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

IKEYEE JACKSON, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SAMUEL, SON & CO. (USA) INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVRI2101679

(Assigned to the Honorable Harold Hopp, Dept.
10)

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

Date: June 5, 2023
Time: 8:30 a.m.
Dept.: 10

Complaint Filed: March 30, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 5, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Harold Hopp, judge presiding, in Department 10 of the above referenced Court located at 4050 Main Street, Riverside, California 92501, Plaintiff Ikeyee Jackson (“Plaintiff”) will and hereby does move this Court for an Order:

- (1) granting final approval to the Stipulation of Class Action Settlement and Release (“Stipulation” or “Settlement Agreement”) in this action;
- (2) approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement;
- (3) approving Plaintiff’s request for an award of the class representative enhancement payment of \$7,500.00 to Plaintiff pursuant to the terms of the Settlement;
- (4) approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class Counsel for 1/3 of the \$241,442.50 gross settlement fund, or \$80,480.83, and reimbursement of litigation costs of \$1,926.77, pursuant to the terms of the Settlement;
- (5) approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$9,000.00, pursuant to the terms of the Settlement; and
- (6) 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. In light of the overwhelmingly positive response, as shown by the lack of objections and requests for exclusion, there is no question that the settlement is fair, reasonable, and adequate, and thus should be granted final approval.

This Motion will be based on the attached Memorandum of Points and Authorities and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L. Marder, Plaintiff Ikeyee Jackson, and Taylor Mitzner of Phoenix Settlement Administrators, the

1 oral arguments of counsel (should there be any), and on the complete records and file herein.

2
3 DATED: May 11, 2023

DIVERSITY LAW GROUP, P.C.

4
5
6 By: 
Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff Ikeyee Jackson

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1 **I. INTRODUCTION**

2 On March 30, 2021, Plaintiff Ikeyee Jackson (“Plaintiff”) filed a complaint on behalf of
3 himself and all similarly situated employees against Defendant Samuel, Son & Co. (USA) Inc.
4 (“Defendant”) in the Superior Court of the State of California for the County of Riverside. The
5 First Amended Complaint asserts a cause of action for violation of Labor Code section 226(a)
6 and a cause of action for violation of the Private Attorneys General Act (“PAGA”), Labor Code
7 section 2698, *et seq.*, predicated on Defendant’s alleged violation of Labor Code section 226(a).
8 Plaintiff seeks penalties, attorneys’ fees, and costs.

9 Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action
10 Settlement and Release of Claims (“Stipulation” or “Settlement Agreement”). In sum, the
11 Settlement Agreement provides for a \$241,442.50 **non-reversionary** fund to be created for the
12 benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the
13 Plaintiff, and costs of settlement administration are to be paid. After these deductions are made,
14 the entire net settlement fund will be paid to all Class Members who did not opt-out of the
15 Settlement (“Settlement Class Members”).

16 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval
17 Motion. This Court preliminarily approved this settlement on January 10, 2023, directing
18 distribution of class notice and scheduling the hearing for final approval of settlement (the
19 “Preliminary Approval Order”).

20 As directed by the Court, the Settlement Administrator distributed the Notice of Class
21 Action Settlement (“Class Notice”) to 240 Class Members. (Declaration of Taylor Mitzner
22 (“Mitzner Decl.”) at ¶ 5.) The deadline for Class Members to submit requests for exclusion, file
23 objections, or submitting a dispute was March 24, 2023. (Mitzner Decl. ¶¶ 8, 9, 10.) Thus far,
24 one (1) request for exclusion was received and zero (0) objections and zero (0) wage statement
25 disputes have been filed. (*Id.*) As such, there is a 99.58% participation rate by Class Members.
26 Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order
27 finding that the Settlement Agreement is fair and reasonable.

28 In sum, in light of the settlement administration process and the results thereof, the lack

1 of any opt-outs, and the amount of class funds being paid out to the Class Members, the Court
2 should confirm its preliminary approval as this process supports the Court’s initial finding that
3 the Settlement is fair and reasonable.

4 In addition to the results of the notice process, for the same reasons as set forth earlier in
5 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent
6 the basic points previously covered that support approval of the settlement:

- 7 ▪ The Settlement provides a total settlement sum of \$241,442.50 which is **non-**
8 **reversionary**;
- 9 ▪ The Settlement is fair given that all Class Members will receive (*after deductions*
10 *for fees, costs, etc.*) on average, approximately \$512.60 per person (*See Mitzner*
11 *Decl. ¶ 13*);
- 12 ▪ Class Members did not need to submit claim forms to participate in the
13 settlement, but are being paid automatically;
- 14 ▪ The allocation reflects that payment of claims will be paid to all Class Members
15 on a pro-rata basis, based on the number of wage statements each Class Member
16 received during the Class Period;
- 17 ▪ Plaintiff investigated the claims at issue, including exchanges of information by
18 Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to
19 fully evaluate this case;
- 20 ▪ A highly regarded administrator, Phoenix Settlement Administrators (“Phoenix”),
21 was retained for fees of \$9,000.00; and

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

24 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE** 25 **SETTLEMENT**

26 The notice procedures required by the Preliminary Approval Order have been followed
27 and satisfy all due process rights of Class Members. The Preliminary Approval Order
28 contemplated that the Class Notice be sent to all Class Members by first class mail, as specified

1 in the settlement. The Preliminary Approval Order contemplated, further, that Phoenix would
2 serve as the Settlement Administrator.

3 As clearly stated in the Mitzner Declaration, notice was provided to all Class Members as
4 required by the Preliminary Approval Order. (Mitzner Decl. ¶ 5.) On January 13, 2023, the
5 Settlement Administrator received a Class Member mailing list from Defendant’s counsel that
6 included 240 Class Members. (*Id.* at ¶ 3.)

7 On January 23, 2023, the Settlement Administrator sent each Class Member a Class
8 Notice via first class mail. (*Id.* at ¶ 5.) From the date of mailing four (4) Class Notices were
9 returned. (*Id.* at ¶ 6.) As of date of this declaration, zero (0) Class Notices are considered
10 undeliverable. (*Id.* at ¶ 7.) Further, the Class Notice provided Class Members with Class
11 Counsel’s contact information and information about how they could seek further information
12 regarding the settlement, leave questions for the Settlement Administrator, and update their
13 mailing address.

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

24 Here, the Class Members were sent a mailing regarding the settlement that satisfies due
25 process rights. The mailing described the litigation, provided an explanation of the terms of the
26 settlement, explained Class Members’ rights, allowed Class Members to seek additional
27 information with Class Counsel contact information, and explained ways for Class Members to
28 opt out or object, if so desired. As such, this constitutes proper notice to the Class Members.

1 Accordingly, the Court may proceed to determine the fairness and adequacy of the
2 Settlement and enter its Order granting final approval, secure in the knowledge that all absent
3 Class Members have been given the opportunity to participate fully in the claims, exclusion, and
4 the approval process.

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

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

8 In order to proceed as a class, there are two requirements which must be met—
9 ascertainability and community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d. 695,
10 704.) Under California law, there are two basic requirements which must exist to sustain a class
11 action: “[t]he first is existence of an ascertainable class, and the second is a well-defined
12 community of interest in the questions of law and fact involved.” (*Vasquez v. Superior Court*
13 (1971) 4 Cal. 3d 800, 809.) “The community of interest requirement embodies three factors: (1)
14 predominant common questions of law or fact; (2) class representatives with claims or defenses
15 typical of the class; and (3) class representatives who can adequately represent the class.”
16 (*Richmond v. Dart Industries* (1981) 29 Cal. 3d. 462, 470.)

17 **1. The Class is Ascertainable**

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

22 Here, the Class is defined as: “All current and former employees of Defendant in the
23 State of California who were paid shift differential and/or shift premium wages at any time
24 between November 1, 2020, through June 11, 2021” (the “Class”). There are 240 individuals
25 that comprise of the Class. (Mitzner Decl. at ¶ 3.) This is far more than the minimum required
26 to certify a class. Within the context of manageability, the issue is whether there exists sufficient
27 means for identifying class members at the remedial stage. (*Reyes, supra*, 196 Cal. App. 3d at
28 pp. 1274-75.) Class Members have already been identified by Defendant and Notice has been

provided to all of the Class Members. Accordingly, the Class is ascertainable under Code of Civil Procedure § 382.

2. There is a Community of Interest

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

a. There are Predominant Common Questions of Law and Fact

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

Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure, violated the California Labor Code by failing to provide accurate itemized wage statements. Defendant denies that liability could be established on a class-wide basis. Defendant contends instead that liability and damages would need to be conducted on a case-by-case basis, and that Plaintiff’s legal theories lack merit.

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

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

Here, Plaintiff was subjected to the same policies and practices as other Class Members.

1 Plaintiff was employed by Defendant as a non-exempt employee. Plaintiff alleges that he, like
2 all other Class Members, was not provided compliant wage statements. (Declaration of Ikeyee
3 Jackson (“Jackson Decl.”) ¶ 2.) Specifically, like other members of the class, Plaintiff alleges
4 that he received wage statements that did not accurately identify the hourly rates or applicable
5 hours for shift differentials. Thus, Plaintiff’s claims are typical to those of Class Members.

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

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

10 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
11 been raised or presented. (Jackson Decl. ¶ 5.) Plaintiff has taken all necessary steps to represent
12 the interests of the Class, including providing information and documents to his counsel and
13 reviewing pleadings and documents in this case. (*Id.* at ¶¶ 3,6-7.) For such reasons, Plaintiff has
14 adequately represented the Class Members and will continue to do so.

15 **B. Defendant’s Allegations and Chances of Class Certification**

16 Defendant asserts that individualized issues predominate in this case, including without
17 limitation, whether Defendant provided accurate wage statements in compliance with the law. In
18 any event, even assuming that a class could be certified, Defendant asserts that it has complied
19 with all laws. Based thereon, Defendant continues to maintain that it is not liable for the
20 allegations made by the Plaintiff.

21 **C. Risks, Expenses and Complexity of Further Litigation**

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

Defendant has maintained that there is no liability. As stated above, Defendant alleges that a class could not have been certified. There is always a risk that the court will not grant certification of the class, wherein the class will not be entitled to any damages. Based on the foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of damages and/or penalties alleged, and a substantial amount of complex issues that would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this Motion.

D. The Negotiation and Terms of the Settlement, and the Reception of the Settlement by Class Members Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement. The Settlement was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. (Declaration of Nicholas Rosenthal ("Rosenthal Decl.") ¶ 3.)

Further, the results after mailing of the Class Notice also fully support confirmation of the Court's preliminary approval of the settlement, as evidenced by the 99.58% participation rate. In other words, only one (1) request for exclusion was submitted and none of the Class Members submitted objections to the settlement or wage statement disputes. (Mitzner Decl. ¶¶ 8-10.) In light of overwhelmingly positive response to the settlement, the Court may appropriately infer that the settlement is fair, adequate, and reasonable, when among other reasons, no Class Members have opted out or objected to it. (*See Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (reaction of class members to the settlement is a factor supporting approval of a class action settlement.)

E. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement

1. Standard of Review

On a motion for final approval of a class action settlement under California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769, a court's inquiry at this juncture is

whether the settlement is “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217.) A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better served by the settlement than by further litigation.” (*See Manual for Complex Litigation Fourth* (Fed. Judicial Center 2004), § 21.6 at p. 309 (“MCL”).) The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. (*See 4 Newberg on Class Actions* (2008) 4th § 11.41; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

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

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

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

(2000) 85 Cal. App. 4th 1135, 1146:

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

2. The Settlement is Presumed to Be Fair

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

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

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

The settlement here warrants approval and carries a presumption of fairness. As previously noted in the Motion for Preliminary Approval, this settlement was negotiated at arm’s length between the Parties and their counsel. (Rosenthal Decl. ¶ 5.)

Second, Class Counsel engaged in extensive factual investigation before settling, including an extensive review and analysis of class data and information pertaining Defendant’s policies and practices relevant to the class claims. (Rosenthal Decl. ¶ 3.) 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. (Rosenthal Decl. at ¶¶ 8, 9; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 3, 4; Declaration of Kristen Agnew (“Agnew Decl.”) ¶¶ 3-8; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-7.)

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

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

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

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

1 settlement. Because the Settlement provides immediate and substantial relief, without the
2 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
3 costs—Class Counsel believe that the Settlement warrants the Court’s final approval.

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

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

11 Here, as noted above, continued litigation could potentially have led to appeals on a
12 number of issues. On the other hand, the settlement that was reached provides all Class
13 Members—regardless of their means—with fair relief in a prompt and efficient manner. Were
14 the Court to deny final approval, the Class Members would be left without a remedy as a
15 practical matter and courts across the State would have to address the issues presented here in a
16 piecemeal, costly, and time-consuming manner. The settlement here is therefore consistent with
17 the “overriding public interest in settling and quieting litigation” that is “particularly true in class
18 action suits.” (*See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at
19 § 11.41.) Here, this case could have potentially involved years of litigation, as evidenced by the
20 Parties’ litigation record and history in similar wage and hour cases.

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

22 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
23 interest of the Class Members as a whole. (Lee Decl. ¶ 2; Agnew Decl. ¶ 2; Rosenthal Decl. ¶ 2;
24 Marder Decl. ¶ 2.) Similarly, counsel for Defendant is in favor of the settlement. The
25 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
26 adequate is entitled to significant weight by the Court in its final approval determination. (*See*
27 *Officers for Justice*, 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617;
28 *Linney*, 151 F.3d at p. 1242.)

IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Class Representative Ikeyee Jackson requests an enhancement of \$7,500.00 in accordance with the terms of the Settlement Agreement. Plaintiff met with Class Counsel and had numerous discussions about the case. (Jackson Decl. ¶ 3.) Plaintiff also provided substantive information and documents regarding Defendant's policies and practices to help support the class claims alleged in this case. (*Id.*) Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. Plaintiff estimates that he spent approximately 25 hours assisting in the prosecution of this matter. (*Id.* ¶ 4.)

In addition to the invaluable services that he provided, Plaintiff took significant risks, personally, professionally, and monetarily in acting as the Class Representative, seeking benefits on behalf of the class. (Jackson Decl. ¶ 8.) Because the claims alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff undertook the risk that he may be required to pay Defendant's fees and costs, in the event that Defendant prevailed in this action. Moreover, Plaintiff understood that an individual case would have resolved much faster than a class action and involved much less financial risk than a class action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the class. (*Id.* at ¶ 8.) Significantly, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, Plaintiff also faced significant risk in not being able to find suitable prospective employment, as a result of filing of this case against Defendant. (*Id.* at ¶ 9)

Plaintiff took these risks upon himself for the benefit of the Class. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the Class, and Plaintiff took on substantial risks in helping Class Members obtain this financial benefit. As such, the enhancement should be awarded to Plaintiff for his commitment, dedication, and risks taken for this litigation.

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated as one-third of the total value of the settlement for the successful prosecution and resolution of this action. Recently, the California Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("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 fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set....The judge, in other words, is trying to mimic the market in legal services").)

An award of one-third of the fund in attorneys' fees "mimics the marketplace" as it is "supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." (*Fernandez v. Victoria Secret Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. *16 n. 59 (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, "empirical studies [that] show that...fee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.)

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund, which is the same percentage of fee award sought in this case. (*Laffitte*, 1 Cal. 5th at p. 506.) And this was based on a lodestar amount that required a multiplier of 2.13. (*Id.* at p. 487.) As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to

bring the imputed multiplier within a justifiable range.” (*Id.* at p. 505.)

Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.” (*Laffitte v. Robert Half Int’l* (2014) 231 Cal. App. 4th 860, 871.) Here, the fee award representing 33 1/3% of the fund clearly falls within that range and is consistent with other comprehensive surveys of class action settlements and fee awards. (*See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award* (2010) 7 J. Empirical Leg. Stud. 811, 833 (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).)

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the...reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically notified Class Members that Plaintiff’s Counsel would be seeking \$80,480.83 of the settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement or the request for attorneys’ fees. This strong favorable response also supports the requested fees.

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to “cross-check” the amount of fees calculated by way of percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award.” (*Laffitte, supra*, 1 Cal. 5th at p. 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, pp. 306-307 (“[The lodestar cross-check does not

1 trump the primary reliance on the percentage of common fund method”).)

2 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means
3 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
4 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
5 range, but the court is not necessarily required to make such an adjustment.” (*Id.*) Thus, a
6 lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required;
7 in many cases, performing a cross-check “undermines” one of the primary reasons for using the
8 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
9 discouraging protracted litigation. (*Id.* at p. 506 (finding trial courts “retain the discretion to
10 forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney*
11 *Fees* (1985) 108 F.R.D. 237, 258; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 29-
12 30 (citing the recommendations of the Third Circuit Task Force with approval and observing that
13 “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many
14 authorities, who have been most vocal about the manner in which it exacerbates the problem of
15 ‘cheap settlements’ and burdens already overworked trial judge.”).)

16 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
17 4 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255; *see also*,
18 e.g., *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (applying a 2.52
19 multiplier on a cross-check in an antitrust class action); *Chavez, supra*, 162 Cal. App. 4th at p. 60
20 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders* (1988)
21 203 Cal. App. 3d 78 (affirming a 2.34 multiplier without remand).) The intermediate court in
22 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
23 a 2.13 multiplier. (*Laffitte, supra*, 231 Cal. App. 4th at pp. 881-82.) The intermediate court
24 opinion was affirmed in full by the California Supreme Court in its new decision guiding lower
25 courts on assessing fees.

26 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
27 awarded by the percentage method showing that the majority of multipliers awarded are “in the
28 1.5-3.0” range. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (affirming

1 a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
2 over 30 cases).) Federal district courts applying California law have likewise routinely approved
3 cross-check multipliers between 2 and 3 in employment cases. (*See, e.g., Willner v. Manpower*
4 *Inc.* (N.D. Cal. June 22, 2015) No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (affirming a
5 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
6 *N.A.* (N.D. Cal. 2014) 303 F.R.D. 326, 334 (approving attorneys' fees that resulted in lodestar
7 multiplier of 2.83); *Hopkins v. Stryker Sales Corp.* (N.D. Cal. Feb. 6, 2013) No. 11-CV-02786-
8 LHK, 2013 WL 496358, at *5 (approving a multiplier of 2.76 in settlement of Labor Code
9 violations).) Other courts have found even higher multipliers to be reasonable by comparison to
10 other cases. (*See Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113,
11 1125-26 (approving a 5.2 multiplier on a cross-check after surveying a large body of cases
12 affirming a higher multiplier).)

13 With respect to Class Counsel's lodestar, to date, approximately 102.5 hours have been
14 expended by Class Counsel in this matter. (Lee Decl. ¶ 6, Ex. A; Agnew Decl. ¶ 9, Ex. A;
15 Rosenthal Decl. ¶ 10, Ex. A; Marder Decl. ¶ 8, Ex. A.) Mr. Lee requests an hourly rate of
16 \$750.00 per hour. (Lee Decl. ¶ 7.) Ms. Agnew requests an hourly rate of \$700.00 per hour.
17 (Agnew Decl. ¶ 10.) Mr. Rosenthal requests an hourly rate of \$700.00 per hour. (Rosenthal
18 Decl. ¶ 11.) Mr. Marder requests an hourly rate of \$750.00 per hour. (Marder Decl. ¶ 9.) The
19 courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time
20 records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney
21 as to the number of hours worked on a particular case is sufficient evidence to support an award
22 of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182
23 Cal. App. 3d 553, 559.)

24 Reasonable hours include, in addition to time spent during litigation, the time spent
25 before the action is filed, including time spent interviewing the clients, investigating the facts and
26 the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447
27 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend the
28 attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 (1982) [*Serrano IV*].) Thus,

1 Class Counsel requests that the court find that these hours were reasonable in this litigation.

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

8 Class Counsel's skill and experience justify the requested rate. As shown in the
9 supporting declarations, Class Counsel have significant experience in the area of employment
10 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
11 employees in employment matters, particularly wage and hour cases. (Lee Decl. ¶ 4; Agnew
12 Decl. ¶¶ 4-8; Rosenthal Decl. ¶ 9; Marder Decl. ¶¶ 4-7.) As such, based on the hours and
13 applicable rate, Class Counsel's lodestar amount through finalization of this settlement (without
14 a multiplier) will be approximately \$73,130.00 (Lee Decl. ¶ 7; Agnew Decl. ¶ 10; Rosenthal
15 Decl. ¶ 11; Marder Decl. ¶ 9.)

16 As a result of the above-enumerated hours, Plaintiffs' counsel are requesting a multiplier
17 of **1.1** to reach \$80,480.83. Plaintiff was informed of the fee division between Class Counsel in
18 writing prior to the filing of this matter. (Jackson Decl. ¶ 12).

19 As such, the requested fee award is fair and reasonable, and should be awarded in its
20 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
21 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
22 Class Counsel's request for attorneys' fees in the amount of \$80,480.83 is fair, reasonable, and
23 adequate.

24 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT** 25 **OF COSTS**

26 The request for reimbursement of costs, in the amount of \$1,926.77 is fair and
27 reasonable. The costs are all litigation-related costs, which have been detailed in the supporting
28 declaration of Class Counsel. (Rosenthal Decl. ¶ 12, Ex. B.) The authority for the court to

award this is the Parties' Settlement Agreement and the California Labor Code.

With regard to the request for reimbursement of travel and meals, Plaintiff cites *Thon v. Thompson* (1994) 29 Cal. App. 4th 1546, *Gibson v. Bobroff* (1996) 49 Cal. App. 4th 1202, and *Berkeley Cement, Inc. v. Regents of Univ. of Calif.* (2019) 30 Cal. App. 5th 1133. Specifically, in *Berkeley Cement*, the most recent case, the issue addressed by the Court was whether mediation related expenses incurred by a party is recoverable under California Code of Civil Procedure § 1033.5, despite the fact that the mediation was completely voluntary and not court-ordered. (*Id.* at 1140.) After considering the arguments of both sides, the Court held that such expenses are recoverable even if the mediation was not court-ordered, when the mediation is a reasonably necessary means of resolving the dispute and avoiding the expenses of a trial. (*Id.* at 1142.)

As such, Plaintiff's request should be approved.

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

Plaintiff also requests that the Court approve administration costs to the Settlement Administrator, Phoenix Settlement Administrators, in the amount of \$9,000.00, which is less than the estimated amount that was agreed upon by the Parties. As detailed in the Declaration of Mr. Mitzner submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Class Member's individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted and distributed Class Notices to all 240 Class Members, and otherwise administered the Settlement. (Mitzner Decl. ¶¶ 3, 5.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. CONCLUSION

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

Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form

1 proposed and submitted:

- 2 1. granting final approval to the proposed Settlement Agreement in this action;
- 3 2. approving distribution of the settlement funds to the Class Members pursuant to
- 4 the terms of the Settlement Agreement;
- 5 3. approving Plaintiff's request for an award of the class representative enhancement
- 6 of \$7,500.00 to Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
- 7 4. approving Plaintiff Counsel's request for an award to Class Counsel for
- 8 \$80,480.83 in attorneys' fees and \$1,926.77 in costs with payment pursuant to the terms of the
- 9 Settlement Agreement;
- 10 5. approving Plaintiff's request for payment of the settlement administration costs to
- 11 Phoenix Settlement Administrators in the amount of \$9,000.00 with payment pursuant to the
- 12 terms of the Settlement Agreement; and
- 13 7. entering final judgment as to all members of the Class in this action.
- 14

15 DATED: May 11, 2023

DIVERSITY LAW GROUP, P.C.

16
17 By: 

18 Larry W. Lee
19 Kristen M. Agnew
20 Nicholas Rosenthal
21 Attorneys for Plaintiff Ikeyee Jackson
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