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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

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

Plaintiffs,

vs.

HCL AMERICA, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV371353

[Hon. Sunil R. Kulkarni, Department 1]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Jordan McDonald; Declaration of Kevin Lee;
[Proposed] Order and Final Judgment]*

Date: September 21, 2023
Time: 1:30 p.m.
Department: 1

Complaint Filed: October 7, 2020

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

2 **PLEASE TAKE NOTICE** that on September 21, 2023, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 10C, of the above-entitled court located at 191 North First Street,
4 San Jose, California 95113, Plaintiff, Jordan McDonald, will and hereby does seek an Order:

- 5 1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement (the
6 “Agreement”) in this action;
- 7 2. approving distribution of the settlement funds to Settlement Class Members pursuant to the
8 terms of the Agreement;
- 9 3. approving Plaintiff’s request for a service award of \$10,000.00 to the Class Representative
10 pursuant to the terms of the Agreement;
- 11 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
12 \$410,000.00 Gross Settlement Amount, or \$136,666.67, and reimbursement of litigation
13 costs of \$8,583.88, pursuant to the terms of the Agreement;
- 14 5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix
15 Settlement Administrators in the amount of \$10,000.00, pursuant to the terms of the
16 Agreement;
- 17 6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency in
18 the amount of \$30,000.00 and payment to Aggrieved Employees in the amount of
19 \$10,000.00, pursuant to the terms of the Agreement; and
- 20 7. entering final judgment as to all members of the Settlement Class in this action.

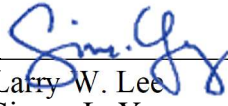
21 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
22 Court approval of the settlement of a purported class action and allows the Court to grant final
23 certification of a class for settlement purposes. The overwhelmingly positive Class response—as shown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

26 This motion will be based on the attached Memorandum of Points and Authorities, the
27 supporting Declarations of Larry W. Lee, Simon L. Yang, Plaintiff Jordan McDonald, and Kevin Lee of
28

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

3 DATED: August 29, 2023

DIVERSITY LAW GROUP, P.C.

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

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SUMMARY OF MOTION

On October 7, 2020, Plaintiff, Jordan McDonald, filed this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, HCL America, Inc., in the Superior Court of California for the County of Santa Clara. The lawsuit seeks to remedy Defendant’s alleged failure to furnish lawful wage statements and failure to timely pay wages at separation.

Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”). The Agreement provides for a \$410,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, service award to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees, and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Class Members.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. On January 23, 2023, the Court preliminarily approved this settlement. It directed distribution of the Notice of Class Action Settlement (“Class Notice”) and scheduled the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Administrator, Phoenix Settlement Administrators, distributed the Class Notice to 234 Class Members. Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. No objections have been filed. *Id.* ¶ 9. Nor has any request for exclusion been received. *Id.* ¶ 8. As such, there is a 100% participation rate. *Id.* ¶ 11. Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

In addition to the results of the notice process, the points discussed in Plaintiff’s Preliminary Approval Motion also support final approval of the settlement:

- The settlement provides a total settlement sum of \$410,000.00;
- The settlement is fair given that Settlement Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money (on average, each Settlement Class Member will receive approximately \$917.93, and each Aggrieved Employee will additionally receive another \$49.75, *see* Admin Decl. ¶¶ 14-15);
- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;

- Plaintiff conducted significant investigation in this case, including substantial informal discovery and exchanges of information by Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administrators, was retained for fees of \$10,000.00 only; and
- California’s LWDA will also be the beneficiary of this settlement as it will receive \$30,000.00, should this settlement be granted final approval.

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

DISCUSSION

I. Class Members Were Provided Notice of the Settlement.

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

As clearly stated in the Admin Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On April 3, 2023, the Administrator received a Class Member mailing list from Defendant’s counsel that included 234 Class Members. Admin Decl. ¶ 3. On June 30, 2023, the Administrator conducted a search to update addresses, and each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶¶ 4-5. No Class Notices were returned due to an incorrect address. *Id.* ¶ 6. No Class Notices remain undeliverable. *Id.* ¶ 7. The Class Notice provided Class Members with Class Counsel’s contact information, where they could further seek information regarding the settlement, leave questions for the Administrator, and update their address.

Plaintiff provided the “best notice practicable” in this case as necessary to protect the due process rights of class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (providing “best notice practicable” with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (explaining individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating best practicable notice is that

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

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

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

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

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

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

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

16 Here, the Class includes all members of the “Late Pay Class” and all members of the “Wage
17 Statement Class.” The Late Pay Class includes all former non-exempt employees of Defendant in the
18 State of California whose employment ended at any time from April 12, 2017, through April 30, 2022.
19 The Wage Statement Class includes all current and former non-exempt employees of Defendant in the
20 State of California at any time from April 12, 2019, through February 28, 2021. There are 234
21 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the minimum required to certify
22 a class. Within the context of manageability, the issue is whether there exists sufficient means for
23 identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members
24 have been identified by Defendant, and notice was already provided to the Class Members.¹

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26
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28 ¹ For purposes of PAGA, all Class Members who were employed by Defendant since April 12, 2019, are
also “Aggrieved Employees.”

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

2 The “community of interest” requirement embodies three separate factors: (1) predominant
3 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
4 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
5 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

11 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
12 violated the Labor Code by (i) not paying final wages promptly upon termination but delaying them
13 until Defendant’s next regular pay date and (ii) failing to accurately itemize and show the number of
14 total hours worked or the hourly rates paid for any hours worked and instead issuing wage statements
15 that show gross wages earned without any hourly rates or the corresponding number of hours worked at
16 the rates. Defendant denies that liability could be established on a class-wide basis and contends instead
17 that liability and damages would need to be conducted on a case-by-case basis.

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

19 A class representative’s claim must be “typical” but not necessarily identical to the claims of
20 other class members; it is sufficient that the representative is similarly situated so that he or she will
21 have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983).
22 Courts look to “whether the action is based on conduct which is not unique to the named Plaintiff” and
23 whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d
24 497, 508 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
25 named representative aligns with the interests of the class.” *Id.* at 508.

26 Plaintiff was employed by Defendant and alleges that he was subjected to the same payroll
27 policies as all other Class Members. Specifically, like other members of the Class, Plaintiff received
28 wage statements that showed “86.67” hours, regardless of how many hours he actually worked.

1 Declaration of Jordan McDonald (“McDonald Decl.”) ¶ 2. Moreover, when Plaintiff’s employment
2 ended, he was not paid his final wages immediately upon, or within three days of, the termination of his
3 employment but instead paid his final wages on the next regular payday. *Id.* In sum, Plaintiff alleges he
4 was subjected to the same policies and practices as other Class Members. Plaintiff’s claims thus are
5 typical to those of Class Members.

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

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

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

14 Defendant asserts that even assuming that a class could have been certified, Plaintiff would be
15 unable to establish a “knowing and intentional” violation of Section 226(a) and that employees suffered
16 no injuries from its wage statement practices. Defendant also asserted that any alleged underpayments
17 would be subject to its good faith defense for liability under Section 203. Based thereon, Defendant
18 continues to maintain that it is not liable for the allegations made by the Plaintiff.

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

20 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the fairness of
21 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
22 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
23 possibility of non-certification, and potential for appeals.

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

**D. The Settlement Terms and Negotiation—as Well as the Class Member Response—
All Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.**

Without reiterating the details in the Preliminary Approval Motion showing that the Agreement (and the negotiation process that led up to it) is fair and adequate, the Parties highlight the following facts. The Agreement was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

After Class Notice, neither a single request for exclusion nor objection to the settlement has been received. The Class Member response suggests the Court’s preliminary approval of the settlement should now be granted final approval. Admin Decl. ¶¶ 8-9. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

III. Well-Established Legal Principles Support Final Approval of the Settlement.

On a motion for final approval of a class action settlement under Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better served by the settlement than by further litigation.” *See Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

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

6 As the Court of Appeal has cautioned:

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

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

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

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

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

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

19 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
20 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
21 arm’s length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,
22 including the exchange of formal and informal discovery and class data enabling Class Counsel to
23 evaluate the full extent of Defendant’s potential liability. *Id.* ¶ 4. Further, Class Counsel is highly
24 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
25 significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 6-8; Declaration of
26 Simon L. Yang (“Yang Decl.”) ¶¶ 4-6.

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

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

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

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

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

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

26 The Agreement affords the Class prompt, fair relief while avoiding significant legal and factual
27 battles that otherwise may have prevented the Class from obtaining any recovery at all. While Class
28 Counsel believe the Class Members’ claims are meritorious and can be successfully litigated, they are

1 experienced and fully understand the inherent risks and uncertainty involved with such matters as the
2 resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that
3 would inevitably follow should the Class prevail at trial. Class Counsel has also assessed the same risks
4 in connection with the current settlement. Because the settlement provides immediate and substantial
5 relief, without the attendant risks and delay of continued litigation—not to mention the threat of
6 litigation fees and costs—Class Counsel believe that the settlement warrants the Court’s final approval.

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

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

16 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of
17 the Class Members as a whole. Lee Decl. ¶ 5; Yang Decl. ¶ 2. Similarly, counsel for Defendant is in
18 favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair,
19 reasonable, and adequate is entitled to significant weight by the Court in its final approval
20 determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at
21 617; *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

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

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

24 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
25 funds remain after 180 days, the Parties have agreed that the funds (upon the expiration date) would
26 escheat to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member.
27 None of the settlement funds will revert to Defendant or be diverted to a *cy pres* recipient.
28

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

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

In addition to the invaluable services that he provided, Plaintiff took significant risks, both professionally and monetarily, in acting as Class Representative to seek benefits for the Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant had he not prevailed in this action. Moreover, Plaintiff understood that an individual case would have resolved much faster than a class action and involved much less financial risk than a class action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class. McDonald Decl. ¶ 8.

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, the Class Representative also faces significant risk in not being able to find suitable employment, all as a result of filing of this case against Defendant. Plaintiff took these risks upon himself to the benefit of the Class. McDonald Decl. ¶ 8. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the requested award. Moreover, this litigation has resulted in a significantly valuable benefit to the Class, and Plaintiff took on substantial risks in helping to get this financial benefit to the Class. As such, the award should be granted to Plaintiff for his commitment, dedication, and risks taken for this litigation.

Equally important, Plaintiff provided a general release and waiver of the protections of Civil Code section 1542. McDonald Decl. ¶ 9. This is a more extensive release than that provided by the Class at large and also supports the request for the award.²

² Courts have routinely granted approval of settlements containing such incentive awards. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*

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

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

3 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
4 successful prosecution and resolution of this action. California state and federal courts have recognized
5 that an appropriate method for determining award of attorneys’ fees is based on a percentage of the total
6 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
7 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
8 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

9 Indeed, the California Supreme Court has confirmed that the award of attorneys’ fees in common
10 fund wage and hour class action settlements may be based on the percentage method. *See Laffitte v.*
11 *Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
12 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
13 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
14 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
15 created”). Here, the percentage method supports the requested fees.

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

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Columbia Gas Transmission Corp., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each
class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.
27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*,
142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative).

1 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
2 Here, Plaintiff and his counsel secured a \$410,000.00 settlement. On average, each Class Member will
3 receive approximately \$917.93—a result that led to no objections or exclusions. Admin Decl. ¶¶ 8-14.

4 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
5 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
6 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
7 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
8 Class Counsel would be seeking \$136,666.67 in attorneys’ fees. Again, there were no objections.

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

11 No one expects a lawyer whose compensation is contingent upon his success to charge,
12 when successful, as little as he would charge a client who had agreed to pay for his
13 services, regardless of success. Nor, particularly in complicated cases producing large
recoveries, is it just to make a fee depend solely on the reasonable amount of time
expended.

14 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$410,000.00 has been
15 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
16 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
17 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
18 experienced defense firm. For such reasons, Class Counsel’s request for attorneys’ fees in the amount of
19 \$136,666.67 is fair, reasonable, and adequate.

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

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

1 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even
2 higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).³ Indeed, the intermediate
3 court in *Laffitte*—after finding that “2 to 4” is a reasonable range for multipliers on a cross-check—
4 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.⁴ Moreover, the Ninth Circuit has cited
5 with approval a comprehensive study of fees awarded by the percentage method showing that the
6 majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
7 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and
8 analyzing the multiplier awarded in over 30 cases).⁵

9 With respect to Class Counsel’s lodestar, at least 151.3 hours have been expended by just one of
10 the three Class Counsel litigating this case. Yang Decl. ¶ 8, Ex. A. Moreover, Class Counsel expects to
11 incur approximately 15.0 hours of anticipated time spent to attend the final approval hearing, secure
12 final approval, as well as respond to post-final approval phone calls and correspondence from the
13 Administrator, defense counsel, and Class Members. *Id.* Courts are quite liberal in the evidence required
14 to prove an attorney’s hours. Detailed time records are not required; an attorney’s testimony alone may
15 suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient
16 evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v.*
17 *Denevi*, 182 Cal. App. 3d 553, 559 (1986).

18 Reasonable hours include, in addition to time spent during litigation, the time spent before the
19 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
20

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

23 ⁴ The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

24 ⁵ Federal district courts applying California law have likewise routinely approved cross-check
25 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
26 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
27 attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL
496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
28 cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

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

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

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

15 Based on the rate and 166.3 total hours, the lodestar for just one of the three Class Counsel
16 through the finalization of this settlement will be approximately \$124,725.00. Yang Decl. ¶ 8. In sum,
17 the lodestar for just one of the three Class Counsel litigating this matter approximately equals the
18 requested attorneys' fees and results in a modest multiplier of just 1.09. Again, the requested fees are
19 reasonable and fair, based on the factors described above. The cross-check also supports the requested
20 fees.

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

22 The request for reimbursement of costs, in the amount of \$8,583.88 is fair and reasonable. As set
23 forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this
24 action. Lee Decl. ¶ 9, Ex. A. As such, this request should be approved.

25 **E. The Administrator's Fees and Costs Should Be Approved.**

26 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
27 Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Kevin
28

1 Lee, the settlement administration fees expended in this matter amount to a total of \$10,000.00. Admin
2 Decl. ¶ 16. For such reasons, it is requested that the Administrator's fees be approved.

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

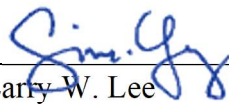
4 On January 24, 2023, Plaintiff uploaded the Order Granting Plaintiff's Motion for Preliminary
5 Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 10. Concurrent with the filing
6 of this motion, Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

7 **CONCLUSION**

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

11 DATED: August 29, 2023

DIVERSITY LAW GROUP, P.C.

12 By: 
13 Larry W. Lee
14 Simon L. Yang
15 Attorneys for Plaintiff
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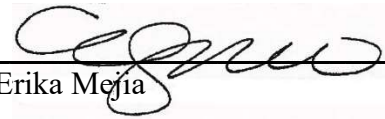
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1 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
2 in this office.

3 I declare under penalty of perjury under the laws of the State of California that the above
4 is true and correct. Executed on August 29, 2023, at Los Angeles, California.

5 
6 Erika Mejia