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

DAVID LONG, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAPITOL COMPLIANCE
MANAGEMENT, LLC, et al.,

Defendants.

Case No.: 34-2021-00301119-CU-OE-GDS

CLASS ACTION

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

Date: August 25, 2023

Time: 9:00 a.m.

Dept.: 28

DAVID LONG, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAPITOL COMPLIANCE
MANAGEMENT, LLC, et al.

Defendants.

RELATED CASE: 34-2021-00302928-CU-OE-
GDS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 25, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Lauri A. Damrell, in Department 28 of the above referenced Court located at 720 9th Street, Sacramento, California 95814, Plaintiff David Long (“Plaintiff”) will seek an Order: (1) granting final approval of the Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement Agreement”) in this matter; (2) approving distribution of the settlement funds to the Participating Class Members pursuant to the terms of the Settlement Agreement; (3) approving Plaintiff’s request for an incentive payment to Plaintiff of \$10,000.00 pursuant to the terms of the Settlement Agreement; (4) approving Plaintiff’s request for an award of attorneys’ fees of approximately one-third of the \$500,000.00 Gross Settlement Amount, or \$166,666.67, and reimbursement of litigation costs of \$14,231.74 pursuant to the terms of the Settlement Agreement; (5) approving Plaintiff’s request for payment of the Settlement Administration Costs to Phoenix Settlement Administrators in the amount of \$13,500.00 pursuant to the terms of the Settlement Agreement; and (6) entering final judgment as to all members of the 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 opt-outs to the settlement, 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 Point and Authorities and the supporting Declarations of Larry W. Lee, Max W. Gavron, Kelsey A. Webber, Plaintiff David Long, and Taylor Mitzner of Phoenix Settlement Administrators, and upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court’s website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the

1 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before
2 the hearing and receive the tentative ruling. If you do not call the court and the opposing party by
3 4:00 p.m. the court day before the hearing, no hearing will be held.

4
5 DATED: August 3, 2023

DIVERSITY LAW GROUP, P.C.
WEBBER LAW GROUP

6
7
8 By: _____



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Max W. Gavron

Kelsey A. Webber

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1 **I. INTRODUCTION**

2 Plaintiff David Long (“Plaintiff”) now seeks the Court’s final approval of the class and
3 representative action settlement with Defendants Capital Compliance Management, LLC;
4 CC101, Inc.; Alternative Medical Center, Inc.; Sharp Source; Doc’s Inc.; Perchta, Inc.; and C9
5 Alliance, Inc. (collectively, “Defendants”) (together with Plaintiff, the “Parties”). The settlement
6 provides for a \$500,000.00 **non-reversionary** fund to be created for the benefit of the Class,
7 from which attorneys’ fees, litigation costs, incentive payment to the Plaintiff, and costs of
8 settlement administration are to be paid. The net settlement amount after these deductions will be
9 paid to all Class Members who did not opt-out of the settlement.

10 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
11 Approval of Class Action Settlement. The Court preliminarily approved this settlement on April
12 17, 2023, directing distribution of the Class Notice and scheduling the hearing for final approval
13 of settlement (the “Preliminary Approval Order”). As explained by the Parties in their
14 Stipulation Requesting Approval of Second Amended Notice of Class Action Following
15 Preliminary Approval, the escalator clause of the Settlement Agreement was triggered, thus
16 closing the Class Period on January 1, 2022, as opposed to the date originally contemplated by
17 the Agreement.

18 As directed by the Court, the Settlement Administrator distributed the Class Notice to
19 754 Class Members. Declaration of Taylor Mitzner (“Admin Decl.”) (on behalf of Phoenix
20 Settlement Administrators (“Phoenix”)) ¶ 6. To date, zero (0) Requests for Exclusion have been
21 received. *Id.* ¶ 9. No objections to the settlement were received. *Id.* ¶ 10. Finally, there are no
22 outstanding disputes. *Id.* ¶ 11. As such, there is a 100% participation rate. Thus, an inference can
23 be made that the Class supports the Court’s Preliminary Approval Order finding that the
24 Settlement Agreement is fair and reasonable and the Court should grant final approval.

25 In sum, as a result of the settlement administration process, the lack of any objections or
26 opt-outs, and the amount of class funds being paid out to the Class Members, the Court may
27 confirm its preliminary approval as this process supports the Court’s initial finding that the
28 settlement is fair and reasonable. The fact that no objections were filed is instructive that Class

Members believe that the settlement was fair and reasonable. Given the escalator clause was triggered, the amount each class member is anticipated to receive increased from what Plaintiff estimated at the time of preliminary approval. The average Individual Settlement Share is now \$372.15, as compared to \$215.66.

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

- The settlement provides a Gross Settlement Amount of \$500,000.00 which is **non-reversionary**;
- The settlement is fair given that claiming Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money (on average, each Participating Class Member will receive approximately \$372.15) (*Id.* ¶ 15);
- 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 Class Members in proportion to the number of pay periods worked by each Class Member during the Class Period, with a minimum payment of \$16.87 for an individual that only worked for one pay period and the maximum totaling \$2,193.12;
- Plaintiff conducted significant investigation in this case, including the exchange of formal and informal discovery and the production of putative class data necessary for Plaintiff to fully evaluate this case; and
- A highly regarded administrator, Phoenix Settlement Administrators, was retained for no more than \$13,500.00.
- Defendants' share of payroll taxes will be funded in addition to the Gross Settlement Amount. (Agreement ¶ 15, 36, 38(c)).¹

¹ The Court asked that Plaintiff address this issue in its Order re Preliminary Approval. See pg. 3. Plaintiff apologizes for the error in the briefing submitted previously.

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

II. NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order and subsequent order approving the Second Amended Class Notice have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Notice of Class Action Settlement (the “Class Notice”), be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary Approval Order contemplated, further, that Phoenix would serve as the Settlement Administrator.

As clearly stated in the Mitzner Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On April 3, 2023, the Settlement Administrator received a Class Member mailing list from Defendants’ counsel that included 754 Class Members.² Admin Decl. ¶ 3. On or about May 22, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail, after conducting a search of the National Change of Address registry to obtain updated addresses. *Id.* ¶ 5-6. As part of the administration process, the Settlement Administrator has re-mailed Class Notices to 54 Class Members using newly updated addresses after performing a skip-trace using TransUnion TL Oxp, one of the most comprehensive address databases available for skip tracing. *Id.* ¶ 7. As of the date of this filing, ten (10) Class Notices remain undeliverable because an updated address could not be found via skip trace. *Id.* ¶ 8. Further, the Class Notice provided Class Members with the Class Counsel’s contact information, where they could further seek information regarding the settlement, leave questions for the Settlement Administrator, and update their address.

The provision of sending the notice to class members as described above meets the requirements for the “best notice practicable” in this case as necessary to protect the due process

² While Plaintiff’s Motion for Preliminary Approval referenced 1,228 putative class members, because the escalator clause of the agreement was triggered, the class period was shortened to end January 1, 2022, which resulted in a lower number of class members than originally anticipated. (Admin Decl. ¶ 13.)

rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the litigation and explanation of opt-out rights satisfies due process). Here, the Class Members were provided with a mailing regarding the settlement that explained the settlement and allowed Class Members to seek information, ask questions, and object, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may proceed to determine the fairness and adequacy of the settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE

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

In order to proceed as a class, there are two requirements which must be met—ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). “The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d 462, 470 (1981).

1. The Class is Ascertainable

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class is defined as: “all current and former non-exempt employees of Defendants in the State of California who worked during the Class Period (the period of May 20, 2017, through January 1, 2022).” There are 754 individuals that comprise of the Class. Admin Decl. ¶ 3. This is far more than the minimum required to certify a class. The Class is manageable because Defendants have already identified Class Members.

2. There is a Community of Interest

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

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

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

5 Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or
6 procedure, violated the Labor Code by failing to pay overtime wages for all hours worked,
7 failing to provide off-duty meal and rest breaks, failing to pay all wages owed upon separation of
8 employment, failing to reimburse business expenses, and failing to provide accurate itemized
9 wage statements. As a result, Plaintiff and Class Members did not receive wages and penalties
10 owed. Defendants deny that liability could be established on a class-wide basis and contend that
11 liability and damages would need to be conducted on a case-by-case basis.

12 **b. Plaintiff's Claims are Typical of the Class Claims**

13 The purported class representative's claim must be "typical" but not necessarily identical
14 to the claims of other class members; it is sufficient that the representative is similarly situated so
15 that he or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal.
16 App. 3d 27, 45 (1983). Plaintiff worked for Defendants from about November 25, 2020, to about
17 April 14, 2021, and was subjected to the same payroll policies as his fellow Class Members.
18 Declaration of David Long ("Long Decl.") ¶ 2.

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

20 The class representative, through qualified counsel, must be capable of "vigorously and
21 tenaciously" protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
22 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any
23 such issues been raised or presented. Long Decl. ¶ 8. Plaintiff has taken all necessary steps to
24 represent the interests of the Class, including providing information and documents to his
25 counsel and reviewing pleadings in this case. *Id.* ¶ 6.

26 **B. Defendants' Allegations and Unlikelihood of Class Certification**

27 Defendants assert that individualized issues predominate in this case, including without
28 limitation, whether all Class Members worked at more than one location during the same

workday. Defendants assert that the failure to provide off-duty meal and rest breaks and reimburse business expenses due to travel between dispensaries only impacted a limited number of employees, if at all, and deny liability. Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and potential for appeals. These risks on class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There was a risk that Plaintiff would not have obtained the total amount of damages alleged, and a substantial number of complex issues would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this Motion.

C. The Settlement is Fair, Adequate, and Reasonable

As explained previously, the Agreement 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 Max W. Gavron ("Gavron Decl.") ¶ 2. The results after mailing of the Class Notice support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that to date, zero (0) Requests for Exclusion or Objections to the settlement were received. Admin Decl. ¶¶ 9-10. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that no class member has submitted an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

D. 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 Section 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217

(1983). 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* Alba Conte and Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

Although the Court possesses “broad discretion” in determining that a proposed class action settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. 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.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*, 688 F.2d at 626. As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000):

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 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146. The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was

1 negotiated at arm's length. Gavron Decl. ¶ 5. Second, Class Counsel engaged in extensive factual
2 investigation before settling, including reviewing class data. Gavron Decl. ¶ 2. Further, Class
3 Counsel is highly experienced in this type of litigation. As shown in the supporting declarations,
4 Class Counsel has significant experience in class actions and employment wage and hour
5 matters. Gavron Decl. ¶¶ 8-14; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 7-9; Declaration of
6 Kelsey A. Webber ("Webber Decl.") ¶¶ 3-9.

7 **3. Risks Inherent in Continued Litigation Favor Final Approval**

8 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
9 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
10 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
11 (3d Cir. 1995); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F.
12 Supp. 610, 616-17 (N.D. Cal. 1979). If Plaintiff pursued this case without settlement and failed
13 to prevail, Plaintiff would have been potentially responsible for Defendants' costs. As such,
14 should any individual bring individual claims against Defendants on the same causes of action,
15 they would each face the uncertainty of prevailing and the possibility of paying costs to
16 Defendants. Accordingly, such claims likely would not be brought—thus, this lawsuit achieves a
17 true benefit for the class that they might not otherwise get or seek as individuals. Here, given that
18 a fair and reasonable settlement has been reached, neither Plaintiff nor any of the Class Members
19 will be required to pay for Defendants' litigation costs.

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

24 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding
25 significant legal and factual battles that otherwise may have prevented the Class from obtaining
26 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious and
27 can be successfully litigated, they are experienced and fully understand the inherent risks and
28 uncertainty involved with such matters as the resolution of class certification, the outcome of a

1 potential trial, and the outcome of any appeals that would inevitably follow should the Class
2 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
3 settlement. Because the settlement provides immediate and substantial relief, without the
4 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
5 costs—Class Counsel believe that the settlement warrants the Court’s final approval.

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

8 Another factor considered by courts in approving a settlement is the complexity, expense,
9 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
10 157. In applying this factor, the Court must weigh the benefits of the settlement against the
11 expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v.*
12 *Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971). Here, the settlement that was reached provides to all
13 Class Members—regardless of their means—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 in this case is therefore
17 consistent with the “overriding public interest in settling and quieting litigation” that is
18 “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted);
19 *see also 4 Newberg* § 11.41. This case would have likely involved years of litigation, numerous
20 putative class member depositions, and exhaustive discovery.

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. Gavron Decl. ¶ 5; Lee Decl. ¶ 5; Webber Decl. ¶ 10.
24 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and
25 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
26 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625;
27 *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242.

28 **IV. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT**

1 **SHOULD BE APPROVED**

2 Class Representative David Long requests an enhancement of \$10,000.00. Plaintiff met
3 with Class Counsel and conferred on a number of occasions to discuss the case, including
4 providing substantive documents and information regarding Defendants' practices. Long Decl. ¶
5 6. He estimates he spent between 20-25 hours assisting in the litigation of this case, as detailed in
6 his declaration. Long Decl. ¶ 7. Accordingly, Plaintiff provided invaluable information,
7 evidence, and documents that resulted in this settlement.

8 In addition to the invaluable services that he provided, Plaintiff took significant risks,
9 both professionally and monetarily, in acting as the Class Representative, seeking benefits on
10 behalf of the Class. Long Decl. ¶¶ 6-9. Because the claims alleged by the Class Representative
11 involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying
12 the costs of Defendants, had he not prevailed in this action. *Id.* ¶ 11. Despite this, however,
13 Plaintiff agreed to pursue this case on behalf of the Class.

14 Also, given that future employers are much less likely to hire individuals who have filed
15 employment-related lawsuits, particularly cases of this nature, the Class Representative also
16 faced significant risk in not being able to find suitable employment, all as a result of filing of this
17 case against Defendants. Plaintiff took these risks upon himself to the benefit of the Class. Class
18 Members did not have to file individual lawsuits and bear the risks of payment of costs if they
19 did not prevail, nor did they have to face the potential for retaliation and not getting future
20 employment had they filed a lawsuit which is a public record. These are significant benefits that
21 weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a
22 significantly valuable benefit to the Class, and Plaintiff took on substantial risks in helping to get
23 this financial benefit to the Class. As such, the enhancement should be awarded to Plaintiff for
24 his commitment, dedication, and risks taken for this litigation. Plaintiff also agreed to provide a
25 more expansive release than other class members by executing a general release. Long Decl. ¶
26 12.

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

award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative).

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated as approximately one-third (1/3) of the total value of the settlement for the successful prosecution and resolution of this action. The fees awarded by the Court will be split according to a written fee splitting agreement that was approved in writing by Plaintiff. Gavron Decl. ¶ 7; Webber Decl. ¶ 15. Pursuant to the written agreement, Diversity Law Group will receive two-thirds (2/3) of the legal fees recovered and Webber & Egbert Employment Law, P.C. will receive one-third (1/3) of the legal fees recovered. *See id.*

The California Supreme Court explained that 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*, 1 Cal. 5th 480, 503 (2016). 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*, 160 F.3d 361, 363 (7th Cir. 1998). An award of approximately 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*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008). Indeed, "empirical studies [that] show that...fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. This was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 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

1 so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

2 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
3 percent of the common fund is consistent with, and in the range of, awards in other class action
4 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
5 representing one-third of the fund clearly falls within that range, and is consistent with other
6 comprehensive surveys of class action settlements and fee awards. *See, e.g.* Fitzpatrick, *An*
7 *Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811,
8 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards
9 were between 25 percent and 35 percent, with almost no awards more than 35 percent”).

10 The results delivered by Class Counsel also support the requested percentage of the fund.
11 Here, Plaintiff and his counsel secured a \$500,000.00 non-reversionary common fund settlement.
12 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
13 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
14 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
15 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
16 Notice specifically notified Class Members that Class Counsel would be seeking \$166,666.67 of
17 the settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement.
18 This strong favorable response also supports the requested fees.

19 A lodestar “cross-check” further supports the fee request. The Supreme Court in *Laffitte*
20 stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or
21 low, the trial court should consider whether the percentage used should be adjusted so as to bring
22 the imputed multiplier within a justifiable range, but the court is not necessarily required to make
23 such an adjustment.” *Id.* Courts have defined reasonable multipliers on a lodestar cross-check to
24 “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255
25 (2001); *see also, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002)
26 (affirming 3.65 multiplier in ~\$1 billion settlement); *In re Nat’l Collegiate Athletic Ass’n Athletic*
27 *Grant-in-Aid Cap Antitrust Litig.*, 768 F. App’x 651, 654 (9th Cir. 2019) (affirming 3.66
28 multiplier); *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (affirming

multiplier of 6.85); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand); *Aboudi v. T-Mobile USA, Inc.*, No. 12CV2169 BTM NLS, 2015 WL 4923602, at *7 (S.D. Cal. Aug. 18, 2015) (“Multipliers of 1 to 4 are commonly found to be appropriate in common fund cases.”).

With respect to Class Counsel’s lodestar, to date, approximately 269.1 hours have been expended by Class Counsel in this matter. (Gavron Decl. ¶ 15, Exh. A; Lee Decl. ¶ 10, Exh. A; Webber Decl. ¶ 12) Moreover, Class Counsel expects to incur approximately 10 additional hours of attorney time in finalizing this settlement, responding to inquiries from settlement class members, and interacting with the administrator. (Gavron Decl. ¶ 15) The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

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

Class Counsel’s skill and experience justify the requested rate. As shown in the

1 supporting declarations, Class Counsel have significant experience in employment and wage and
2 hour class actions. Class Counsel's practice focuses on representing employees in employment
3 matters, particularly wage and hour cases. (Gavron Decl. ¶¶ 8-14; Lee Decl. ¶ 7-9; Webber Decl.
4 ¶¶ 3-9) As such, based on the hours and respective applicable rates, the total lodestar to be
5 expended by Class Counsel through finalizing this settlement will be approximately \$172,260.00
6 (Gavron Decl. ¶ 16; Lee Decl. ¶ 11; Webber Decl. ¶ 12)

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

14 The multiplier should be enhanced by the contingent nature of counsel's fee recovery.
15 The risks in taking on a class action case are enormous, not the least of which is time and effort.
16 As explained previously, Defendants maintained that there were significant obstacles. Thus, the
17 risk involved in this case was quite significant for Plaintiff and his counsel, and in the face of
18 such risks, the current settlement was still able to be obtained by Plaintiff's counsel.

19 Here based upon Plaintiff's counsel's lodestar of \$172,260.00, Plaintiff's requested fees
20 result in a negative multiplier of 0.97 ($\$166,666.67$ (requested fees) $\div$ $\$172,260.00$ (lodestar
21 amount)). This demonstrates that the requested fees are reasonable and fair, particularly based on
22 the factors and cases described above. *See, e.g. In re Nat'l Collegiate Athletic Ass'n Athletic*
23 *Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x at 654 (affirming 3.66 multiplier).

24 **VI. THE COURT SHOULD APPROVE REIMBURSEMENT OF COSTS**

25 The request for reimbursement of costs, in the amount of \$14,231.74 is fair and
26 reasonable. The costs are all litigation related costs, which have been detailed in the supporting
27 declarations of Class Counsel. Lee Decl. ¶ 12, Ex. A; Webber Decl. ¶ 14, Ex. A. Significantly,
28 the costs sought are significantly less than the \$30,000.00 permitted by the Settlement

Agreement, such that the remaining amount will be distributed to Class Members.

VII. THE SETTLEMENT ADMINISTRATOR'S COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Mitzner, the settlement administration fees expended in this matter amount to a total of \$13,500.00. Admin Decl. ¶ 17. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. NOTICE TO THE LWDA & CY PRES

Plaintiff will provide notice of this Motion to the LWDA in conjunction with this filing. Gavron Decl. ¶ 19. As detailed previously, uncashed checks will be distributed to the proposed cy pres recipient, Legal Aid At Work. Agreement ¶ 58. Neither Plaintiff's counsel nor Plaintiff have any conflict of interest with this beneficiary. Gavron Decl. ¶ 18; Lee Decl. ¶ 13; Webber Decl. ¶ 11.

IX. CONCLUSION

Plaintiff respectfully submits that the standards for final approval have been met, and the terms of the Settlement Agreement are fair, adequate and reasonable.

DATED: August 3, 2023

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