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

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

Plaintiff,

vs.

KIDS CARE DENTAL & ORTHODONTICS, a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2021-00296816

[Assigned for all purposes to Department 27,
Hon. Jill H. Talley]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Kelsey A. Webber; Declaration of Wendie
Brandt; Declaration of Yami Burns; [Proposed]
Order and Final Judgment]*

Date: September 1, 2023
Time: 9:00 a.m.
Department: 27

Complaint Filed: March 18, 2021

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

PLEASE TAKE NOTICE that on September 1, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 27 of the above-entitled court located at 720 9th Street, Sacramento, California 95814, Plaintiff, Wendie Brandt, will and hereby does seek an Order:

1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”) in this action;
2. approving distribution of the settlement funds to Settlement Class Members and PAGA Employees pursuant to the terms of the Agreement;
3. approving Plaintiff’s request for a service award of \$10,000.00 to the Class Representative pursuant to the terms of the Agreement;
4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the \$800,000.00 Gross Settlement Amount, or \$266,666.67, and reimbursement of litigation costs of \$14,296.75 pursuant to the terms of the Agreement;
5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$13,500.00 pursuant to the terms of the Agreement;
6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency of \$45,000.00 pursuant to the terms of the Agreement; and
7. entering final judgment as to all members of the Settlement 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. The overwhelmingly positive Class response—as shown by the lack of any objections to the settlement and also the lack of any opt outs—supports that the settlement is fair, reasonable, and adequate, and should be granted final approval.

This motion will be based on the attached Memorandum of Points and Authorities, the supporting Declarations of Larry W. Lee, Simon L. Yang, Kelsey A. Webber, Plaintiff Wendie Brandt,

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

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

10 DATED: August 10, 2023

DIVERSITY LAW GROUP, P.C.

11 By: _____
12

Larry W. Lee

Simon L. Yang

13 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On March 18, 2021, Plaintiff, Wendie Brandt, initiated this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, Reeves. D.D.S. and Lavalley, D.D.S., a Dental Corporation d/b/a Kids Care Dental & Orthodontics. On behalf of a putative class of current and former non-exempt employees of Defendant in the State of California who did not sign a separation agreement, and as a proxy for the State, the Action pursues class action and PAGA claims for Defendant’s alleged underpayments of various wages, unreimbursed business expenses, and noncompliant wage statements.

Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”). The Agreement provides for a \$800,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, a service award to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”) and PAGA Employees, and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Settlement Class Members.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. On May 5, 2023, 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 1,165 Class Members. Declaration of Yami Burns on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. No objections were made. *Id.* ¶ 9. Nor were any requests for exclusion submitted. *Id.* ¶ 8. As such, there is a 100% participation rate. *Id.* ¶ 10. Based on the Class Member response, an inference can be made that the Class finds the settlement is fair and reasonable.

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

- The settlement provides a total settlement sum of \$800,000.00;
- The settlement is fair given that Class Members will receive (*after* deductions for fees, costs, etc.) a substantial amount of money (on average, each Settlement Class Member will receive

approximately \$373.85, and each PAGA Employee will additionally receive another \$16.56, *see* Admin Decl. ¶¶ 12-13);

- The allocation reflects payments to Class Members in proportion to the number of relevant workweeks worked by each Class Member during the Class Period;
- Plaintiff conducted significant investigation in this case, including substantial formal discovery and informal exchanges of information by Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully evaluate this case; and
- California’s LWDA will also be the beneficiary of this settlement as it will receive \$45,000.00, should this settlement be granted final approval.

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

DISCUSSION

I. Class Members Were Provided Notice of the Settlement.

The notice procedures required by the Preliminary Approval Order, have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that Phoenix Settlement Administrators would serve as the Administrator. It also contemplated that the Class Notice to be sent to all Class Members by first class mail, as specified in the Agreement, would enable Class Members to contact Class Counsel, seek additional information regarding the settlement, leave questions for the Administrator, and update their addresses.

As the Admin Declaration states, notice was provided to Class Members, as required by the Preliminary Approval Order. On May 26, 2023, the Administrator received a Class Member mailing list from Defendant’s counsel that included 1,165 Class Members. Admin Decl. ¶ 3. On May 29, 2023, the Administrator conducted a National Change of Address (“NCOA”) search to update the Class Member mailing list of addresses as accurately as possible. *Id.* ¶ 4. On June 7, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 5. No Class Notices were returned; none of the Class Notices remain undeliverable. *Id.* ¶ 6.

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

1 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating best practicable notice is that
2 which is “reasonably calculated, under all the circumstances, to apprise interested parties of the
3 pendency of the action and afford them an opportunity to present their objections”).

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

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

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

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

13 **1. The Class Is Ascertainable.**

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

17 Here, the Class includes all current and former non-exempt employees of Defendant in the State
18 of California during the Class Period who did not sign a separation agreement during the Class Period.
19 Agreement § 1.5. The Class Period is from September 16, 2016, through September 26, 2022. *Id.* § 1.7.¹

20 There are 1,165 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the
21 minimum required to certify a class. Within the context of manageability, the issue is whether there
22 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at
23 1274-75. Here, Class Members have already been identified and have already been sent notice.

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

25 The “community of interest” requirement embodies three separate factors: (1) predominant
26

27 ¹ The settlement also defines a group of PAGA Employees, which includes all current and former non-
28 exempt employees of Defendant in the State of California during the PAGA Period. Agreement § 1.17.
The PAGA Period is from September 16, 2019, through September 26, 2022. *Id.* § 1.18.

1 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
2 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
3 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

9 Here, Plaintiff alleges that Defendant, as a matter of common corporate policy, practice, or
10 procedure, allegedly underpaid overtime, underpaid the additional hour of regular rate wages on
11 occasions meal and rest periods were not provided, failed to reimburse expenses, and furnished unlawful
12 wage statements. While Defendant denies that liability could be established on a class-wide basis and
13 contends instead that liability would need to be conducted on a case-by-case basis, common questions
14 predominate Plaintiff’s theories of liability.

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

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

23 Plaintiff was employed by Defendant and alleges that she was subjected to the same payroll
24 policies and wage statement practices as all other Class Members. Specifically, like other members of
25 the Class, Plaintiff alleges she was required to purchase work uniform with the Company’s logo and to
26 maintain and clean the work uniform on her own time and at her own expense. Declaration of Wendie
27 Brandt (“Brandt Decl.”) ¶ 2. She alleges she was not reimbursed for the costs of purchasing,
28 maintaining, or cleaning the work uniform. *Id.* She also alleges she did not have certain compensation

1 considered when calculating her overtime rate or the rate for additional hours of pay in lieu of meal and
2 rest periods. *Id.* She also alleges that she was furnished unlawful wage statements. *Id.* In sum, Plaintiff
3 alleges she was subjected to the same policies and practices as other Class Members. Plaintiff's claims
4 thus are typical to those of Class Members.

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

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

12 **B. Defendant's Allegations and Position on Class Certification Support Approval.**

13 Defendant asserts that even assuming that a class could have been certified, Plaintiff would be
14 unable to establish classwide liability. For example, Defendant provided Plaintiff with information about
15 various defenses, including for example some based on arbitration agreements and others based on
16 factual disputes regarding Plaintiff's allegations. Moreover, even if Plaintiff prevailed on the merits,
17 Defendant contested the extent of liability. For example, with respect to liability for underpaid wages,
18 overtime, and additional hours of regular rate wages, Defendant contended that it would not be subject
19 to Section 203 penalties, based on a good faith defense.² Likewise, with respect to wage statement
20 liability, Defendant contended that liability under Section 226(e) would be subject to additional defenses
21 requiring proof of injuries resulting from knowing and intentional violations. Finally, with respect to
22 PAGA penalties, Defendant contended that PAGA penalties in any event be subject to discretionary
23 reductions. Based thereon, Defendant continues to maintain that it is not liable for the allegations made
24 by Plaintiff or for the amounts alleged by Plaintiff.

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

26 Plaintiff believes that a class can be certified. Plaintiff, however, also believes in the fairness of
27 the settlement when factoring in the uncertainty and risks involved in not prevailing on the theory of
28

² Except as otherwise noted, all "Section" references are to the Labor Code.

1 liability alleged in the Complaint, the possibility of non-certification, and the potential for appeals.

2 There is always a risk that the court will not grant certification of the class. As Defendant alleges
3 that a class could not have been certified, there was at least a substantial risk that Plaintiff would not
4 have obtained the total amount of damages alleged, and a substantial number of complex issues that
5 would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
6 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, Plaintiff highlights the following facts.
11 The Agreement was the product of negotiation between highly able and experienced attorneys on both
12 sides who possessed the relevant data and extensive legal research which they had carefully analyzed.
13 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

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

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

20 On a motion for final approval of a class action settlement under Code of Civil Procedure section
21 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair,
22 adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).
23 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of
24 the class are better served by the settlement than by further litigation.” *See Manual for Complex*
25 *Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement,
26 particularly in class actions and other complex cases, where substantial resources can be conserved by
27 avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg,
28 *Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,

1 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

2 Although the Court possesses “broad discretion” in determining that a proposed class action
3 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
4 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
5 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
6 *Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise
7 a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways,*
8 *Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
9 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial
10 role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement,
11 disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

12 As the Court of Appeal has cautioned:

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

17 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

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

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

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

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

28 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); *accord, Ellis v. Naval Air Rework*

1 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

2 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
3 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
4 arm's length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,
5 including the exchange of significant informal discovery and class data enabling Class Counsel to
6 evaluate the full extent of Defendant's potential liability. *Id.* ¶ 4. Further, Class Counsel is highly
7 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
8 significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 6-8; Declaration of
9 Simon L. Yang ("Yang Decl.") ¶¶ 4-6; Declaration of Kelsey A. Webber ("Webber Decl.") ¶¶ 5-9.

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

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

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

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

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

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

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

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

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

25 Class Counsel supports the settlement as fair, reasonable, and adequate, as in the best interest of
26 the Class Members as a whole, and fair, reasonable, and adequate in view of PAGA's purposes. Lee
27 Decl. ¶ 5; Yang Decl. ¶ 2; Webber Decl. ¶ 10. Similarly, counsel for Defendant is in favor of this
28 settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable,

1 and adequate is entitled to significant weight by the Court in its final approval determination. *See*
2 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney v.*
3 *Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

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

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

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

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

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

14 In addition to the invaluable services that she provided and the hours she devoted to the litigation
15 on behalf of the Class, Brandt Decl. ¶ 3, Plaintiff took significant risks, both professionally and
16 monetarily, in acting as Class Representative to seek benefits for the Class. Because the claims Plaintiff
17 alleged involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying
18 the costs of Defendant had she not prevailed in this action. Moreover, Plaintiff understood that an
19 individual case would have resolved much faster than a class action and involved much less financial
20 risk than a class action. Despite this, Plaintiff agreed to pursue this case on behalf of the Class. *Id.* ¶ 8.

21 Also, given that future employers are much less likely to hire individuals who have filed
22 employment-related lawsuits (particularly cases of this nature), the Class Representative also faces
23 significant risk in not being able to find suitable employment—due to the filing of this case against
24 Defendant. Plaintiff took these risks upon herself to the benefit of the Class. Brandt Decl. ¶ 8. Class
25 Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not
26 prevail, nor did they have to face the potential for retaliation and not getting future employment had they
27 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the
28 requested award. Moreover, this litigation has resulted in a significantly valuable benefit to the Class,

1 and Plaintiff took on substantial risks in helping to get this financial benefit to the Class. As such, the
2 award should be granted to Plaintiff for her commitment, dedication, and risks taken for this litigation.

3 Equally important, Plaintiff provided a general release and waiver of the protections of Civil
4 Code section 1542 apart from currently pending claims. Brandt Decl. ¶ 9. This is a more extensive
5 release than that provided by the Class at large and also supports the request for the award.³

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

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

8 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
9 successful prosecution and resolution of this action. California state and federal courts have recognized
10 that an appropriate method for determining award of attorneys' fees is based on a percentage of the total
11 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
12 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
13 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
14 equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
15 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
16 alone." *Vincent*, 557 F.2d at 769.

17 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
18 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
19 fund wage and hour class action settlements should start with the percentage method. *See Laffitte v.*
20 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
21 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
22 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
23 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund

24 ³ 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 created”). Under the percentage of the fund method, a court’s objective remains to “mimic the market”
2 in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When
3 a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what
4 the market will set The judge, in other words, is trying to mimic the market in legal services.”).

5 First, the fee award representing 33⅓% of the fund clearly falls within that range and is
6 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
7 fee awards. Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in
8 legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7
9 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
10 “[m]ost fee awards were between 25 percent and 35 percent”).⁴

11 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
12 Here, Plaintiff and her counsel secured a \$800,000.00 settlement and zero Class Members chose to opt
13 out. Zero chose to object.

14 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
15 relevant to the . . . reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
16 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
17 market” for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
18 Class Counsel would be seeking \$266,666.67 in attorneys’ fees. Again, there were no objections.

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

21 No one expects a lawyer whose compensation is contingent upon his success to charge, when
22 successful, as little as he would charge a client who had agreed to pay for his services, regardless
23 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.

24 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$800,000.00 has been

25 ⁴ 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).

1 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
2 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
3 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
4 experienced defense firm. For such reasons, Class Counsel's request for attorneys' fees in the amount of
5 \$266,666.67 is fair, reasonable, and adequate.

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

7 The amount requested is reasonable for an additional reason. While the primary method
8 employed to determine fees is the percentage method, courts have discretion to use the lodestar method
9 to "cross-check" the amount of fees calculated by way of percentage. As the California Supreme Court
10 has emphasized, "the lodestar calculation, when used in this manner, does not override the trial court's
11 primary determination of the fee as a percentage of the common fund and thus does not impose an
12 absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis
13 added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-
14 check does not trump the primary reliance on the percentage of common fund method]").

15 Courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4 or even
16 higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).⁵ Indeed, the intermediate
17 court in *Laffitte*—after finding that "2 to 4" is a reasonable range for multipliers on a cross-check—
18 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.⁶ Moreover, the Ninth Circuit has cited
19 with approval a comprehensive study of fees awarded by the percentage method showing that the
20 majority of multipliers awarded are "in the 1.5-3.0" range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
21 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and
22 analyzing the multiplier awarded in over 30 cases).⁷

23

⁵ *Accord Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *Sutter*
24 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
25 cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
multiplier without remand).

26 ⁶ The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

27 ⁷ Federal district courts applying California law have likewise routinely approved cross-check
28 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
attorneys' fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL

1 With respect to Class Counsel's lodestar, at least 208.3 hours have been expended by Class
2 Counsel litigating this case. Lee Decl. ¶ 10, Ex. B; Yang Decl. ¶ 8, Ex. A; Webber Decl. ¶¶ 11-12.
3 Moreover, Class Counsel expects to incur approximately 25.0 hours of anticipated time spent to attend
4 the final approval hearing and secure final approval, as well as respond to post-final approval phone
5 calls and correspondence from the administrator, defense counsel, and Class Members. *Id.* Courts are
6 quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not
7 required; an attorney's testimony alone may suffice: "Testimony of an attorney as to the number of
8 hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the
9 absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

10 Reasonable hours include, in addition to time spent during litigation, the time spent before the
11 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
12 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee
13 award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v.*
14 *Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel seeks compensation involve
15 only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

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

21 Here, Mr. Lee's hourly rate is \$800. Lee Decl. ¶ 10. Mr. Yang's hourly rate is \$750. Yang Decl.
22 ¶ 7. Mr. Webber's hourly rate is \$650. Webber Decl. ¶ 11. Plaintiff's Counsel's skill and experience
23 justify the requested rates. As shown in the supporting declarations, Plaintiff's Counsel has significant
24 experience in the area of employment and wage and hour class and representative actions. Plaintiff's
25

26
27 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
28 violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

Counsel's practices focus on representing employees in employment matters, particularly wage and hour cases on a contingency basis. Lee Decl. ¶¶ 6-8; Yang Decl. ¶¶ 4-6; Webber Decl. ¶¶ 5-9.

Based on the rates and 233.3 total hours, the lodestar for Class Counsel through the finalization of this settlement will be approximately \$179,030.00. Lee Decl. ¶ 10; Yang Decl. ¶ 8; Webber Decl. ¶ 11. The requested attorneys' fees result in a modest multiplier of approximately 1.49. Again, the requested fees are reasonable and fair, based on the factors described above. The cross-check and negative multiplier support the fee requested.

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

The request for reimbursement of costs, in the amount of \$14,296.75 is fair and reasonable. As set forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this action. Lee Decl. ¶ 9, Ex. A (\$14,143.65); Webber Decl. ¶ 9, Ex. A (\$153.10). 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 Yami Burns, the settlement administration fees expended in this matter amount to a total of \$13,500.00. Admin Decl. ¶ 15, Ex. B. For such reasons, it is requested that the Administrator's fees be approved.

V. Notice to the LWDA Has Been Provided.

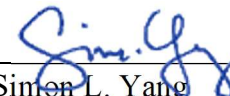
On May 15, 2023, Plaintiff uploaded the Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 11. Concurrent with the filing of this motion, Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

CONCLUSION

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

DATED: August 10, 2023

DIVERSITY LAW GROUP, P.C.

By: 
Simon L. Yang
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

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

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

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

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

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
12 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
13 **AUTHORITIES IN SUPPORT**
14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
16 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
18 **4. DECLARATION OF KELSEY A. WEBBER IN SUPPORT OF PLAINTIFF'S**
19 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
20 **5. DECLARATION OF WENDIE BRANDT IN SUPPORT OF PLAINTIFF'S**
21 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
22 **6. DECLARATION OF YAMI BURNS WITH RESPECT TO NOTICE AND**
23 **SETTLEMENT ADMINISTRATION**
24 **7. [PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF**
25 **CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

26 on the interested parties in this action as follows:

27 28 Maureen K. Bogue Noah Levin PACIFIC EMPLOYMENT LAW, INC. 260 California Street, Suite 500 San Francisco, CA 94111 maureen@pacificemploymentlaw.com noah@pacificemploymentlaw.com <i>Attorneys for Defendant Kids Care Dental & Orthodontics</i>	Kelsey A. Webber Shaelyn A. Stewart WEBBER & EGBERT EMPLOYMENT LAW, P.C. 1610 R. Street, Suite 300 Sacramento, California 95811 Kelsey.Webber@webberlawgroup.com Shaelyn.Stewart@webberlawgroup.com <i>Attorneys for Plaintiff</i>
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29 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
indicated above or on the attached mailing list. I certify that said electronic transmission was

1 completed and that all pages were received by the party(ies) identified herein or on the attached
2 mailing list.

3 I declare under penalty of perjury under the laws of the State of California that the above
4 is true and correct. Executed on August 10, 2023, at Los Angeles, California.

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6 Erika Mejia
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