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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CARLA ZAYAC, on behalf of herself and others
similarly situated and as a proxy for the State of
California,

Plaintiff,

vs.

SUTTER VALLEY MEDICAL
FOUNDATION, a California corporation;
SUTTER VALLEY HOSPITALS, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00293728

*[Assigned for all purposes to Department 28,
Hon. Lauri A. Damrell]*

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

*[Filed concurrently with Declaration of William
L. Marder; Declaration of Dennis S. Hyun;
Declaration of Majed Dakak; Declaration of
Carla Zayac; Declaration of Taylor Mitzner;
[Proposed] Order]*

Date: September 29, 2023
Time: 9:00 a.m.
Department: 28
Reservation No.: 3172023-MO

Complaint Filed: February 2, 2021
FAC Filed: March 3, 2021

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

2 **PLEASE TAKE NOTICE** that on September 29, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 28 of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff Carla Zayac (hereinafter “**Plaintiff**”), will and hereby does seek an Order:

- 5 1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement and
6 Release (the “**Agreement**” or “**Settlement Agreement**”) attached as Exhibit A to the
7 *previously* filed Declaration of Dennis S. Hyun filed on February 10, 2023;
- 8 2. approving distribution of the settlement funds to Participating Class Members pursuant to the
9 terms of the Agreement;
- 10 3. approving Plaintiff’s request for a service award of \$15,000.00 pursuant to the terms of the
11 Agreement;
- 12 4. approving Class Counsel’s request for an award of attorneys’ fees of 35% of the
13 \$4,750,000.00 Gross Settlement Amount, or \$1,662,500.00, and reimbursement of litigation
14 costs of \$11,715.09, pursuant to the terms of the Agreement;
- 15 5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix
16 Settlement Administrators in the amount of \$62,500.00, pursuant to the terms of the
17 Agreement;
- 18 6. approving the Class Representative Service Award of \$15,000.00, pursuant to the terms of
19 the Agreement;
- 20 7. approving the Private Attorneys General Act (the “**PAGA**”) Payment to the Labor Workforce
21 Development Agency (the “**LWDA**”) (of \$356,250.00, which is 75% of \$475,000.00
22 allocated to the PAGA Payment), the PAGA Payment to the PAGA-Eligible Employees (of
23 \$118,750.00, which is 25% of \$475,000.00 allocated to the PAGA Payment); and
- 24 8. entering final judgment as to all members of the Settlement Class, the PAGA Members, and
25 the State of California (including the Labor and Workforce Development Agency) in this
26 action.

27 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
28 Court approval of the settlement of a purported class action and allows the Court to grant final

1 certification of a class for settlement purposes. The overwhelmingly positive Class response, as shown
2 by the lack of objections to the settlement and the fact that only four Class Members opted out, supports
3 that the settlement is fair, reasonable, and adequate, including in light of PAGA's purposes to remediate
4 present labor law violations, deter future ones, and to maximize enforcement of state labor laws—and
5 should be granted final approval.

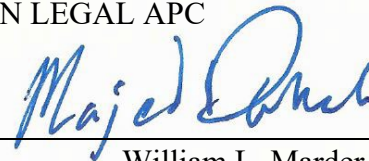
6 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
7 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the
8 department may be downloaded off the court's website. If the party does not have online access, they
9 may call the dedicated phone number for the department as referenced in the local telephone directory
10 between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the
11 tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the
12 hearing, no hearing will be held.

13 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
14 and proposed Notice of Class Action Settlement, the supporting Declarations of William L. Marder,
15 Majed Dakak, Dennis S. Hyun, Taylor Mitzner of Phoenix Settlement Administrators, and Plaintiff
16 Carla Zayac, all pleadings and papers on file herein, and any further oral and documentary evidence as
17 may be presented before or at the hearing of this matter.

18
19 DATED: August 29, 2023

POLARIS LAW GROUP
KESSELMAN BRANTLY STOCKINGER LLP
HYUN LEGAL APC

20
21
22 By: _____



William L. Marder
Majed Dakak
Dennis S. Hyun

23
24
25 *Attorneys for Plaintiff CARLA ZAYAC and the*
26 *Putative Class*
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28

MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

This class action alleges Defendant Sutter Valley Hospitals (“**Defendant**”) violated the Healthy Workplace Healthy Family Act of 2014 (“**HWHFA**”), Labor Code sections 201–204, 233, and 245–249, by not paying sick pay wages at the regular rate of pay to Plaintiff Carla Zayac (“**Plaintiff**”) and Class Members; Defendant derivatively failed to furnish accurate, itemized wage statements to all Class Members in accordance with Labor Code section 226; Defendant is liable to the Class Members for derivative waiting time penalties pursuant to Labor Code section 203; and Defendant violated Labor Code sections 201, 226, 233, 246, and 2698, *et seq.* Plaintiff thus sues both on a class-wide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“**PAGA**”) for alleged violations of Business & Professions Code sections 17200, *et seq.* Defendant denies the allegations.¹

Plaintiff now seeks the court’s final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release (the “**Agreement**” or “**Settlement Agreement**”) attached as Exhibit A to the *previously* filed Declaration of Dennis S. Hyun filed on February 10, 2023 (“**2/10/23 Hyun Decl.**”). The Agreement requires Defendant to pay \$4,750,000.00 for the class-wide settlement of claims from August 8, 2016, through March 27, 2023, the Class Period End Date. (Agreement at ¶¶ 2.Z, 11.) Defendant is also required to pay its employer’s share of payroll taxes. (Agreement at ¶ 19.) The Agreement provides for a \$4,750,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, service awards to the Class Representatives, payment to the California Labor and Workforce Development Agency (the “**LWDA**”), and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Participating Class Members and PAGA Members.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. On March 27, 2023, the court preliminarily approved this settlement (the “**Preliminary Approval**”).

¹ Plaintiff initially asserted a claim for failure to provide meal and rest periods in violation of Labor Code sections 226.7 and 512. However, because these claims are subsumed by prior-filed and settled class and PAGA actions, the Parties herein are settling the sick pay and derivative claims only. The Parties specifically excluded the meal and rest period claims from the released claims.

1 **Order**”). It directed distribution of the Notice of Proposed Class Action Settlement (“**Class Notice**”)
2 and scheduled the hearing for final approval of settlement.

3 As directed by the court, the Administrator, Phoenix Class Action Administrators, distributed the
4 Class Notice to 15,840 Class Members. (Declaration of Taylor Mitzner on behalf of Phoenix Class
5 Action Administration Solutions (“**Admin Decl.**”) at ¶ 5.) **Zero** objections were received. (*Id.* at ¶ 9.)
6 Additionally, only four requests for opt-out exclusion were received. (*Id.* at ¶ 8.). As such, there is a
7 99.97% participation rate. (*Id.* at ¶ 11.) This suggests the Class supports the court’s Preliminary
8 Approval Order finding that the Agreement is fair and reasonable.

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

- 11 ▪ The settlement provides a total settlement sum of \$4,750,000.00. (Admin Decl. at ¶¶ 13, 15);
12 (Agreement ¶¶ 2.Z, 11); (Court March 17, 2023 Preliminary Approval Minute Order (“**3/17/23**
Court Order”) at 3);
- 13 ▪ The settlement is fair given that Participating Class Members will receive (*after deductions for*
14 *fees, costs, etc.*) a substantial amount of money (on average, each Participating Class Member
15 will receive approximately \$159.34). (Admin Decl. at ¶ 14.) This does not include the additional
average individual PAGA payment of approximately \$8.78. (Admin Decl. at ¶ 15); (3/17/23
Court Order at 3-4.);
- 16 ▪ Pursuant to the settlement, Defendant has agreed to fund the employer-side taxes due separately
17 and apart from the Gross Settlement Amount. (Admin Decl. at ¶ 16); (Agreement ¶¶ 11, 19);
(3/17/23 Court Order at 3.)
- 18 ▪ Class Members did not need to submit claim forms to participate in the settlement, but are being
19 paid automatically. (Agreement ¶¶ 33, 46.);
- 20 ▪ The allocation reflects that payment of claims will be paid to all Class Members in proportion to
21 the number of applicable workweeks for each Class Member during the Class Period.
(Agreement ¶¶ 2.T, 16); (3/17/23 Court Order at 3.);
- 22 ▪ Plaintiff conducted significant investigation in this case, including formal and informal discovery
23 and exchanges of information by Plaintiff and Defendant of class data necessary for Plaintiff to
fully evaluate this case. (2/10/23 Hyun Decl. ¶¶ 9-10.); (Declaration of Majed Dakak filed on
February 10, 2023 (“**2/10/23 Dakak Decl.**”) ¶¶ 2-3); (3/17/23 Court Order at 3.);
- 24 ▪ A highly regarded administrator, Phoenix Class Action Administration Solutions, was retained
25 for fees of \$62,500.00 only. (Admin Decl. at ¶ 17); (3/17/23 Court Order at 3.); and
- 26 ▪ California’s LWDA will also be the beneficiary of this settlement as it will receive \$356,250.00,
should this settlement be granted final approval. (Admin Decl. at ¶ 15); (3/17/23 Court Order at 3.)

27 Accordingly, the court should grant Final Approval consistent with the Preliminary Approval Order.
28

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. Notably, the 3/17/23 Court Order regarding Preliminary Approval specified the Notice should not contain language that “Plaintiff and her attorneys believe the Settlement is fair, reasonable, and adequate and in the best interest of all Settlement Class Members.” That language was removed accordingly. (*See* Court’s Preliminary Approval Order dated March 27, 2023, ¶ 8, Exs. A and B; *see also* Admin Decl. at ¶ 5, Ex. A).

As stated in the Admin Declaration, notice has now been provided to Class Members. On May 26, 2023, the Administrator received a Class Member mailing list from Defendant’s counsel that included 15,840 Class Members. (Admin Decl. at ¶ 3.) On June 16, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. (*Id.* at ¶ 5.) From the date of mailing, 154 Class Notices were returned due to an incorrect address and 107 Class Notices were then re-mailed to an updated address after performing an address trace or using the forwarding address provided by the Post Office. (*Id.* at ¶ 6.) Only 47 of the 15,840 Class Notices remained undeliverable because an updated address could not be located despite skip tracing efforts. (*Id.* at ¶ 7.) Further, the Class Notice provided Class Members with Class Counsel’s contact information, where they could seek further information regarding the settlement, leave questions for the Administrator, and update their address. (Admin Decl. at ¶ 5, Ex. A).

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* (1985) 472 U.S. 797, 811–812 [providing “best notice practicable” with description of the litigation and explanation of opt-out rights satisfies due process]; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174–175 [explaining individual notice must be sent to class members who can be identified through reasonable means]; *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 [stating “best practicable notice” is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”].)

Here, Class Members were mailed a notice that explained the settlement and allowed Class Members to seek information, ask questions, exclude themselves (opt-out), and object, if so desired. (Admin Decl. at ¶ 5, Ex. A.) The Class Notice was effective, as there was evidence that class members in fact utilized the notice process. Specifically, 6 workweek disputes were received and fully addressed by the Administrator to the satisfaction of the class members. (Admin Decl. at ¶ 10.) Additionally, the Notice is clear that the PAGA-Eligible Employees cannot opt out of the PAGA component of the settlement. (Admin Decl. at ¶ 5, Ex. A.) As such, proper notice has been given to the Class Members and PAGA-Eligible Employees. Thus, the court may determine the fairness and adequacy of the settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

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

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

The court already addressed the requirements for certifying a class for settlement purposes in its 3/17/23 Court Order granting preliminary approval. Plaintiff briefly addresses the requirements again here.

1. The Class Is Ascertainable.

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

Here, the Class is defined as: all non-exempt current or former employees of Defendant in the State of California who recorded paid sick leave in at least one workweek and also received, in that same workweek, nondiscretionary remuneration other than base hourly wages from August 8, 2016 to March 27, 2023 [Class Period End Date] (the “**Class Period**”). (Agreement ¶ 2.B; 2J.) There are 15,840 individuals that comprise the Class. (Admin Decl. ¶ 3.) This is more than the minimum required to certify a class. Within the context of manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. (*Reyes, supra*, 196 Cal.App.3d at 1274–1275.) Class Members have been identified by Defendant, and notice was already provided to the Class Members.

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
4 (3) class representatives who can adequately represent the class. (*Richmond v. Dart Industries, Inc.*
5 (1981) 29 Cal.3d 462, 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1234.)

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* (2003) 29 Cal.4th 1096, 1104–1105.)

11 Plaintiff alleges that Defendant, as a matter of corporate practice, failed to properly pay for days
12 on which Plaintiff took paid sick leave as required by California law; that sick leave was paid at the
13 incorrect pay rate; that Plaintiff’s wage statements provided by Defendant did not reflect the correct sick
14 pay rate in pay periods in which they also earned shift differentials and were thus not paid all wages
15 owed. The class-wide impact of Defendant’s alleged conduct satisfies the commonality requirement.
16 (See *Stephens v. Montgomery Ward & Co.* (1987) 193 Cal.App.3d 411, 421.)

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

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

25 Here, Plaintiff—like other members of the Class—alleges that she was not properly paid for days
26 on which she took paid sick leave as required by California law; that her sick leave was paid at the
27 incorrect pay rate; that Plaintiff’s wage statements provided by Defendant did not reflect the correct sick
28

1 pay rate in pay periods in which she also earned shift differentials and because of this alleged violation,
2 she was not paid all wages owed at termination. (Zayac Decl. at ¶ 2.)

3 **c. Plaintiff and Her Counsel Adequately Represented the Class.**

4 A class representative, through qualified counsel, must be capable of “vigorously and
5 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d
6 834, 846.) Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues been
7 raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class,
8 including providing information and documents to Class Counsel, making herself available to discuss
9 the claims, providing wage statements that she was issued, reviewing wage statements while the lawsuit
10 was pending, and answering any questions. (Zayac Decl. at ¶ 3.) For such reasons, Plaintiff has
11 adequately represented Class Members.

12 From the inception of the case, Class Counsel has zealously represented the interests of the
13 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
14 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
15 litigated numerous other class action cases, and are competent to represent the Class. (Marder Decl. at ¶
16 8-14; Hyun Decl. at ¶ 3-6; Dakak Decl. at ¶ 3-6.)

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

18 Defendant asserts that even assuming that a class could have been certified, Plaintiff would be
19 unable to establish liability. Defendant denies all claims alleged in the Action and denies all wrongdoing
20 whatsoever by Defendant. Defendant further denies that any of its employees has been “aggrieved” by a
21 violation of the Labor Code. Based thereon, Defendant continues to maintain that it is not liable for the
22 allegations made by Plaintiff.

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

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

1 There is always a risk that the court will not grant certification of the class. As Defendant alleges
2 that a class could not have been certified, there was at least a substantial risk that Plaintiff would not
3 have obtained the total amount of damages alleged, and a substantial number of complex issues that
4 would have necessitated significant expenditure of time and expenses. For an expanded discussion on
5 risk *see* 3/17/23 Court Order at 5; Hyun Decl. at ¶¶ 10-11; Dakak Decl. at ¶¶ 9, 12; Marder Decl. at ¶¶ 3-
6 4. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this motion.

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

9 Without reiterating the details in the Preliminary Approval Motion showing that the Agreement
10 (and the negotiation process that led up to it) is fair and adequate (*see* 3/17/23 Court Order at 3-5), the
11 Parties highlight the following facts. The Agreement was the product of negotiation between highly able
12 and experienced attorneys on both sides who possessed the relevant discovery, data, and extensive legal
13 research which they had carefully analyzed. (Hyun Decl. at ¶¶ 8-10.)

14 Since preliminary approval, only **four** requests for exclusion and **zero** objections to the
15 settlement have been received since the Class Notice was mailed. (Admin Decl. at ¶¶ 8–9.) The Class
16 Member response suggests the court’s preliminary approval of the settlement should now be granted
17 final approval. The court may appropriately infer that the class action settlement is fair, adequate, and
18 reasonable, given that not a single Class Member has submitted an objection. (See *Class Plaintiffs v.*
19 *City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.)

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

21 On a motion for final approval of a class action settlement under Code of Civil Procedure section
22 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair,
23 adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615,
24 625.) A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
25 interests of the class are better served by the settlement than by further litigation.” (See *Manual for*
26 *Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”).) The law favors
27 settlement, particularly in class actions and other complex cases, where substantial resources can be
28 conserved by avoiding the time, cost, and rigors of formal litigation. (See Alba Conte & Herbert B.

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

3 Although the court possesses “broad discretion” in determining that a proposed class action
4 settlement is fair, the court’s role must be limited to the extent necessary to reach a reasoned judgment
5 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
6 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. (See
7 *Officers for Justice, supra*, 688 F.2d at p. 625.) Accordingly, the court should give due regard to what is
8 otherwise a “private consensual agreement” between the parties. (*Ibid.*; see also *Church v. Consolidated*
9 *Freightways, Inc.* (N.D. Cal., May 3, 1993, No. C-90-2290-DLJ) 1993 WL 149840; *In re Wash. Pub.*
10 *Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, *aff’d sub nom.*; *City of Seattle, supra*,
11 955 F.2d 1268; MCL § 21.6 at p. 309 [“The judicial role in reviewing a proposed settlement is critical,
12 but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The
13 judge cannot rewrite the agreement”].)

14 As the Court of Appeal has cautioned:

15 It cannot be overemphasized that neither the trial court in approving the settlement nor
16 this Court in reviewing that approval have the right or duty to reach any ultimate
17 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
18 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.”

19 (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

20 A court’s review and approval of a PAGA settlement is subject to a similar standard as that for
21 class action settlement approval. A court should evaluate a PAGA settlement to determine whether it is
22 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
23 deter future ones, and to maximize enforcement of state labor laws. (*Moniz v. Adecco USA, Inc.* (2021)
24 72 Cal.App.5th 56, 77.)

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

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

27 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-
28 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the

1 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
2 percentage of objectors is small.

3 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

4 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
5 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
6 arm's length. (Hyun Decl. at ¶¶ 9-10.) Class Counsel engaged in extensive factual investigation before
7 settling, including the exchange of formal and informal discovery and class data enabling Class Counsel
8 to evaluate the full extent of Defendant's potential liability. (Hyun Decl. at ¶¶ 8-10); (Dakak Decl. at ¶
9 8; 3/17/23 Court Order at 3-5.) Further, Class Counsel is highly experienced in this type of litigation. As
10 shown in the supporting declarations, Class Counsel has significant experience in class actions and
11 employment matters. (Marder Decl. at ¶¶ 8-14; Hyun Decl. at ¶¶ 3-6; Dakak Decl. at ¶ 3-6.)

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

13 To assess the fairness, adequacy, and reasonableness of a class action settlement, the court also
14 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
15 continued litigation. (See also *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability*
16 *Litigation* (3d Cir. 1995) 55 F.3d 768, 806 ["present value of the damages plaintiffs would likely recover
17 if successful, appropriately discounted for the risk of not prevailing, should be compared with the
18 amount of the proposed settlement"]; *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel*
19 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616–617.)

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

28 The risks of this case were weighed by Class Counsel and should be considered a significant

1 factor by the Court in its determination of final approval. Class Counsel obtained a significant settlement
2 for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of
3 costs by the Class Members or Class Representative.

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

13 Specifically, here, Defendant would have argued that there is no private right of action for sick
14 pay wages and that it did not act willfully. Defendant would have further argued that Plaintiff could not
15 have recovered Labor Code section 226 penalties pursuant to *Maldonado v. Epsilon Plastics, Inc.* (2018)
16 22 Cal.App.5th 1308, 1337. A Court could be persuaded by Defendant's arguments and, therefore, there
17 is a possibility that the Court, in its discretion, may only award a small percentage of the maximum
18 PAGA penalties. Additionally, Plaintiff's acceptance of the Agreement was premised, in part, on the
19 risks associated with the possibility of the Court denying class certification, refusing to award waiting
20 time penalties, and significantly reducing Plaintiff's PAGA penalties. (Hyun Decl. at ¶¶ 10-11.)

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

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

27 As noted above, continued litigation could have led to appeals on several issues. On the other
28 hand, the settlement that was reached provides to all Class Members—regardless of their means—fair

1 relief in a prompt and efficient manner. Were the court to deny final approval, the Class Members would
2 be left without a remedy as a practical matter and courts across the State would have to address the
3 issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is
4 therefore consistent with the “overriding public interest in settling and quieting litigation” that is
5 “particularly true in class action suits.” (See *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d
6 943, 950; see also Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed.
7 2002).) Here, litigation of this case through trial could have required years of litigation.

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

9 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
10 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. (Marder
11 Decl. at ¶¶ 3-5; Hyun Decl. at ¶¶ 9-11; Dakak Decl. at ¶¶ 9, 12.) Similarly, counsel for Defendant does
12 not oppose final approval of this settlement. The endorsement of qualified and well-informed counsel of
13 a settlement as fair, reasonable, and adequate is entitled to significant weight by the court in its final
14 approval determination. (See *Officers for Justice, supra*, 688 F.2d at 625; *Ellis v. Naval Air Rework*
15 *Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610,
16 617; *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242.)

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

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

19 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
20 funds remain after 180 days, the Parties have agreed that the funds (upon the expiration date) would be
21 paid as a *cy pres* to the Court Appointed Special Advocates of Sacramento County, a non-profit
22 organization that supports projects which will benefit Class Members, pursuant to California Code of
23 Civil Procedure section 384, subject to the approval of the court. (3/17/23 Court Order at 4); (Agreement
24 ¶ 47.) The Parties and their Counsel certify that they have no connection to or relationship with the *cy*
25 *pres* recipient Special Advocates of Sacramento County, a non-profit organization. (Marder Decl. at ¶
26 15; Hyun Decl. at ¶ 13; Dakak Decl. at ¶ 14; Zayac Decl. at ¶10.)

27 **B. The Proposed PAGA Allocation Should Be Approved.**

28 The Settlement Agreement provides for a \$475,000 PAGA Payment to resolve claims under

PAGA, 75% (\$356,250) of which will be paid to the LWDA and 25% (\$118,750) of which will be paid to individual PAGA-Eligible Employees based on their proportionate share of Compensable Workweeks worked during the PAGA Period. (Settlement Agreement ¶ 15.) PAGA-Eligible Employees are those Class Members who have been employed as non-exempt employees of Defendant during the PAGA Period and who, in at least one workweek during the PAGA Period, recorded paid sick leave and received, during the same workweek, non-discretionary remuneration other than base hourly wages. (Settlement Agreement, ¶ 2.EE.) The PAGA Period means the period from May 31, 2019 through March 27, 2023 [Class Period End Date]. (Settlement Agreement ¶ 2.FF; 2J.) PAGA-Eligible Employees release all claims and causes of action, arising during the PAGA Period, that were or could have been alleged based on the factual allegations in the operative complaint and/or Plaintiff's LWDA Notice. (Settlement Agreement ¶ 21.) The PAGA release, like the class release, does not include penalties associated with meal and rest break claims. (*Id.*) The Settlement Agreement and the Notice make clear that the PAGA-Eligible Employees cannot opt out of the PAGA component of the settlement. (*Id.*; Admin Decl. at ¶ 5, Ex. A (e.g. “You will, however, be bound by the Private Attorneys General Act (the “PAGA”) release and you will receive a payment for the PAGA release even if you exclude yourself.” ... “Of this amount, 75% (\$356,250) will be paid to the State of California and the remaining 25% (\$118,750) will be paid to all persons who are eligible members of the Settlement Class who have been employed during the PAGA Period, whether or not they exclude themselves from the Class Settlement.” ... “Additionally, upon the funding of the court-approved Settlement by Sutter, all eligible members of the Settlement Class who have been employed between May 31, 2019 through March 27, 2023, whether or not they exclude themselves from the Settlement, will be deemed to have forever released and extinguished their claims for PAGA civil penalties against the Released Parties arising during the PAGA period to the extent those claims are based on the above-referenced claims that were alleged or reasonably could have been alleged based on the facts contained in Plaintiff’s operative Complaint, as enumerated in the preceding subparagraph above and/or in Plaintiff’s PAGA Notice to the California Labor and Workforce Development Agency.”).)

Obtaining a \$356,250.00 payment for the LWDA “is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize

enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) While a \$356,250.00 recovery for the State serves PAGA’s purposes, here it must also be remembered that the vast majority of PAGA penalties that Plaintiff contended were at issue were Section 210 penalties, which may be recovered as either class claims or PAGA claims. (Lab. Code § 210(c) [“An employee is only entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation.”].) Since Section 210(c) penalties as class recoveries are not subject to discretionary reductions that accompany PAGA recoveries, considering these potential PAGA penalties to be class remedies was in the best interests of the Class.²

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

As was discussed in Plaintiff’s Motion for Preliminary Approval, Class Representative Carla Zayac requests a service award of \$15,000.00. The request is quite reasonable considering the general release that the Agreement requires of her but not required of any other Class Member. (Agreement at ¶ 22.) Independently, the request is appropriate in recognition of Plaintiff’s efforts on behalf of the Class. (Zayac Decl. at ¶¶ 3-6.)

As part of her duties as the Class Representative, Plaintiff provided all necessary information and evidence that resulted in this settlement. (*Id.* at ¶ 3.) Plaintiff met and conferred with Class Counsel on a number of occasions to discuss the case. (*Id.*) She searched and provided information and documents to Class Counsel and made herself available to answer any questions during litigation. (*Id.*) She reviewed information and documents obtained from the case to assist with the litigation. (*Id.*) She assisted with reviewing and approving the written notice to the Labor and Workforce Development Agency. (*Id.*) Ultimately, Plaintiff’s efforts secured an exceptional result for the Class.

In addition to the invaluable services that she provided, Plaintiff took significant risks, both professionally and monetarily, in acting as Class Representative to seek benefits for the Class. (Zayac

² In cases that proceed to judicial awards of PAGA penalties, courts have awarded dramatically reduced PAGA penalties. For example, *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517 [citing an employer’s “good faith attempts to comply” with the law and awarding 10% of PAGA penalties despite plaintiff prevailing on the merits].) Defendant’s probable arguments as to its “good faith attempts to comply” with the law thus also warrant a substantial settlement discount.

Decl. at ¶¶ 4, 8.) 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 she not prevailed in this action. (Zayac Decl. at ¶ 8.) Furthermore, Plaintiff risks prejudice in the future from other potential employers that may be less willing to hire an individual who has filed suit against a prior employer. (Zayac Decl. at ¶¶ 4, 8.) Plaintiff took this risk upon herself and the whole class benefited. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor do they have to face potential prejudice in future employment. As such, the award should be granted to Plaintiff for her commitment, dedication, and risks taken for this litigation.

Equally important, Plaintiff provided general releases and waivers of the protections of Civil Code section 1542. (Zayac Decl. at ¶ 9; Agreement at ¶ 22.) This is a more extensive release than that provided by the Class at large and further supports the request for the award.³

D. The Requested Attorneys' Fees Should Be Approved.

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

Class Counsel seeks a fee award calculated at 35% of the total value of the settlement [as the court preliminarily approved] for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent, supra*, 557 F.2d at 769.)

³ Courts have routinely granted approval of settlements containing such incentive awards. (See *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299–300 [incentive award of \$50,000]; *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 [two incentive awards of \$55,000, and three incentive awards of \$35,000]; *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913–14 [granting a \$50,000 incentive award]; *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251–52 [\$50,000 awarded to each class representative]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476, at *51–52 [awarding \$25,000 incentive award in FLSA overtime wages class action]; *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 [affirming \$25,000 incentive award to class representative].)

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

12 First, the fee award representing 35% of the fund clearly falls within that range and is consistent
13 with other rulings of other courts and comprehensive surveys of class action settlements and fee awards.
14 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal
15 services.” (See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award* (2010)
16 7 J. Empirical Leg. Stud. 811, 833 [analyzing 444 cases between 2006–2007 and concluding that
17 “[m]ost fee awards were between 25 percent and 35 percent”].) Such an attorneys’ fees award of the
18 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide
19 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
20 (*Fernandez v. Victoria Secret Stores LLC* (C.D. Cal. July 21, 2008) 2008 WL 8150856, at *16 n.59
21 [citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
22 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n.11].) Indeed, an attorneys’ fees award of
23 35% of the fund is consistent with empirical studies that show “fee awards in class actions average
24 around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11.)

25 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
26 Here, Plaintiff and Plaintiff’s counsel secured a \$4,750,000.00 settlement and only 0.025% of the Class
27 chose to opt out. (Admin Decl. at ¶ 11.) Zero Class Members chose to object. (*Id.* at ¶ 9.)

1 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
2 relevant to the . . . reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir.
3 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation of
4 the market” for fees is well supported. (*Id.* at p. 1269.) Here, the Class Notice specifically notified the
5 Class that Class Counsel would be seeking 35% in attorneys’ fees, amounting to \$1,662,500, from
6 which the three Plaintiff’s Counsel firms will be splitting fees (which equals \$554,166.67 per law firm).
7 (*See* Dakak Decl. at ¶ 15 (re client signed written agreement to split fees between the law firms at 33%
8 each). Again, there were no objections from the Class.

9 Fourth, courts recognize 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 ((2d Cir. 1974) 495 F.2d 448, 470.) Here, it is clear that a settlement fund of \$4,750,000.00 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 \$1,662,500 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 California Supreme Court
24 emphasized, however, that “the lodestar calculation, when used in this manner, does not override the
25 trial court’s primary determination of the fee as a percentage of the common fund and thus does not
26 impose an absolute maximum or minimum on the potential fee award.” (*Laffitte, supra*, 1 Cal.5th at p.
27 505; also see *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306–307 [“The lodestar
28 cross-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.* (2001) 91 Cal.App.4th 224, 255; see also *Sutter Health*
3 *Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 [applying a 2.52 multiplier on a cross-check
4 in an antitrust class action]; *Chavez, supra*, 162 Cal.App.4th at p. 60 [applying a 2.5 multiplier on a
5 lodestar cross-check]; *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 [affirming a 2.34
6 multiplier without remand].) The California Supreme Court in *Laffitte*, after finding that “2 to 4” is a
7 reasonable range for multipliers on a cross-check, affirmed the lower court’s 2.13 multiplier. (*Laffitte*,
8 *supra*, 231 Cal.App.4th at pp. 881–882.) Moreover, the Ninth Circuit has cited with approval a
9 comprehensive study of fees awarded by the percentage method showing that the majority of multipliers
10 awarded are “in the 1.5–3.0” range. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
11 1051 [affirming a multiplier of 3.65 in an employment class action case and analyzing the multiplier
12 awarded in over thirty cases].)⁴

13 With respect to Plaintiff’s Counsel’s lodestar, at least 719.30 hours have been expended by Class
14 Counsel litigating this case. (Marder Decl. at ¶ 16, Ex. A (201.80 hours); Hyun Decl. at ¶¶ 14-16, Ex. A
15 (219.20 hours); Dakak Decl. at ¶ 16, Ex. A (298.30 hours).) Moreover, Plaintiff’s Counsel expects to incur
16 approximately 30 hours of anticipated time spent to attend the final approval hearing and secure final
17 approval, as well as after approval to respond to correspondence and phone calls from the administrator,
18 defense counsel, and Class Members. (Marder Decl. at ¶ 16; Hyun Decl. at ¶ 15; Dakak Decl. at ¶ 16.) The
19 courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not
20 required; an attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours
21 worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence
22 of detailed time records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

24 ⁴ 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.* (N.D. Cal.
26 June 22, 2015) 2015 WL 3863625, at *7 (affirming a 2.10 multiplier on settlement of California Labor
27 Code violations); *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 303 F.R.D. 326, 334 (approving
28 attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.* (N.D. Cal.
Feb. 6, 2013) 2013 WL 496358, at *5 (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. See *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125–1126
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

1 Reasonable hours include, in addition to time spent during litigation, the time spent before the
2 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
3 preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) The fee
4 award should also include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v.*
5 *Unruh* (1982) 32 Cal.3d 621, 639.) The hours for which Plaintiff's Counsel seeks compensation involve
6 only these types of tasks. Thus, the number of hours for 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* (2000) 22 Cal.4th 1084, 1095.)
9 The court may consider other factors when determining a reasonable hourly rate, for example, the
10 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the
11 attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629,
12 632–633.)

13 Here, Plaintiff's Counsel's hourly load star rates range from \$200 to \$850. (Marder Decl. at ¶ 16,
14 Ex. A; Hyun Decl. at ¶ 16; Dakak Decl. at ¶ 16, Ex. A.) Plaintiff's Counsel's skill and experience justify
15 the requested rates. As shown in the supporting declarations, Plaintiff's Counsel has significant
16 experience in the area of employment and wage and hour class and representative actions. Plaintiff's
17 Counsels' practices focus on representing employees in employment matters, particularly wage and hour
18 cases on a contingency basis. (Marder Decl. at ¶¶ 8-14; Hyun Decl. at ¶¶ 3-6; Dakak Decl. at ¶¶ 7, 3-6.)
19 Based on the hours and applicable rates, the lodestar for Class Counsel through the finalization of this
20 settlement will be approximately \$562,670.00, based on 719.30 total hours. (Marder Decl. at ¶ 16, Ex.
21 A; Hyun Decl. at ¶¶ 14-16, Ex. A; Dakak Decl. at ¶ 11, Ex. A.)

22 Based upon Plaintiff's counsel's lodestar of \$562,670.00, the requested attorneys' fees result in a
23 multiplier of approximately 2.95, which is reasonable and fair, given the factors described above.
24 Accordingly, the cross-check supports the fee requested.

25 **E. The Court Should Approve the Request for Reimbursement of Costs.**

26 The request for reimbursement of costs, in the amount of \$11,715.09 is fair and reasonable. As
27 set forth in Plaintiff's Counsels' declarations, the costs were all directly incurred in the prosecution of
28

1 this action. (Marder Decl. at ¶ 17, Ex. B (\$1,792.52); Hyun Decl. at ¶ 17 (\$4,874.65); Dakak Decl. at ¶
2 17, Ex. B (\$5,047.92).) As such, this request should be approved.

3 **F. The Administrator's Fees and Costs Should Be Approved.**

4 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
5 Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Taylor
6 Mitzner, the settlement administration fees expended in this matter amount to a total of \$62,500.00,
7 which is less than the amount that was agreed upon by the Parties. (Admin Decl. at ¶ 17, Ex. B.) For
8 such reasons, it is requested that the Administrator's fees be approved.

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

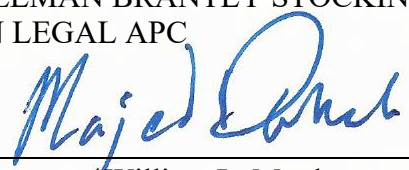
10 Plaintiff uploaded the Proposed Order Granting Plaintiff's Motion for Preliminary Approval of
11 Class Action Settlement to the LWDA's website. (2/10/23 Hyun Decl. at ¶ 15.) Concurrent with the
12 filing of this motion, Plaintiff also have uploaded the final approval motion to the LWDA. (*Id.* at ¶ 18.)

13 **CONCLUSION**

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

17
18 DATED: August 29, 2023

POLARIS LAW GROUP
KESSELMAN BRANTLY STOCKINGER LLP
HYUN LEGAL APC

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25 *Putative Class*
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