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

MARGARET MATTHEWS, OKEEM SMITH,
TOMAS VERDUZCO ALCALA, and DARRYL
KNOX, as individuals and on behalf of all others
similarly situated, and as private attorneys general,

Plaintiffs,

vs.

UNITED NATURAL FOODS WEST, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. S-CV-0046420

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Kyle Nordrehaug;
Declaration of Margaret Matthews; Declaration
of Kevin Lee; [Proposed] Order and Final
Judgment]*

Date: June 29, 2023
Time: 8:30 a.m.
Department: 3

Complaint Filed: March 23, 2021

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

2 **PLEASE TAKE NOTICE** that on June 29, 2023, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 3 of the above-entitled court located at 101 Maple Street, Auburn,
4 California 95603, Plaintiffs Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl
5 Knox will seek an Order:

- 6 1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement (the
7 “Agreement”) in this action;
- 8 2. approving distribution of the settlement funds to Settlement Class Members and PAGA
9 Employees pursuant to the terms of the Agreement;
- 10 3. approving Plaintiffs’ request for a service award of \$10,000.00 to each Class Representative
11 pursuant to the terms of the Agreement;
- 12 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
13 \$2,750,000.00 Gross Settlement Amount, or \$916,666.67, and reimbursement of litigation
14 costs of \$17,827.96 pursuant to the terms of the Agreement;
- 15 5. approving Plaintiffs’ request for payment of the settlement administration costs to Phoenix
16 Settlement Administrators in the amount of \$33,750.00 pursuant to the terms of the
17 Agreement;
- 18 6. approving Plaintiffs’ request for payment to the Labor & Workforce Development Agency of
19 \$206,250.00 pursuant to the terms of the Agreement; and
- 20 7. entering final judgment as to all members of the Settlement Class in this action.

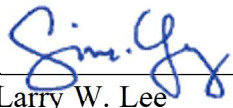
21 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
22 Court approval of the settlement of a purported class action and allows the Court to grant final
23 certification of a class for settlement purposes. The overwhelmingly positive Class response—as shown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

26 This motion will be based on the attached Memorandum of Points and Authorities, the
27 supporting Declarations of Larry W. Lee, Kyle Nordrehaug, Plaintiff Margaret Matthews, and Kevin
28

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

3 DATED: June 6, 2023

DIVERSITY LAW GROUP, P.C.

4
5 By: 

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff Matthews

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On March 23, 2021, Plaintiff, Margaret Matthews, initiated this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, United Natural Foods West, Inc. Meanwhile, Okeem Smith, Tomas Verduzco Alcala, and Darryl Knox separately sued Defendant regarding various Labor Code violations. Collectively, Plaintiffs, on behalf of a putative class and as a proxy for the State, pursued class action and PAGA claims for alleged: (i) unreimbursed expenses, (ii) underpaid sick pay wages, (iii) unpaid wages and overtime, (iv) failure to provide meal and rest periods, (v) underpayment of the additional hour of regular rate wages for meal and rest period premiums, (vi) untimely payment of wages, and (vii) noncompliant wage statements.

Plaintiffs now seek the Court’s final approval of the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”). The Agreement provides for a \$2,750,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, a service award to each Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Settlement Class Members and PAGA Employees.

The history of this litigation was previously detailed in Plaintiffs’ Preliminary Approval Motion. On December 1, 2022, the Court held a hearing on preliminary approval of this settlement. It directed distribution of the Notice of Class Action Settlement (“Class Notice”) and scheduled the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Administrator, Phoenix Settlement Administrators, distributed the Class Notice to 4,132 Class Members. Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. No objections have been filed. *Id.* ¶ 9. Nor have any requests for exclusion been received. *Id.* ¶ 8. In sum, there is a 100% participation rate. *Id.* ¶ 11. An inference thus can be made that the Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

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

- The settlement provides a total settlement sum of \$2,750,000.00;

- 1 ▪ The settlement is fair given that Class Members will receive (*after* deductions for fees, costs,
2 etc.) a fair and appropriate amount of money (on average each exempt Settlement Class
3 Member will receive approximately \$217.62 and each non-exempt Settlement Class Member
4 will receive approximately \$360.43, *see* Admin Decl. ¶ 14);
- 5 ▪ Class Members did not need to submit claim forms to participate in the settlement, but are
6 being paid automatically;
- 7 ▪ The allocation reflects that payment of claims will be paid to Class Members in proportion to
8 the number of relevant workweeks worked by each Class Member during the Class Period;
- 9 ▪ Plaintiffs conducted significant investigation in this case, including substantial informal
10 discovery and exchanges of information by Plaintiffs and Defendant of class data for the
11 entire class necessary for Plaintiffs to fully evaluate this case;
- 12 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained for fees of
13 \$33,750.00 only; and
- 14 ▪ California's LWDA will also be the beneficiary of this settlement as it will receive
15 \$206,250.00, should this settlement be granted final approval.

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

17 DISCUSSION

18 I. Class Members Were Provided Notice of the Settlement.

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

23 As the Admin Declaration recounts, notice was provided to Class Members, as required by the
24 Preliminary Approval Order. On December 16, 2022, the Administrator received a Class Member
25 mailing list from Defendant's counsel that included 4,132 Class Members. Admin Decl. ¶ 3. On
26 December 27, 2022, each of the persons identified on the mailing list were sent the Class Notice via first
27 class mail. *Id.* ¶ 5. From the date of mailing, 45 Class Notices were returned, and 28 Class Notices were
28 re-mailed to either a forwarding address or an updated address obtained after performing an address
trace. *Id.* ¶ 6. Only 17 of the Class Notices (or only 0.4%) remain undeliverable since an updated address
could not be obtained. *Id.* ¶ 7. The Class Notice mailed to the Class Members provided Class Members
with Class Counsel's contact information, where they could further seek information regarding the
settlement, leave questions for the Administrator, and update their addresses.

1 Plaintiffs provided the “best notice practicable” in this case as necessary to protect the due
2 process rights of class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
3 (providing “best notice practicable” with description of the litigation and explanation of opt-out rights
4 satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (explaining individual
5 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
6 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating best practicable notice is that
7 which is “reasonably calculated, under all the circumstances, to apprise interested parties of the
8 pendency of the action and afford them an opportunity to present their objections”).

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

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

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

16 The Court already addressed the requirements for certifying a class for settlement purposes in its
17 Order granting preliminary approval. Plaintiffs briefly address the requirements again here.

18 **1. The Class Is Ascertainable.**

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

22 Here, the Class includes all members of the “Exempt Class” and “Non-Exempt Class.”
23 Agreement ¶ 1.5. The Exempt Class includes all persons employed by Defendant in the State of
24 California as exempt employees during the Exempt Class Period (defined as May 11, 2019, through
25 June 30, 2022). *Id.* ¶ 1.5.1. The Non-Exempt Class includes all persons employed by Defendant in the
26 State of California as hourly paid, non-exempt employees and paid sick pay wages during the Sick Pay
27 Period (defined as March 23, 2017 through June 30, 2022), as well as all other persons employed by
28

1 Defendant in California as hourly-paid, non-exempt employees during the Post-*Cortez* Period (defined
2 as October 5, 2019 through June 30, 2022). *Id.* ¶ 1.5.2.

3 There are 4,132 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the
4 minimum required to certify a class. Within the context of manageability, the issue is whether there
5 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at
6 1274-75. Here, Class Members have already been identified and have already been sent notice.

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

8 The “community of interest” requirement embodies three separate factors: (1) predominant
9 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
10 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
11 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

17 Here, Plaintiffs allege that Defendant, as a matter of their corporate policy, practice, or
18 procedure, underpaid various wages based on Defendant’s failures to reimburse expenses and pay all
19 sick pay wages, minimum wages, and overtime wages, failed to provide meal and rest breaks, and failed
20 to furnish lawful wage statements. While Defendant denies that liability could be established on a class-
21 wide basis and contends instead that liability would need to be conducted on a case-by-case basis,
22 common questions predominate Plaintiffs’ theories of liability.

23 **b. Plaintiffs’ Claims Are Typical of the Class Claims.**

24 A class representative’s claim must be “typical” but not necessarily identical to the claims of
25 other class members; it is sufficient that the representative is similarly situated so that he or she will
26 have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983).
27 Courts look to “whether the action is based on conduct which is not unique to the named Plaintiff” and
28 whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d

497, 508 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the named representative aligns with the interests of the class.” *Id.* at 508.

Plaintiffs were employed by Defendant and allege that they were subjected to the same payroll policies and wage statement practices as all other Class Members. For example, like other members of the Class, Plaintiffs allege they were not provided either duty-free 10-minute rest periods or duty-free 30-minute meal periods within the first five hours of work. Declaration of Margaret Matthews (“Matthews Decl.”) ¶ 2; *see also* Declaration of Tomas Verduzco Alcala in Support of Preliminary Approval of Class Action Settlement (“Alcala Decl.”) ¶ 2; Declaration of Daryl Knox in Support of Preliminary Approval of Class Action Settlement (“Knox Decl.”) ¶ 2; Declaration of Okeem Smith in Support of Preliminary Approval of Class Action Settlement (“Smith Decl.”) ¶ 2. Plaintiffs also allege that they were not paid an additional hour of regular rate wages for the missed meal and rest periods and were underpaid overtime wages and sick pay wages, which were not paid based on their regular rates of pay. *Id.* Plaintiffs also allege that they regularly worked from home and incurred costs for internet service to perform work duties. *Id.* Plaintiffs also allege that they was not provided with accurate itemized wage statements. *Id.* In sum, Plaintiffs allege they were subjected to the same policies and practices as other Class Members. Plaintiffs’ claims thus are typical to those of Class Members.

c. Plaintiffs Adequately Represented the Class.

The class representative, through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834, 846 (1984). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. Plaintiffs have taken all necessary steps to represent the interests of the Class, including providing information and documents to his counsel and reviewing pleadings in this case. Matthews Decl. ¶¶ 3-5; *see also* Alcala Decl. ¶ 3; Knox Decl. ¶ 3; Smith Decl. ¶ 3. For such reasons, Plaintiffs have adequately represented Class Members.

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

Defendant asserts that even assuming that a class could have been certified, Plaintiffs would be unable to establish classwide liability. For example, with respect to meal and rest break violations, Defendant contended that (i) there were no violations, (ii) if there were, they were individualized issues

1 not amenable to a class or representative proceeding, and (iii) employees in any event were already paid
2 premiums. With respect to liability from underpaid wages, Defendant contended that they would not be
3 subject to Section 203 penalties, based on good faith defenses. Likewise, with respect to PAGA liability,
4 Defendant contended that PAGA penalties would be subject to discretionary reductions. Based thereon,
5 Defendant continues to maintain that it is not liable for the allegations made by Plaintiffs or for the
6 amounts alleged by Plaintiffs.

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

8 Plaintiffs believe that a class can be certified. Plaintiffs, however, also believe in the fairness of
9 the settlement when factoring in the uncertainty and risks involved in not prevailing on the theory of
10 liability alleged in the Complaint, the possibility of non-certification, and the potential for appeals.

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

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

18 Without reiterating the details in the Preliminary Approval Motion showing that the Agreement
19 (and the negotiation process that led up to it) is fair and adequate, Plaintiffs highlight the following facts.
20 The Agreement was the product of negotiation between highly able and experienced attorneys on both
21 sides who possessed the relevant data and extensive legal research which they had carefully analyzed.
22 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5; Declaration of Kyle Nordrehaug (“Nordrehaug
23 Decl.”) ¶¶ 6-8.

24 Following notice to the Class, not a single request for exclusion or objection to the settlement has
25 been received to date. Admin Decl. ¶¶ 8-9. The Court may appropriately infer that the class action
26 settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted an
27 objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992). Indeed, the Class
28 Member response suggests the preliminarily approved settlement should now be granted final approval.

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

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

Although the Court possesses "broad discretion" in determining that a proposed class action settlement is fair, the Court's role must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise a "private consensual agreement" between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff'd sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 ("The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement").

As the Court of Appeal has cautioned:

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.

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

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

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

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

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

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

13 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
14 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
15 arm's length. Lee Decl. ¶¶ 4-5; Nordrehaug Decl. ¶ 8. Class Counsel engaged in extensive factual
16 investigation before settling, including the exchange of formal and informal discovery and class data
17 enabling Class Counsel to evaluate the full extent of Defendant's potential liability. Lee Decl. ¶ 4.
18 Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting
19 declarations, Class Counsel has significant experience in class actions and employment wage and hour
20 matters. *Id.* ¶¶ 6-8; Nordrehaug Decl. ¶¶ 3-5.

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

22 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
23 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
24 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) (“[P]resent
25 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
26 of not prevailing, should be compared with the amount of the proposed settlement.”); *Girsh v. Jepson*,
27 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

1 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been
2 potentially responsible for Defendant's costs. Likewise, any other current or former employees that
3 bring individual claims also would face the uncertainty of prevailing and the possibility of paying costs
4 to Defendant. For that reason, many of these current and former employees likely would not pursue
5 claims. This lawsuit thus achieves a true benefit for the Class that they otherwise might not get or even
6 seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs
7 nor any of the Class Members will be required to pay for Defendant's litigation costs.

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

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

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

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

27 While continued litigation could have led to appeals on several issues, the settlement that was
28 reached provides to all Class Members—regardless of their means—fair relief in a prompt and efficient

1 manner. Were the Court to deny final approval, the Class Members would be left without a remedy as a
2 practical matter and courts across the State would have to address the issues presented here in a
3 piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with
4 the “overriding public interest in settling and quieting litigation” that is “particularly true in class action
5 suits.” *See Van Bronkhorst*, 529 F.2d at 950; *see also 4 Newberg* § 11.41. Here, litigation of this case
6 through trial and appeals would require extended litigation.

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

8 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
9 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA’s purposes. Lee
10 Decl. ¶ 5; Nordrehaug Decl. ¶ 8. Similarly, counsel for Defendant is in favor of this settlement. The
11 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is
12 entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*,
13 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney v. Cellular Alaska P’ship*, 151
14 F.3d 1234, 1242 (9th Cir. 1998).

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

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

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

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

22 Class Representatives Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl
23 Knox each request a service award of \$10,000.00. Plaintiffs met with Class Counsel to provide
24 substantive information regarding Defendant’s practices. Matthews Decl. ¶ 3; *see also* Alcala Decl. ¶ 3;
25 Knox Decl. ¶ 3; Smith Decl. ¶ 3. Plaintiffs provided invaluable information, evidence, and documents
26 that resulted in this settlement.

27 In addition to the invaluable services that they provided and the hours they devoted to the
28 litigation on behalf of the Class, Matthews Decl. ¶ 3; *see also* Alcala Decl. ¶ 3; Knox Decl. ¶ 3; Smith

1 Decl. ¶ 3, Plaintiffs took significant risks, both professionally and monetarily, in acting as Class
2 Representatives to seek benefits for the Class. Because the claims Plaintiffs alleged involved the
3 payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of
4 Defendant had they not prevailed in this action. Moreover, Plaintiffs understood that an individual case
5 would have resolved much faster than a class action and involved much less financial risk than a class
6 action. Despite this, Plaintiffs agreed to pursue this case on behalf of the Class. Matthews Decl. ¶ 8.

7 Also, given that future employers are much less likely to hire individuals who have filed
8 employment-related lawsuits (particularly cases of this nature), the Class Representatives also face
9 significant risks in not being able to find suitable employment—due to the filing of this case against
10 Defendant. Plaintiffs took these risks upon themselves to the benefit of the Class. Matthews Decl. ¶ 8;
11 *see also* Alcala Decl. ¶ 4; Knox Decl. ¶ 4; Smith Decl. ¶ 4. Class Members did not have to file
12 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to
13 face the potential for retaliation and not getting future employment had they filed a lawsuit which is a
14 public record. These are significant benefits that weigh in favor of granting the requested awards.
15 Moreover, this litigation has resulted in a fair, reasonable, and adequate benefit to the Class, and
16 Plaintiffs took on substantial risks in helping to get this financial benefit to the Class. As such, the
17 awards should be granted to Plaintiffs for their commitment, dedication, and risks taken for this
18 litigation.

19 Equally important, Plaintiffs provided a general release and waiver of the protections of Civil
20 Code section 1542. Matthews Decl. ¶ 9. This is a more extensive release than that provided by the Class
21 at large and also supports the request for the award.¹

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23
24 ¹ Courts have routinely granted approval of settlements containing such incentive awards. *See Van*
25 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
26 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)
27 (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141
28 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*
Columbia Gas Transmission Corp., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each
class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.
27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*,
142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative).

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

2 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
3 successful prosecution and resolution of this action. California state and federal courts have recognized
4 that an appropriate method for determining award of attorneys' fees is based on a percentage of the total
5 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
6 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
7 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
8 equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
9 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
10 alone." *Vincent*, 557 F.2d at 769.

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

22 First, the fee award representing 33⅓% of the fund clearly falls within that range and is
23 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
24 fee awards. Attorneys' fees awards of 35% of the fund are within the expected range in the "market in
25 legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7
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28

1 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
2 “[m]ost fee awards were between 25 percent and 35 percent”).²

3 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
4 Here, Plaintiffs and his counsel secured a \$2,750,000.00 settlement and zero Class Members chose to
5 opt out. Zero chose to object.

6 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
7 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
8 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
9 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
10 Class Counsel would be seeking \$916,666.67 in attorneys’ fees. Again, there were no objections.

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

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

17 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$2,750,000.00 has been
18 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
19 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
20 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
21 experienced defense firm. For such reasons, Class Counsel’s request for attorneys’ fees in the amount of
22 \$916,666.67 is fair, reasonable, and adequate.

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24
25 ² Such a fee award mimics the market and “is supported by the fact that typical contingency fee
26 agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the
27 case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July
28 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and
Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, a fee award of 35% of the
fund is consistent with “empirical studies [that] show that ... fee awards in class actions average around
one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

The request for reimbursement of costs, in the amount of \$17,827.96 is fair and reasonable. As set forth in Plaintiffs' counsel's declaration, the costs were all directly incurred in the prosecution of this action. Lee Decl. ¶ 9, Ex. A; Nordrehaug Decl. ¶ 11, Exs. 2-3. As such, this request should be approved.

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

Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Kevin Lee, the settlement administration fees expended in this matter amount to a total of \$33,750.00. Admin Decl. ¶ 17, Ex. B. For such reasons, it is requested that the Administrator's fees be approved.

V. Notice to the LWDA Has Been Provided.

On December 3, 2022, Plaintiffs uploaded the Order Granting Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement to the LWDA’s website. Lee Decl. ¶ 10. Concurrent with the filing of this motion, Plaintiffs also have uploaded the final approval motion to the LWDA. *Id.*

CONCLUSION

Plaintiffs respectfully submit that the standards for final approval have been met and the terms of the Agreement are fair, adequate, and reasonable. Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed and submitted.

DATED: June 6, 2023

DIVERSITY LAW GROUP, P.C.

By:

Simon L. Yang

Attorneys for Plaintiff Matthews