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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

KARINA MOSQUEDA, on behalf of
herself and all similarly aggrieved
employees,

Plaintiff,

v.

SANSEI GARDENS, INC.; NEW IMAGE
LANDSCAPE COMPANY; and DOES 1
through 50, inclusive,

Defendants.

Case No. 21CV000325

(Assigned to the Hon. Thomas W. Wills, Dept.
15)

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

Date: December 8, 2023

Time: 8:30 A.M.

Dept.: 15

Complaint Filed: February 3, 2021

FAC Filed: September 27, 2022

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 8, 2023, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Thomas W. Wills, judge
4 presiding, in Department 15 of the above referenced Court, located at 1200 Aguajito Road,
5 Monterey, California 93940, Plaintiff Karina Mosqueda (“Plaintiff”) will and hereby does
6 move this Court will and hereby move this Court for an Order:

7 1. Granting final approval to the Joint Stipulation and Settlement of PAGA and
8 Class Action Claims (“Stipulation” or “Settlement Agreement”) in this action;

9 2. Approving distribution of the settlement funds to Class Members pursuant to the
10 terms of the Settlement Agreement;

11 3. Approving Plaintiff’s request for an award of the Class Representative Service
12 Payment of \$5,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

13 4. Approving Plaintiff’s request for an award of attorneys’ fees of one-third of the
14 \$1,000,000.00 Gross Settlement Amount, and reimbursement of actual litigation costs of
15 \$5,668.24, pursuant to the terms of the Settlement Agreement;

16 5. Approving Plaintiff’s request for payment of the Settlement Administration
17 Costs to Phoenix Settlement Administrators in the amount of \$13,500.00 pursuant to the terms
18 of the Settlement Agreement;

19 6. Approving Plaintiff’s request for payment to the California Labor and
20 Workforce Development Agency for \$56,250.00 pursuant to the PAGA and the terms of the
21 Settlement Agreement; and

22 7. Entering final judgment as to all members of the Class in this action.

23 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
24 provides for court approval of the settlement of a purported class action and allows the Court
25 to grant final certification of a class for settlement purposes. The basis for this unopposed
26 Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures
27 proposed by the Parties are adequate to ensure the opportunity of Class Members to participate
28 in, opt out of, or object to the settlement. In light of the overwhelmingly positive response, as

1 shown by the lack of objections and disputes to the settlement and 100% of Settlement Class
2 Members participating in the settlement, there is no question that the settlement is fair,
3 reasonable, and adequate and thus should be granted final approval.

4 This Motion is based on the Memorandum of Points and Authorities and the supporting
5 Declarations of B. James Fitzpatrick, Laura L. Franklin, Larry W. Lee, Max W. Gavron,
6 Plaintiff Karina Mosqueda, and Taylor Mitzner of Phoenix Settlement Administrators, and
7 upon the oral arguments of counsel (should there be any), and on the complete records and file
8 herein.

9
10 Dated: November 14, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

11
12 By: 

13 B. James Fitzpatrick
14 Larry W. Lee
15 Max W. Gavron
16 Attorneys for Plaintiff,
17 KARINA MOSQUEDA, on behalf of
18 herself and all similarly situated employees
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1 **I. INTRODUCTION**

2 Plaintiff Karina Mosqueda (“Plaintiff”) now seeks the Court’s final approval of the
3 Joint Stipulation and Settlement of PAGA and Class Claims (“Settlement Agreement” or
4 “Settlement”) with Defendants Sansei Gardens, Inc. and New Image Landscaping Company
5 (together, “Defendants”). The Settlement Agreement provides for a \$1,000,000.00 **non-**
6 **reversionary** fund to be created for the benefit of the Settlement Class, from which attorneys’
7 fees, litigation costs, service payment to the Class Representative, payment of PAGA penalties
8 to the California Labor and Workforce Development Agency (“LWDA”) and PAGA Group,
9 and costs of settlement administration are to be paid. The entire Net Settlement Amount after
10 these deductions will be paid to all Class Members who did not opt-out of the Settlement.
11 Here, no individuals opted out of the settlement or objected to the Settlement.

12 The history of this litigation was previously detailed in Plaintiff’s Motion for
13 Preliminary Approval of Class Action Settlement. The Court preliminary approved this
14 settlement on April 28, 2023, directing distribution of Notice of Pendency of Class Action
15 (“Notice of Proposed Settlement” or “Notice”) and scheduling the hearing for final approval of
16 the settlement (the “Preliminary Approval Order”).

17 As directed by the Court, the Settlement Administrator selected by the Parties –
18 Phoenix Settlement Administrators – distributed the Notice to 1,304 Settlement Class
19 Members.¹ Declaration of Taylor Mitzner on behalf of Phoenix Settlement Administrators
20 (“Phoenix Decl.”) ¶ 5. Sixty-three (63) Notices were returned. *Id.* ¶ 6. Phoenix located current
21 mailing addresses for the returned Notices, and successfully remailed thirty-nine (39) Notices.
22 *Id.* ¶ 6. To date, zero (0) Requests for Exclusion have been submitted to the Settlement
23 Administrator. *Id.* ¶ 8. **No objections or disputes** to the settlement have been submitted by
24 Settlement Class Members. *Id.* ¶¶ 9-10. As such, the settlement has a participation rate of
25 **100%**. *Id.* ¶ 11. In light of this positive response from Settlement Class Members, an inference
26 can be made that the Settlement Class supports the Court’s Preliminary Approval Order

27

¹ The settlement class is even smaller than originally estimated at preliminary approval. This increases the
28 average pro rata recovery higher than addressed at preliminary approval further supporting Plaintiff’s request that
 the Court finally approve the Settlement.

1 finding that the Settlement Agreement is fair and reasonable. Declaration of Max W. Gavron
2 (“Gavron Decl.”) ¶ 6.

3 In addition to the results of the notice process, for the same reasons as set forth earlier
4 in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following
5 represent the basic points supporting final approval of the settlement:

6 ▪ The settlement provides a total settlement sum of \$1,000,000.00, which is **non-**
7 **reversionary**;

8 ▪ The settlement is fair given that participating Settlement Class Members will
9 receive (*after deductions for fees, costs, etc.*) a substantial amount of money – on average,
10 approximately \$442.67 to each Settlement Class Member, with the estimated highest
11 individual settlement payment being \$3,434.58, and the lowest being \$17.61 (*see* Phoenix
12 Decl. ¶ 14);

13 ▪ Settlement Class Members did **not** need to submit claim forms to participate in
14 the settlement, but will automatically receive a check for their individual share of the
15 settlement;

16 ▪ The allocation reflects that payment of Individual Settlement Payment amounts
17 will be paid to Settlement Class Members on a *pro rata* basis, based on the number of
18 workweeks worked by each respective Settlement Class Member during the Class Period, as
19 compared to the total number of workweeks worked by all Settlement Class Members during
20 the Class Period.

21 ▪ Plaintiff’s counsel conducted significant investigation in this case, including
22 conducting written discovery, analysis of a 10% sampling of putative class member time and
23 payroll records, and review of Defendant’s document production, including Defendant’s
24 policies regarding meal and rest periods, timekeeping, hours of work, overtime, and payday,
25 and payment of final wages, necessary for Plaintiff to fully evaluate this case;

26 ▪ A highly regarded settlement administrator, Phoenix Settlement Administrators,
27 was retained to administer the settlement for approximately \$13,500.00 (*see* Phoenix Decl. ¶
28 17); and

1 ▪ The State of California’s LWDA will also be the beneficiary of this settlement,
2 as it will receive \$56,250.00 pursuant to the PAGA, should this settlement be granted final
3 approval. Timely notice of the PAGA settlement was provided to the LWDA pursuant to Cal.
4 Lab. Code § 2699(1)(2) and no objections or disputes to the settlement by the LWDA were
5 received by Plaintiff’s counsel. Gavron Decl. ¶ 8. Accordingly, the Court should grant Final
6 Approval consistent with the Preliminary Approval Order.

7 **II. SETTLEMENT CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF**
8 **THE SETTLEMENT**

9 The notice procedures required by the Preliminary Approval Order have been followed
10 and satisfy all due process rights of Settlement Class Members. Specifically, the Preliminary
11 Approval Order contemplated that the Notice of Proposed Settlement, as approved in the
12 Preliminary Approval Order, be sent to all Settlement Class Members by first class mail, as
13 specified in the Settlement Agreement. Further, the Preliminary Approval Order contemplated
14 that Phoenix Settlement Administrators would serve as the Settlement Administrator.

15 As clearly stated in the Declaration of Taylor Mitzner on behalf of Phoenix Settlement
16 Administrators, notice was provided to all Settlement Class Members. On May 12, 2023, the
17 Settlement Administrator received a Settlement Class List from Defendant’s counsel that
18 included 1,304 Settlement Class Members. Phoenix Decl. ¶ 3. Prior to mailing the Notice, the
19 Settlement Administrator conducted a National Change of Address (NCOA) search to correct
20 and/or update the Settlement Class List in case of any address changes. *Id.* ¶ 4. On May 22,
21 2023, the Settlement Administrator mailed the Notice, in English and Spanish, to all
22 Settlement Class Members on the mailing list via U.S. first class mail. *Id.* ¶ 5. From the date of
23 mailing, sixty-three (63) Notices were returned to the Settlement Administrator due to
24 incorrect addresses. *Id.* ¶ 6. Phoenix conducted a skip trace to determine appropriate addresses
25 for the returned Notices and remailed thirty-nine (39) Notices. *Id.* ¶ 6. Further, the Notice
26 provided Settlement Class Members with Class Counsel’s and the Settlement Administrator’s
27 contact information, where they could further seek information regarding the Settlement, ask
28 questions, review pleadings in the case, and update their address.

 The provision of sending the notice to class members as described above meets the

1 requirements for 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
3 (1985) (provision of “best notice practicable” with description of the litigation and explanation
4 of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75
5 (1974) (individual notice must be sent to class members who can be identified through
6 reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)
7 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
8 apprise interested parties of the pendency of the action and afford them an opportunity to
9 present their objections”).

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

17 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE,**
18 **AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

19 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

20 In order to proceed as a class, there are two requirements which must be met –
21 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704
22 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971) (there are two basic
23 requirements which must exist to sustain a class action: “[t]he first is existence of an
24 ascertainable class, and the second is a well-defined community of interest in the questions of
25 law and fact involved.”). “The community of interest requirement embodies three factors: (1)
26 predominant common questions of law or fact; (2) class representatives with claims or
27 defenses typical of the class; and (3) class representatives who can adequately represent the
28 class.” *Richmond v. Dart Industries*, 29 Cal. 3d 462, 470 (1981).

//

1 **1. The Class is Ascertainable**

2 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure §
3 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the
4 means available for identifying the class members.” *Reyes v. San Diego County Board of*
5 *Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Settlement Class consists of “all
6 current and former non-exempt employees of Defendant who worked for Defendant in
7 California during the Class Period.” Based on Defendant’s records, there are 1,304 individuals
8 that comprise the Settlement Class. Phoenix Decl. ¶ 3. This is more than the minimum
9 required to certify a class.

10 Within the context of manageability, the issue is whether there exists sufficient means
11 for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at pp. 1274-75.
12 Settlement Class Members have already been identified by Defendant and notice was provided
13 to Settlement Class Members, as provided in the Settlement Agreement. Phoenix Decl. ¶ 5.

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

15 The “community of interest” requirement embodies three separate factors: (1)
16 predominant common questions of law or fact; (2) class representatives whose claims are
17 typical of the class; and (3) class representatives who can adequately represent the class.
18 *Richmond*, 29 Cal. 3d at p. 470; *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234
19 (1999).

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

21 “The ultimate question in every case of this type [class actions] is whether...the issues
22 which may be jointly tried, when compared with those requiring separate adjudication, are so
23 numerous and substantial that the maintenance of a class action would be advantageous to the
24 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th
25 1096, 1104-05 (2003).

26 In the present case, Plaintiff alleges that Defendant failed to provide meal and rest
27 periods or compensation in lieu thereof, failed to pay minimum, hourly, and overtime wages,
28 failed to pay wages for all hours worked, failed to pay prevailing rate of wages for all public

works, failed to pay overtime premium wages for all overtime hours worked, failed to pay all wages on time, failed to provide off-duty meal or rest breaks, failed to pay premiums for missed meal and rest breaks, failed to pay all wages owed at the end of employment, failed to reimburse work-related expenses, failed to provide accurate wage statements, in violation of 201, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1770, et seq., 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, and 2698, et seq., and Business and Professions Code § 17200, et seq. Plaintiff alleged that these are all uniform corporate policies, practices, and procedures of Defendant as alleged by Plaintiff, the claims can be jointly tried and thus the predominance requirement is satisfied. Defendant denies all of these claims, denies that liability could be established on a class-wide basis, and contends instead that liability and damages, if any, would need to be conducted on a case-by-case basis.

b. Plaintiff's Claims are Typical of the Class Claims

The purported 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 class members have similar injuries, "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 p. 508.

Plaintiff asserts that she was subjected to the same payroll policies and practices as all other Settlement Class Members. In this regard, Plaintiff was employed by Defendant as a non-exempt employee from about January 2020, to about October 9, 2020. Declaration of Karina Mosqueda ("Mosqueda Decl.") ¶ 2. Like other members of the Settlement Class, Plaintiff alleges that she was not provided off-duty meal and rest breaks or paid premium compensation for missed breaks, paid all minimum, hourly, and overtime premium wages

1 owed, provided accurate wage statements, paid all wages when due and upon separation of
2 employment, paid on a timely basis, and reimbursed for business expenses. Plaintiff like other
3 members of the Settlement Class alleges she was not paid the prevailing rate of wages for all
4 public works. Mosqueda Decl. ¶¶ 3-7. Based on the above, Plaintiff contends that she was
5 subjected to the same policies and practices as other Settlement Class Members. Accordingly,
6 typicality is satisfied.

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

8 The class representative, through qualified counsel, must be capable of “vigorously and
9 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App.
10 3d 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Settlement Class,
11 nor have any such issues been raised or presented. Mosqueda Decl. ¶ 9. Plaintiff has taken all
12 necessary steps to represent the interests of the Settlement Class, including providing
13 information and documents to her counsel, discussing the lawsuit with her counsel on several
14 occasions, and reviewing the various pleadings including the Complaint, Settlement
15 Agreement, and declarations submitted in this case. Mosqueda Decl. ¶ 8. For such reasons,
16 Plaintiff has adequately represented the Settlement Class Members and will continue to do so.

17 **B. Risks, Expenses, and Complexity of Further Litigation**

18 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the
19 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
20 involved in not prevailing on one or more of the causes of action or theories alleged in the
21 operative Complaint, the possibility of non-certification, and potential for appeals. These risks
22 on class certification are compounded by the California Supreme Court’s holding in *Duran v.*
23 *U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014).

24 As stated above, Defendant alleges that Plaintiff would not be able to obtain class
25 certification. Based on the foregoing, there were risks that Plaintiff would not have obtained
26 the total amount of damages and penalties alleged on behalf of the class, and a substantial
27 number of complex issues that would have necessitated significant expenditure of time and
28 expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting

of this Motion.

C. The Terms of the Settlement, Negotiation of Settlement, and Reception of the Settlement by Settlement Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement Agreement was the product of negotiations between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. Gavron Decl. ¶ 3. The Parties engaged in arm's length negotiations with an experienced neutral that resulted in the settlement. *Id.*

The results after mailing of the Notice support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that only none of the Settlement Class Members opted out and none of the Settlement Class Members submitted a written objection or dispute to the settlement. Phoenix Decl. ¶ 11. With the 100% rate of participation in the settlement by Settlement Class Members, the Court may appropriately infer that the class action settlement is fair, adequate, and reasonable. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

1. Standard of Review

On a motion for final approval of a class action settlement under California Code of Civil Procedure § 382 and California Rule of Court 3.769, 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), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). 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

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

4 Although the court possesses “broad discretion” in determining that a proposed class
5 action settlement is fair, the court’s role must be limited to the extent necessary to reach a
6 reasoned judgment that the agreement is not the product of fraud or overreaching by, or
7 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
8 reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at p. 625.

9 Accordingly, the court should give due regard to what is otherwise a “private consensual
10 agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993
11 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
12 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The
13 judicial role in reviewing a proposed settlement is critical, but limited to approving the
14 proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite
15 the agreement”).

16 A court’s approval of a class action settlement will only be reversed for a clear abuse
17 of discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
18 *Justice*, 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s
19 decision was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v.*
20 *Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
21 1238 (9th Cir. 1998).

22 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

23 It cannot be overemphasized that neither the trial court in approving
24 the settlement nor this Court in reviewing that approval have the
25 right or duty to reach any ultimate conclusions on the issues of fact
26 and law which underlie the merits of the dispute. It is well settled
27 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.

28 85 Cal. App. 4th 1135, 1146 (2000).

1 **2. The Settlement is Presumed to Be Fair**

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

4 [A] presumption of fairness exists where: (1) the settlement is
5 reached through arm's-length bargaining; (2) investigation and
6 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.

7 *Dunk*, 48 Cal. App. 4th at p. 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,
8 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.

9 The settlement in the case at bar warrants approval and carries a presumption of
10 fairness. As previously noted in the application for Preliminary Approval, this current
11 settlement was negotiated at arm's length during a full day of mediation. Gavron Decl. ¶ 3.

12 Second, Class Counsel engaged in extensive factual investigation before settling,
13 including the exchange of formal and informal discovery. Specifically, Class Counsel
14 analyzed putative class data, including a 10% sampling of putative class member time and
15 payroll records and reviewed extensive documents regarding Defendants' wage and hour
16 policies. *Id.* ¶ 4.

17 Further, Class Counsel are highly experienced in this type of litigation. As shown in
18 the supporting declarations, Class Counsel have significant experience in class actions and
19 employment wage and hour matters. Gavron Decl. ¶¶ 10-17; Declaration of B. James
20 Fitzpatrick ("Fitzpatrick Decl.") ¶ 12; Declaration of Laura L. Franklin ("Franklin Decl.") ¶¶
21 3-4; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 13-15.

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

24 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
25 court also should weigh the immediacy and certainty of substantial settlement proceeds against
26 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768,
27 806 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful,
28 appropriately discounted for the risk of not prevailing, should be compared with the amount of

1 the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
2 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

3 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would
4 have been potentially responsible for Defendant’s costs. Mosqueda Decl. ¶ 13. As such, should
5 individual current or former employees of Defendant bring individual claims on the same
6 causes of action, they would each face the uncertainty of prevailing and the possibility of
7 paying costs to Defendant. Accordingly, such claims likely would not be brought by many of
8 these current and former employees – thus, this lawsuit achieves a true benefit for the
9 Settlement Class that they might not otherwise get or seek as individuals. Here, given that a
10 fair and reasonable settlement has been reached, neither Plaintiff nor any of the Settlement
11 Class Members will be required to pay for Defendant’s litigation costs.

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

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

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4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant 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 p. 625; *Girsh*, 521 F.2d at p. 157. In applying this factor, the court must weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

As noted above, continued litigation could have led to appeals on several issues. On the other hand, the settlement that was reached provides to all Settlement Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, Settlement 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 p. 950 (footnote omitted); *see also Newberg* § 11.41. Here, this case could have involved years of further litigation.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel support the settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class Members as a whole. Fitzpatrick Decl. ¶ 5; Franklin Decl. ¶ 2; Lee Decl. ¶ 2; Gavron Decl. ¶ 2. Similarly, counsel for Defendant 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 p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.

IV. 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 of the mailing of the individual settlement payment checks, the Parties have agreed that all such uncashed settlement funds shall be distributed to

1 the *cy pres* recipient Watsonville Law Center, in accordance with Code of Civil Procedure §
2 384. Class Counsel do not have a conflict of interest with Watsonville Law Center. Fitzpatrick
3 Decl. ¶ 14; Lee Decl. ¶ 6; Gavron Decl. ¶ 9.

4 V. **THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT**
SHOULD BE APPROVED

5 The Settlement Agreement authorized Class Representative Karina Mosqueda to
6 request a service payment of \$5,000.00. Plaintiff provided significant assistance with the
7 lawsuit, including discussing the case with Class Counsel on multiple occasions, searching for
8 and providing documents and information regarding Defendant's practices at issue in the case,
9 and reviewing the various files and pleadings submitted in this case. Mosqueda Decl. ¶ 8.
10 Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted
11 in this settlement.

12 In addition to the invaluable services that she provided, Plaintiff also took significant
13 risks, both professionally and monetarily, in acting as the Class Representative, seeking
14 benefits on behalf of the Settlement Class. Mosqueda Decl. ¶¶ 13-14. Because the claims
15 alleged by the Class Representative involved the payment of costs to the prevailing party,
16 Plaintiff could have possibly faced paying the costs of Defendant, had she not prevailed in this
17 action. *Id.* ¶ 13. Despite this, however, Plaintiff agreed to pursue this case on behalf of the
18 Settlement Class.

19 Also, given that future employers are much less likely to hire individuals who have
20 filed employment-related lawsuits, particularly cases of this nature, the Class Representative
21 also faced significant risk in not being able to find suitable employment and/or face retaliation
22 from prospective employers, all as a result of filing of this case against Defendant. Plaintiff
23 took these risks upon herself to the benefit of the Settlement Class. Mosqueda Decl. ¶ 13.
24 Settlement Class Members did not have to file individual lawsuits and bear the risks of
25 payment of costs if they did not prevail, nor did they have to face the potential for retaliation
26 and not getting future employment had they filed a lawsuit which is a public record. These are
27 significant benefits that weigh in favor of granting the requested enhancement. Moreover, this
28 litigation has resulted in a significantly valuable benefit to the Settlement Class (*i.e.*, an

1 average award to Class Members in the amount of \$442.67, with the highest Individual
2 Settlement Payment to Class Members of \$3,434.58), and Plaintiff took on substantial risks in
3 helping to get this financial benefit to the Settlement Class. As such, the service payment
4 should be awarded to Plaintiff for her commitment, dedication, and risks taken for this
5 litigation.

6 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
7 § 1542, which other Settlement Class Members did not have to do. Agreement ¶ 69; Mosqueda
8 Decl. ¶ 14. This is a more extensive release than that provided by the Settlement Class at large,
9 also supporting the request for the enhancement.

10 Courts have routinely granted approval of settlements containing such enhancements.
11 *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)
12 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130
13 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive
14 awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)
15 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission*
16 *Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class
17 representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at
18 *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages
19 class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000
20 incentive award to class representative in ERISA case).

21 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

22 The amount of the proposed settlement is a direct result of the effort and work of Class
23 Counsel. The settlement before this Court inures to the benefit of Defendants' employees and
24 is the direct result of Class Counsel's efforts. As set forth in the declarations of Class Counsel,
25 a considerable amount of work done by Class Counsel achieved an enormous benefit to the
26 Class.

27 The \$1,000,000.00 settlement amount is the result of a considerable expenditure of
28 time, effort, skill, and money by Class Counsel. Class Counsel obtained data pertaining to the

1 number of putative class members and aggrieved employees, as well as Defendants’ policies
2 regarding meal and rest periods, timekeeping, overtime, reimbursement, payment of final
3 wages, among others. The information provided by Defendants allowed Plaintiff to review and
4 analyze the liability and potential exposure. After thoroughly investigating the facts relating to
5 the class and PAGA claims alleged in this lawsuit and engaging in a thorough study of the
6 legal principles applicable to the claims asserted against Defendants and mediation, the Parties
7 were able to reach the current settlement. Class Counsel shouldered the risk that it might
8 recover no fee at all and may even lose the considerable sum it advanced in expenses.
9 Counsel’s requested fee, therefore, should be granted in full.

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

23 An award of one-third, of the fund in attorneys’ fees mimics the marketplace, as it “is
24 supported by the fact that typical contingency fee agreements provide that class counsel will
25 recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v.*
26 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
27 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
28 *Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed, “empirical studies

1 [that] show that...fee awards in class actions average around one-third of the recovery.”

2 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

3 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
4 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported
5 by a lodestar cross-check that employed a multiplier of 2.13. *Id.* at 487. The Court in *Laffitte*
6 explained that when cross-checking a percentage fee request against the lodestar method, the
7 court should examine the imputed multiplier in the lodestar calculation and, only when the
8 multiplier is “extraordinarily high or low [should] the trial court [] consider whether the
9 percentage method should be adjusted so as to bring the imputed multiplier within a justifiable
10 range.” *Id.* at 505.

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

23 Finally, “the response of the class members to attorneys’ fee notice, though not
24 decisive, is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v.*
25 *Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the
26 court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case,
27 the Notice specifically notified Settlement Class Members that Class Counsel would be
28 seeking \$333,333.33 of the settlement fund as attorneys’ fees. To date, no Settlement Class

1 Member has objected to the settlement or the request for attorneys' fees and there is a 100%
2 participation rate. This strong favorable response also supports the requested fees.

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

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

26 Courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4 or
27 even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
28 *e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a

1 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
2 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
3 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
4 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
5 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court
6 opinion was affirmed in full by the California Supreme Court in its decision guiding lower
7 courts on assessing fees.

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

23 With respect to Class Counsel’s lodestar, Class Counsel and their support staff will
24 have expended approximately 564.5 hours litigating this case, which does not include
25 approximately 15 hours of anticipated time spent after final approval responding to
26 correspondence and phone calls from Settlement Class Members, the Settlement
27 Administrator, and defense counsel. Fitzpatrick Decl. ¶ 6, Ex. A; Lee Decl. ¶ 8, Ex. A; Gavron
28 Decl. ¶ 18, Ex. A. Thus, the total number of hours expected to be invested in this case through

1 resolution is expected to be approximately 579.5. Class Counsel request hourly rates ranging
2 from \$500 to \$595 per hour, which contemplates a rate commensurate with the jurisdiction in
3 which this action was litigated. Fitzpatrick Decl. ¶ 8; Lee Decl. ¶ 12; Gavron Decl. ¶ 21. The
4 courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time
5 records are not required. An attorney's testimony alone may suffice: "Testimony of an
6 attorney as to the number of hours worked on a particular case is sufficient evidence to support
7 an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*,
8 182 Cal. App. 3d 553, 559 (1986).

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

16 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
17 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
18 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*,
19 the attorney's skill and experience, the nature of the work performed, the relevant area of
20 expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*,
21 61 Cal. App. 4th 629, 632-33 (1998).

22 Class Counsel's skill and experience justify the requested rates. As shown in the
23 supporting declarations, Class Counsel have significant experience in the area of employment
24 and wage and hour class actions. Specifically, Class Counsel's practice focuses on
25 representing employees in employment matters, particularly wage and hour cases. Fitzpatrick
26 Decl. ¶ 12; Franklin Decl. ¶¶ 3-4; Lee Decl. ¶¶ 13-15; Gavron Decl. ¶¶ 10-17. As such, based
27 on the hours and applicable rate, Class Counsel's lodestar amount through the finalization of
28 this settlement – without a multiplier – will be approximately \$303,934.00. Fitzpatrick Decl. ¶

1 8; Lee Decl. ¶ 12; Gavron Decl. ¶ 21.

2 Once the court establishes the lodestar amount, it may enhance the lodestar number by
3 applying a multiplier in order to adjust the fees awarded to an amount appropriate to the
4 circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors
5 include the difficulty of the questions involved and the skill in presenting them, the contingent
6 nature of the fee award, the extent to which the litigation precluded other employment, and the
7 percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82
8 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other
9 factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139
10 (2001).

11 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
12 the-benefit; namely, no objections by class members, commendable conduct by counsel, and
13 significant recoveries by class members, all of which were previously detailed above. *Lealao*,
14 82 Cal. App. 4th at 51-53. As in *Lealao*, the Settlement Class was notified of the settlement
15 and attorneys' fee with no objections. The extreme effort undertaken by counsel, as shown by
16 their hours and the significantly high number of claims being paid out, shows commendable
17 conduct.

18 The multiplier should be enhanced because of the contingent nature of counsel's fee
19 recovery. The risks in taking on a class action case are enormous, not the least of which is time
20 and effort. As this Court very well knows, not only do these cases require substantial work, but
21 there exist significant risks.

22 Finally, based upon Class Counsel's lodestar of \$303,934.00. Plaintiff's request for a
23 modest multiplier of 1.09 ($\$333,333.33 / \$303,934.00$) is reasonable and fair, particularly
24 based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224
25 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards
26 in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*,
27 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common
28 fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v.*

1 *Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the
2 common fund, based on a multiplier of 2.52). As such, the requested fee award is fair and
3 reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of
4 time, but also a great deal of expense to ensure the successful litigation of this action on behalf
5 of all Settlement Class Members. For these reasons, Class Counsel's request for attorneys'
6 fees in the amount of \$333,333.33 should be approved as fair, reasonable, and adequate.

7 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR**
REIMBURSEMENT OF COSTS

8 The request for reimbursement of litigation costs, in the amount of \$5,668.24 is fair
9 and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may
10 seek up to \$25,000.00 as reimbursement for litigation costs under the Settlement Agreement.
11 As set forth in Class Counsel's declaration, the costs were all directly incurred in the
12 prosecution of this action, including but not limited to, filing fees, service of process costs,
13 postage costs, and mediation fees. Gavron Decl. ¶ 22, Ex. B; Fitzpatrick Decl. ¶ 11, Ex. B. As
14 such, the requested costs should be approved as fair and reasonable.

15 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
APPROVED

16 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
17 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
18 funds. As shown on the Declaration of Taylor Mitzner, the settlement administration fees
19 expended in this matter amount to a total of \$13,500.00, which is the amount that was agreed
20 upon by the Parties and preliminarily approved by the Court. Phoenix Decl. ¶ 17, Ex. B. For
21 such reasons, it is requested that the Settlement Administrator's fees be approved.

22 **IX. PLAINTIFF HAS PROVIDED NOTICE TO THE LWDA**

23 On May 5, 2023, Plaintiff uploaded the Order Granting Motion for Preliminary
24 Approval of Class Action Settlement to the LWDA's website. Gavron Decl. ¶ 23; Ex. C.
25 Concurrent with the filing of this Motion, Plaintiff uploaded this motion and proposed order to
26 the LWDA's website. *Id.* ¶ 24.

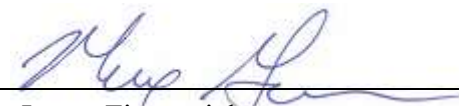
27 **X. CONCLUSION**

28 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff

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

5
6 Dated: November 14, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

7
8 By: 
9 B. James Fitzpatrick
10 Larry W. Lee
11 Max W. Gavron
12 Attorneys for Plaintiff,
13 KARINA MOSQUEDA, on behalf of
14 herself and all similarly situated employees
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On November 14, 2023, I served the following document(s) described as:

- on the interested parties in this action as follows:

PROOF OF SERVICE

1 Sacramento, California 95816
2 *Attorneys for Defendants Sansei Gardens, Inc. and New Image Landscape Company*

3 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
4 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
5 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
6 the above-entitled case. The service transmission was reported as complete and a copy of the
filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
in this office.

7 I declare under penalty of perjury under the laws of the State of California that the
8 above is true and correct. Executed on November 14, 2023, at Los Angeles, California.

9
10 
Erika Mejia