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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

YANNET JIMENEZ on behalf of herself
and all similarly situated employees,

v.

SAMBRAILO PACKAGING; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV003281

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

Date: November 3, 2023

Time: 8:30 a.m.

Dept: 15

Complaint Filed: December 7, 2020

FAC Filed: April 18, 2023

Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

1. Granting final approval to the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Settlement Agreement” or “Settlement”) in this action;
2. Approving distribution of the settlement funds to Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff’s request for an award of the Class Representative Service Payment of \$5,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff’s request for an award of attorneys’ fees of one-third of the \$1,400,000.00 Gross Settlement Amount, and reimbursement of actual litigation costs of \$21,715.35, pursuant to the terms of the Settlement 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 Settlement Agreement;
6. Approving Plaintiff’s request for payment to the California Labor and Workforce Development Agency for \$37,500.00 pursuant to the PAGA and the terms of the Settlement Agreement; and
7. Entering final judgment as to all members of the Class in this action.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate 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 Franklin, Larry W. Lee, Max W. Gavron, Yannet
6 Jimenez, and Taylor Mitzner of Phoenix Settlement Administrators, and upon the oral
7 arguments of counsel (should there be any), and on the complete records and file herein.

8
9 Dated: October 12, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP

10
11 By: _____

B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff,
YANNET JIMENEZ on behalf of herself and
all similarly situated employees

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Rules

California Rule of Court 3.769.....17

1 **I. INTRODUCTION**

2 Plaintiff Yannet Jimenez (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Settlement
4 Agreement” or “Settlement”) with Defendant Sambrailo Packaging (“Defendant”). The
5 Settlement Agreement provides for a \$1,400,000.00 **non-reversionary** fund to be created for
6 the benefit of the Settlement Class, from which attorneys’ fees, litigation costs, service
7 payment to the Class Representative, payment of PAGA penalties to the California Labor and
8 Workforce Development Agency (“LWDA”) and PAGA Group, and costs of settlement
9 administration are to be paid. The entire Net Settlement Amount after these deductions will be
10 paid to all Class Members who did not opt-out of the Settlement.

11 The history of this litigation was previously detailed in Plaintiff’s Motion for
12 Preliminary Approval of Class Action Settlement. The Court preliminary approved this
13 settlement on June 30, 2023, directing distribution of Notice of Pendency of Class Action
14 (“Notice of Proposed Settlement” or “Notice”) and scheduling the hearing for final approval of
15 the settlement (the “Preliminary Approval Order”).

16 As directed by the Court, the Settlement Administrator selected by the Parties –
17 Phoenix Settlement Administrators – distributed the Notice to 1,235 Settlement Class
18 Members. Declaration of Taylor Mitzner on behalf of Phoenix Settlement Administrators
19 (“Phoenix Decl.”) ¶ 5. Thirty-three (33) Notices were returned. *Id.* ¶ 6. Phoenix located
20 current mailing addresses for the returned Notices, and successfully remailed them. *Id.* ¶ 6.
21 To date, zero (0) Requests for Exclusion have been submitted to the Settlement Administrator.
22 *Id.* ¶ 8. **No objections or disputes** to the settlement have been submitted by Settlement Class
23 Members. *Id.* ¶¶ 9-10. As such, the settlement has a participation rate of **100%**. *Id.* ¶ 11. In
24 light of this positive response from Settlement Class Members, an inference can be made that
25 the Settlement Class supports the Court’s Preliminary Approval Order finding that the
26 Settlement Agreement is fair and reasonable. Declaration of Max W. Gavron (“Gavron Decl.”)
27 ¶ 6.

28 In addition to the results of the notice process, for the same reasons as set forth earlier

1 in Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following
2 represents the basic points supporting final approval of the settlement:

3 ▪ The settlement provides a total settlement sum of \$1,400,000.00, which is **non-**
4 **reversionary**;

5 ▪ The settlement is fair given that participating Settlement Class Members will
6 receive (*after deductions for fees, costs, etc.*) a substantial amount of money – on average,
7 approximately \$663.39 to each Settlement Class Member, with the estimated highest
8 individual settlement payment being \$6,509.86, and the lowest being \$17.74 (*see* Phoenix
9 Decl. ¶ 14);

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

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

18 ▪ Plaintiff's counsel conducted significant investigation in this case, including
19 conducting written discovery, three depositions, analysis of a 20% sampling of putative class
20 member time and payroll records, and review of Defendant's document production, including
21 Defendant's policies regarding meal and rest periods, timekeeping, overtime, rounding,
22 reimbursement, payment of final wages, necessary for Plaintiff to fully evaluate this case;

23 ▪ A highly regarded settlement administrator, Phoenix Settlement Administrators,
24 was retained to administer the settlement for approximately \$14,000.00 (*see* Phoenix Decl. ¶
25 17); and

26 ▪ The State of California's LWDA will also be the beneficiary of this settlement,
27 as it will receive \$37,500.00 pursuant to the PAGA, should this settlement be granted final
28 approval. Timely notice of the PAGA settlement was provided to the LWDA pursuant to Cal.

1 Lab. Code § 2699(1)(2) and no objections or disputes to the settlement by the LWDA were
2 received by Plaintiff's counsel. Gavron Decl. ¶ 8. Accordingly, the Court should grant Final
3 Approval consistent with the Preliminary Approval Order.

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

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

11 As clearly stated in the Declaration of Taylor Mitzner on behalf of Phoenix Settlement
12 Administrators, notice was provided to all Settlement Class Members. On July 25, 2023, the
13 Settlement Administrator received a Settlement Class List from Defendant's counsel that
14 included 1,235 Settlement Class Members. Phoenix Decl. ¶ 3. Prior to mailing the Notice, the
15 Settlement Administrator conducted a National Change of Address (NCOA) search to correct
16 and/or update the Settlement Class List in case of any address changes. *Id.* ¶ 4. On August 4,
17 2023, the Settlement Administrator mailed the Notice to all Settlement Class Members on the
18 mailing list via U.S. first class mail. *Id.* ¶ 5. From the date of mailing, thirty-three (33) Notices
19 were returned to the Settlement Administrator due to incorrect addresses. *Id.* ¶ 6. Phoenix
20 conducted a skip trace to determine appropriate addresses for the returned Notices and
21 remailed them. *Id.* ¶ 6. Further, the Notice provided Settlement Class Members with Class
22 Counsel's and the Settlement Administrator's contact information, where they could further
23 seek information regarding the Settlement, ask questions, review pleadings in the case, and
24 update their address.

25 The provision of sending the notice to class members as described above meets the
26 requirements for the "best notice practicable" in this case as necessary to protect the due
27 process rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12
28 (1985) (provision of "best notice practicable" with description of the litigation and explanation

1 of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75
2 (1974) (individual notice must be sent to class members who can be identified through
3 reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)
4 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
5 apprise interested parties of the pendency of the action and afford them an opportunity to
6 present their objections”).

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

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

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

16 In order to proceed as a class, there are two requirements which must be met –
17 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704
18 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971) (there are two basic
19 requirements which must exist to sustain a class action: “[t]he first is existence of an
20 ascertainable class, and the second is a well-defined community of interest in the questions of
21 law and fact involved.”). “The community of interest requirement embodies three factors: (1)
22 predominant common questions of law or fact; (2) class representatives with claims or
23 defenses typical of the class; and (3) class representatives who can adequately represent the
24 class.” *Richmond v. Dart Industries*, 29 Cal. 3d 462, 470 (1981).

25 **1. The Class is Ascertainable**

26 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure §
27 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the
28 means available for identifying the class members.” *Reyes v. San Diego County Board of*

1 *Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Settlement Class consists of “all
2 current and former non-exempt employees of Defendant who worked for Defendant in
3 California during the Class Period.” Based on Defendant’s records, there are 1,235 individuals
4 that comprise the Settlement Class. Phoenix Decl. ¶ 3. This is more than the minimum
5 required to certify a class.

6 Within the context of manageability, the issue is whether there exists sufficient means
7 for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at pp. 1274-75.
8 Settlement Class Members have already been identified by Defendant and notice was provided
9 to all of the above Settlement Class Members. Phoenix Decl. ¶ 5.

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

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

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

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

22 In the present case, Plaintiff alleges that Defendant failed to provide meal and rest
23 periods or compensation in lieu thereof, failed to pay minimum, hourly, and overtime wages,
24 failed to provide accurate wage statements, failed to timely pay all wages when owed and
25 upon separation of employment, and failed to reimburse business expenses, in violation of
26 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 1174, 1175, 1194, 1197, 1198, 1199, 2802, and
27 2698, *et seq.*, and Business and Professions Code § 17200, *et seq.* As these are all uniform
28 corporate policies, practices, and procedures of Defendant as alleged by Plaintiff, the claims

1 can be jointly tried and thus the predominance requirement is satisfied. Defendant denies all of
2 these claims, denies that liability could be established on a class-wide basis, and contends
3 instead that liability and damages, if any, would need to be conducted on a case-by-case basis.

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

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

14 Plaintiff asserts that she was subjected to the same payroll policies and practices as all
15 other Settlement Class Members. In this regard, Plaintiff was employed by Defendant as a
16 non-exempt employee from about 2008, to about August 2020. Declaration of Yannet Jimenez
17 ("Jimenez Decl.") ¶ 2. Like other members of the Settlement Class, Plaintiff alleges that she
18 was not provided off-duty meal and rest breaks or paid premium compensation for missed
19 breaks, paid all minimum, hourly, and overtime wages owed, provided accurate wage
20 statements, paid all wages when due and upon separation of employment, and reimbursed for
21 business expenses. Jimenez Decl. ¶¶ 3-7. Based on the above, Plaintiff contends that she was
22 subjected to the same policies and practices as other Settlement Class Members. Accordingly,
23 typicality is satisfied.

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

25 The class representative, through qualified counsel, must be capable of "vigorously and
26 tenaciously" protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App.
27 3d 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Settlement Class,
28 nor have any such issues been raised or presented. Jimenez Decl. ¶ 9. Plaintiff has taken all

1 necessary steps to represent the interests of the Settlement Class, including providing
2 information and documents to her counsel, discussing the lawsuit with her counsel on several
3 occasions, and reviewing the various pleadings including the Complaint, Settlement
4 Agreement, and declarations submitted in this case. Jimenez Decl. ¶ 8. For such reasons,
5 Plaintiff has adequately represented the Settlement Class Members and will continue to do so.

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

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

13 As stated above, Defendant alleges that Plaintiff would not be able to obtain class
14 certification. Based on the foregoing, there were risks that Plaintiff would not have obtained
15 the total amount of damages and penalties alleged on behalf of the class, and a substantial
16 number of complex issues that would have necessitated significant expenditure of time and
17 expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting
18 of this Motion.

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

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

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

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

10 **1. Standard of Review**

11 On a motion for final approval of a class action settlement under California Code of
12 Civil Procedure § 382 and California Rule of Court 3.769, a court's inquiry is whether the
13 settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688
14 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S.
15 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final
16 approval, when "the interests of the class are better served by the settlement than by further
17 litigation." *See Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed.
18 2004) ("MCL"). The law favors settlement, particularly in class actions and other complex
19 cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of
20 formal litigation. *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41
21 (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).

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

27 Accordingly, the court should give due regard to what is otherwise a "private consensual
28 agreement" between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993

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

6 A court’s approval of a class action settlement will only be reversed for a clear abuse
7 of discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
8 *Justice*, 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s
9 decision was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v.*
10 *Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
11 1238 (9th Cir. 1998).

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

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

18 85 Cal. App. 4th 1135, 1146 (2000).

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

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

22 [A] presumption of fairness exists where: (1) the settlement is
23 reached through arm’s-length bargaining; (2) investigation and
24 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.

25 *Dunk*, 48 Cal. App. 4th at p. 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,
26 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.

27 The settlement in the case at bar warrants approval and carries a presumption of
28 fairness. As previously noted in the application for Preliminary Approval, this current

1 settlement was negotiated at arm's length during a full day of mediation and continued
2 settlement discussions over the course of several months. Gavron Decl. ¶ 3.

3 Second, Class Counsel engaged in extensive factual investigation before settling,
4 including the exchange of formal and informal discovery and significant motion practice,
5 including class certification. Specifically, Class Counsel conducted three depositions,
6 reviewed Defendant's document production, including relevant policies, and analyzed putative
7 class data, including a 20% sampling of putative class member time and payroll records. *Id.* ¶
8 4.

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

14 3. Two-Way Costs and Other Risks Inherent in Continued Litigation 15 Favor Final Approval

16 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
17 court also should weigh the immediacy and certainty of substantial settlement proceeds against
18 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768,
19 806 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful,
20 appropriately discounted for the risk of not prevailing, should be compared with the amount of
21 the proposed settlement") (internal citations omitted); *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d
22 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

23 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would
24 have been potentially responsible for Defendant's costs. Jimenez Decl. ¶ 13. As such, should
25 individual current or former employees of Defendant bring individual claims on the same
26 causes of action, they would each face the uncertainty of prevailing and the possibility of
27 paying costs to Defendant. Accordingly, such claims likely would not be brought by many of
28 these current and former employees – thus, this lawsuit achieves a true benefit for the

1 Settlement Class that they might not otherwise get or seek as individuals. Here, given that a
2 fair and reasonable settlement has been reached, neither Plaintiff nor any of the Settlement
3 Class Members will be required to pay for Defendant's litigation costs.

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

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

20 **4. The Complexity, Expense, and Likely Duration of Continued** 21 **Litigation Against Defendant Favor Final Approval**

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

27 As noted above, continued litigation could have led to appeals on several issues. On the
28 other hand, the settlement that was reached provides to all Settlement Class Members –

1 regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny
2 final approval, Settlement Class Members would be left without a remedy as a practical matter
3 and courts across the State would have to address the issues presented here in a piecemeal,
4 costly, and time-consuming manner. The settlement in this case is therefore consistent with the
5 “overriding public interest in settling and quieting litigation” that is “particularly true in class
6 action suits.” *See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also Newberg* §
7 11.41. Here, this case could have involved years of further litigation.

8 **5. The Opinion of Experienced Counsel Favors Final Approval**

9 Class Counsel support the settlement as fair, reasonable, and adequate, and in the best
10 interest of the Settlement Class Members as a whole. Fitzpatrick Decl. ¶ 5; Franklin Decl. ¶ 2;
11 Lee Decl. ¶ 2; Gavron Decl. ¶ 2. Similarly, counsel for Defendant is in favor of this settlement.
12 The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable,
13 and adequate is entitled to significant weight by the Court in its final approval determination.
14 *See Officers for Justice*, 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p.
15 617; *Linney*, 151 F.3d at p. 1242.

16 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS** **SHOULD BE APPROVED**

17 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
18 settlement funds remain after 180 days of the mailing of the individual settlement payment
19 checks, the Parties have agreed that all such uncashed settlement funds shall be distributed to
20 the *cy pres* recipient Watsonville Law Center, in accordance with Code of Civil Procedure §
21 384. Class Counsel do not have a conflict of interest with Watsonville Law Center. Fitzpatrick
22 Decl. ¶ 14; Lee Decl. ¶ 6; Gavron Decl. ¶ 9.

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

24 The Settlement Agreement authorized Class Representative Yannet Jimenez to request
25 a service payment of \$5,000.00. Plaintiff provided significant assistance with the lawsuit,
26 including discussing the case with Class Counsel on multiple occasions, searching for and
27 providing documents and information regarding Defendant’s practices at issue in the case,
28 sitting for deposition, and reviewing the various files and pleadings submitted in this case.

1 Jimenez Decl. ¶ 8. Accordingly, Plaintiff provided invaluable information, evidence, and
2 documents that resulted in this settlement.

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

10 Also, given that future employers are much less likely to hire individuals who have
11 filed employment-related lawsuits, particularly cases of this nature, the Class Representative
12 also faced significant risk in not being able to find suitable employment and/or face retaliation
13 from prospective employers, all as a result of filing of this case against Defendant. Plaintiff
14 took these risks upon herself to the benefit of the Settlement Class. Jimenez Decl. ¶ 13.
15 Settlement Class Members did not have to file individual lawsuits and bear the risks of
16 payment of costs if they did not prevail, nor did they have to face the potential for retaliation
17 and not getting future employment had they filed a lawsuit which is a public record. These are
18 significant benefits that weigh in favor of granting the requested enhancement. Moreover, this
19 litigation has resulted in a significantly valuable benefit to the Settlement Class (*i.e.*, an
20 average award to Class Members in the amount of \$663.39, with the highest Individual
21 Settlement Payment to Class Members of \$6,509.86), and Plaintiff took on substantial risks in
22 helping to get this financial benefit to the Settlement Class. As such, the service payment
23 should be awarded to Plaintiff for her commitment, dedication, and risks taken for this
24 litigation.

25 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
26 § 1542, which other Settlement Class Members did not have to do. Agreement ¶ 37; Jimenez
27 Decl. ¶ 14. This is a more extensive release than that provided by the Settlement Class at large,
28 also supporting the request for the enhancement.

Courts have routinely granted approval of settlements containing such enhancements. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 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 in ERISA case).

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

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

The \$1,400,000.00 settlement amount is the result of a considerable expenditure of time, effort, skill, and money by Class Counsel. Class Counsel obtained data pertaining to the number of putative class members and aggrieved employees, as well as Defendant's policies regarding meal and rest periods, timekeeping, overtime, rounding, reimbursement, payment of final wages, among others. The information provided by Defendant allowed Plaintiff to review and analyze the liability and potential exposure. After thoroughly investigating the facts relating to the class and PAGA claims alleged in this lawsuit and engaging in a thorough study of the legal principles applicable to the claims asserted against Defendant, two full-day mediations with experienced mediators, and further negotiations conducted over the course of several months, the Parties were able to reach the current settlement. Class Counsel shouldered the risk that it might recover no fee at all and may even lose the considerable sum it advanced

1 in expenses. Counsel’s requested fee, therefore, should be granted in full.

2 Class Counsel seeks a fee award calculated as approximately thirty-five percent (35%)
3 of the total value of the Gross Settlement Amount as compensation for the successful
4 prosecution and resolution of this action. Under California law, the award of attorneys’ fees in
5 common fund wage and hour class action settlements should start with the percentage method.
6 *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming
7 majority of federal and state courts in holding that when class action litigation establishes a
8 monetary fund for the benefit of the class members, and the trial court in its equitable powers
9 awards class counsel a fee out of that fund, the court may determine the amount of a
10 reasonable fee by choosing an appropriate percentage of the fund created”). Under the
11 percentage of the fund method, the Court’s objective remains to “mimic the market” in fixing
12 a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) (“When
13 a fee is set by a court rather than by contract, the object is to set it at a level that will
14 approximate what the market will set.... The judge, in other words, is trying to mimic the
15 market in legal services”).

16 An award of 35%, or approximately one-third, of the fund in attorneys’ fees mimics the
17 marketplace, as it “is supported by the fact that typical contingency fee agreements provide
18 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is
19 tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July
20 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing*
21 *Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed,
22 “empirical studies [that] show that...fee awards in class actions average around one-third of
23 the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

24 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
25 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported
26 by a lodestar cross-check that employed a multiplier of 2.13. *Id.* at 487. The Court in *Laffitte*
27 explained that when cross-checking a percentage fee request against the lodestar method, the
28 court should examine the imputed multiplier in the lodestar calculation and, only when the

multiplier is “extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

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

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice specifically notified Settlement Class Members that Class Counsel would be seeking \$490,000.00 of the settlement fund as attorneys’ fees. To date, no Settlement Class Member has objected to the settlement or the request for attorneys’ fees and there is a 100% participation rate. This strong favorable response also supports the requested fees.

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to “cross-check” the amount of fees calculated by way of percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or

1 minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite*
2 *Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does
3 not trump the primary reliance on the percentage of common fund method”).

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

19 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or
20 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
21 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a
22 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
23 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
24 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
25 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
26 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court
27 opinion was affirmed in full by the California Supreme Court in its decision guiding lower
28 courts on assessing fees.

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

With respect to Class Counsel’s lodestar, Class Counsel and their support staff will have expended approximately 957.5 hours litigating this case, which does not include approximately 15 hours of anticipated time spent after final approval responding to correspondence and phone calls from Settlement Class Members, the Settlement Administrator, and defense counsel. Fitzpatrick Decl. ¶ 6, Ex. A; Lee Decl. ¶ 8, Ex. A; Gavron Decl. ¶ 18, Ex. A. Thus, the total number of hours expected to be invested in this case through resolution is expected to be approximately 972.5. Class Counsel request hourly rates ranging from \$500 to \$595 per hour, which contemplates a rate commensurate with the jurisdiction in which this action was litigated. Fitzpatrick Decl. ¶ 8; Lee Decl. ¶ 12; Gavron Decl. ¶ 21. The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*,

1 182 Cal. App. 3d 553, 559 (1986).

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

9 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
10 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
11 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*,
12 the attorney's skill and experience, the nature of the work performed, the relevant area of
13 expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*,
14 61 Cal. App. 4th 629, 632-33 (1998).

15 Class Counsel's skill and experience justify the requested rates. As shown in the
16 supporting declarations, Class Counsel have significant experience in the area of employment
17 and wage and hour class actions. Specifically, Class Counsel's practice focuses on
18 representing employees in employment matters, particularly wage and hour cases. Fitzpatrick
19 Decl. ¶ 12; Franklin Decl. ¶¶ 3-4; Lee Decl. ¶¶ 13-15; Gavron Decl. ¶¶ 10-17. As such, based
20 on the hours and applicable rate, Class Counsel's lodestar amount through the finalization of
21 this settlement – without a multiplier – will be approximately \$515,533.50. Fitzpatrick Decl. ¶
22 8; Lee Decl. ¶ 12; Gavron Decl. ¶ 21.

23 Once the court establishes the lodestar amount, it may enhance the lodestar number by
24 applying a multiplier in order to adjust the fees awarded to an amount appropriate to the
25 circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors
26 include the difficulty of the questions involved and the skill in presenting them, the contingent
27 nature of the fee award, the extent to which the litigation precluded other employment, and the
28 percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82

1 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other
2 factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139
3 (2001).

4 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
5 the-benefit; namely, no objections by class members, commendable conduct by counsel, and
6 significant recoveries by class members, all of which were previously detailed above. *Lealao*,
7 82 Cal. App. 4th at 51-53. As in *Lealao*, the Settlement Class was notified of the settlement
8 and attorneys' fee with no objections. The extreme effort undertaken by counsel, as shown by
9 their hours and the significantly high number of claims being paid out, shows commendable
10 conduct.

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

15 Finally, based upon Class Counsel's lodestar of \$515,533.50, Plaintiff's request for a
16 **negative multiplier** of 0.95 (\$490,000.00 / \$515,533.50) is reasonable and fair, particularly
17 based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224
18 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards
19 in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*,
20 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common
21 fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v.*
22 *Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the
23 common fund, based on a multiplier of 2.52). As such, the requested fee award is fair and
24 reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of
25 time, but also a great deal of expense to ensure the successful litigation of this action on behalf
26 of all Settlement Class Members. For these reasons, Class Counsel's request for attorneys'
27 fees in the amount of \$490,000.00 should be approved as fair, reasonable, and adequate.

28 //

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

3 The request for reimbursement of litigation costs, in the amount of \$27,715.35 is fair
4 and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may
5 seek up to \$30,000.00 as reimbursement for litigation costs under the Settlement Agreement.
6 As set forth in Class Counsel's declaration, the costs were all directly incurred in the
7 prosecution of this action, including but not limited to, filing fees, service of process costs,
8 postage costs, and mediation fees. Gavron Decl. ¶ 22, Ex. B; Fitzpatrick Decl. ¶ 11, Ex. B. As
9 such, the requested costs should be approved as fair and reasonable.

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

12 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
13 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
14 funds. As shown on the Declaration of Taylor Mitzner, the settlement administration fees
15 expended in this matter amount to a total of \$14,000.00, which is the amount that was agreed
16 upon by the Parties. Phoenix Decl. ¶ 17, Ex. B. For such reasons, it is requested that the
17 Settlement Administrator's fees be approved.

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

19 On July 14, 2023, Plaintiff uploaded the Order Granting Motion for Preliminary
20 Approval of Class Action Settlement to the LWDA's website. Gavron Decl. ¶ 23; Ex. C.
21 Concurrent with the filing of this Motion, Plaintiff uploaded this motion and proposed order to
22 the LWDA's website. *Id.* ¶ 24.

23 **X. CONCLUSION**

24 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
25 respectfully submits that the standards for final approval have been met and the terms of the
26 Settlement Agreement are fair, adequate, and reasonable. Accordingly, Plaintiff respectfully
27 requests that the Court grant this Motion and enter an Order in the form proposed and
28 submitted.

1 Dated: October 12, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP

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4 By:


B. James Fitzpatrick
Larry W. Lee

Attorneys for Plaintiff,
YANNET JIMENEZ on behalf of herself and
all similarly situated employees