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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

JAMIE KENNEDY, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

UNIVAR SOLUTIONS USA INC., a
Washington corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: MSC21-00272

[Assigned for all purposes to the Hon. E. Weil,
Department 39]

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

Date: January 26, 2023

Time: 9:00 a.m.

Dept: 39

Complaint Filed: February 16, 2021

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 26, 2023, at 9:00 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable E. Weil, judge presiding, in Department 39 of
4 the above referenced Court located at 725 Court Street, Martinez, California 94553, Plaintiff
5 Jamie Kennedy (“Plaintiff”) will and hereby does move this Court for an Order:

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

8 2. Approving distribution of the settlement funds to the Class Members pursuant to
9 the terms of the Settlement Agreement;

10 3. Approving Plaintiff’s request for an enhancement payment of \$10,000.00 to
11 Plaintiff pursuant to the terms of the Settlement Agreement;

12 4. Approving Class Counsel’s request for an award of attorneys’ fees of one-third of
13 the Maximum Settlement Amount, or \$31,666.67, and reimbursement of actual litigation costs of
14 \$8,182.70, pursuant to the terms of the Settlement Agreement;

15 5. Approving Plaintiff’s request for payment of the settlement administration costs
16 to Phoenix Settlement Administrators in the amount of \$4,500.00, pursuant to the terms of the
17 Settlement Agreement;

18 6. Approving Plaintiff’s request for payment to the California Labor & Workforce
19 Development Agency (“LWDA”) for \$3,750.00 pursuant to the California Labor Code Private
20 Attorneys General Act, pursuant to the terms of the Settlement Agreement; and

21 7. Entering final judgment as to all members of the settlement class in this action.

22 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
23 provides for court approval of the settlement of a purported class action and allows the Court to
24 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
25 response, as shown by the lack of opt-outs and objections to the settlement, there is no question
26 that the settlement is fair, reasonable, and adequate and thus should be granted final approval.

27 This Motion will be based on the attached Memorandum of Points and Authorities and
28 the supporting Declarations of Larry W. Lee, Max W. Gavron, William L. Marder, Plaintiff

1 Jamie Kennedy, and Taylor Mitzner of Phoenix Settlement Administrators, upon the oral
2 arguments of counsel (should there be any), and on the complete records and file herein.
3

4 DATED: January 3, 2023

DIVERSITY LAW GROUP, P.C.

5 By:  _____

6 Larry W. Lee

7 Max W. Gavron

8 Attorneys for Plaintiff, the Class, and Aggrieved
9 Employees
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1 **I. INTRODUCTION**

2 Plaintiff Jamie Kennedy (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action Settlement (“Stipulation” or “Settlement Agreement”). The
4 Settlement Agreement provides for a \$95,000.00 **non-reversionary** fund to be created for the
5 benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the
6 named Plaintiff, payment to the California Labor and Workforce Development Agency
7 (“LWDA”), and costs of settlement administration are to be paid. The entire Net Settlement Fund
8 after these deductions will be paid to all Class Members who did not opt-out of the Settlement.

9 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
10 Approval of Class Action Settlement. The Court preliminary approved this settlement on
11 September 22, 2022, directing distribution of Notice of Class Action Settlement (“Class Notice”)
12 and scheduling the hearing for final approval of the settlement (the “Preliminary Approval
13 Order”).

14 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
15 Settlement Administrators—distributed the Class Notice to 22 Class Members. Declaration of
16 Taylor Mitzner on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 3. To date,
17 there have been **no requests for exclusions and/or objections to the settlement** submitted by
18 any Class Members. *Id.* ¶¶ 8, 9. As such, there is a 100% participation rate. Thus, in light of the
19 lack of objections and opt-outs, an inference can be made that the Class supports the Court’s
20 Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

21 In addition to the results of the notice process, for the same reasons as set forth earlier in
22 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represents
23 the basic points supporting final approval of the settlement:

- 24 • The settlement provides a total settlement sum of \$95,000.00, which is **non-**
25 **reversionary**;
- 26 • The settlement is fair given that participating Class Members will receive (*after*
27 *deductions for fees, costs, etc.*) a substantial amount of money – on average, approximately
28 \$1,620.48 to each Participating Class Member, with the estimated **highest** individual settlement

1 payment being approximately \$3,206.65 (*See* Admin Decl. ¶ 14);

2 • Class Members did not need to submit claim forms to participate in the
3 settlement, but are being paid automatically;

4 • The allocation reflects that payment of individual settlement amounts will be paid
5 to Class Members on a *pro rata* basis, based on each Class Member's Pay Rate;

6 • Plaintiff's counsel conducted significant investigation in this case, including
7 conducting informal discovery and significant exchanges of information regarding class data for
8 the entire class, including the number of class members, the hourly rates of pay for class
9 members, as well as documents and information pertaining to Defendant Univar Solutions USA
10 Inc.'s ("Defendant") policies and practices regarding payment of sick pay wages;

11 • A highly regarded settlement administrator, Phoenix Settlement Administrators,
12 was retained to administer the settlement for approximately \$4,500 (*See* Admin Decl. ¶ 16); and

13 • The State of California's LWDA will also be the beneficiary of this settlement, as
14 it will receive \$3,750.00 pursuant to the PAGA, should this settlement be granted final approval.

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

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

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

25 As clearly stated in the Administrator's Declaration, notice was provided to Class
26 Members, as required by the Preliminary Approval Order. On October 27, 2022, the Settlement
27 Administrator received a Class Member mailing list from Defendant's counsel that included 22
28 Class Members. Admin Decl. ¶ 3. On November 3, 2022, the Settlement Administrator mailed
the Class Notice to all 22 Class Members on the mailing list via U.S. first class mail. *Id.* ¶ 5.

1 From the date of mailing, one Class Notice was returned to the Settlement Administrator due to
2 an incorrect address. *Id.* ¶ 6. The Settlement Administrator conducted a National Change of
3 Address (“NCOA”) search to correct and/or update the Class Member’s address and re-mailed
4 the Class Notice to the updated address thereto. *Id.* As of the date of this filing, zero Class
5 Notices remain undeliverable. *Id.* ¶ 7.

6 Furthermore, the Class Notice provided Class Members with Class Counsel’s and the
7 Settlement Administrator’s contact information and website, where they could further seek
8 information regarding the settlement, ask questions, review pleadings in the case, and update
9 their address. Admin Decl. ¶ 5, Ex. A.

10 The provision of sending the notice to Class Members as described above meets the
11 requirements for the “best notice practicable” in this case as necessary to protect the due process
12 rights of Class Members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
13 (provision of “best notice practicable” with description of the litigation and explanation of opt-
14 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974)
15 (individual notice must be sent to class members who can be identified through reasonable
16 means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best
17 practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise
18 interested parties of the pendency of the action and afford them an opportunity to present their
19 objections”).

20 Here, all Class Members were provided with a mailing that explained the settlement and
21 allowed Class Members to seek information, ask questions, and exclude themselves and/or object
22 to the settlement, if so desired. As such, proper notice has been given to the Class Members.
23 Thus, the Court may determine the fairness and adequacy of the Settlement and enter its Order
24 granting final approval and final judgment as to all Class Members, secure in the knowledge that
25 all absent Class Members have been given the opportunity to participate fully in the settlement,
26 exclusion, and the approval process.

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

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

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

4 **1. The Class is Ascertainable**

5 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section
6 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
7 available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*,
8 196 Cal. App. 3d 1263, 1271 (1987).

9 Here, the Class is comprised of “all non-union former non-exempt California employees
10 of Defendant who were paid sick pay wages and non-discretionary incentive wages, including,
11 but not limited to, job premium and/or shift differential wages, in the same workweek during
12 their employment and whose employment ended at any time between August 22, 2017, and the
13 date of preliminary approval of the Settlement.” There are 22 individuals that comprise the Class.
14 Admin Decl. ¶ 3. This is more than the minimum required to certify a class.

15 Within the context of manageability, the issue is whether there exists sufficient means for
16 identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at pp. 1274-75. Class
17 Members have already been identified by Defendant and notice was provided to all of the above
18 Class Members.

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

20 The “community of interest” requirement embodies three separate factors: (1)
21 predominant common questions of law or fact; (2) class representatives whose claims are typical
22 of the class; and (3) class representatives who can adequately represent the class. *Richmond v.*
23 *Dart Industries*, 29 Cal. 3d. 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th
24 1225, 1234 (1999).

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

26 “The ultimate question in every case of this type [class actions] is whether...the issues
27 which may be jointly tried, when compared with those requiring separate adjudication, are so
28 numerous and substantial that the maintenance of a class action would be advantageous to the

1 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096,
2 1104-05 (2003).

3 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
4 failed to factor non-discretionary incentive wages, including job premiums and/or shift
5 differential wages, into the calculation of the regular rate for purposes of paying sick pay wages.
6 As these are alleged uniform corporate policies, practices, and procedures, the claims can be
7 jointly tried and thus the predominance requirement is satisfied.

8 **b. Plaintiff’s Claims are Typical of the Class Claims**

9 The purported class representative’s claim must be “typical” but not necessarily identical
10 to the claims of other class members; it is sufficient that the representative is similarly situated so
11 that he or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal.
12 App. 3d 27, 45 (1983). Courts look to whether class members have similar injuries, “whether the
13 action is based on conduct which is not unique to the named Plaintiff,” and whether other class
14 members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508
15 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
16 named representative aligns with the interests of the class.” *Id.* at p. 508.

17 While Defendant denies the allegations, Plaintiff contends that she was subjected to the
18 same payroll policies as all other Class Members. In this regard, Plaintiff was employed by
19 Defendant as an hourly, non-exempt, non-union employee from about April 2020, until about
20 January 2021. Declaration of Jamie Kennedy (“Kennedy Decl.”) ¶ 2. Plaintiff contends that, like
21 other members of the Class, she was routinely paid non-discretionary pay such as job premiums
22 and/or shift differential wages. *Id.* ¶ 3. However, Plaintiff contends that whenever sick pay and
23 the non-discretionary pay were paid to Plaintiff in the same workweek, Defendant miscalculated
24 the sick pay regular rate such that it failed to include the non-discretionary wages into the
25 calculation of the regular rate or pay. *Id.*

26 In other words, Plaintiff alleges that she was subjected to the same policies and practices
27 as other Class Members. Accordingly, Plaintiff’s claims are aligned with the interests of the
28 Class and typicality is satisfied.

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

2 The class representative, through qualified counsel, must be capable of “vigorously and
3 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
4 834, 846 (1984).

5 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
6 been raised or presented. Kennedy Decl. ¶ 5. Plaintiff has taken all necessary steps to represent
7 the interests of the Class, including discussing the lawsuit with her counsel on several occasions,
8 searching for and providing information and documents to her counsel, and reviewing pleadings
9 and the settlement agreement in this case. *Id.* ¶ 6. For such reasons, Plaintiff has adequately
10 represented the Class Members and will continue to do so.

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

12 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the
13 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
14 involved in not prevailing on one or more of the causes of action or theories alleged in the
15 operative Complaint, the possibility of non-certification, and potential for appeals. These risks on
16 class certification are compounded by the California Supreme Court’s holding in *Duran v. U.S.*
17 *Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014).

18 Defendant contends that any failure to pay wages upon separation was not “willful”
19 within the meaning of Labor Code § 203, and thus penalties would not be appropriate. Moreover,
20 Plaintiff also faces risk with regard to prevailing on class certification, as there is currently no
21 precedent from any California courts for certification of a sick pay regular rate class. Based on
22 the foregoing, there were risks that the class would not be certified, Plaintiff would not have
23 obtained the total amount of penalties alleged, and a substantial number of complex issues would
24 have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
25 and complexity of further litigation warrant granting of this Motion.

26 **C. The Terms, Negotiation, and Reception of the Settlement by Class Members**
27 **All Strongly Support the Conclusion that the Settlement is Fair, Adequate,**
28 **and Reasonable**

Without reiterating the Parties’ showing that the Settlement Agreement and the

1 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
2 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
3 Settlement Agreement was the product of negotiations between highly able and experienced
4 attorneys on both sides who possessed the relevant data and extensive legal research which they
5 had carefully analyzed. Declaration of Max W. Gavron (“Gavron Decl.”) ¶¶ 3-5. The Parties
6 engaged in arm’s-length negotiations at mediation with an highly experienced and well-known
7 mediator, Joel Grossman, Esq. *Id.*

8 The results after mailing of the Class Notice support confirmation of the Court’s
9 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
10 fact that **no Class Members opted out and/or submitted any written objections to the**
11 **settlement.** Admin Decl. ¶¶ 8, 9. The Court may appropriately infer that the class action
12 settlement is fair, adequate, and reasonable, given that not a single class member has submitted a
13 request for exclusion and/or an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
14 1291 (9th Cir. 1992).

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

17 **1. Standard of Review**

18 On a motion for final approval of a class action settlement under California Code of Civil
19 Procedure § 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement
20 is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625
21 (9th Cir. 1982), *cert. denied subnom.*; *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A
22 settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
23 interests of the class are better served by the settlement than by further litigation.” *See Manual*
24 *for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law
25 favors settlement, particularly in class actions and other complex cases, where substantial
26 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Alba*
27 *Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class*
28 *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).

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

12 A court’s approval of a class action settlement will only be reversed for a clear abuse of
13 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
14 *Justice*, 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision
15 was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar*, 1993
16 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
17 1998).

18 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

19 It cannot be overemphasized that neither the trial court in approving
20 the settlement nor this Court in reviewing that approval have the
21 right or duty to reach any ultimate conclusions on the issues of fact
22 and law which underlie the merits of the dispute. It is well settled
23 that in the judicial consideration of proposed settlements, ‘the [trial]
24 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.

25 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

26 **2. The Settlement is Presumed to Be Fair**

27 The Court should begin its analysis with the presumption that the settlement is fair and
28 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; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm's-length after a full day of mediation with an experienced wage-and-hour mediator, Joel Grossman, Esq. Gavron Decl. ¶¶ 3-5. Additionally, Class Counsel engaged in informal discovery before mediation, including reviewing and analyzing the production of class and payroll data, and information pertaining to Defendant's sick pay policies and practices. *Id.* The exchange of informal discovery allowed Class Counsel to conduct a full analysis of exposure. *Id.*

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. Gavron Decl. ¶¶ 7-13; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 6-8; Declaration of William L. Marder ("Marder Decl.") ¶¶ 6-13.

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

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

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendant's costs. As such, if other employees of Defendant

1 brought individual claims on the same causes of action, they would each face the uncertainty of
2 prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely
3 would not be brought by many of these individuals—thus, this lawsuit achieves a true benefit for
4 the class that they might not otherwise get or seek as individuals. Here, given that a fair and
5 reasonable settlement has been reached, neither Plaintiff nor any of the Class Members will be
6 required to pay for Defendant’s litigation costs.

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

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

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

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

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

means—fair relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members would be left without a remedy as a practical matter and courts across the State would have to address the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case could have involved years of litigation, especially given that the sick pay regular rate claim has never been certified by a California court before.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of the Class Members as a whole. Lee Decl. ¶ 2; Gavron Decl. ¶ 2; Marder Decl. ¶ 2. Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 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. 1242.

IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED

As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement funds remain after 180 days of the mailing of the Individual Settlement Payment checks, the Parties have agreed that all such uncashed settlement funds shall be distributed to Legal Aid at Work as a *cy pres* recipient. Class counsel provided declarations in conjunction with preliminary approval demonstrating they do not have any conflicts of interest with the proposed *cy pres* recipient. *See* Supplemental Declarations of Max Gavron, William Marder, and Larry Lee (filed September 15, 2022).

V. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD SHOULD BE APPROVED

Class Representative Jamie Kennedy requests an enhancement payment of \$10,000.00. Plaintiff had numerous discussions regarding the lawsuit with Class Counsel, searched for and provided substantive documents and information regarding Defendant’s policies and practices at issue in this case, and reviewed pleadings and documents in this case. Kennedy Decl. ¶ 6.

1 Plaintiff estimates she spent between 15-20 hours working with counsel to prosecute this case
2 and implement the settlement. Kennedy Decl. ¶ 6. Accordingly, Plaintiff provided invaluable
3 information, evidence, and documents that resulted in this settlement.

4 In addition to the invaluable services that she provided, Plaintiff also took significant
5 risks, both professionally and monetarily, in acting as Class Representative, seeking benefits on
6 behalf of the Class. Kennedy Decl. ¶ 8. Because the claims alleged by the Class Representative
7 involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying
8 the costs of Defendant, had she not prevailed in this action. *Id.* Despite this, however, Plaintiff
9 agreed to pursue this case on behalf of the Class.

10 Also, given that future employers are much less likely to hire individuals who have filed
11 employment-related lawsuits, particularly cases of this nature, the Class Representative also
12 faced significant risk in not being able to find suitable employment and/or face retaliation from
13 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
14 risks upon herself to the benefit of the Class. Kennedy Decl. ¶ 7. Class Members did not have to
15 file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
16 have to face the potential for retaliation and not getting future employment had they filed a
17 lawsuit which is a public record. These are significant benefits that weigh in favor of granting the
18 requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit
19 to the Class, *i.e.*, average award to Class Members in the amount of \$1,620.48, and the highest
20 award being approximately \$3,206.65, and Plaintiff took on substantial risks in helping to get
21 this financial benefit to the Class. As such, the enhancement should be awarded to Plaintiff for
22 her commitment, dedication, and risks taken for this litigation.

23 Finally, Plaintiff provided a general release of all claims and a waiver under California
24 Civil Code § 1542, which other Class Members did not have to do. Settlement Agreement ¶
25 III.2.a.; Kennedy Decl. ¶ 9. This is a more extensive release than that provided by the Class at
26 large, also supporting the request for the enhancement.

27 Courts have routinely granted approval of settlements containing such enhancements. *See*
28 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive

award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. 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.*, No. C-06-4068, 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 in ERISA case).

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated at one-third of the Maximum Settlement Amount, or \$31,666.67, for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.

The California Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action settlements in *Laffitte*. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is proper under the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the

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

5 Here, the fee award representing approximately one-third of the fund clearly falls within
6 that range and is consistent with other rulings of other courts and comprehensive surveys of class
7 action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS
8 61796, 23 (S.D. Cal. 2011) (recognizing that “courts may award attorney’s fees in the 30-40%
9 range in wage and hour class actions that result in recovery of a common fund under \$10
10 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
11 *Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of
12 class action litigation nationwide conclude that fees in the range sought here are consistent with
13 market rates).

14 The results delivered by Class Counsel also support the requested percentage of the fund.
15 Here, Plaintiff and her counsel secured a \$95,000.00 non-reversionary common fund settlement.

16 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
17 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
18 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
19 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
20 Notice specifically notified Class Members that Class Counsel would be seeking up to
21 \$31,666.67 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
22 strong favorable response also supports the requested fees.

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

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

1 expended.

2 *City of Detroit v. Grinnell Corp*, 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a
3 settlement fund of \$95,000.00 has been created as the entire amount is to be paid out without any
4 reversions. For Class Counsel, the fees here were wholly contingent in nature and the case
5 presented far more risk than the usual contingent fee case. Among the risks was the cost inherent
6 in class action litigation, as well as a potentially drawn-out battle with a corporate Defendant.

7 As secondary support for the percentage of the fund method, courts have discretion to
8 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
9 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the
10 trial court’s primary determination of the fee as a percentage of the common fund and thus does
11 not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at
12 p. 505; *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar
13 cross-check does not trump the primary reliance on the percentage of common fund method”).

14 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
15 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
16 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
17 court is not necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is
18 aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases,
19 performing a cross-check “undermines” one of the primary reasons for using the percentage
20 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging
21 protracted litigation. *Id.* at p. 506 (finding trial courts “retain the discretion to forgo a lodestar
22 cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108
23 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000)
24 (citing the recommendations of the Third Circuit Task Force with approval and observing that
25 “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many
26 authorities, who have been most vocal about the manner in which it exacerbates the problem of
27 ‘cheap settlements’ and burdens already overworked trial judge”).

28 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to

1 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
2 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
3 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at p. 60
4 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
5 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
6 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
7 a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at pp. 881-82. The intermediate court opinion was
8 affirmed in full by the California Supreme Court in its new decision guiding lower courts on
9 assessing fees.

10 With respect to Class Counsel’s lodestar, to date, at least approximately 72.8 hours have
11 been expended by Class Counsel in this matter. Gavron Decl. ¶ 14, Ex. A. Moreover, Class
12 Counsel expects to incur approximately 5 additional hours in finalizing this settlement, including
13 handling any post-approval matters and settlement issues that may arise. Gavron Decl. ¶ 16; Mr.
14 Gavron requests an hourly rate of \$600.00. Gavron Decl. ¶ 15. The courts are quite liberal in the
15 evidence required to prove an attorney’s hours. Detailed time records are not required. An
16 attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours
17 worked on a particular case is sufficient evidence to support an award of attorney fees, even in
18 the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

19 Reasonable hours include, in addition to time spent during litigation, the time spent
20 before the action is filed, including time spent interviewing the clients, investigating the facts and
21 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
22 62 (1980). Further, the fee award should include fees incurred to establish and defend the
23 attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class
24 Counsel requests that the court find that these hours were reasonable in this litigation.

25 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
26 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
27 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
28 attorney’s skill and experience, the nature of the work performed, the relevant area of expertise

1 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
2 4th 629, 632-33 (1998).

3 Class Counsel's skill and experience justify the requested rate. As shown in the
4 supporting declarations, Class Counsel have significant experience in the area of employment
5 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
6 employees in employment matters, particularly wage and hour cases. Lee Decl. ¶¶ 6-8; Gavron
7 Decl. ¶¶ 7-13; Marder Decl. ¶ 6-13. As such, based on the hours and applicable rate, the total
8 lodestar to be expended by Class Counsel through finalizing this settlement will be
9 approximately \$46,680.00, based on 77.8 total hours, which includes 5 anticipated hours. Gavron
10 Decl. ¶ 14, Ex. A.

11 Once the court establishes the lodestar amount, it may enhance the fee award by a
12 multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at p. 48. The
13 pertinent factors include the difficulty of the questions involved and the skill in presenting them,
14 the contingent nature of the fee award, the extent to which the litigation precluded other
15 employment, and the percentage-of-the-fund the attorney would have received on the fair
16 market. *Id.*; *Lealao*, 82 Cal. App. 4th at p. 49. However, this list is not exhaustive and the court
17 can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal.
18 4th 1122, 1139 (2001).

19 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
20 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at p. 52 (the
21 promptness of settlement "cannot be used to justify the refusal to apply a multiplier"). According
22 to *Lealao*, courts placed "an extraordinarily high value" on settlement, and counsel should be
23 rewarded, not punished, for achieving this goal in a timely fashion. *Id.*

24 Here based upon Plaintiff's counsel's lodestar of \$46,680.00 exceeds the fees requested.
25 Accordingly, the Court would need to apply a negative multiplier to arrive at the requested fees.
26 This demonstrates the amount requested is reasonable and fair, particularly based on the factors
27 described above. *C.f. Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (Ct. App. 2001)
28 (noting that courts using the lodestar method to calculate attorney fees awards in class actions

1 typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist.
2 LEXIS 162880 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of
3 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F.
4 Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier
5 of 2.52).

6 As such, the requested fee award is fair and reasonable, and should be awarded in its
7 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
8 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
9 Class Counsel's request for attorneys' fees in the amount of \$31,666.67 is fair, reasonable, and
10 adequate.

11 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
12 **OF COSTS**

13 The request for reimbursement of costs, in the amount of \$8,182.70 is fair and
14 reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek
15 up to \$15,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set
16 forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of
17 this action. Gavron Decl. ¶ 18, Ex. B. As such, this requested costs should be approved as fair
18 and reasonable.

19 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
20 **APPROVED**

21 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
22 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
23 funds. As shown on the Declaration of Taylor Mitzner, the settlement administration costs
24 expended in this matter amount to a total of \$4,500.00, which is the amount that was agreed upon
25 by the Parties. Admin Decl. ¶ 16, Ex. B. For such reasons, it is requested that the Settlement
26 Administrator's fees be approved.

27 **IX. NOTICE TO THE LWDA**

28 Concurrent with the filing of this Motion, Plaintiff provided notice to the LWDA.
Gavron Decl. ¶ 19.

//

1 **X. CONCLUSION**

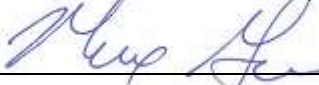
2 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
3 respectfully submits that the standards for final approval have been met and the terms of the
4 Settlement Agreement are fair, adequate, and reasonable.

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

- 7 1. Granting final approval to the proposed Settlement Agreement in this action;
8 2. Approving distribution of the settlement funds to the Class Members pursuant to
9 the terms of the Settlement Agreement;
10 3. Approving Plaintiff's request for an award of the class representative
11 enhancement payment of \$10,000.00, with payment pursuant to the terms of the Settlement
12 Agreement;
13 4. Approving Class Counsel's request for an award to Class Counsel for \$31,666.67
14 in attorneys' fees and \$8,182.70 in costs, with payment pursuant to the terms of the Settlement
15 Agreement;
16 5. Approving Plaintiff's request for payment of the settlement administration costs
17 to Phoenix Settlement Administrators in the amount of \$4,500.00, with payment pursuant to the
18 terms of the Settlement Agreement;
19 6. Approving Plaintiff's request for payment to the LWDA for \$3,750.00, with
20 payment pursuant to the terms of the Settlement Agreement; and
21 7. Entering final Judgment in the form proposed and submitted as to all members of
22 the Class in this action.

23
24 DATED: January 3, 2023

DIVERSITY LAW GROUP, P.C.

25 By: 

26 Larry W. Lee

Max W. Gavron

27 Attorneys for Plaintiff, the Class, and Aggrieved
28 Employees

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, Los Angeles, California 90071.

9 On January 3, 2023, I served the following document(s) described as:

- 10 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
11 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
12 **AUTHORITIES IN SUPPORT**
- 13 **2. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
14 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 15 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
16 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 17 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
18 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 19 **5. DECLARATION OF JAMIE KENNEDY IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 21 **6. DECLARATION OF TAYLOR MITZNER REGARDING SETTLEMENT**
22 **NOTICE ADMINISTRATION**
- 23 **7. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
- 25 **8. [PROPOSED] JUDGMENT**

26 on the interested parties in this action as follows:

27 Connie L. Michaels
28 Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

*Attorneys for Defendant Univar
Solutions USA Inc.*

cmichaels@littler.com

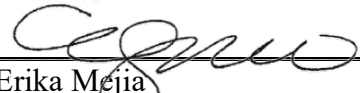
1 Marlene S. Muraco
2 Littler Mendelson, P.C.
3 50 W. San Fernando 7th Floor
San Jose, CA 95113

*Attorneys for Defendant Univar
Solutions USA Inc.*

mmuraco@littler.com

4 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
5 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
6 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the
7 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.

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

10 
11 Erika Mejia