on a
12 case-by-case basis, common questions predominate Plaintiff’s theories of liability.

13 **b. Plaintiff’s Claims Are Typical of the Class Claims.**

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

21 Plaintiff was employed by Defendants and alleges that she was subjected to the same payroll
22 policies and wage statement practices as all other Class Members. Specifically, like other members of
23 the Class, when Plaintiff’s employment with Control Air Conditioning Corp. ended on May 31, 2019,
24 Plaintiff was not paid her accrued paid time off (“PTO”). Declaration of Tara Joy (“Joy Decl.”) ¶ 2. Also
25 like other members of the Class, when Control Air Enterprises LLC began employing Plaintiff as of
26 June 1, 2019, Plaintiff was provided wage statements that did not show the name and address of Control
27 Air Enterprises LLC (but instead showed “CAE Non Union PR,” without any address). *Id.*

28

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

1 In sum, Plaintiff alleges she was subjected to the same policies and practices as other Class
2 Members. Plaintiff's claims thus are typical to those of Class Members.

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

4 The class representative, through qualified counsel, must be capable of "vigorously and
5 tenaciously" protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
6 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
7 been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class,
8 including providing information and documents to her counsel and reviewing pleadings in this case. Joy
9 Decl. ¶¶ 3-5. For such reasons, Plaintiff has adequately represented Class Members.

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

11 Defendants assert that even assuming that a class could have been certified, Plaintiff would be
12 unable to establish classwide liability. For example, with respect to wage statement liability, Defendants
13 contended that liability under Section 226(e) would be subject to additional defenses requiring proof of
14 injuries resulting from knowing and intentional violations. Likewise, with respect to liability for waiting
15 time penalties, Defendants contended that liability under Section 203 would be subject to additional
16 defenses based on Defendants' good faith. Finally, with respect to PAGA penalties, Defendants
17 contended that PAGA penalties in any event be subject to discretionary reductions. Based thereon,
18 Defendants continue to maintain that they are not liable for the allegations made by Plaintiff or for the
19 amounts alleged by Plaintiff.

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

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

24 There is always a risk that the court will not grant certification of the class. As Defendants allege
25 that a class could not have been certified, there was at least a substantial risk that Plaintiff would not
26 have obtained the total amount of damages alleged, and that a substantial number of complex issues
27 would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
28 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, Plaintiff highlights 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 Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

Following notice to the Class, not a single request for exclusion or objection to the settlement was received. Admin Decl. ¶¶ 8-9. 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

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

6 As the Court of Appeal has cautioned:

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

14 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

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

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

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

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

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

27 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
28 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
arm’s length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,
including the exchange of formal and informal discovery and class data enabling Class Counsel to
evaluate the full extent of Defendants’ potential liability. *Id.* ¶ 4. 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.* ¶¶ 6-8; Declaration of Simon L. Yang (“Yang Decl.”) ¶¶ 4-6; Declaration of Roger C. Carter (“Carter Decl.”) ¶¶ 3-11; Declaration of Marc H. Phelps (“Phelps Decl.”) ¶¶ 3-7.

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).

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendants’ costs. Likewise, any other current or former employees that 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 Plaintiff 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 Class Representative.

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).

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

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

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

19 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
20 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. Lee
21 Decl. ¶ 5; Yang Decl. ¶ 2; Carter Decl. ¶ 8; Phelps Decl. ¶ 8. Similarly, counsel for Defendants is in
22 favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair,
23 reasonable, and adequate is entitled to significant weight in determining final approval. *See Officers for*
24 *Justice*, 688 F.2d at 625; *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

25 **IV. The Proposed Payments and Procedures Should Be Approved.**

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

27 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
28 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 Representative Tara Joy requests a service award of \$10,000.00. The request is reasonable in light of the general release that the Agreement requires of Plaintiff. Independently, the request is appropriate in recognition of Plaintiff's efforts on behalf of the Class and the State.

With respect to the general release, Plaintiff did not proceed with litigation of all of her potential claims and instead strategically pursued the targeted claims in this lawsuit to maximize her ability to recover penalties for the Class and for the State. Joy Decl. ¶ 7. Had Plaintiff instead pursued all of her individual claims, Plaintiff could have recovered additional sums. Nonetheless, for the benefit of the Class, Plaintiff 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 Plaintiff in other contexts would have sought at least a \$10,000.00 payment in exchange for a general release.

Independently, Plaintiff actively contributed to the litigation of this case, including by providing information after the start of the litigation that enabled Plaintiff's Counsel to identify and allege additional claims for waiting time penalties based on the transition of Plaintiff and others' employments from Control Air Conditioning Corp. to Control Air Enterprises LLC. Joy Decl. ¶ 3. Indeed, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. *Id.*

In addition to the services that she provided and the more than 50.0 hours she devoted to the litigation on behalf of the Class, Joy Decl. ¶ 3, Plaintiff took significant risks, both professionally and monetarily, in acting as Class Representative to seek benefits for the Class. For example, Plaintiff gave up her own financial gain: in order to pursue claims on behalf of the Class, Plaintiff did not accept a severance agreement (or the consideration offered) from Defendants at the end of her employment. *Id.* ¶ 4. Moreover, Plaintiff understood that an individual case would have resolved much faster than a class action (and involved much less financial risk than a class action). Indeed, because the claims Plaintiff alleged involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendants had she not prevailed in this action. Despite this, Plaintiff 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), Plaintiff also faces significant risk in not being able to find suitable employment—due to the filing of this case against Defendants. Plaintiff took these risks upon herself 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 Plaintiff took on substantial risks in helping to get this financial benefit to the Class. As such, the award should be granted to Plaintiff for her 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).

Indeed, the California Supreme Court has confirmed that the award of attorneys’ fees in common fund wage and hour class action settlements may be based on 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

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 40% to Diversity Law Group, P.C., 30% to The Carter Law Firm, and 30% to The Phelps Law Group. Yang Decl. ¶ 9.

1 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
3 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
4 created”). Here, the percentage method supports the requested fees.

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

13 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
14 Here, Plaintiff and her counsel secured a \$750,000.00 settlement. On average, each Class Member will
15 receive approximately \$1,291.01—a result that led to no objections or exclusions. Admin Decl. ¶¶ 8-15.

16 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
17 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
18 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
19 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
20 Class Counsel would be seeking \$250,000.00 in attorneys’ fees. Again, there were no objections.

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

23 No one expects a lawyer whose compensation is contingent upon his success to charge, when
24 successful, as little as he would charge a client who had agreed to pay for his services, regardless
25 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.

26 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$750,000.00 has been
27 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
28 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 \$250,000.00 is fair, reasonable, and adequate.

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

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

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

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

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

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 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL 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).

1 With respect to Class Counsel's lodestar, at least 235.1 hours have been expended by Class
2 Counsel litigating this case. Lee Decl. ¶ 10, Ex. B (33.3); Yang Decl. ¶ 8, Ex. A (152.8); Carter Decl. ¶
3 14, Ex. B (42.9); Phelps Decl. ¶ 9 (49.0). Moreover, Class Counsel expects to incur approximately 10.0
4 hours of anticipated time spent to attend the final approval hearing and secure final approval, as well as
5 respond to post-final approval phone calls and correspondence from the administrator, defense counsel,
6 and Class Members. Yang Decl. ¶ 8. Courts are quite liberal in the evidence required to prove an
7 attorney's hours.⁷

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

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*, 22 Cal. 4th 1084, 1095 (2000).
16 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill
17 and experience, the nature of the work performed, the relevant area of expertise and the attorney's
18 customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

19 Here, Mr. Lee's hourly rate is \$800. Lee Decl. ¶ 10. Mr. Yang and Mr. Carter's hourly rates are
20 \$750. Yang Decl. ¶ 7; Carter Decl. ¶ 14, Ex. B. Mr. Phelps's hourly rate is \$600. Phelps Decl. ¶ 9.
21 Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the supporting
22 declarations, Plaintiff's Counsel has significant experience in the area of employment and wage and
23 hour class and representative actions. Plaintiff's Counsel's practices focus on representing employees in
24 employment matters, particularly wage and hour cases on a contingency basis. Lee Decl. ¶¶ 6-8; Yang
25 Decl. ¶¶ 4-6; Carter Decl. ¶¶ 3-11; Phelps Decl. ¶¶ 3-7.

26
27 ⁷ Detailed time records are not required; an attorney's testimony alone may suffice: "Testimony of an
28 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).

Based on the rates and 245.1 total hours, the lodestar for Class Counsel through the finalization of this settlement will be approximately \$178,140.00. Lee Decl. ¶ 10; Yang Decl. ¶ 8; Carter Decl. ¶ 14; Phelps Decl. ¶ 9. The requested attorneys' fees result in a modest multiplier of approximately 1.40. Again, the requested fees are reasonable and fair, based on the factors described above. The cross-check and modest multiplier support the fee requested.

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

The request for reimbursement of costs, in the amount of \$7,402.29 is fair and reasonable. As set forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this action. Lee Decl. ¶ 9, Ex. A (\$4,655.34); Carter Decl. ¶ 13, Ex. A (\$1,501.95); Phelps Decl. ¶ 10 (\$1,245.00). 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 \$9,500.00. Admin Decl. ¶ 16, Ex. B. For such reasons, it is requested that the Administrator's fees be approved.

V. Notice to the LWDA Has Been Provided.

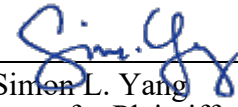
Plaintiff has uploaded the Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 11. Concurrent with the filing of this motion, Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

CONCLUSION

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

DATED: August 3, 2023

DIVERSITY LAW GROUP, P.C.

By: 

Simon L. Yang

Attorneys for Plaintiff