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

CASSANDRA NEGRETE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WINSUPPLY INC., a Delaware
corporation; ORANGE COUNTY
WINDUSTRIAL CO., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2021-01188066-CU-OE-CXC

(Assigned for all purposes to the Hon. Randall J.
Sherman, Dept. CX105)

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

Date: July 14, 2023
Time: 10:00 a.m.
Dept.: CX105

Complaint Filed: March 9, 2021
FAC Filed: April 13, 2022
SAC Filed: January 19, 2023
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on July 14, 2023, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Randall J. Sherman, judge presiding, in Department
4 CX105 of the above referenced Court located at 751 W. Santa Ana Blvd., Santa Ana, California
5 92701, Plaintiff Cassandra Negrete (“Plaintiff”) will seek an Order: (1) granting final approval of
6 the Joint Stipulation of Class Action and PAGA Settlement (“Stipulation” or “Settlement
7 Agreement”) in this matter; (2) approving distribution of the settlement payments to the
8 Participating Class Members pursuant to the terms of the Settlement Agreement; (3) approving
9 Plaintiff’s request for an award of the Enhancement Payment of \$10,000.00 to Plaintiff pursuant to
10 the terms of the Settlement Agreement; (4) approving Class Counsel’s request for an award of
11 attorneys’ fees of approximately 33 1/3% of the \$2,000,000.00 Gross Settlement Amount, or
12 \$666,667.00, and reimbursement of litigation costs of \$17,700.11 pursuant to the terms of the
13 Settlement Agreement; (5) approving Plaintiff’s request for payment of the Settlement
14 Administration Costs to Phoenix Settlement Administrators in the amount of \$18,925.00 pursuant
15 to the terms of the Settlement Agreement and subsequent Court Order; (6) approving Plaintiff’s
16 request for payment to the California Labor & Workforce Development Agency for \$112,500.00
17 pursuant to the terms of the Settlement Agreement; and (7) entering final judgment as to all
18 members of the Settlement Class in this action.

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

25 This Motion will be based on the attached Memorandum of Point and Authorities and the
26 supporting Declarations of Larry W. Lee, Max W. Gavron, Plaintiff Cassandra Negrete, and Taylor
27 Mitzner of Phoenix Settlement Administrators, and upon the oral arguments of counsel (should
28 there be any), and on the complete records and file herein.

1
2 DATED: June 21, 2023

DIVERSITY LAW GROUP, P.C.

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4 By: 
5 Larry W. Lee
6 Max W. Gavron
7 Attorneys for Plaintiff and the Class
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1 **I. INTRODUCTION**

2 Plaintiff Cassandra Negrete (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action and PAGA Settlement (“Stipulation” or “Settlement Agreement”) with
4 Defendants Winsupply Inc. and Orange County Windustrial Co. (collectively, “Defendants”)
5 (together with Plaintiff, the “Parties”). The settlement provides for a \$2,000,000.00 **non-**
6 **reversionary** fund to be created for the benefit of the Class, from which attorneys’ fees, litigation
7 costs, enhancement payment to the Plaintiff, payment to the California Labor & Workforce
8 Development Agency (“LWDA”), and costs of settlement administration are to be paid. The net
9 settlement fund after these deductions will be paid to all class members who did not opt-out of the
10 settlement.

11 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
12 Approval of Class Action Settlement and subsequent supplemental briefing. The Court
13 preliminarily approved this Settlement on March 10, 2023, directing distribution of Class Notice
14 and scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

15 As directed by the Court, the Settlement Administrator distributed the Class Notice to 784
16 Class Members. Declaration of Taylor Mitzner (“Admin Decl.”) ¶ 5. To date, one (1) Request for
17 Exclusion has been received. *Id.* ¶ 7. Zero (0) Objections to the Settlement were received. *Id.* ¶ 8.
18 Finally, there are no outstanding disputes. *Id.* ¶ 9. As such, there is a 99.87% participation rate.
19 Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order
20 finding that the Settlement Agreement is fair and reasonable.

21 In sum, as a result of the settlement administration process, the lack of any objections and
22 only one opt-out, and the amount of funds being paid out to the Class Members, the Court may
23 confirm its preliminary approval as this process supports the Court’s initial finding that the
24 settlement is fair and reasonable. The fact that no objections were filed is instructive that Class
25 Members believe that the settlement was fair and reasonable.

26 In addition to the results of the notice process, for the same reasons as set forth earlier in
27 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent the
28 basic points previously covered supporting approval of the settlement:

- The settlement provides a total settlement sum of \$2,000,000.00 which is **non-reversionary**;
- The settlement is fair given that Class Members will receive a substantial amount of money (on average, each Class Member will receive approximately \$1,451.73; with the highest pay out being \$4,262.58 and the lowest \$28.61) and each Aggrieved Employee will receive on average an additional \$68.31, with the highest payout being \$134.03, and the lowest being \$1.89. Admin Decl. ¶¶ 13-14;
- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Participating Class Members in proportion to the pay periods worked by each Participating Class Member;
- Plaintiff conducted significant investigation in this case, including exchanges of information by Plaintiff and Defendants of putative class data for the entire class and a sampling of time and pay records, for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administration, was retained for \$18,925.00; and
- California’s LWDA will also benefit from this settlement as it will receive \$112,500.00, should this Settlement be granted final approval.

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

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Notice of Proposed Class Action Settlement (the “Class Notice”), as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the

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

3 As clearly stated in the Declaration of Mitzner, notice was provided to Class Members, as
4 required by the Preliminary Approval Order. On March 27, 2023, the Settlement Administrator
5 received a Class Member mailing list from Defendants' counsel that included 784 Class Members.
6 Admin Decl. ¶ 3. On or about April 6, 2023, each of the persons identified on the mailing list was
7 sent the Class Notice via first class mail. *Id.* ¶ 5. None of the notices were returned to the Settlement
8 Administrator and thus none were undeliverable. *See id.* ¶ 6. Further, the Class Notice provided
9 Class Members with the Class Counsel's contact information, where they could further seek
10 information regarding the class settlement, leave questions for the Settlement Administrator, and
11 update their address.

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

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

28 //

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

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

4 In order to proceed as a class, there are two requirements which must be met—
5 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704
6 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971) (there are two basic requirements
7 which must exist to sustain a class action: “[t]he first is existence of an ascertainable class, and the
8 second is a well-defined community of interest in the questions of law and fact involved.”) “The
9 community of interest requirement embodies three factors: (1) predominant common questions of
10 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
11 representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d.
12 462, 470 (1981).

13 **1. The Class is Ascertainable**

14 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 “is
15 determined by examining (1) class definition, (2) the size of the class, and (3) the means available
16 for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App.
17 3d 1263, 1271 (1987). Here, the Class is defined as: “all current and former hourly-paid, non-
18 exempt employees of Defendants employed in the State of California at any time during the Class
19 Period.” There are 784 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the
20 minimum required to certify a class. Within the context of manageability, the issue is whether there
21 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d
22 at 1274-75. Class Members have already been identified by Defendants and notice was provided to
23 Class Members.

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

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

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

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

7 Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or procedure,
8 violated the Labor Code by failing to provide off-duty meal and rest breaks, failing to pay all
9 regular, minimum, and overtime wages owed, failing to pay all wages owed upon separation of
10 employment, failing to reimburse business expenses, failing to provide accurate itemized wage
11 statements, and engaging in unfair business practices. As a result, Plaintiff alleges that she is owed
12 unpaid wages and penalties for said violations. Defendants deny that liability could be established
13 on a class-wide basis, and contend that liability and damages would need to be conducted on a case-
14 by-case basis.

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

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

24 Plaintiff worked for Defendants from about January 2017 to about April 1, 2020 as a non-
25 exempt employee. Like her fellow Class Members, Plaintiff was not provided with off-duty meal
26 and rest breaks, timely paid all regular, minimum, and overtime wages owed, paid all wages owed
27 upon separation of employment, reimbursed for business expenses, and not provided with accurate
28 itemized wage statements. Declaration of Cassandra Negrete (“Negrete Decl.”) ¶ 2. In other words,

1 Plaintiff was subjected to the same policies and practices as other Class Members. Thus, Plaintiff's
2 claims are typical to those of Class Members.

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

4 The class representative, through qualified counsel, must be capable of “vigorously and
5 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
6 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such
7 issues been raised or presented. Negrete Decl. ¶ 6. Plaintiff has taken all necessary steps to
8 represent the interests of the Class, including providing information and documents to her counsel
9 and reviewing pleadings in this case. *Id.* ¶¶ 4-8. For such reasons, Plaintiff has adequately
10 represented the Class Members and will continue to do so.

11 **B. Defendants’ Allegations and Unlikelihood of Class Certification**

12 As detailed in the Motion for Preliminary Approval, Defendants assert that they complied
13 with the Labor Code and had policies that prohibited off-the-clock work and provided off-duty meal
14 and rest breaks. Defendants also assert that each of the wholesale locations operate independently
15 from one another, with separate ownership and employment decisions rendering class certification
16 unlikely. Based thereon, Defendants continue to maintain that they are not liable for the allegations
17 made by Plaintiff.

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

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

25 Defendants have maintained that there is no liability. As stated above, Defendants allege
26 that a class could not have been certified. There is always a risk that the court will not grant
27 certification of the class, wherein the class will not be entitled to any damages. Based on the
28 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of

1 damages alleged, and a substantial amount of complex issues that would have necessitated
2 significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of
3 further litigation warrant granting of this Motion.

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

7 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
8 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
9 Approval of Class Action Settlement, the Parties highlight the following facts. The settlement was
10 the product of negotiation between highly able and experienced attorneys on both sides who
11 possessed the relevant data and extensive legal research which they had carefully analyzed.
12 Declaration of Max W. Gavron ("Gavron Decl.") ¶ 4; Declaration of Larry W. Lee ("Lee Decl.") ¶
13 4.

14 The results after mailing of the Class Notice support confirmation of the Court's preliminary
15 approval of the settlement with final approval of the settlement, as evidenced by the fact that to
16 date, only one (1) Request for Exclusion and no Objections to the Settlement were received. Admin
17 Decl. ¶¶ 7-8. The Court may appropriately infer that the class action settlement is fair, adequate,
18 and reasonable, given that no Class Member has submitted an objection. *See Class Plaintiffs v. City*
19 *of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

22 **1. Standard of Review**

23 On a motion for final approval of a class action settlement under California Code of Civil
24 Procedure § 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is
25 "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th
26 Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A settlement
27 is fair, adequate, and reasonable, and therefore merits final approval, when "the interests of the class
28 are better served by the settlement than by further litigation." *See Manual for Complex Litigation*,

1 *Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement, particularly
2 in class actions and other complex cases, where substantial resources can be conserved by avoiding
3 the time, cost, and rigors of formal litigation. *See* Alba Conte & Herbert B. Newberg, 4 *Newberg on*
4 *Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
5 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

6 Although the Court possesses “broad discretion” in determining that a proposed class action
7 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned
8 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
9 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to
10 all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due
11 regard to what is otherwise a “private consensual agreement” between the parties. *Id.*; *see also*
12 *Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub.*
13 *Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*, *Class Plaintiffs*,
14 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical,
15 but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The
16 judge cannot rewrite the agreement”).

17 A court’s approval of a class action settlement will only be reversed for a clear abuse of
18 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*,
19 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a clear
20 abuse of discretion”); *Class Plaintiffs*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453
21 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

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

24 “It cannot be overemphasized that neither the trial court in approving the settlement
25 nor this Court in reviewing that approval have the right or duty to reach any ultimate
26 conclusions on the issues of fact and law which underlie the merits of the dispute. It
27 is well settled that in the judicial consideration of proposed settlements, ‘the [trial]
28 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.’”

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

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

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

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

10 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
11 previously noted in the application for Preliminary Approval, this current settlement was negotiated
12 at arm’s length. Gavron Decl. ¶ 5. Second, Class Counsel engaged in extensive factual
13 investigation before settling, including reviewing class data. Gavron Decl. ¶ 4. Further, Class
14 Counsel is highly experienced in this type of litigation. As shown in the supporting declarations,
15 Class Counsel has significant experience in class actions and employment wage and hour matters.
16 Gavron Decl. ¶¶ 9-15; Lee Decl. ¶¶ 9-11; Declaration of Nick Rosenthal (“Rosenthal Decl.”) ¶¶ 6-
17 8; Declaration of Kwanporn “Mai” Tulyathan (“Tulyathan Decl.”) ¶ 7-12.

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

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

27 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
28 been potentially responsible for Defendants’ costs. As such, should any individual bring individual

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

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

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

21 **4. The Complexity, Expense, and Likely Duration of Continued Litigation**
22 **Against Defendants 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 625; *Girsh*, 521 F.2d at
25 157. In applying this factor, the Court must weigh the benefits of the settlement against the expense
26 and delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447
27 F.2d 431, 433-34 (5th Cir. 1971).

28 As noted above, continued litigation could have led to appeals on a number of issues,

1 including, but not limited to, the joint employer status of the various entities within California. On
2 the other hand, the settlement that was reached provides to all Class Members—regardless of their
3 means—fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
4 Class Members would be left without a remedy as a practical matter and courts across the State
5 would have to address the issues presented here in a piecemeal, costly, and time-consuming
6 manner. The settlement in this case is therefore consistent with the “overriding public interest in
7 settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*,
8 529 F.2d at 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case would have likely
9 involved years of litigation.

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

11 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
12 interest of the Class Members as a whole. Gavron Decl. ¶ 5; Lee Decl. ¶ 5; Rosenthal Decl. ¶ 5;
13 Tulyathan Decl. ¶ 5. Similarly, counsel for Defendants are in favor of this settlement. The
14 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
15 adequate is entitled to significant weight by the Court in its final approval determination. *See*
16 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151
17 F.3d at 1242.

18 **IV. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE AWARD SHOULD** 19 **BE APPROVED**

20 Class Representative Cassandra Negrete requests an enhancement of \$10,000.00. Plaintiff
21 met with Class Counsel on a number of occasions to discuss the case, including providing
22 documents and information regarding Defendants’ practices. Negrete Decl. ¶¶ 4-8. Accordingly,
23 Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.
24 Plaintiff spent approximately 25 hours fulfilling her responsibilities as Class Representative. *Id.* ¶ 7.

25 In addition to the invaluable services that she provided, Plaintiff took significant risks, both
26 professionally and monetarily, in acting as the Class Representative, seeking benefits on behalf of
27 the Class. *Id.* ¶¶ 9-10. Because the claims alleged by the Class Representative involved the payment
28 of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendants,

1 had she not prevailed in this action. Moreover, Plaintiff understood that an individual case would
2 have resolved much faster than a class action and involved much less financial risk than a class
3 action. *Id.* Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class.

4 Also, given that future employers are much less likely to hire individuals who have filed
5 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
6 significant risk in not being able to find suitable employment, all as a result of filing of this case
7 against Defendants. *Id.* ¶ 10. Plaintiff took these risks upon herself to the benefit of the Class. Class
8 Members did not have to file individual lawsuits and bear the risks of payment of costs if they did
9 not prevail, nor did they have to face the potential for retaliation and not getting future employment
10 had they filed a lawsuit, which is a public record. These are significant benefits that weigh in favor
11 of granting the requested enhancement. Moreover, this litigation has resulted in a significantly
12 valuable benefit to the Class, and Plaintiff took on substantial risks in helping to get this financial
13 benefit to the Class. As such, the incentive payment should be awarded to Plaintiff for her
14 commitment, dedication, and risks taken for this litigation.

15 Courts have routinely granted approval of settlements containing such enhancements. *See*
16 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
17 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
18 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
19 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
20 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-
21 52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No.
22 C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000
23 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th
24 Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

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

26 Class Counsel seeks a fee award calculated as approximately thirty-three and one-third
27 percent (33 1/3%) of the Gross Settlement Amount for the successful prosecution and resolution of
28 this action. The California Supreme Court has explained the award of attorneys' fees in common

1 fund wage and hour class action settlements should start with the percentage method. *See Laffitte v.*
2 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and
3 state courts in holding that when class action litigation establishes a monetary fund for the benefit
4 of the class members, and the trial court in its equitable powers awards class counsel a fee out of
5 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
6 percentage of the fund created”). Under the percentage of the fund method, the Court’s objective
7 remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363
8 (7th Cir. 1998) (“When a fee is set by a court rather than by contract, the object is to set it at a level
9 that will approximate what the market will set.... The judge, in other words, is trying to mimic the
10 market in legal services”).

11 An award of approximately one-third of the fund in attorneys’ fees mimics the marketplace
12 as it “is supported by the fact that typical contingency fee agreements provide that class counsel
13 will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v.*
14 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
15 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
16 *Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed, “empirical studies [that]
17 show that...fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix,*
18 *Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

19 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
20 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
21 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or
22 low [should] the trial court [] consider whether the percentage method should be adjusted so as to
23 bring the imputed multiplier within a justifiable range.” *Id.* at 505.

24 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent
25 of the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
26 *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing 33
27 1/3% of the fund clearly falls within that range, and is consistent with other comprehensive surveys
28 of class action settlements and fee awards. *See Fitzpatrick, An Empirical Study of Class Action*

1 *Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases
2 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35
3 percent, with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class*
4 *Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16
5 (2010) (independent studies of class action litigation nationwide conclude that fees representing
6 one-third of the total recovery is consistent with market rates). The results delivered by Class
7 Counsel also support the requested percentage of the fund. Here, Plaintiff and her counsel secured a
8 \$2,000,000.00 non-reversionary common fund settlement.

9 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
10 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
11 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
12 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
13 Notice specifically notified Class Members that Class Counsel would be seeking \$666,667.00 of the
14 settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement and
15 only one has requested to be excluded. This strong favorable response and over 99% participation
16 rate also supports the requested fees.

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

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

25 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a common fund of \$2,000,000.00 has been
26 created as the entire amount is to be paid out without any reversions. For Class Counsel, the fees
27 were wholly contingent in nature and the case presented far more risk than the usual contingent fee
28 case. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-
out battle with defendants that have retained premier defense counsel.

1 Courts have discretion to “cross-check” the fees awarded through the lodestar method.
2 However, the *Laffitte* Court “emphasize[d] [that] the lodestar calculation, when used in this manner,
3 does not override the trial court’s primary determination of the fee as a percentage of the common
4 fund and thus does not impose an absolute maximum or minimum on the potential fee award.”
5 *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307
6 (3d Cir. 2005) (“[The lodestar cross-check does not trump the primary reliance on the percentage of
7 common fund method”).

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

22 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
23 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g.*,
24 *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
25 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a
26 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78
27 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding
28 that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier.

1 *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was affirmed in full by the
2 California Supreme Court in its new decision guiding lower courts on assessing fees.

3 With respect to Class Counsel's lodestar and including 25 hours of anticipated time after
4 final approval, approximately 463.2 hours will have been expended by Class Counsel in this matter.
5 Gavron Decl. ¶ 7, Ex. A; Lee Decl. ¶ 7, Ex. A; Rosenthal Decl. ¶ 9, Ex. A; Tulyathan Decl. ¶ 13, Ex.
6 A. Mr. Gavron and Ms. Tulyathan request an hourly rate of \$600 per hour. Gavron Decl. ¶ 8;
7 Tulyathan Decl. ¶ 14. Mr. Lee requests an hourly rate of \$800 per hour. Lee Decl. ¶ 8. Mr.
8 Rosenthal requests an hourly rate of \$700 per hour. Rosenthal Decl. ¶ 10. The courts are quite
9 liberal in the evidence required to prove an attorney's hours. Detailed time records are not required.
10 An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours
11 worked on a particular case is sufficient evidence to support an award of attorney fees, even in the
12 absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

19 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
20 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
21 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
22 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and
23 the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th
24 629, 632-33 (1998).

25 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
26 declarations, Class Counsel have significant experience in the area of employment and wage and
27 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in
28 employment matters, particularly wage and hour cases. Gavron Decl. ¶¶ 13-15; Lee Decl. ¶¶ 9-11;

1 Rosenthal Decl. ¶¶ 6-8; Tulyathan Decl. ¶¶ 7-12. As such, based on the hours and applicable rates,
2 the total lodestar to be expended by Class Counsel through finalizing this settlement will be
3 approximately \$307,740.00. Gavron Decl. ¶ 7, Ex. A; Lee Decl. ¶ 7, Ex. A; Rosenthal Decl. ¶ 9,
4 Ex. A; Tulyathan Decl. ¶, Ex. A.

5 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier
6 in order to make an appropriate fee award. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The
7 pertinent factors include the difficulty of the questions involved and the skill in presenting them, the
8 contingent nature of the fee award, the extent to which the litigation precluded other employment,
9 and the percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82
10 Cal. App. 4th at 49. However, this list is not exhaustive and the court can consider other factors it
11 deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

12 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-
13 benefit, namely, no objections by Class Members, commendable conduct by counsel, and
14 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*, 82
15 Cal. App. 4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorney's fee
16 with no objections. The effort undertaken by counsel, as shown by their hours and the high amount
17 of claims being paid out, shows commendable conduct.

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

23 The multiplier should be enhanced by the contingent nature of counsel's fee recovery. The
24 risks in taking on a class action case are enormous, not the least of which is time and effort. Not
25 only was there significant risk taken upon by Plaintiff's counsel, but their ability to obtain the
26 current settlement should be seen as quite commendable.

27 As explained previously, Defendants maintained that there were significant obstacles. Thus,
28 the risk involved in this case was quite significant for Plaintiff and her counsel, and in the face of

1 such risks, the current settlement was still able to be obtained by Plaintiff's counsel.

2 Here based upon Plaintiff's counsel's lodestar of \$307,740.00, Plaintiff's request for a
3 multiplier of 2.17 is reasonable and fair, particularly based on the factors described above. *Wershba*
4 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (Ct. App. 2001) (noting that courts using the lodestar
5 method to calculate attorney fees awards in class actions typically apply multipliers in the range of
6 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)
7 (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action
8 settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014)
9 (awarding 33% of the common fund, based on a multiplier of 2.52).

10 As such, the requested fee award is fair and reasonable, and should be awarded in its
11 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
12 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
13 Class Counsel's request for attorneys' fees in the amount of \$666,667.00 is fair, reasonable, and
14 adequate.

15 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
16 **COSTS**

17 The request for reimbursement of costs, in the amount of \$17,700.11 is fair and reasonable.
18 The costs are all litigation related costs, which have been detailed in the supporting declaration of
19 Class Counsel. Gavron Decl. ¶ 16, Ex. B. Significantly, the costs sought are less than the
20 \$25,000.00 permitted by the Settlement Agreement, such that the remaining amount will be
21 distributed to Participating Class Members.

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

24 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
25 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds.
26 As shown on the Declaration of Mitzner, the administration fees expended in this matter amount to
27 a total of \$18,925.00. Admin Decl. ¶ 16. As explained in the Declaration of Max Gavron in support
28 of Plaintiff's Unopposed Ex Parte Application to Amend Proposed Class Notice and Order

Granting Preliminary Approval (ROA #96), this amount increased from the originally estimated amount because of the additional tax filings associated with the various released parties. However, the difference in the increased administration cost of approximately \$6,425.00 was absorbed by the amount remaining after the deduction of Class Counsel's requested cost reimbursement (\$17,700.11) from the amount allocated by the Settlement Agreement (\$25,000.00). Gavron Decl. ¶ 16. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. NOTICE TO LWDA

Plaintiff served the LWDA with this Motion and supporting documents in conjunction with filing. Gavron Decl. ¶ 17; Ex. C.

IX. 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 request that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for an award of an Enhancement Payment of \$10,000.00 to Plaintiff, with payment pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff's counsel's request for an award to Class Counsel for \$666,667.00 in attorneys' fees and \$17,700.11 in costs, with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff's request for payment of the administration costs to Phoenix Settlement Administrators in the amount of \$18,925.00, with payment pursuant to the terms of the Settlement Agreement and subsequent Court order;
6. Approving Plaintiff's request for payment to the LWDA for \$112,500.00 with payment pursuant to the terms of the Settlement Agreement; and

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

2
3 DATED: June 21, 2023

DIVERSITY LAW GROUP, P.C.

4
5 By: 
6 Larry W. Lee
7 Max W. Gavron
8 Attorneys for Plaintiff and the Class