

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JOSE CABALO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

JONES LANG LASALLE AMERICAS,
INC., a Maryland corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00044322-CU-OE-CTL

(Assigned to the Hon. Ronald F. Frazier, Dept. C-65)

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

Date: March 17, 2023

Time: 8:30 a.m.

Dept.: C-65

Complaint Filed: December 3, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 17, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Ronald F. Frazier, judge presiding, in Department C-65 of the above referenced Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Jose Cabalo (“Plaintiff”) will and hereby does move this Court for an Order:

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

(2) Approving distribution of the settlement funds to the Class Members and PAGA Employees pursuant to the terms of the Settlement Agreement;

(3) Approving Plaintiff’s request for an award of the Class Representative Service Award of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

(4) Approving Class Counsel’s request for an award of attorneys’ fees of one-third (1/3) of the \$950,000.00 Maximum Settlement Amount, or \$316,666.67, and reimbursement of actual litigation costs of \$10,318.75, pursuant to the terms of the Settlement Agreement;

(5) Approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$5,450.00, pursuant to the terms of the Settlement Agreement;

(6) Approving the PAGA Payment of \$100,000.00 pursuant to California Labor Code section 2699(l), 75% of which (\$75,000.00) will be distributed to the California Labor & Workforce Development Agency (“LWDA”), pursuant to the terms of the Settlement Agreement; and

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

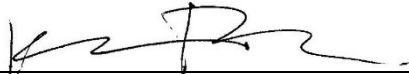
This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. This Motion is also made pursuant to Section 2699(l) of the California Labor Code. In light of the overwhelmingly positive response, as shown by the lack of objections to the settlement and requests for exclusion, there is no question that the settlement is fair, reasonable, and adequate, and thus should be granted final

1 approval.

2 This Motion will be based on the attached Memorandum of Points and Authorities and
3 the supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, Plaintiff Jose
4 Cabalo, and Taylor Mitzner of Phoenix Settlement Administrators, the oral arguments of counsel
5 (should there be any), and on the complete records and file herein.

6
7 DATED: February 23, 2023

DIVERSITY LAW GROUP, P.C.

8 By: 

9 Larry W. Lee

Mai Tulyathan

10 Attorneys for Plaintiff, the Class, and Aggrieved
11 Employees
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1 **I. INTRODUCTION**

2 Plaintiff Jose Cabalo (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action and PAGA Settlement and Release (“Stipulation” or “Settlement
4 Agreement”). In sum, the Settlement Agreement provides for a \$950,000.00 **non-reversionary**
5 fund to be created for the benefit of the Class¹, from which attorneys’ fees, litigation costs,
6 service award to the Plaintiff, PAGA penalties, and costs of settlement administration are to be
7 paid. The entire net settlement fund after these deductions will be paid to all Class Members
8 who did not opt-out of the settlement (“Participating Class Members”).

9 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval
10 Motion. This Court preliminarily approved this settlement on October 4, 2022, directing
11 distribution of class notice and scheduling the hearing for final approval of settlement (the
12 “Preliminary Approval Order”).

13 As directed by the Court, the Settlement Administrator distributed the Notice of Class
14 Action and PAGA Settlement and Release (“Settlement Notice”) to 1,031 Class Members.
15 Declaration of Taylor Mitzner (“Admin. Decl.”) at ¶ 3. The deadline for Class Members to
16 submit requests for exclusion or file objections was January 26, 2023. Admin. Decl. at ¶¶ 8-9.
17 To date, zero requests for exclusion have been submitted to the Settlement Administrator. *Id.* at
18 ¶ 8. Zero objections to the settlement have been submitted by any Class Members. *Id.* at ¶ 9.
19 As such, there is a **100% participation rate** by Class Members. In light of this overwhelmingly
20 positive response from Class Members, an inference can be made that the Class supports the
21 Court’s Preliminary Approval Order finding that the Settlement Agreement is fair and
22 reasonable. Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶ 6.

23 In addition to the results of the notice process, for the same reasons as set forth earlier in
24 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent
25

26 ¹ The “Class” as preliminarily approved by the Court consists of all hourly-paid, non-exempt persons
27 employed by Defendant Jones Lang LaSalle Americas, Inc. (“Defendant”) in the State of California at
28 any time during the period of December 4, 2020, through January 27, 2022, who received differential
shift pay and, in that same workweek, either worked overtime (including double time) and/or used
personal (sick) time.

the basic points previously covered that support approval of the settlement:

- The settlement provides a total settlement sum of \$950,000.00 which is **non-reversionary**;

- The settlement is fair given that all Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount—on average, approximately \$492.30 to each Participating Class Member, with the estimated highest individual settlement payment being \$615.83 (*See Admin. Decl. at ¶ 14*);

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

- The allocation reflects that payment of claims will be paid to all Class Members on a pro-rata basis, based on the number of Workweeks worked by each Class Member during the Class Period;

- Plaintiff’s counsel conducted significant investigation in this case, including conducting informal discovery and significant exchanges of information regarding class data, payroll data for the class, sample time and payroll records for class members, and Defendant’s various policy documents necessary for Plaintiff to fully evaluate this case;

- A highly regarded administrator, Phoenix Settlement Administrators (“Phoenix”), was retained; and

- The California Labor and Workforce Development Agency (“LWDA”) will also be a beneficiary of this Settlement as it will receive \$75,000.00 pursuant to the PAGA, should this Settlement be granted final approval. Timely notice of the PAGA settlement was provided to the LWDA pursuant to Cal. Lab. Code section 2699(1)(2) and no objections to the Settlement by the LWDA were received by Plaintiff’s Counsel. Tulyathan Decl. at ¶ 8.

In sum, in light of the settlement administration process and the results thereof, the lack of any opt-outs, and the amount of class funds being paid out to the Class Members, the Court should confirm its preliminary approval as this process supports the Court’s initial finding that the settlement is fair and reasonable. Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval Order.

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

2 The notice procedures required by the Preliminary Approval Order have been followed
3 and satisfy all due process rights of Class Members. The Preliminary Approval Order
4 contemplated that the Settlement Notice, as approved in the Preliminary Approval Order, be sent
5 to all Class Members by first class mail, as specified in the settlement. The Preliminary
6 Approval Order contemplated, further, that Phoenix would serve as the Settlement
7 Administrator.

8 As clearly stated in the Declaration of Taylor Mitzner on behalf of Phoenix Settlement
9 Administrators, notice was provided to all Class Members as required by the Preliminary
10 Approval Order. Admin. Decl. at ¶ 5. On October 6, 2022, the Settlement Administrator
11 received a Class Member mailing list from Defendant’s counsel that included 1,031 Class
12 Members. *Id.* at ¶ 3. Prior to mailing the Class Notice, the Settlement Administrator conducted
13 a National Change of Address (NCOA) search to correct and/or update the class list in case of
14 any address changes. *Id.* at ¶ 4.

15 On October 28, 2022, the Settlement Administrator sent each Class Member a Settlement
16 Notice via first class mail. *Id.* at ¶ 5. From the date of mailing, 16 Settlement Notices were
17 returned to the Settlement Administrator due to incorrect addresses. Admin. Decl. at ¶ 6. The
18 Settlement Administrator conducted skip tracing to identify updated addresses for the 16
19 Settlement Notice packets, and subsequently re-mailed them via U.S. first class mail. *Id.* Of the
20 16 Settlement Notices that were skip traced, 13 updated addresses were obtained and the
21 Settlement Notices were promptly re-mailed to those Class Members via first class mail. *Id.* As
22 of date of this declaration, five Settlement Notices are considered undeliverable. *Id.* at ¶ 7.
23 Specifically, the Settlement Administrator could not option updated addresses for three
24 Settlement Notices via skip trace, while two Settlement Notices were returned to the Settlement
25 Administrator after re-mailing. *Id.*

26 The provision of sending the Settlement Notice to Class Members as described above
27 meets the requirements for the “best notice practicable” in this case as necessary to protect the
28 due process rights of class members. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,

811-12 (1985) (provision of “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) (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) (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, the Class Members were sent a mailing regarding the settlement that satisfies due process rights. The mailing described the litigation and settlement, provided an explanation of the terms of the settlement, explained Class Members’ rights, allowed Class Members to seek additional information, and explained ways for Class Members to opt out or object, if so desired. The Settlement Notice also provided contact information for the Settlement Administrator and Class Counsel. As such, this constitutes proper notice to the Class Members.

Accordingly, the Court may proceed to 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.

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

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

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

1 *Richmond v. Dart Industries*, 29 Cal. 3d. 462, 470 (1981).

2 **1. The Class is Ascertainable**

3 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382
4 is determined by examining “(1) class definition, (2) the size of the class, and (3) the means
5 available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*,
6 196 Cal. App. 3d 1263, 1271 (1987).

7 Here, the Class is defined as: “all hourly-paid, non-exempt persons employed by
8 Defendant in the State of California at any time during the Class Period who received differential
9 shift pay and, in that same workweek, either worked overtime (including double time) and/or
10 used personal (sick) time.” Based on Defendant’s records, there are 1,031 individuals that
11 comprise the Class. Admin. Decl. at ¶ 3. This is far more than the minimum required to certify a
12 class.

13 Within the context of manageability, the issue is whether there exists sufficient means for
14 identifying class members at the remedial stage. *Reyes, supra*, 196 Cal. App. 3d at pp. 1274-75.
15 Class Members have already been identified by Defendant and notice has been provided to all of
16 the Class Members. Admin. Decl. at ¶¶ 3-7. Accordingly, the Class is ascertainable under Code
17 of Civil Procedure § 382.

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

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

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

24 “The ultimate question in every case of this type [class actions] is whether...the issues
25 which may be jointly tried, when compared with those requiring separate adjudication, are so
26 numerous and substantial that the maintenance of a class action would be advantageous to the
27 judicial process and to the litigants.” *Lockheed Martin Corp. v. Sup. Ct.*, 29 Cal. 4th 1096, 1104-
28 05 (2003).

1 In the present case, Plaintiff alleges that Defendant is liable to the Class for (i) failure to
2 pay overtime and double time wages at the correct regular rate of pay in violation of Labor Code
3 §§ 510, 558, and 1194, (ii) failure to pay sick pay at the correct regular rate of pay in violation of
4 Labor Code §§ 201-203 and 246, and (iii) failure to provide accurate itemized wage statements
5 to its employees in violation of Labor Code § 226(a). With respect to Plaintiff's claims under
6 Labor Code §§ 201-203, 246, 510, 558, and 1194, Plaintiff contends that Defendant failed to pay
7 overtime and double time wages and sick pay wages at the correct regular rate of pay. In this
8 regard, Plaintiff contends that Defendant failed to factor non-discretionary remuneration,
9 including shift differential wages, into the calculation of the regular rate for purposes of paying
10 overtime, double time, and sick pay wages, and thus Plaintiff and employees were underpaid said
11 wages. Additionally, Plaintiff also alleges derivative wage statement claims under Labor Code §
12 226(a). Specifically, as a result of the regular rate claims above, Plaintiff asserts that the
13 corresponding wage statements issued to Plaintiff and other employees failed to identify the
14 required information under Labor Code § 226(a).

15 As these are all uniform corporate policies, practices, and procedures of Defendant as
16 alleged by Plaintiff, the claims can be jointly tried and thus the predominance requirement is
17 satisfied. Defendant denies all of these claims, denies that liability could be established on a
18 class-wide basis, and contends instead that liability and damages, if any, would need to be
19 conducted on a case-by-case basis.

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

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

1 Here, Plaintiff was subjected to the same policies and practices as other Class Members.
2 Plaintiff was employed by Defendant as a non-exempt employee. Plaintiff alleges that he, like
3 all other Class Members, was not paid all overtime, double time, and sick pay wages owed and
4 was not provided compliant wage statements. Declaration of Jose Cabalo (“Cabalo Decl.”) at ¶¶
5 3-5. Specifically, like other members of the Class, Plaintiff alleges that he regularly earned non-
6 discretionary pay, such as shift differentials, that was not factored into the regular rate of pay for
7 the purposes of paying overtime, double time, and sick pay wages. *Id.* at ¶¶ 3-4. As a result of
8 this underpayments, the wage statements issued to Plaintiff did not identify the correct rates of
9 pay for overtime, double time, and sick pay, and gross and net wages earned. *Id.* at ¶ 6. Thus,
10 Plaintiff’s claims are typical to those of Class Members.

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

12 The class representative, through qualified counsel, must be capable of “vigorously and
13 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
14 834, 846 (1984).

15 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
16 been raised or presented. Cabalo Decl. at ¶ 8. Plaintiff has taken all necessary steps to represent
17 the interests of the Class, including providing information and documents to his counsel and
18 reviewing pleadings and documents in this case. *Id.* at ¶¶ 7-9. For such reasons, Plaintiff has
19 adequately represented the Class Members and will continue to do so.

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

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

27 Defendant has maintained that there is no liability and that a class could not have been
28 certified. There is always a risk that the court will not grant certification of the class, wherein the

1 class will not be entitled to any damages. Based on the foregoing, there was a substantial risk
2 that Plaintiff would not have obtained the total amount of damages and/or penalties alleged, and
3 a substantial amount of complex issues that would have necessitated significant expenditure of
4 time and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant
5 granting of this Motion.

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

9 Without reiterating the Parties' showing that the Settlement Agreement and the
10 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
11 Preliminary Approval of Class Action Settlement, the Parties highlight several key facts. First,
12 the Settlement was the product of negotiations between highly able and experienced attorneys on
13 both sides who possessed the relevant data and extensive legal research which they had carefully
14 analyzed. Tulyathan Decl. at ¶¶ 3-4. The Parties also participated in private mediation with an
15 experienced and neutral mediator, Louis Marlin, Esq., who helped facilitate settlement
16 negotiations between the Parties. *Id.* at ¶ 3. Thus, this settlement is the result of arm's length
17 negotiations, and should be granted final approval.

18 Second, the results after mailing of the Settlement Notice also fully support confirmation
19 of the Court's preliminary approval of the settlement, as evidenced by the 100% participation
20 rate. In other words, none of the Class Members submitted exclusions to the settlement or filed
21 an objection to the settlement. Admin. Decl. at ¶¶ 8-9. In light of overwhelmingly positive
22 response to the settlement, the Court may appropriately infer that the settlement is fair, adequate,
23 and reasonable, when among other reasons, no Class Members have opted out or objected to it.
24 *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (reaction of class
25 members to the settlement is a factor supporting approval of a class action settlement).

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

28 **1. Standard of Review**

On a motion for final approval of a class action settlement under California Code of Civil

1 Procedure § 382 and California Rules of Court, Rule 3.769, a court’s inquiry at this juncture is
2 whether the settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv.*
3 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*,
4 459 U.S. 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final
5 approval, when “the interests of the class are better served by the settlement than by further
6 litigation.” *See Manual for Complex Litigation, Fourth* § 21.6 at p. 309 (Fed. Jud. Ctr., 4th ed.
7 2004) (“MCL”). The law favors settlement, particularly in class actions and other complex cases,
8 where substantial resources can be conserved by avoiding the time, cost, and rigors of formal
9 litigation. *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (2008);
10 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*
11 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

12 Although the Court possesses “broad discretion” in determining that a proposed class
13 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
14 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
15 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
16 adequate to all concerned parties. *See Officers for Justice, supra*, 688 F.2d at p. 625.
17 Accordingly, the Court should give due regard to what is otherwise a “private consensual
18 agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993
19 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379
20 (D. Ariz. 1989); *MCL* § 21.6 at p. 309 (“The judicial role in reviewing a proposed settlement is
21 critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions
22 on it. The judge cannot rewrite the agreement.”).

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

As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000)):

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

2. The Settlement is Presumed to Be Fair

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

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

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

The settlement here warrants approval and carries a presumption of fairness. As previously noted in the Motion for Preliminary Approval, this settlement was negotiated at arm’s length between the Parties and their counsel and was facilitated by an experienced and neutral mediator, Louis Marlin, Esq. Tulyathan Decl. at ¶ 3.

Second, Class Counsel engaged in extensive factual investigation before settling, including exchange of informal discovery before mediation. Specifically, Class Counsel reviewed class data, sample time and payroll records for the class members, as well as information pertaining to Defendant’s pertinent policies, practices, and procedures. Tulyathan Decl. at ¶ 4. Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. Lee Decl. at ¶¶ 4-5; Tulyathan Decl. at ¶¶ 12-15;

1 Declaration of William L. Marder (“Marder Decl.”) at ¶¶ 3-7.

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

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

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

23 The settlement also affords finality, avoiding significant legal and factual battles that
24 otherwise may have prevented the Class from obtaining any recovery at all. While Class
25 Counsel believe that the Class Members’ claims are meritorious and can be successfully
26 litigated, counsel are experienced and fully understand the inherent risks and uncertainty
27 involved with such matters including the resolution of class certification, the outcome of a
28 potential trial, and the outcome of any appeals that would inevitably follow should the Class

1 prevail at trial. Class Counsel have also assessed the same risks in connection with the current
2 settlement. Because the settlement provides immediate and substantial relief, without the
3 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
4 costs—Class Counsel believe that the settlement warrants the Court’s final approval.

5 **4. The Complexity, Expense, and Likely Duration of Continued** 6 **Litigation Against Defendant Favor Final Approval**

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

12 Here, as noted above, continued litigation could potentially have led to appeals on several
13 issues. On the other hand, the settlement that was reached provides all Class Members—
14 regardless of their means—with fair relief in a prompt and efficient manner. Were the Court to
15 deny final approval, the Class Members would be left without a remedy as a practical matter and
16 courts across the State would have to address the issues presented here in a piecemeal, costly,
17 and time-consuming manner. The settlement here is therefore consistent with the “overriding
18 public interest in settling and quieting litigation” that is “particularly true in class action suits.”
19 *See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at § 11.41. Here,
20 this case could have potentially involved years of litigation, especially given that the sick pay
21 regular rate class claim has never been certified by a California court before.

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

23 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
24 interest of the Class Members as a whole. Lee Decl. at ¶ 2; Tulyathan Decl. at ¶ 5; Marder Decl.
25 at ¶ 2. Similarly, counsel for Defendant is in favor of the settlement. The endorsement of
26 qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled
27 to significant weight by the Court in its final approval determination. *See Officers for Justice,*
28 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p.

1 1242.

2 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
3 **APPROVED**

4 Class Representative Jose Cabalo requests an enhancement of \$10,000.00 in accordance
5 with the terms of the Settlement Agreement. Plaintiff provided significant assistance with the
6 lawsuit, including discussing the case with Class Counsel on multiple occasions, searching for
7 and providing documents and information regarding Defendant's practices at issue in the case,
8 including his pay records and employment documents, and reviewing the various files and
9 pleadings submitted in this case. Cabalo Decl. at ¶ 7. Accordingly, Plaintiff provided invaluable
10 information, evidence, and documents that resulted in this settlement.

11 In addition to the invaluable services that he provided, Plaintiff took significant risks,
12 personally, professionally, and monetarily in acting as the Class Representative, seeking benefits
13 on behalf of the class. Cabalo Decl. at ¶¶ 11-12. Because the claims alleged by Plaintiff
14 involved the payment of costs to the prevailing party, Plaintiff undertook the risk that he may be
15 required to pay Defendant's fees and costs, in the event that Defendant prevailed in this action.
16 Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class.

17 Also, given that future employers are much less likely to hire individuals who have filed
18 employment-related lawsuits, particularly cases of this nature, the Class Representative also
19 faced significant risk in not being able to find suitable employment and/or face retaliation from
20 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
21 risks upon himself to the benefit of the Class. Cabalo Decl. at ¶ 12. Class Members did not have
22 to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
23 they have to face the potential for retaliation and not getting future employment had they filed a
24 lawsuit which is a public record. These are significant benefits that weigh in favor of granting
25 the requested enhancement. Moreover, this litigation has resulted in a significantly valuable
26 benefit to the Class, and Plaintiff took on substantial risks in helping Class Members obtain this
27 financial benefit. As such, the enhancement should be awarded to Plaintiff for his commitment,
28 dedication, and risks taken for this litigation.

1 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
2 § 1542, which other Class Members did not have to do. Cabalo Decl. at ¶ 13. This is a more
3 extensive release than that provided by the Class at large, also supporting the request for the
4 enhancement.

5 Courts have routinely granted approval of settlements containing such enhancements.
6 (See *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300
7 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio
8 1990) 130 F.R.D. 366, 374 (two incentive awards of \$55,000, and three incentive awards of
9 \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913-14 (granting a
10 \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio
11 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
12 *Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52
13 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th
14 Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 Incentive award to class representative in
15 ERISA case).

16 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

17 Class Counsel seeks a fee award calculated at one-third of the Maximum Settlement
18 Amount, or \$316,666.67, for the successful prosecution and resolution of this action. California
19 state and federal courts have recognized that an appropriate method for determining award of
20 attorneys' fees is based on a percentage of the total value of benefits to Class Members by the
21 settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest*
22 (1977) 20 Cal.3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478;
23 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this
24 equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
25 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
26 burden alone." (*Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.)

27 Under California law, the award of attorneys' fees in common fund wage and hour class
28 action settlements is under the percentage method. (See *Laffitte v. Robert Half Int'l* (2016) 1

1 Cal. 5th 480, 503 (“We join the overwhelming majority of federal and state courts in holding that
2 when class action litigation establishes a monetary fund for the benefit of the class members, and
3 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
4 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
5 created”).) Under the percentage of the fund method, the Court’s objective remains to “mimic
6 the market” in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363
7 (“When a fee is set by a court rather than by contract, the object is to set it at a level that will
8 approximate what the market will set...The judge, in other words, is trying to mimic the market
9 in legal services”).)

10 Here, the fee award representing approximately one-third of the fund clearly falls within
11 that range and is consistent with other rulings of other courts and comprehensive surveys of class
12 action settlements and fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S.
13 Dist. LEXIS 61796, 23 (recognizing that “courts may award attorney’s fees in the 30-40% range
14 in wage and hour class actions that result in recovery of a common fund under \$10 million”); *see*
15 *also Eisenberg & Miller, Attorney Fees in Class Action Settlements: An Empirical Study: 1993-*
16 *2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action
17 litigation nationwide conclude that fees in the range sought here are consistent with market
18 rates).) The results delivered by Class Counsel also support the requested percentage of the
19 fund. Here, Plaintiff and his counsel secured a \$950,000.00 non-reversionary common fund
20 settlement.

21 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
22 is relevant to the... reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C.
23 Cir. 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s
24 “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class
25 Notice specifically notified Class Members that Class Counsel would be seeking up to
26 \$316,666.67 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
27 strong favorable response also supports the requested fees.

28 In addition, it is recognized that one of the primary factors justifying an enhanced

1 attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of*
2 *Detroit v. Grinnell Corp.*:

3 No one expects a lawyer whose compensation is contingent upon
4 his success to charge, when successful, as little as he would charge
5 a client who had agreed to pay for his services, regardless of
6 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.

7 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) For Class Counsel, the fees
8 here were wholly contingent in nature and the case presented far more risk than the usual
9 contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a
10 potentially drawn-out battle with a corporate defendant. As such, the requested fee should be
11 awarded in its entirety.

12 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
13 **OF COSTS**

14 The request for reimbursement of costs, in the amount of \$10,318.75 is fair and
15 reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek
16 up to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set
17 forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of
18 this action, including but not limited to, filing and service fees, court fees, CourtCall fees,
19 postage fees, and costs associated with mediation. Tulyathan Decl. at ¶ 16, Ex. A. As such, this
20 requested costs should be approved as fair and reasonable.

21 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
22 **APPROVED**

23 Plaintiff also requests that the Court approve administration costs to the Settlement
24 Administrator, Phoenix Settlement Administrators, in the amount of \$5,450.00, which is less
25 than the estimated amount of \$25,000.00 that was agreed upon by the Parties. As detailed in the
26 Declaration of Taylor Mitzner submitted herewith, Phoenix performed duties in connection with
27 this settlement that were integral in effectuating the settlement and the notice process. Among
28 other things, Phoenix calculated each Class Member's individual settlement payment, updated

addresses contained in the class data supplied by Defendant, formatted and distributed Settlement Notices to all 1,031 Class Members, and otherwise administered the settlement. Admin. Decl. at ¶ 17, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff respectfully submits that the standards for final approval have been met, and the terms of the Settlement Agreement are fair, adequate, and reasonable.

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

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for an award of the Class Representative Service Award of \$10,000.00 to Plaintiff, with payment pursuant to the terms of the Settlement Agreement;
4. Approving Class Counsel's request for an award to Class Counsel for \$316,666.67 in attorneys' fees and \$10,318.75 in costs, with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$5,450.00, with payment pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiff's request for payment to the LWDA for \$75,000.00, with payment pursuant to the terms of the Settlement Agreement; and
7. Entering final judgment as to all members of the Class in this action.

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1 DATED: February 23, 2023

DIVERSITY LAW GROUP, P.C.

2 By: 

3 Larry W. Lee

Mai Tulyathan

4 Attorneys for Plaintiff, the Class, and Aggrieved
5 Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On February 23, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 13 **3. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT
- 14 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT
- 15 **5. DECLARATION OF TAYLOR MITZNER WITH RESPECT TO SETTLEMENT**
NOTICE ADMINISTRATION
- 16 **6. DECLARATION OF JOSE CABALO IN SUPPORT OF PLAINTIFF'S MOTION**
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 17 **7. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION**
AND PAGA SETTLEMENT AND JUDGMENT

18 on the interested parties in this action as follows:

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23
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25
26
27
28
Spencer C. Skeen
Spencer.skeen@ogletree.com
Marlene M. Moffitt
Marlene.moffitt@ogletree.com
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4660 La Jolla Village Drive, Suite 900

San Diego, California 92122
Attorneys for Defendant Jones Lang Lasalle Americas, Inc.

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 23, 2023, at Los Angeles, California.


Erika Mejia