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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

EDWARD GNAT, on behalf of himself and
all similarly aggrieved employees,

Plaintiff,

v.

QUINN COMPANY; and DOES 1 through
50, inclusive,

Defendants.

Case No. 20CV003431

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

Date: July 12, 2024
Time: 8:30 a.m.
Dept.: 15

Action Filed: December 21, 2020
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on July 12, 2024, at 8:30 a.m. before the Honorable
3 Thomas W. Wills, judge presiding in Department 15 of the above-referenced Court, located at
4 1200 Aguajito Road, Monterey, California 93940, Plaintiff Edward Gnat (“Plaintiff”) will and
5 hereby does move the Court for an Order: (1) granting final approval to the Joint Stipulation
6 and Settlement Agreement of Class Action and PAGA Claims (“Stipulation of Settlement,”
7 “Settlement,” or “SA”) in this action; (2) approving distribution of the settlement funds to the
8 Settlement Class pursuant to the terms of the Stipulation of Settlement; (3) approving
9 Plaintiff’s request for an award of the service payment to Plaintiff pursuant to the terms of the
10 Stipulation of Settlement; (4) approving Plaintiff’s counsel’s request for an award of attorneys’
11 fees to Class Counsel of approximately one-third of the \$500,000.00 Gross Settlement
12 Amount, or \$166,666.67, and reimbursement of litigation costs of \$19,263.06, pursuant to the
13 terms of the Stipulation of Settlement; (5) approving Plaintiff’s request for payment of the
14 settlement administration costs to Phoenix Settlement Administrators in the amount of
15 \$15,750.00 pursuant to the terms of the Stipulation of Settlement; (6) approving Plaintiff’s
16 request for payment to the California Labor and Workforce Development Agency of
17 \$22,500.00 pursuant to the terms of the Stipulation of Settlement; and (7) entering final
18 judgment as to all members of the Settlement Class in this action.

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
20 provides for court approval of the settlement of a purported class action and allows the Court
21 to grant final certification of a class for settlement purposes. In light of the overwhelmingly
22 positive response, there is no question that the settlement is fair, reasonable, and adequate and
23 thus should be granted final approval.

24 This Motion will be based on the attached Memorandum of Points and Authorities and
25 the supporting Declarations of B. James Fitzpatrick, Laura L. Franklin, Larry W. Lee, Max W.
26 Gavron, Mai Tulyathan, Plaintiff Edward Gnat, and Yami Burns of Phoenix Settlement
27 Administrators, and upon the oral arguments of counsel (should there be any) and on the
28 complete records and file herein.

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DATED: June 18, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: 
B. James Fitzpatrick
Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff,
EDWARD GNAT, on behalf of himself and all
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

2 **I. INTRODUCTION**

3 Plaintiff Edward Gnat (“Plaintiff”) seeks final approval of the Joint Stipulation and
4 Settlement Agreement of Class Action and PAGA Claims (“Stipulation of Settlement,”
5 “Settlement,” or “SA”) with Defendant Quinn Company (“Defendant”). The settlement
6 provides for a \$500,000.00 fund created for the benefit of the Class, from which attorneys’
7 fees, litigation costs, service payment to the Plaintiff, payment to the California Labor &
8 Workforce Development Agency (“LWDA”), and costs of settlement administration are to be
9 paid.

10 The history of this litigation was previously detailed in Plaintiff’s Preliminary
11 Approval Motion. This Court preliminarily approved this settlement on February 23, 2024,
12 directing distribution of Notice of Proposed Settlement and scheduling the hearing for final
13 approval of settlement (the “Preliminary Approval Order”). As further detailed below, during
14 the administration process, Defendant mistakenly provided only the data related to the class
15 members, which resulted in distribution of the notice to only those individuals that comprise
16 the class. Accordingly, with this Motion, the Parties submit a proposed notice to accompany
17 the checks that will be sent to the PAGA Group that explains the check they will receive
18 constituting their Individual PAGA Payment.

19 The Settlement Administrator distributed the Notice of Proposed Settlement.
20 Declaration of Yami Burns on behalf of Phoenix Settlement Administrators (“Admin. Decl.”)
21 ¶¶ 3-6. To date, only one (1) individual has requested exclusion from the settlement. Admin.
22 Decl. ¶ 8. No Settlement Class Members have filed an objection to the settlement. *Id.* ¶ 9. As
23 such, there is a 99.4% participation rate.

24 In sum, as a result of the settlement administration process, the single opt-out, and the
25 amount of class funds being paid out to Settlement Class Members, the Court may confirm its
26 preliminary approval as the lack of opposition from the Settlement Class supports the Court’s
27 initial finding that the settlement is fair and reasonable.

28 In addition to the positive results of the notice process, the following summary of the

basic points outlined in this memorandum supports approval of the settlement:

- The settlement provides a total settlement sum of \$500,000.00;
- Settlement Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Settlement Class Members in proportion to the number of workweeks each Settlement Class Member was employed during the Class Period, with an average payment of \$1,635.53 per person, with the highest payment being approximately \$5,437.84, and the lowest being approximately \$12.93 (Admin. Decl. ¶ 13);
- As this Court is well aware, Plaintiff significantly investigated and litigated the claims at issue, including the exchange of formal and informal discovery by Plaintiff and Defendant and data for the putative class as necessary for Plaintiff to fully evaluate this case;
- In addition to the Settlement Class, California's LWDA will also benefit from this settlement, as it will receive \$22,500.00, should this settlement be granted final approval;
- A highly regarded administrator, Phoenix Settlement Administrators ("Phoenix"), was retained for an estimated payment of \$15,750.00; and
- None of the settlement funds will revert to Defendant.

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

II. NOTICE TO THE CLASS & PROPOSED NOTICE TO THE PAGA GROUP

The Preliminary Approval Order contemplated that the Notice of Proposed Settlement (the "Notice") be sent to all Settlement Class Members by first class mail, as specified in the Stipulation of Settlement. The Preliminary Approval Order specified that Phoenix would serve as the Settlement Administrator.

As described in the Declaration of Yami Burns, Phoenix provided the Notice to Settlement Class Members. On or about April 5, 2024, the Settlement Administrator received a

1 mailing list from Defendant’s counsel that included the names, contact, and employment data
2 for 162 Settlement Class Members. Admin. Decl. ¶ 3. On April 16, 2024, after updating the
3 mailing addresses through the National Change of Address Database, the Notice was sent to
4 all Settlement Class Members via first class mail. *Id.* ¶ 5.

5 In total, eleven (11) Notices were returned due to deficient addresses. Admin. Decl. ¶
6 6. Out of that number, all 11 Notices were re-mailed with updated addresses obtained by
7 Phoenix using an advanced research tool, as set forth in the Preliminary Approval Order. *Id.*
8 The Notice provided Settlement Class Members with the contact information for Plaintiff’s
9 counsel so that Settlement Class Members could seek information regarding the settlement,
10 pose questions to the Settlement Administrator, and update their addresses. Ultimately, zero
11 (0) Notices were determined to be undeliverable. Admin. Decl. ¶ 7.

12 Here, the Settlement also contemplates payment to the PAGA Group. Attached to the
13 Declaration of Max W. Gavron as **Exhibit A** is a draft of the notice the Parties propose the
14 Settlement Administrator distribute to the PAGA Group members (herein after, the “PAGA
15 Notice”). While the Parties originally submitted a proposed notice to the court that anticipated
16 the PAGA Group Members would be notified of the Settlement in conjunction with the Class
17 Members, during the administration process Defendant inadvertently did not provide the data
18 to the Settlement Administrator such that it distributed the Class Notice to the PAGA Group
19 Members concurrently with the Class Members. Accordingly, the Parties now request that the
20 Court approve and the Settlement Administrator distribute the PAGA Notice in conjunction
21 with distributing the PAGA Group Member’s Individual PAGA Payments. Because by
22 operation of law PAGA Group Members may not opt out of the Settlement, providing them
23 notice of the settlement with their Individual PAGA Payment is appropriate and the Court
24 should approve this request. *See Robinson v. S. Ctys. Oil Co.*, 53 Cal. App. 5th 476, 483
25 (2020) (citing *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009)) (explaining that employee
26 cannot opt out of PAGA settlement).¹ As explained in the Burns Declaration, in advance of

27
28 ¹ Two of the Class Members’ employment overlapped with the PAGA Period. Accordingly in their class notice,
they received an estimate of their Individual PAGA Payment that was incorrect. The Settlement Administrator

(Footnote continued)

1 the hearing on Final Approval, the Settlement Administrator will submit a supplemental
2 declaration detailing the average, high, and low payments which it anticipates will be
3 distributed to the PAGA Group Members after receipt of the data from Defendant.

4 The provision of Notice to Settlement Class Members constitutes the “best notice
5 practicable” to those class members, and therefore protects the due process rights of those
6 individuals. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of
7 “best notice practicable” with description of the litigation and explanation of opt-out rights
8 satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual
9 notice must be sent to class members who can be identified through reasonable means);
10 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable
11 notice is that which is “reasonably calculated, under all the circumstances, to apprise interested
12 parties of the pendency of the action and afford them an opportunity to present their
13 objections”).

14 Here, Settlement Class Members were provided mailed notices regarding the
15 settlement that explained the terms of the settlement and allowed Settlement Class Members to
16 seek information, ask questions, opt-out, and object, if so desired. As such, proper notice has
17 been given to the Settlement Class. Thus, the Court may determine the fairness and adequacy
18 of the settlement and enter its Order granting final approval, secure in the knowledge that all
19 absent Settlement Class Members have been given the opportunity to participate fully in the
20 claims, exclusion, and the approval process.

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

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

24 In order to proceed as a class, there are two requirements which must be met –
25 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704
26 (1967). “The community of interest requirement embodies three factors: (1) predominant
27

28 will send a corrective notice to these two individuals explaining the estimated portion of their Individual PAGA
Payment was incorrect and identifying the recalculated amount. Gavron Decl. ¶ 7.

1 common questions of law or fact; (2) class representatives with claims or defenses typical of
2 the class; and (3) class representatives who can adequately represent the class.” *Richmond v.*
3 *Dart Industries*, 29 Cal. 3d. 462, 470 (1981). *See also Vasquez v. Superior Court*, 4 Cal. 3d
4 800, 809 (1971) (there are two basic requirements which must exist to sustain a class action:
5 “[t]he first is existence of an ascertainable class, and the second is a well-defined community
6 of interest in the questions of law and fact involved”).

7 Here, the Court previously certified the Settlement Class on February 23, 2024. As
8 such, all of the factors for class certification have already been met.

9 **B. Defendant’s Defenses**

10 Defendant asserts that it has complied with the Labor Code and argues that class
11 certification is not appropriate. Defendant also asserts a number of defenses including that (1)
12 Plaintiff’s class claims are not appropriate due to arbitration agreements in place; (2) the class
13 period for Plaintiff’s class claims is limited due to the arbitration agreements; (3) Defendant
14 maintained legally compliant written policies with regard to payment of wages, meal and rest
15 breaks, and work-related reimbursements; (4) any omission of information on the wage
16 statements was not a “knowing and intentional failure” by Defendant; (5) Defendant did not
17 authorize off-the-clock work by employees or maintain a uniform policy regarding off-the-
18 clock work; and (6) Defendant asserts that its rounding policies are neutral and lawful.

19 **C. Risks, Expenses, and Complexity of Further Litigation**

20 The fairness settlement at issue is fair and reasonable, factoring in the significant risks
21 associated with this case. These include the risk that Plaintiff would not prevail on the merits,
22 the possibility of non-certification, and the risk that any favorable judgment Plaintiff might
23 obtain would be challenged and possibly overturned on appeal. Defendant has maintained that
24 there is no liability. As stated above, Defendant’s position throughout the instant litigation has
25 been that its labor practices complied with California law, and therefore, Settlement Class
26 Members will be unable to prevail on any of their claims. Therefore, the risks, expenses, and
27 complexity of further litigation warrant granting of this Motion.

28 //

1 **D. The Terms, Negotiation, and Reception of the Settlement by Settlement**
2 **Class Members All Strongly Support the Conclusion that the Settlement is**
3 **Fair, Adequate, and Reasonable**

4 The evidence that Plaintiff supplied in support of his Motion for Preliminary Approval
5 of Class Action Settlement amply demonstrated that the negotiation process that led to
6 settlement was conducted at arm's length and in good faith. In addition, Plaintiff highlights the
7 following facts: (1) the Stipulation of Settlement was the product of negotiation between
8 highly able and experienced attorneys on both sides who possessed the relevant data and
9 extensive legal research which they had carefully analyzed (Declaration of Max W. Gavron
10 ("Gavron Decl.") ¶ 3); (2) the results after mailing of the Notice support confirmation of the
11 Court's preliminary approval of the settlement with final approval of the settlement, as
12 evidenced by the fact that only one Settlement Class Member submitted a Request for
13 Exclusion to the settlement (Admin. Decl. ¶ 8); and (0) zero Settlement Class Members have
14 filed an objection to the settlement (Admin. Decl. ¶ 9).

15 Courts may appropriately infer that the class action settlement is fair, adequate, and
16 reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v.*
17 *City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992). Here, zero Settlement Class Members
18 objected to the settlement; therefore, it may be inferred that the settlement is fair, reasonable,
19 and adequate.

20 **E. Under Well-Established Legal Principles, the Court Should Grant Final**
21 **Approval of the Settlement**

22 **1. Standard of Review**

23 On a motion for final approval of a class action settlement under California Code of
24 Civil Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether
25 the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*,
26 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S.
27 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final
28 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). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

Accordingly, the Court should give due regard to what is otherwise a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; *Manual for Complex Litigation* § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”). A court’s approval of a class action settlement will only be reversed for abuse of discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

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

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

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

2. The Circumstances Surrounding this Settlement Give Rise to a Presumption of Fairness

The Court should begin its analysis by recognizing that a presumption that the settlement is fair applies to this case and thus the settlement should be approved:

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

Dunk, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

The settlement in the case at bar is subject to a presumption of fairness and therefore warrants approval. As previously noted in the application for Preliminary Approval, the settlement was negotiated at arm's length, after a full day of mediation with the Honorable Steven Denton (Ret.). Gavron Decl. ¶ 3.

In addition, Class Counsel conducted extensive factual investigation before reaching a settlement, and further engaged in extensive litigation, including, but not limited to, litigation regarding a prior settlement of PAGA claims, amending the complaint, and an arbitration agreement. Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in wage and hour matters and class actions. Gavron Decl. ¶¶ 14-20; Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶¶ 13, 14; Declaration of Laura L. Franklin ("Franklin Decl.") ¶¶ 4, 5; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 5-7; Declaration of Mai Tulyathan ("Tulyathan Decl.") ¶¶ 5-10.

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

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds

1 against the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d
2 768, 806 (3d Cir. 1995) (“present value of the damages Plaintiff would likely recover if
3 successful, appropriately discounted for the risk of not prevailing, should be compared with
4 the amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d
5 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

6 If Plaintiff was to pursue this case without settlement and not prevail, Plaintiff would
7 be potentially responsible for Defendant’s fees and costs. Likewise, were individual
8 employees of Defendant to bring individual claims on the same causes of action, they would
9 each face the same uncertainty of prevailing and the same possibility of becoming liable to pay
10 fees and costs to Defendant. Accordingly, such claims likely would not be brought by many of
11 the current and former employees who make up the Settlement Class – thus, this lawsuit
12 achieves a true benefit for the Settlement Class that they might not otherwise realize as
13 individuals. Here, given that a fair and reasonable settlement has been reached, neither
14 Plaintiff nor any of the Settlement Class Members will be required to pay for Defendant’s
15 litigation fees and costs. Thus, the risks undertaken by Class Counsel and Settlement Class
16 should be considered a significant factor by the Court in its determination of final approval.
17 The settlement provides a fair recovery to the Settlement Class, and it also eliminates the risk
18 of costs to the Settlement Class.

19 The Stipulation of Settlement also affords finality, avoiding significant legal and
20 factual battles that might otherwise prevent the Settlement Class from obtaining any recovery
21 at all. While Class Counsel believe the Settlement Class Members’ claims are meritorious and
22 can be successfully litigated, counsel are experienced and fully understand the risks of trial
23 and the possibility of an adverse judgment, notwithstanding counsel’s confidence in the case.
24 The risk of an undesired outcome at trial and on any subsequent appeals are inherent in all
25 litigation. Given the complexity of this particular case, those risks are more pronounced than
26 usual. Class Counsel has assessed such risks in connection with the current settlement.
27 Because the settlement provides immediate and substantial relief, without the attendant risks
28 and delay of continued litigation – not to mention the threat of litigation fees and costs – Class

Counsel believe that the settlement warrants the Court's final approval.

**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 625; *Girsh*, 521 F.2d at 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 likely would have led to appeals of any judgment on a number of issues, including the issues outlined above regarding Defendant's anticipated defenses to liability and class certification. The settlement, however, provides to all Settlement Class Members fair relief in a prompt and efficient manner without requiring Settlement Class Members to pay out of pocket costs and legal fees. Were the Court to deny final approval, most of the 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, handling numerous individual lawsuits. The settlement in this case is therefore consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case would have likely involved years more of litigation, as evidenced by the Parties' litigation record.

5. The Opinion of Experienced Counsel Favors Final Approval

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

1 **6. Discovery and Settlement Discussions Undertaken in this Action**
2 **Favor Final Approval**

3 Prior to negotiating the settlement, Class Counsel engaged in lengthy investigation on a
4 number of topics and categories. For example, Plaintiff reviewed numerous documents related
5 to Defendant's written policies and handbooks, data pertaining to the number of putative class
6 members and aggrieved employees and the number of pay periods at issue, and a twenty
7 percent sample of payroll and timekeeping data for the putative class. The Parties also engaged
8 in all-day mediation before finally reaching this settlement. Gavron Decl. ¶ 3.

9 Class Counsel worked tirelessly throughout the duration of this case and was prepared
10 to present Plaintiff's case at trial before the Parties were able to reach a settlement in this
11 matter. As detailed above, each of the factors counsel strongly in favor of final approval of the
12 settlement by this Court.

13 **IV. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT**
14 **SHOULD BE APPROVED**

15 Class Representative and Plaintiff Edward Gnat requests a service payment of
16 \$5,000.00. Plaintiff met with Class Counsel to discuss the case, including providing
17 substantive information and documents regarding Defendant's practices. Accordingly, Plaintiff
18 provided invaluable information, evidence, and documents that resulted in this settlement.

19 In addition to the invaluable services that he provided, Plaintiff also took significant
20 risks, personally, professionally, and monetarily, in acting as the Class Representative seeking
21 benefits on behalf of the Settlement Class. Because the claims alleged by the Class
22 Representative provide for the payment of fees and costs to the prevailing party, Plaintiff
23 undertook the risk that he may be required to pay Defendant's fees and costs in the event that
24 Defendant prevailed in this action.

25 Moreover, Plaintiff was an active participant in the prosecution of this case. Plaintiff
26 met with Class Counsel on numerous occasions, had numerous phone conferences with Class
27 Counsel, provided information and documents to Class Counsel, and reviewed various case
28 documents including discovery responses and the Stipulation of Settlement. Declaration of

1 Edward Gnat (“Gnat Decl.”) ¶ 7. Plaintiff spent roughly 25-30 hours fulfilling his
2 responsibilities as Class Representative. *Id.* ¶ 7.

3 Plaintiff took these risks upon himself for the benefit of the Settlement Class.
4 Settlement Class Members did not have to file individual lawsuits and bear the risks of
5 payment of fees and costs if they did not prevail, nor did they have to face the potential for
6 retaliation and not getting future employment had they filed a lawsuit which is a public record.
7 These are significant benefits that weigh in favor of granting the requested service payment.
8 Moreover, this litigation has resulted in a significantly valuable benefit to the Settlement
9 Class, and Plaintiff took on substantial risks in helping to get this financial benefit to the
10 Settlement Class. As such, the service payment should be awarded to Plaintiff for his
11 commitment, dedication, and risks taken for this litigation.

12 **V. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED**

13 The amount of the proposed settlement is a direct result of the effort and work of Class
14 Counsel. Significant work occurred over the past three and a half years. The settlement before
15 this Court inures to the benefit of Defendant’s employees and is the direct result of Class
16 Counsel’s efforts. As set forth in the declarations of Class Counsel, a considerable amount of
17 work done by Class Counsel achieved an enormous benefit to the Settlement Class.

18 The \$500,000.00 settlement amount is the result of a considerable expenditure of time,
19 effort, skill, and money by Class Counsel. Class Counsel obtained data pertaining to the
20 number of putative class members and aggrieved employees, number of pay periods at issue,
21 and sample payroll and timekeeping data for the putative class, as well as Defendant’s written
22 policies. The information provided by Defendant allowed Plaintiff to review and analyze the
23 liability and potential exposure. After thoroughly investigating the facts relating to the class
24 and PAGA claims alleged in this lawsuit, and engaging in a thorough study of the legal
25 principles applicable to the claims asserted against Defendant, a full-day mediation with the
26 Honorable Steven Denton (Ret.) was conducted to reach the current settlement. Class Counsel
27 shouldered the risk that it might recover no fee at all and may even lose the considerable sum
28 it advanced in expenses. Counsel’s requested fee, therefore, should be granted in full.

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

14 An award of one-third, or approximately 33.3%, of the fund in attorneys' fees mimics
15 the marketplace, as it "is supported by the fact that typical contingency fee agreements provide
16 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is
17 tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July
18 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing*
19 *Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed,
20 "empirical studies [that] show that...fee awards in class actions average around one-third of
21 the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

22 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
23 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported
24 by a lodestar cross-check that employed a multiplier of 2.13. *Id.* at 487. The court in *Laffitte*
25 explained that when cross-checking a percentage fee request against the lodestar method, the
26 court should examine the imputed multiplier in the lodestar calculation and, only when the
27 multiplier is "extraordinarily high or low [should] the trial court [] consider whether the
28 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 \$166,666.67 of the settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement or the request for attorneys’ fees. 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 minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does

1 not trump the primary reliance on the percentage of common fund method”).

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

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

27 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
28 awarded by the percentage method showing that the majority of multipliers awarded are “in

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

14 With respect to Class Counsel’s lodestar, Class Counsel will have expended
15 approximately 332.2 hours litigating this case, which includes anticipated time spent after final
16 approval responding to correspondence and phone calls from Settlement Class Members, the
17 Settlement Administrator, and defense counsel. Fitzpatrick Decl. ¶ 9, Ex. A; Gavron Decl. ¶
18 10, Ex. B. Additionally, paralegals for Mr. Fitzpatrick and Ms. Franklin’s firm spent
19 approximately 30.7 hours on this matter. Fitzpatrick Decl. ¶ 9; Ex. A. Thus, the total number
20 of hours expected to be invested in this case through resolution is approximately 362.9. Class
21 Counsel request an hourly rate of between \$500.00 and \$595.00 per hour. Fitzpatrick Decl. ¶
22 11; Gavron Decl. ¶ 13. Paralegals at Fitzpatrick & Swanston bill at a rate of \$185 per hour.
23 Fitzpatrick Decl. ¶ 10. The courts are quite liberal in the evidence required to prove an
24 attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may
25 suffice: “Testimony of an attorney as to the number of hours worked on a particular case is
26 sufficient evidence to support an award of attorney fees, even in the absence of detailed time
27 records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

28 Reasonable hours include, in addition to time spent during litigation, the time spent

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

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

13 Class Counsel's skill and experience justify the requested rates. As shown in the
14 supporting declarations, Class Counsel have significant experience in the area of employment
15 and wage and hour class actions. Specifically, Class Counsel's practice focuses on
16 representing employees in employment matters, particularly wage and hour cases. Fitzpatrick
17 Decl. ¶ 1; Franklin Decl. ¶ 4; Lee Decl. ¶ 6; Gavron Decl. ¶ 18; Tulyathan Decl. ¶ 6. As such,
18 based on the hours and applicable rate, Class Counsel's lodestar amount through the
19 finalization of this settlement – without a multiplier – will be approximately \$205,464.50.
20 Fitzpatrick Decl. ¶ 13; Gavron Decl. ¶ 13.

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

1 (2001).

2 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
3 the-benefit, namely, commendable conduct by counsel, and significant recoveries by class
4 members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As
5 in *Lealao*, the Settlement Class was notified of the settlement and attorneys' fee request. The
6 extreme effort undertaken by counsel, as shown by their hours and the significantly high value
7 being paid for claims, shows considerable skill.

8 The multiplier should be enhanced because of the contingent nature of counsel's fee
9 recovery. The risks in taking on a class action case are enormous, not the least of which is time
10 and effort. As this Court knows, substantial litigation has been undertaken by Class Counsel in
11 this case, and to date, Class Counsel has yet to recover any fees for their work. This type of
12 risk and effort justifies a multiplier, particularly in view of the contingent nature of the fee
13 arrangement in this case.

14 Thus, the risks are very real and substantial for Class Counsel. Not only have Class
15 Counsel undertaken a significant risk in this matter, but in the face of that risk they have
16 achieved an excellent settlement. Thus, their work in obtaining the settlement in this matter
17 has been commendable.

18 Finally, based upon Class Counsel's lodestar of \$205,464.50, Plaintiff's lodestar
19 actually exceeds the fees requested, such that a negative multiplier is implicated (\$205,464.50
20 / \$166,666,67). *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) (noting that
21 courts using the lodestar method to calculate attorney fees awards in class actions typically
22 apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS
23 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier
24 of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F.
25 Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a
26 multiplier of 2.52).

27 As such, the requested fee award is fair and reasonable, and should be awarded in its
28 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to

1 ensure the successful litigation of this action on behalf of all Settlement Class Members. For
2 these reasons, Class Counsel's request for attorneys' fees in the amount of \$166,666.67 should
3 be approved as fair, reasonable, and adequate.

4 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
5 **OF COSTS**

6 The request for reimbursement of costs, in the amount of \$19,263.06 is fair and
7 reasonable. The costs are all litigation-related costs, which have been detailed in the
8 supporting declarations of Class Counsel. Fitzpatrick Decl. ¶ 15, Ex. B; Lee Decl. ¶ 8, Ex. B.
9 The authority for the court to award this is the Parties' Stipulation of Settlement and the
10 California Labor Code. As such, this request should be approved.

11 **VII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED**

12 Pursuant to the terms of the Stipulation of Settlement, the fees and costs of the
13 Settlement Administrator, Phoenix, are to be paid out of the class settlement funds. As shown
14 in the Declaration of Ms. Burns, the settlement administration fees expended in this matter
15 amount to a total of \$15,750.00, which is the amount that was agreed upon by the Parties.
16 Admin. Decl. ¶ 16. For such reasons, it is requested that the Settlement Administration Costs
17 fees be approved.

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

19 Concurrent with the filing of this Motion, Plaintiff's counsel provided notice to the
20 Labor and Workforce Development Agency. Gavron Decl. ¶ 21.

21 **IX. CONCLUSION**

22 For all of the foregoing reasons, and on the basis of the authorities cited herein,
23 Plaintiff respectfully submits that the standards for final approval have been met. Thus, the
24 terms of the Stipulation of Settlement are fair, adequate, and reasonable and final approval
25 should be granted.

26 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form
27 proposed and submitted:

- 28 1. Granting final approval to the proposed Stipulation of Settlement in this action;

- 1 2. Approving distribution of the settlement funds to the Settlement Class Members
2 pursuant to the terms of the Stipulation of Settlement;
- 3 3. Approving Plaintiff's request for an award of the Service Payment to the Class
4 Representative, with payment pursuant to the terms of the Stipulation of Settlement;
- 5 4. Approving Plaintiff's request for an award to Class Counsel of \$166,666.67 in
6 attorneys' fees and \$19,263.06 in costs, with payment pursuant to the terms of the Stipulation
7 of Settlement;
- 8 5. Approving Plaintiff's request for payment to the LWDA of \$22,500.00, with
9 payment pursuant to the terms of the Stipulation of Settlement;
- 10 6. Approving Plaintiff's request for payment of the settlement administration costs
11 to Phoenix Settlement Administrators in the amount of \$15,750.00, with payment pursuant to
12 the terms of the Stipulation of Settlement;
- 13 7. Entering final judgment as to all members of the Settlement Class in this action.

14
15 DATED: June 18, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

16
17 By: 

18 B. James Fitzpatrick
19 Larry W. Lee
20 Max W. Gavron
21 Attorneys for Plaintiff,
22 EDWARD GNAT, on behalf of himself and all
23 similarly aggrieved employees
24
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26
27
28