

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com

Kelsey A. Webber (State Bar No. 303721)
Kelsey.Webber@WebberLawGroup.com
Shaelyn A. Stewart (State Bar No. 335149)
Shaelyn.Stewart@webberlawgroup.com
WEBBER LAW GROUP
1610 R Street, Suite 300
Sacramento, California 95811
Telephone: (916) 588-0683

Attorneys for Plaintiff and the Class

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

RICARDO RODRIGUEZ-ALVAREZ, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

NORTHWEST CONFECTIONS
CALIFORNIA, LLC, a California limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 34-2021-00300622-CU-OE-GDS

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

Date: April 21, 2023
Time: 9:00 a.m.
Dept.: 27

Complaint Filed: May 12, 2021
FAC Filed: June 11, 2021
Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on April 21, 2023, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Jill H. Talley, in Department 27 of the above
4 referenced Court located at 720 9th Street, Sacramento, California 95814, Plaintiff Ricardo
5 Rodriguez-Alvarez (“Plaintiff”) will seek an Order: (1) granting final approval of the Joint
6 Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement Agreement”) in
7 this matter; (2) approving distribution of the settlement funds to the Participating Class Members
8 pursuant to the terms of the Settlement Agreement; (3) approving Plaintiff’s request for an
9 incentive payment to Plaintiff of \$10,000.00 pursuant to the terms of the Settlement Agreement;
10 (4) approving Plaintiff’s request for an award of attorneys’ fees of approximately 33 1/3% of the
11 \$275,500.00 Gross Settlement Amount, or \$85,833.33, and reimbursement of litigation costs of
12 \$9,234.40 pursuant to the terms of the Settlement Agreement; (5) approving Plaintiff’s request
13 for payment of the Settlement Administration Costs to Phoenix Settlement Administrators in the
14 amount of \$8,950.00 pursuant to the terms of the Settlement Agreement; and (6) entering final
15 judgment as to all members of the Class in this action.

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

22 This Motion will be based on the attached Memorandum of Point and Authorities and the
23 supporting Declarations of Larry W. Lee, Max W. Gavron, Kelsey A. Webber, Plaintiff Ricardo
24 Rodriguez-Alvarez, and Taylor Mitzner of Phoenix Settlement Administrators, and upon the oral
25 arguments of counsel (should there be any), and on the complete records and file herein.

26 ///

27 ///

28 ///

1 DATED: March 29, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 
4 Larry W. Lee
5 Max W. Gavron
6 Attorneys for Plaintiff and the Class
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	9
II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT	10
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL	11
A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class	11
1. The Class is Ascertainable.....	11
2. There is a Community of Interest.....	12
a. There are Predominant Common Questions of Law and Fact.....	12
b. Plaintiff’s Claims are Typical of the Class Claims	12
c. Plaintiff Adequately Represented the Class	13
B. Defendant’s Allegations and Unlikelihood of Class Certification	13
C. Risks, Expenses, and Complexity of Further Litigation	13
D. The Terms, Negotiation, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable	14
E. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement.....	14
1. Standard of Review.....	14
2. The Settlement is Presumed to Be Fair.....	15
3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	16
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	17
5. The Opinion of Experienced Counsel Favors Final Approval	17

1	IV. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT	
2	SHOULD BE APPROVED	17
3	V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED.....	18
4	VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF	
5	COSTS	22
6	VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE	
7	APPROVED	23
8	VIII.COMPLIANCE HEARING DATE.....	23
9	IX. CONCLUSION	23

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	15
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	19, 20
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	20
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27 (1983)	12
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d. 695 (1967)	11
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	15
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014)	13
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629 (1998)	21
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122 (2001)	22
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	18, 19, 20
<i>Laffitte v. Robert Half Int'l</i> , 231 Cal. App. 4th 860 (2014)	19, 20
<i>Lockheed Martin Corp. v. Superior Court</i> , 29 Cal. 4th 1096 (2003)	12
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553 (1986)	21
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000)	21
<i>Reese v. Wal-Mart Stores, Inc.</i> , 73 Cal. App. 4th 1225 (1999)	12
<i>Reyes v. San Diego County Board of Supervisors</i> , 196 Cal. App. 3d 1263 (1987)	11
<i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462 (1981)	11, 12
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	22
<i>Simons v. Horowitz</i> , 151 Cal. App. 3d 834 (1984)	13
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495 (2009)	20
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	11
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	20

Federal Cases

<i>Boyd v. Bank of Am. Corp.</i> , 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)	22
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979)	16

1	<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907 (S.D. Ohio 2001).....	18
2	<i>Byrd v. Civil Serv. Comm’n</i> , 459 U.S. 1217 (1983).....	14
3	<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993).....	15
4	<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	14, 15
5	<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	11
6	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D. Cal. 1980)	15
7	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240 (S.D. Ohio 1991)..	18
8	<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	19
9	<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998).....	19
10	<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992).....	12
11	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366 (S.D. Ohio 1990)	18
12	<i>In re General Motors Corp.</i> , 55 F.3d 768 (3d Cir. 1995).....	16
13	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	20
14	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234 (9th Cir. 1998).....	15, 17
15	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950).....	11
16	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54 (1980).....	21
17	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615 (9th Cir. 1982)	14, 15, 17
18	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985)	10
19	<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261 (D.C. Cir. 1993)	20
20	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943 (9th Cir. 1976)	15, 17
21	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....	18
22	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F. Supp. 3d 1200 (C.D. Cal. 2014).....	22
23	<i>Young v. Katz</i> , 447 F.2d 431 (5th Cir. 1971)	17

Statutes

25	Code of Civil Procedure section 382	11, 14
----	---	--------

Other Authorities

27	Alba Conte and Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.41 (2008).....	14, 17
----	--	--------

Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> , 7 J. Empirical	
Leg. Stud. 811 (2010)	19
<i>Manual for Complex Litigation, Fourth</i> § 21.6 (Fed. Jud. Ctr., 4th ed. 2004)	14
Rules	
California Rule of Court 3.769	14

1 **I. INTRODUCTION**

2 Plaintiff Ricardo Rodriguez-Alvarez (“Plaintiff”) now seeks the Court’s final approval of
3 the class and representative action settlement. The settlement provides for a \$257,500.00 **non-**
4 **reversionary** fund to be created for the benefit of the Class, from which attorneys’ fees,
5 litigation costs, incentive payment to the Plaintiff, and costs of settlement administration are to
6 be paid. The net settlement amount after these deductions will be paid to all Class Members who
7 did not opt-out of the settlement.

8 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
9 Approval of Class Action Settlement. The Court preliminarily approved this Settlement on
10 January 11, 2023, directing distribution of class notice and scheduling the hearing for final
11 approval of settlement (the “Preliminary Approval Order”).

12 As directed by the Court, the Settlement Administrator distributed the Class Notice to
13 494 Class Members. Declaration of Taylor Mitzner (“Admin Decl.”) (on behalf of Phoenix
14 Settlement Administrators (“Phoenix”)) ¶ 5. To date, one (1) Request for Exclusion has been
15 received. *Id.* ¶ 8. No objections to the settlement were received. *Id.* ¶ 9. Finally, there are no
16 outstanding disputes. *Id.* ¶ 10. As such, there is a 99.8% participation rate. Thus, an inference can
17 be made that the Class supports the Court’s Preliminary Approval Order finding that the
18 Settlement Agreement is fair and reasonable and the Court should grant final approval.

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

- 22 ▪ The settlement provides a Gross Settlement Amount of \$257,500.00 which is
23 **non-reversionary**;
- 24 ▪ The settlement is fair given that claiming Class Members will receive (*after*
25 *deductions for fees, costs, etc.*) a substantial amount of money (on average, each
26 Class Member will receive approximately \$280.90, with the highest award
27 approximately \$1,033.81) (*Id.* ¶ 14);
- 28 ▪ 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;
- Plaintiff conducted significant investigation in this case, including the exchange of informal discovery by Defendant of class data necessary for Plaintiff to fully evaluate this case; and
- A highly regarded administrator, Phoenix Settlement Administrators, was retained for no more than \$8,950.00.

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

II. CLASS MEMBERS WERE PROVIDED NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. As clearly stated in the Mitzner Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On January 23, 2023, the Settlement Administrator received a Class Member mailing list from Defendant's counsel that included 494 Class Members. Admin Decl. ¶ 3. On or about February 2, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 5. As part of the administration process, the Settlement Administrator has re-mailed Class Notices to 26 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.* ¶ 6. As of the date of this filing, four (4) Class Notices remain undeliverable. *Id.* ¶ 7. 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 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); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”). 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, seek additional forms, and object, if so desired.

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 section 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 who were employed in the State of California at any time during the Class Period (the period commencing on May 12, 2017, and ending on September 19, 2022).” There are 494 members that comprise of the Class. Admin Decl. ¶ 5. This is far more than the minimum required to certify a class. Within the context of manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members have already been identified by Defendant and the

1 Class Notice was provided to all of the above Class Members.

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

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

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

8 “The ultimate question in every case of this type [class actions] is whether...the issues
9 which may be jointly tried, when compared with those requiring separate adjudication, are so
10 numerous and substantial that the maintenance of a class action would be advantageous to the
11 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096,
12 1104-05 (2003). Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or
13 procedure, violated the Labor Code by failing to pay minimum, regular, and overtime wages for
14 all hours worked as a result of daily COVID-19 screening procedures, failing to timely pay
15 wages upon separation of employment, including vacation wages, failing to provide accurate
16 itemized wage statements, and engaging in unfair business practices. As a result, Plaintiff and
17 Class Members did not receive wages and penalties owed. Defendant denies that liability could
18 be established on a class-wide basis and contends that liability and damages would need to be
19 conducted on a case-by-case basis.

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

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

1 Plaintiff worked for Defendant from about November 29, 2020, to about April 13, 2021,
2 and was subjected to the same payroll policies as his fellow Class Members and is thus typical.
3 Declaration of Ricardo Rodriguez-Alvarez (“Rodriguez-Alvarez Decl.”) ¶ 2-5.

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

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

11 **B. Defendant’s Allegations and Unlikelihood of Class Certification**

12 Defendant asserts that individualized issues predominate in this case, including without
13 limitation, whether Class Members had signed arbitration agreements. Were Class Member
14 arbitration agreements deemed to be valid, class certification would not be possible. Defendant
15 also asserts that it paid employees for time spent undergoing COVID-19 screenings and that the
16 failure to pay vested vacation wages only impacted a limited number of employees. Declaration
17 of Max W. Gavron (“Gavron Decl.”) ¶ 6.

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

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

25 Defendant has maintained that there is no liability. As stated above, Defendant alleges
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.

28 //

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

4 Without reiterating the Parties' showing that the Settlement Agreement and the
5 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
6 Preliminary Approval, the Parties highlight the following facts. The Agreement was the product
7 of negotiation between highly able and experienced attorneys on both sides who possessed the
8 relevant data and extensive legal research which they had carefully analyzed. Gavron Decl. ¶ 4-
9 5.

10 The results after mailing of the Class Notice support confirmation of the Court's
11 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
12 fact that to date, only one (1) Request for Exclusion and zero (0) objections to the settlement
13 were received. Admin Decl. ¶¶ 8, 9. The Court may appropriately infer that the class action
14 settlement is fair, adequate, and reasonable, given that no class member has submitted an
15 objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

18 **1. Standard of Review**

19 On a motion for final approval of a class action settlement under California Code of Civil
20 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
21 settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688
22 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217
23 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
24 "the interests of the class are better served by the settlement than by further litigation." *See*
25 *Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL").
26 The law favors settlement, particularly in class actions and other complex cases, where
27 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
28 *See Alba Conte and Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (2008); *Class*

1 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*
2 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

3 Although the Court possesses “broad discretion” in determining that a proposed class
4 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
5 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
6 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
7 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court
8 should give due regard to what is otherwise a “private consensual agreement” between the
9 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
10 1993). A court’s approval of a class action settlement will only be reversed for a clear abuse of
11 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

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

14 It cannot be overemphasized that neither the trial court in approving the settlement
15 nor this Court in reviewing that approval have the right or duty to reach any ultimate
16 conclusions on the issues of fact and law which underlie the merits of the dispute.
17 It is well settled that in the judicial consideration of proposed settlements, ‘the
18 [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.

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

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

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

25 *Dunk*, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at
26 1146; *accord, Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash.*
27 *Pub Power Supply*, 720 F. Supp. at 1387.

28 The settlement in the case at bar warrants approval and carries a presumption of fairness.

As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm's length. Gavron Decl. ¶ 5.

Second, Class Counsel engaged in extensive factual investigation before settling, including reviewing class data. Gavron Decl. ¶ 4. Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. Gavron Decl. ¶¶ 11-17; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 6-9; Declaration of Kelsey A. Webber ("Webber Decl.") ¶¶ 3-8.

3. Two-Way Costs and Other Risks

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement") (internal citations omitted).

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendant's costs. As such, should any individual bring individual claims against Defendant on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought—thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff, nor any of the Class Members will be required to pay for Defendant's litigation costs.

While Class Counsel believe the Class Members' claims are meritorious and can be successfully litigated, they are experienced and fully understand the inherent risks and uncertainty involved with such matters as the resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that would inevitably follow should the Class prevail at trial. Because the settlement provides immediate and substantial relief, without the

1 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
2 costs—Class Counsel believe that the settlement warrants the Court’s final approval.

3 **4. The Complexity, Expense, and Likely Duration of Litigation**

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

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

16 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
17 interest of the Class Members as a whole. Gavron Decl. ¶ 5; Lee Decl. ¶ 5; Webber Decl. ¶ 2.
18 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and
19 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
20 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625.

21 **IV. CLASS REPRESENTATIVE INCENTIVE PAYMENT**

22 Class Representative Rodriguez-Alvarez requests an enhancement of \$10,000.00.
23 Plaintiff met with Class Counsel and conferred on a number of occasions to discuss the case,
24 including providing substantive documents and information regarding Defendant’s practices.
25 Rodriguez-Alvarez Decl. ¶ 6. Accordingly, Plaintiff provided invaluable information, evidence,
26 and documents that resulted in this settlement. In addition to the invaluable services that he
27 provided, Plaintiff took significant risks, both professionally and monetarily, in acting as the
28 Class Representative, seeking benefits on behalf of the Class. Rodriguez-Alvarez Decl. ¶¶ 7, 8.

1 Because the claims alleged by the Class Representative involved the payment of costs to the
2 prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not
3 prevailed in this action. Moreover, Plaintiff understood that an individual case would have
4 resolved much faster than a class action and involved much less financial risk than a class action.
5 *Id.* ¶ 10. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class.

6 Also, given that future employers are much less likely to hire individuals who have filed
7 employment-related lawsuits, particularly cases of this nature, the Class Representative also
8 faced significant risk in not being able to find suitable employment, all as a result of filing of this
9 case against Defendant. *Id.* ¶ 11. Plaintiff took these risks upon himself to the benefit of the
10 Class. Class Members did not have to file individual lawsuits and bear the risks of payment of
11 costs if they did not prevail, nor did they have to face the potential for retaliation and not getting
12 future employment had they filed a lawsuit which is a public record.

13 Courts have routinely granted approval of settlements containing such enhancements. *See*
14 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
15 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
16 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
17 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
18 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
19 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative).

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

21 Class Counsel seeks a fee award calculated as approximately thirty-three and one-third
22 percent (33 1/3%) of the total value of the settlement for the successful prosecution and
23 resolution of this action. Recently, the California Supreme Court issued its ruling regarding the
24 award of attorney's fees in wage and hour class action settlements. Under California law, the
25 award of attorneys' fees in common fund wage and hour class action settlements should start
26 with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We
27 join the overwhelming majority of federal and state courts in holding that when class action
28 litigation establishes a monetary fund for the benefit of the class members, and the trial court in

1 its equitable powers awards class counsel a fee out of that fund, the court may determine the
2 amount of a reasonable fee by choosing an appropriate percentage of the fund created”). Under
3 the percentage of the fund method, the Court’s objective remains to “mimic the market” in fixing
4 a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (“When a fee is set by
5 a court rather than by contract, the object is to set it at a level that will approximate what the
6 market will set....The judge, in other words, is trying to mimic the market in legal services”).

7 An award of approximately one-third of the fund in attorneys’ fees mimics the
8 marketplace as it “is supported by the fact that typical contingency fee agreements provide that
9 class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
10 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21,
11 2008). Indeed, “empirical studies [that] show that...fee awards in class actions average around
12 one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

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

18 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
19 percent of the common fund is consistent with, and in the range of, awards in other class action
20 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
21 representing 33 1/3% of the fund clearly falls within that range, and is consistent with other
22 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical*
23 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
24 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were
25 between 25 percent and 35 percent, with almost no awards more than 35 percent”). The results
26 delivered by Class Counsel also support the requested percentage of the fund. Here, Plaintiff and
27 his counsel secured a \$257,500.00 non-reversionary common fund settlement.

28 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,

1 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
2 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
3 “approximation of the market” for fees is well supported. *Id.* at p. 1269. The Class Notice
4 specifically notified Class Members that Class Counsel would be seeking \$85,833.33 of the
5 settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement. This
6 strong favorable response also supports the requested fees. For Class Counsel, the fees were
7 wholly contingent in nature. Among the risks was the cost inherent in class action litigation, as
8 well as a potentially drawn-out battle with a defendant that has retained premier defense counsel.

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

17 “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or
18 low, the trial court should consider whether the percentage used should be adjusted so as to bring
19 the imputed multiplier within a justifiable range, but the court is not necessarily required to make
20 such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at astronomical multipliers.
21 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
22 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g.,*
23 *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
24 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
25 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
26 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
27 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
28 a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.

1 With respect to Class Counsel's lodestar, to date, approximately 133.5 hours have been
2 expended by Class Counsel in this matter. Gavron Decl. ¶ 8, Ex. A. Class counsel also
3 anticipates spending approximately 10 hours in post-final approval matters including
4 corresponding with the Settlement Administrator and class members. Gavron Decl. ¶ 9. Mr.
5 Gavron requests an hourly rate of \$600.00 per hour. Gavron Decl. ¶ 10. The courts are quite
6 liberal in the evidence required to prove an attorney's hours. Detailed time records are not
7 required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number
8 of hours worked on a particular case is sufficient evidence to support an award of attorney fees,
9 even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559
10 (1986). Reasonable hours include, in addition to time spent during litigation, the time spent
11 before the action is filed, including time spent interviewing the clients, investigating the facts and
12 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
13 62 (1980).

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

20 Class Counsel's skill and experience justify the requested rate. As shown in the
21 supporting declarations, Class Counsel have significant experience in the area of employment
22 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
23 employees in employment matters, particularly wage and hour cases. Gavron Decl. ¶ 11-17; Lee
24 Decl. ¶ 6-9; Webber Decl. ¶¶ 3-8. As such, based on the hours and applicable rate, the total
25 lodestar to be expended by Class Counsel through finalizing this settlement, including 10
26 anticipated hours, will be approximately \$86,100.00 Gavron Decl. ¶ 8, Ex. A.

27 Once the court establishes the lodestar amount, it may enhance the fee award by a
28 multiplier in order to make an appropriate fee award. *Serrano v. Priest III*, 20 Cal. 3d 25, 48

(1977). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive, and the court can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

Lealao contains several factors justifying an enhancement based on the percentage-of-the-benefit, namely, no objections by class members, commendable conduct by counsel, and significant recoveries by class members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorneys' fee with no objections. Prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at 52 (the promptness of settlement "cannot be used to justify the refusal to apply a multiplier").

Here based upon Class Counsel's lodestar of \$86,100.00, Plaintiff's request for a **negative multiplier** of .99 is reasonable and fair, particularly based on the factors described above. *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52). Accordingly, Class Counsel's request for attorneys' fees in the amount of \$85,833.33 is fair, reasonable, and adequate.

VI. THE COURT SHOULD APPROVE COSTS

The request for reimbursement of costs, in the amount of \$9,234.40 is fair and reasonable. The costs are all litigation related costs, which have been detailed in the supporting declarations of Class Counsel. Gavron Decl. ¶ 18, Ex. B. Significantly, the costs sought are significantly less than the \$25,000.00 permitted by the Settlement Agreement, such that the remaining amount will be distributed to Class Members.

1 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES SHOULD BE APPROVED**

2 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
3 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
4 funds. As shown on the Declaration of Mitzner, the settlement administration fees expended in
5 this matter amount to a total of \$8,950.00. Admin Decl. ¶ 17.

6 **VIII. NOTICE TO LWDA**

7 Plaintiff provided notice of this Motion to the LWDA in conjunction with its filing.
8 Gavron Decl. ¶ 19.

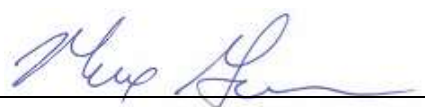
9 **IX. CONCLUSION**

10 Plaintiff respectfully request that the Court enter an Order in the form proposed and
11 submitted:

- 12 1. Granting final approval to the proposed Settlement Agreement in this action;
- 13 2. Approving distribution of the settlement funds to the Class Members pursuant to
14 the terms of the Settlement Agreement;
- 15 3. Approving Plaintiff's request for an award of the Class Representative Incentive
16 Payment of \$10,000.00 to Plaintiff, with payments pursuant to the terms of the Settlement
17 Agreement;
- 18 4. Approving Plaintiff's request for an award to Class Counsel of \$85,833.33 in
19 attorneys' fees and \$9,234.40 in costs with payment pursuant to the terms of the Settlement
20 Agreement;
- 21 5. Approving Plaintiff's request for payment of the settlement administration costs
22 to Phoenix Settlement Administrators in the amount of \$8,950.00 with payment pursuant to the
23 terms of the Settlement Agreement; and
- 24 7. Entering final judgment as to all members of the Class in this action.

25 DATED: March 29, 2023

DIVERSITY LAW GROUP, P.C.

26
27 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class

28
23