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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ALAMEDA**

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

Plaintiff,

vs.

HAYWARD SISTERS HOSPITAL dba ST.  
ROSE HOSPITAL, a California corporation; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. RG20074747

[Hon. Brad Seligman, Department 23]

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

*[Filed concurrently with Declaration of Larry W.  
Lee; Declaration of Simon L. Yang; Declaration  
of William L. Marder; Declaration of Joseluis  
Davila; Declaration of Kevin Lee; [Proposed]  
Order and Final Judgment]*

Date: April 11, 2023  
Time: 3:00 p.m.  
Department: 23

**Reservation No.: A-20074747-001**

Complaint Filed: September 23, 2020

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

**PLEASE TAKE NOTICE** that on April 11, 2023, at 3:00 p.m., or as soon thereafter as the matter may be heard in Department 23, of the above-entitled court located at 1221 Oak Street, Oakland, California 94612, Plaintiff, Joseluis Davila, will and hereby does seek an Order:

1. granting final approval to the Joint Stipulation of Class Action Settlement and Release (the “Agreement”) in this action;
2. approving distribution of the settlement funds to Settlement Class Members and Aggrieved Employees pursuant to the terms of the Agreement;
3. approving Plaintiff’s request for a service award of \$10,000.00 to the 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 \$1,008,000.00 Gross Settlement Amount, or \$336,000.00, and reimbursement of litigation costs of \$5,047.71 pursuant to the terms of the Agreement;
5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$14,000.00 pursuant to the terms of the Agreement;
6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency of \$108,000.00 pursuant to the terms of the Agreement; and
7. entering final judgment as to all members of the Settlement Class and the State of California (including the Labor and Workforce Development Agency) in this action.

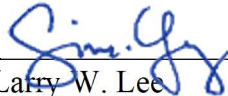
This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for Court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. The overwhelmingly positive Class response—as shown by the lack of any objections to the settlement and also the lack of any opt outs—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 Larry W. Lee, Simon L. Yang, William L. Marder, Plaintiff Joseluis Davila,

1 and Kevin Lee 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: March 17, 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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## SUMMARY OF MOTION

On September 23, 2020, Plaintiff, Joseluis Davila, filed this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, Hayward Sisters Hospital dba St. Rose Hospital. The lawsuit alleges Defendant failed to furnish wage statements that accurately show the total hours worked to non-exempt employees who were paid shift differential wages.

Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action Settlement and Release (the “Agreement”). The Agreement provides for a \$1,008,000.00 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 and Aggrieved Employees.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. On December 13, 2022, the Court preliminarily approved this settlement. It 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 1,006 Class Members. Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. To date, no requests for exclusion have been received. *Id.* ¶ 8.<sup>1</sup> To date, no objections have been filed. *Id.* ¶ 9. 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 \$1,008,000.00;

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<sup>1</sup> Because of a delay in receiving class data (that was not received from Defendant until after Plaintiff appeared ex parte to compel Defendant’s compliance with the Preliminary Approval Order), the deadline for requesting exclusion or objecting does not expire until March 25, 2023. Admin Decl. ¶¶ 3, 8-9. Plaintiff will submit a supplemental declaration from the Administrator upon the conclusion of the Class Member response period.

- 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 \$495.98, and each Aggrieved Employee will additionally receive another  
4       \$35.79, *see* Admin Decl. ¶¶ 14, 15);
- 5       ▪ Class Members did not need to submit claim forms to participate in the settlement, but are  
6       being paid automatically;
- 7       ▪ The allocation reflects that payment of claims will be paid to all Class Members in  
8       proportion to the number of relevant wage statements received by each Class Member during  
9       the Class Period;
- 10       ▪ Plaintiff conducted significant investigation in this case, including formal and informal  
11       discovery and exchanges of information by Plaintiff and Defendant of class data for the  
12       entire class necessary for Plaintiff to fully evaluate this case;
- 13       ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained for fees of  
14       \$14,000.00 only; and
- 15       ▪ California’s LWDA will also be the beneficiary of this settlement as it will receive  
16       \$108,000.00, should this settlement be granted final approval.

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

## 18 DISCUSSION

### 19 I. Class Members Were Provided Notice of the Settlement.

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

24 As clearly stated in the Admin Declaration, notice was provided to Class Members, as required  
25 by the Preliminary Approval Order. On February 3, 2023, the Administrator received a Class Member  
26 mailing list from Defendant’s counsel that included 1,006 Class Members. Admin Decl. ¶ 3. On  
27 February 8, 2023, each of the persons identified on the mailing list were sent the Class Notice via first  
28 class mail. *Id.* ¶ 5. From the date of mailing, 49 Class Notices were returned and were then re-mailed to  
an updated address after performing an address trace. *Id.* ¶ 6. None of the Class Notices remain  
undeliverable. *Id.* ¶ 7. The Class Notice delivered to all 1,006 Class Members provided Class Members  
with Class Counsel’s contact information, where they could further seek information regarding the  
settlement, leave questions for the Administrator, and update their addresses.

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

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

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

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

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

#### 18 **1. The Class Is Ascertainable.**

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

22 Here, the Class includes any current or former nonexempt employees who worked for Defendant  
23 in the State of California and who were paid shift differential wages at any time during the Class Period.  
24 Agreement § 1.5. The Class Period is from September 23, 2019, through March 29, 2022. *Id.* § 1.7.

25 There are 1,006 individuals that comprise the Class. Admin Decl. ¶ 3.<sup>2</sup> This is more than the  
26 minimum required to certify a class. Within the context of manageability, the issue is whether there

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27  
28 <sup>2</sup> All Class Members are also Aggrieved Employees. Agreement § 1.5. The PAGA Period is the same as  
the Class Period. *Id.* § 1.7.

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).

### **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, Plaintiff alleges that Defendant, as a matter of common corporate policy, practice, or procedure, failed to furnish wage statements that accurately show the total hours worked to non-exempt employees who were paid shift differential wages. While Defendant denies that liability could be established on a class-wide basis and contends instead that liability would need to be conducted on a case-by-case basis, common questions predominate Plaintiff’s theory of liability.

### **b. Plaintiff’s 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.

Plaintiff was employed by Defendant and alleges that he was subjected to the same payroll policies and wage statement practices as all other Class Members. Specifically, like other members of the Class, Plaintiff alleges he was paid shift differential wages and received wage statements that failed

1 to itemize the accurate total hours worked (“Davila Decl.”) ¶ 2. In sum, Plaintiff alleges he was  
2 subjected to the same policies and practices as other Class Members. Plaintiff’s claims thus are typical  
3 to those of Class Members.

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

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

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

12 Defendant asserts that even assuming that a class could have been certified, Plaintiff would be  
13 unable to establish classwide liability. For example, Defendant contended that liability under Section  
14 226(e) would be subject to defenses requiring proof of injuries resulting from knowing and intentional  
15 violations.<sup>3</sup> Likewise, Defendant contended that PAGA penalties in any event would be subject to  
16 discretionary reductions. Based thereon, Defendant continues to maintain that it is not liable for the  
17 allegations made by Plaintiff or for the amounts alleged by Plaintiff.

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

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

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

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

**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 has been received to date. 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 approval 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  
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.

11 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

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

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

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

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

22 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); accord, *Ellis v. Naval Air Rework*  
23 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

24 The settlement in the case at bar warrants approval and carries a presumption of fairness. As  
25 previously noted in the application for Preliminary Approval, this current settlement was negotiated at  
26 arm’s length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,  
27 including the exchange of formal and informal discovery and class data enabling Class Counsel to  
28 evaluate the full extent of Defendant’s potential liability. *Id.* ¶ 4. Further, Class Counsel is highly

1 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has  
2 significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 6-8; Declaration of  
3 Simon L. Yang (“Yang Decl.”) ¶¶ 4-6; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-10.

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

5 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also  
6 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in  
7 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) (“present  
8 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk  
9 of not prevailing, should be compared with the amount of the proposed settlement”); *Girsh v. Jepson*,  
10 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

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

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

22 The Agreement also affords the Class prompt, fair relief while avoiding significant legal and  
23 factual battles that otherwise may have prevented the Class from obtaining any recovery at all. While  
24 Class Counsel believe the Class Members’ claims are meritorious and can be successfully litigated, they  
25 are experienced and fully understand the inherent risks and uncertainty involved with such matters as the  
26 resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that  
27 would inevitably follow should the Class prevail at trial. Class Counsel has also assessed the same risks  
28 in connection with the current settlement. Because the settlement provides immediate and substantial

1 relief, without the attendant risks and delay of continued litigation—not to mention the threat of  
2 litigation fees and costs—Class Counsel believe that the settlement warrants the Court’s final approval.

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

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

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

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

18 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of  
19 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA’s purposes. Lee  
20 Decl. ¶ 5; Yang Decl. ¶ 2; Marder Decl. ¶ 2. Similarly, counsel for Defendant is in favor of this  
21 settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable,  
22 and adequate is entitled to significant weight by the Court in its final approval determination. *See*  
23 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney v.*  
24 *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 be

distributed pursuant to Code of Civil Procedure section 384 with 100% of the sum to be paid to Legal Aid at Work. None of the settlement funds will revert to Defendant.

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

Class Representative Joseluis Davila requests a service award of \$10,000.00. Plaintiff met with Class Counsel to provide substantive information regarding Defendant's practices. Davila Decl. ¶ 3. Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that he provided and the 45 hours he devoted to the litigation on behalf of the Class, Davila Decl. ¶ 3, Plaintiff took significant risks, both professionally and monetarily, in acting as Class Representative to seek benefits for the Class. Because the claims Plaintiff alleged involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant had he not prevailed in this action. 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. Despite this, Plaintiff agreed to pursue this case on behalf of the Class. *Id.* ¶ 8.

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 Representative also faces significant risk in not being able to find suitable employment—all as a result of filing of this case against Defendant. Plaintiff took these risks upon himself to the benefit of the Class. Davila Decl. ¶ 8. 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 his commitment, dedication, and risks taken for this litigation.

Equally important, Plaintiff provided a general release and waiver of the protections of Civil Code section 1542. Davila Decl. ¶ 9. This is a more extensive release than that provided by the Class at large and also supports the request for the award.<sup>4</sup>

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<sup>4</sup> 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

1           **C.       The Requested Attorneys’ Fees Should Be Approved.**

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

3           Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the  
4 successful prosecution and resolution of this action. California state and federal courts have recognized  
5 that an appropriate method for determining award of attorneys’ fees is based on a percentage of the total  
6 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th  
7 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ; *Boeing Co. v. Van Gemert*, 444 U.S. 472,  
8 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this  
9 equitable doctrine is to avoid unjust enrichment to the Class and to “spread litigation costs  
10 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden  
11 alone.” *Vincent*, 557 F.2d at 769.

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

23           First, the fee award representing 33⅓% of the fund clearly falls within that range and is  
24 consistent with other rulings of other courts and comprehensive surveys of class action settlements and

25 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)  
26 (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141  
27 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*  
28 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each  
class representative); *Glass v. UBS Fin. Servs.*, 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).

1 fee awards. Attorneys' fees awards of 35% of the fund are within the expected range in the "market in  
2 legal services. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7  
3 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that  
4 "[m]ost fee awards were between 25 percent and 35 percent").<sup>5</sup>

5 Second, the results delivered by Class Counsel also support the requested percentage of the fund.  
6 Here, Plaintiff and his counsel secured a \$1,008,000.00 settlement and zero Class Members chose to opt  
7 out. Zero chose to object.

8 Third, "the response of the class members to attorneys' fee notice, though not decisive, is  
9 relevant to the ... reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,  
10 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the  
11 market" for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that  
12 Class Counsel would be seeking \$336,000.00 in attorneys' fees. Again, there were no objections.

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

15 No one expects a lawyer whose compensation is contingent upon his success to charge, when  
16 successful, as little as he would charge a client who had agreed to pay for his services, regardless  
17 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.

18 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$1,008,000.00 has been  
19 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far  
20 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action  
21 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly  
22 experienced defense firm. For such reasons, Class Counsel's request for attorneys' fees in the amount of  
23 \$336,000.00 is fair, reasonable, and adequate.

24  
25 <sup>5</sup> Such a fee award mimics the market and "is supported by the fact that typical contingency fee  
26 agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the  
27 case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at \*16 n.59 (C.D. Cal. July  
28 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).

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

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

10          Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even  
11 higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).<sup>6</sup> Indeed, the intermediate  
12 court in *Laffitte*—after finding that “2 to 4” is a reasonable range for multipliers on a cross-check—  
13 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.<sup>7</sup> Moreover, the Ninth Circuit has cited  
14 with approval a comprehensive study of fees awarded by the percentage method showing that the  
15 majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d  
16 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and  
17 analyzing the multiplier awarded in over 30 cases).<sup>8</sup>

18          With respect to Class Counsel’s lodestar, at least 280.0 hours have been expended by Class  
19 Counsel litigating this case. Lee Decl. ¶ 10, Ex. B; Yang Decl. ¶ 8, Ex. A; Marder Decl. ¶ 12, Ex. A.  
20 Moreover, Class Counsel expects to incur approximately 30.0 hours of anticipated time spent to  
21

22 <sup>6</sup> *Accord Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *Sutter*  
23 *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).

24 <sup>7</sup> The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

25 <sup>8</sup> Federal district courts applying California law have likewise routinely approved cross-check  
26 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL  
27 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  
28 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 communicate with the Administrator through the close of the response period, attend the final approval  
2 hearing and secure final approval, and respond to post-final approval phone calls and correspondence  
3 from the administrator, defense counsel, and Class Members. Lee Decl. ¶ 10; Yang Decl. ¶ 8. Courts are  
4 quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not  
5 required; an attorney's testimony alone may suffice: "Testimony of an attorney as to the number of  
6 hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the  
7 absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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. Marder's hourly rate is \$750. Marder  
20 Decl. ¶ 11. Mr. Yang's hourly rate is \$725. Yang Decl. ¶ 7. Plaintiff's Counsel's skill and experience  
21 justify the requested rates. As shown in the supporting declarations, Plaintiff's Counsel has significant  
22 experience in the area of employment and wage and hour class and representative actions. Plaintiff's  
23 Counsel's practices focus on representing employees in employment matters, particularly wage and hour  
24 cases on a contingency basis. Lee Decl. ¶¶ 6-8; Marder Decl. ¶¶ 5-12 Yang Decl. ¶¶ 4-6.

25 Based on the rates and 310.0 total hours, the lodestar for Class Counsel through the finalization  
26 of this settlement will be approximately \$232,780.00. Lee Decl. ¶ 10; Yang Decl. ¶ 8; Marder Decl. ¶¶  
27 11-12. The requested attorneys' fees result in a modest multiplier of approximately 1.44 and are  
28 reasonable and fair, based on the factors described above. Here, the litigation of this matter required

1 extraordinary persistence by Class Counsel—e.g., requiring Plaintiff to appear ex parte to compel the  
2 production of class data in compliance with the preliminary approval order, request the Court establish a  
3 deadline for sending a *Belaire-West* notice, seek the Court’s assistance upon Defendant’s failure to  
4 proceed with the *Belaire-West* notice, request the Court establish a deadline for Defendant to determine  
5 whether it would mediate, etc. The cross-check and modest multiplier support the fee requested.

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

7 The request for reimbursement of costs, in the amount of \$5,047.71 is fair and reasonable. As set  
8 forth in Plaintiff’s 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 Kevin  
13 Lee, the settlement administration fees expended in this matter amount to a total of \$14,000.00. Admin  
14 Decl. ¶ 16, Ex. B. For such reasons, it is requested that the Administrator’s fees be approved.

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

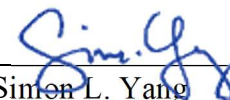
16 On December 17, 2022, Plaintiff uploaded the Order Granting Plaintiff’s Motion for Preliminary  
17 Approval of Class Action Settlement to the LWDA’s website. Lee Decl. ¶ 11. Concurrent with the filing  
18 of this motion, Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

19 **CONCLUSION**

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

23 DATED: March 17, 2023

DIVERSITY LAW GROUP, P.C.

24 By:   
25 Simon L. Yang  
26 Attorneys for Plaintiff  
27  
28