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11 MARIA MARAVILLA and JUAN TORRES REYES
on behalf of themselves and all similarly situated employees
12
13

14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF MONTEREY**

16 MARIA MARAVILLA and JUAN TORRES
17 REYES on behalf of themselves and all similarly
situated employees,

18 v.

19 GREENGATE FRESH, LLLP; and DOES 1
20 through 50, inclusive,

21 Defendants.
22
23
24

Case No. 21CV001258

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

Date: July 26, 2024

Time: 8:30 a.m.

Dept: 14

Action Filed: April 15, 2021

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on July 26, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Carrie M. Panetta, judge presiding, in Department 14 of the
4 above referenced Court located at 1200 Aguajito Road, Monterey, California 93940, Plaintiffs Maria
5 Maravilla and Juan Torres Reyes (together, “Plaintiffs”) will and hereby do move this Court for an
6 Order:

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

9 2. Approving distribution of the settlement funds to Participating Class Members pursuant
10 to the terms of the Stipulation of Settlement;

11 3. Approving Plaintiffs’ request for an award of attorneys’ fees of one-third of the Gross
12 Settlement Amount, which was increased to \$709,389.00 by virtue of the escalator clause, as discussed
13 below, and reimbursement of actual litigation costs of \$12,653.90, pursuant to the terms of the
14 Stipulation of Settlement;

15 4. Approving Plaintiffs’ request for payment of the Settlement Administration Costs to
16 Phoenix Settlement Administrators in the amount of \$12,950.00 pursuant to the terms of the Stipulation
17 of Settlement;

18 5. Approving Plaintiffs’ request for payment to the California Labor and Workforce
19 Development Agency for \$37,500.00 pursuant to the PAGA and the terms of the Stipulation of
20 Settlement; and

21 6. Entering final judgment as to all members of the Class in this action.

22 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
23 court approval of the settlement of a purported class action and allows the Court to grant final
24 certification of a class for settlement purposes. The basis for this unopposed Motion is that the proposed
25 settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to
26 ensure the opportunity of Class Members to participate in, opt out of, or object to the settlement. In light
27 of the overwhelmingly positive response, as shown by the lack of objections and disputes to the
28 settlement and no Class Members requesting to be excluded from the settlement, there is no question that

1 the settlement is fair, reasonable, and adequate and thus should be granted final approval.

2 This Motion is based on the Memorandum of Points and Authorities and the supporting
3 Declarations of B. James Fitzpatrick, Laura L. Franklin, Larry W. Lee, Max W. Gavron, Maria
4 Maravilla, and Juan Torres Reyes, and Yami Burns of Phoenix Settlement Administrators, and upon the
5 oral arguments of counsel (should there be any), and on the complete records and file herein.

6
7 DATED: July 3, 2024

DIVERSITY LAW GROUP, P.C.

8
9 By:  _____

Larry W. Lee

Max W. Gavron

10 Attorneys for Plaintiffs Maria Maravilla and Juan Torres
11 Reyes
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1 **I. INTRODUCTION**

2 Plaintiffs Maria Maravilla and Juan Torres Reyes (together, “Plaintiffs”) now seek the Court’s
3 final approval of the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
4 (“Stipulation of Settlement,” “Settlement,” or “Agreement”) with Defendant Greengate Fresh, LLLP
5 (“Defendant”). The Stipulation of Settlement provided for a \$690,000.00 **non-reversionary** fund to be
6 created for the benefit of the Class, from which attorneys’ fees, litigation costs, payment of PAGA
7 penalties to the California Labor and Workforce Development Agency (“LWDA”) and PAGA
8 Members, and costs of settlement administration are to be paid. The entire Net Settlement Amount after
9 these deductions will be paid to all Class Members who did not opt-out of the Settlement.

10 As detailed more fully below, during the administration of the notice process, the Parties learned
11 that the Escalator Clause of the Agreement was triggered because the total number of workweeks
12 exceeded the cap provided for in the agreement by 1,123 additional weeks on top of the buffer.
13 Accordingly, the Gross Settlement Amount was increased by \$19,389.00 to a total of \$709,389.00.

14 The history of this litigation was previously detailed in Plaintiffs’ Motion for Preliminary
15 Approval of Class Action Settlement. The Court preliminary approved this settlement on February 13,
16 2024, directing distribution of Notice of Pendency of Class Action (“Notice of Proposed Settlement” or
17 “Notice”) and scheduling the hearing for final approval of the settlement (the “Preliminary Approval
18 Order”).

19 As directed by the Court, the Settlement Administrator selected by the Parties – Phoenix
20 Settlement Administrators – distributed the Notice to 1,142 Class Members. Declaration of Yami Burns
21 on behalf of Phoenix Settlement Administrators (“Admin. Decl.”) ¶ 5. Zero (0) Notices were returned.
22 *Id.* ¶ 6. To date, zero (0) Requests for Exclusion have been submitted to the Settlement Administrator.
23 *Id.* ¶ 7. **No objections or disputes** to the settlement have been submitted by Class Members. *Id.* ¶¶ 8-9.
24 As such, the settlement has a participation rate of **100%**. *Id.* ¶ 11. In light of this positive response from
25 Class Members, an inference can be made that the Class supports the Court’s Preliminary Approval
26 Order finding that the Settlement Agreement is fair and reasonable.

27 In addition to the results of the notice process, for the same reasons as set forth earlier in
28 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, the following represents the

basic points supporting final approval of the settlement:

- By virtue of the escalator clause, the settlement provides a total settlement sum of \$709,389.00, which is **non-reversionary**;

- The settlement is fair given that participating Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money – on average, approximately \$347.92 to each Class Member, with the estimated highest individual settlement payment being \$2,788.57, and the lowest being \$8.30 (*see* Admin. Decl. ¶ 14);

- The highest Individual PAGA Payment to be paid is approximately \$82.93, and the average Individual PAGA Payment to be paid is approximately \$16.45 (*see* Admin. Decl. ¶ 15);

- Class Members did **not** need to submit claim forms to participate in the settlement, but will automatically receive a check for their individual share of the settlement;

- The allocation reflects that payment of Individual Settlement Payment amounts will be paid to Participating Class Members on a *pro rata* basis, based on the number of workweeks worked by each respective Class Member during the Class Period, as compared to the total number of workweeks worked by all Class Members during the Class Period.

- Plaintiffs’ counsel conducted significant investigation in this case, including conducting written discovery, analysis of class data and sample records, and review of Defendant’s document production, including Defendant’s policies regarding meal and rest periods, timekeeping, overtime, reimbursement, payment of final wages, necessary for Plaintiffs to fully evaluate this case;

- A highly regarded settlement administrator, Phoenix Settlement Administrators, was retained to administer the settlement for approximately \$12,950.00 (*see* Admin. Decl. ¶ 13); and

- The State of California’s LWDA will also be the beneficiary of this settlement, as it will receive \$37,500.00 pursuant to the PAGA, should this settlement be granted final approval. Timely notice of the PAGA settlement was provided to the LWDA pursuant to Cal. Lab. Code § 2699(1)(2) and no objections or disputes to the settlement by the LWDA were received by Plaintiffs’ counsel. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 12. Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

1 The notice procedures required by the Preliminary Approval Order have been followed and
2 satisfy all due process rights of Class Members. Specifically, the Preliminary Approval Order
3 contemplated that the Notice of Proposed Settlement, as approved in the Preliminary Approval Order, be
4 sent to all Class Members by first class mail, as specified in the Stipulation of Settlement. Further, the
5 Preliminary Approval Order contemplated that Phoenix Settlement Administrators would serve as the
6 Settlement Administrator.

7 As clearly stated in the Declaration of Yami Burns on behalf of Phoenix Settlement
8 Administrators, notice was provided to all Class Members. On January 29, 2024, the Settlement
9 Administrator received a Class List from Defendant's counsel that included 1,141 Class Members.
10 Admin. Decl. ¶ 3. Prior to mailing the Notice, the Settlement Administrator conducted a National
11 Change of Address (NCOA) search to correct and/or update the Class List in case of any address
12 changes. *Id.* ¶ 4. On March 18, 2024, the Settlement Administrator mailed the Notice to 1,141 Class
13 Members on the mailing list via U.S. first class mail. *Id.* ¶ 5.¹ The Notice was distributed in English and
14 Spanish language translations. *Id.* ¶ 5; Ex. A. From the date of mailing, Zero (0) Notices were returned
15 to the Settlement Administrator due to incorrect addresses. *Id.* ¶ 6.

16 On June 24, 2024, one additional individual, Pablo Liera, self-identified as a class member.
17 Admin. Decl. ¶ 11. Defendant confirmed that he should be included in the class, and therefore the
18 Parties agreed to include him. Gavron Decl. ¶ 11. Thereafter, Mr. Liera received a copy of his class
19 notice, and submits a declaration in support of this Motion confirming that he does not wish to opt out of
20 the settlement, nor does he have any objections. Declaration of Pablo Liera ("Liera Decl.") ¶ 2.
21 Accordingly, he is properly included in the settlement and will be bound by the appropriate releases, to
22 the extent that the Court grants final approval.

23 The Notice provided Class Members with Class Counsel's and the Settlement Administrator's
24 contact information, where they could further seek information regarding the settlement, ask questions,
25

26 ¹ The notice provided to Class Members was in the same format approved by the Court. Admin Decl. ¶
27 5; Ex. A. Thus, it identified the Gross Settlement Amount and resulting attorneys' fees as \$690,000 and
28 1/3 of \$690,000, respectively. Because the escalator clause was triggered, the Class Members will
receive more than the amount estimated for distribution in their notice, which was premised on the pre-
escalator clause Gross Settlement Amount. Admin Decl. ¶ 5.

review pleadings in the case, 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, all Class Members were provided with a mailing that explained the settlement and allowed Class Members to seek information, ask questions, and exclude themselves and/or object to the settlement, if so desired. As such, proper notice has been given to the Class. Thus, the Court may 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 settlement, exclusion, and approval process.

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

A. Strength of Plaintiffs’ 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) (there are two basic requirements which must exist to sustain a class action: “[t]he first is existence of an ascertainable class, and the second is a well-defined community of interest in the questions of law and fact involved.”). “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 consists of “all current and former non-exempt employees of Defendant Greengate Fresh LLLP who were employed in the State of California at any time during the Class Period.” Based on Defendant’s records, there are 1,142 individuals that comprise the Class.² Admin. Decl. ¶ 11. This is 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 pp. 1274-75. Class Members have already been identified by Defendant and notice was provided to the above Class Members. Admin. Decl. ¶ 5.

2. There is a Community of Interest

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

a. There are Predominant Common Questions of Law and Fact

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

In the present case, Plaintiffs allege that Defendant failed to provide meal and rest periods or pay premium compensation in lieu thereof, failed to pay minimum, hourly, and overtime wages owed, failed to provide accurate wage statements, failed to timely pay all wages when due and upon separation

² The number of class members increased from the 747 class members Plaintiffs estimated in Plaintiffs’ Motion for Preliminary Approval. However, because the evaluation of the settlement and exposure analysis performed by Plaintiffs in their Motion for Preliminary Approval was largely premised on violations occurring per workweek, the same analysis regarding exposure and the fairness of the settlement applies. Further, here where the escalator clause was triggered, the value of the settlement on a workweek basis was preserved because of the additional funds to be contributed by Defendant by virtue of the escalator clause. Gavron Decl. ¶ 7.

1 of employment, and failed to reimburse business expenses, in violation of Labor Code §§ 201, 202, 203,
2 204, 226, 226.7, 246, 510, 512, 558, 1174, 1175, 1194, 1197, 1197.1 1198, 1199, 2802, and 2698, *et*
3 *seq.*, and Business and Professions Code § 17200, *et seq.* As these are all uniform corporate policies,
4 practices, and procedures of Defendant as alleged by Plaintiffs, the claims can be jointly tried and thus
5 the predominance requirement is satisfied. Defendant denies all of the claims, denies that liability could
6 be established on a class-wide basis, and contends instead that liability and damages, if any, would need
7 to be conducted on a case-by-case basis.

8 **b. Plaintiffs' Claims are Typical of the Class Claims**

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

17 Plaintiffs assert that they were subjected to the same payroll policies and practices as all other
18 Class Members. In this regard, Plaintiff Maria Maravilla began employment with Defendant as a non-
19 exempt employee in about March 2017. Declaration of Maria Maravilla in Support of Motion for
20 Preliminary Approval filed 11/9/23 ("Maravilla Decl.") ¶ 2. Plaintiff Juan Torres Reyes was employed
21 by Defendant as a non-exempt employee from about August 2020, until about September 2020.
22 Declaration of Juan Torres Reyes in Support of Motion for Preliminary Approval filed 11/9/23 ("Reyes
23 Decl.") ¶ 2. Like other members of the Class, Plaintiffs allege that they were not provided off-duty meal
24 and rest breaks or paid premium compensation for missed breaks, paid all minimum, hourly, and
25 overtime wages owed, provided accurate wage statements, paid all wages when due and upon separation
26 of employment, and reimbursed for business expenses. Maravilla Decl. ¶¶ 3-7; Reyes Decl. ¶¶ 3-7.
27 Based on the above, Plaintiffs contend that they were subjected to the same policies and practices as
28 other Class Members. Accordingly, typicality is satisfied.

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

2 The class representative, through qualified counsel, must be capable of “vigorously and
3 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
4 846 (1984). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been
5 raised or presented. Maravilla Decl. ¶ 13; Reyes Decl. ¶ 14. Plaintiffs have taken all necessary steps to
6 represent the interests of the Class, including providing information and documents to their counsel,
7 discussing the lawsuit with their counsel on several occasions, and reviewing the various pleadings
8 including the Complaints, Stipulation of Settlement, and declarations submitted in this case. Maravilla
9 Decl. ¶ 13; Reyes Decl. ¶ 14. For such reasons, Plaintiffs have adequately represented the Class
10 Members and will continue to do so.

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

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

18 As stated above, Defendant alleges that Plaintiffs would not be able to obtain class certification.
19 Based on the foregoing, there were risks that Plaintiffs would not have obtained the total amount of
20 damages and penalties alleged on behalf of the Class, and a substantial number of complex issues that
21 would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
22 and complexity of further litigation warrant granting of this Motion.

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

26 Without reiterating the Parties’ showing that the Stipulation of Settlement and the negotiation
27 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
28 Approval of Class Action Settlement, the Parties highlight the following facts. The Stipulation
Settlement was the product of negotiations between highly able and experienced attorneys on both sides

1 who possessed the relevant data and extensive legal research which they had carefully analyzed. Gavron
2 Decl. ¶ 3. The Parties engaged in arm's length negotiations with an experienced neutral during
3 mediation, that resulted in the settlement after continued negotiations. *Id.*

4 The results after mailing of the Notice support confirmation of the Court's preliminary approval
5 of the settlement with final approval of the settlement, as evidenced by the fact that none of the Class
6 Members opted out and none of the Class Members submitted a written objection or dispute to the
7 settlement. Admin. Decl. ¶¶ 7-9. With the 100% rate of participation in the settlement by Class
8 Members, the Court may appropriately infer that the class action settlement is fair, adequate, and
9 reasonable. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

12 **1. Standard of Review**

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

23 Although the court possesses "broad discretion" in determining that a proposed class action
24 settlement is fair, the court's role must be limited to the extent necessary to reach a reasoned judgment
25 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
26 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
27 *Officers for Justice*, 688 F.2d at p. 625. Accordingly, the court should give due regard to what is
28 otherwise a "private consensual agreement" between the parties. *Id.*; *see also Church v. Consolidated*

1 *Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
2 720 F. Supp. 1379 (D. Ariz. 1989), *aff'd sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309
3 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed
4 settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

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

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

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

19 85 Cal. App. 4th 1135, 1146 (2000).

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

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

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

28 *Dunk*, 48 Cal. App. 4th at p. 1802; *accord, Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.
Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As
previously noted in the application for Preliminary Approval, this current settlement was negotiated at
arm’s length during a full day of mediation and continued settlement discussions over the course of the

1 following year. Gavron Decl. ¶ 3.

2 Second, Class Counsel engaged in extensive factual investigation before settling, including the
3 exchange of formal and informal discovery and initiating arbitration proceedings. Specifically, Class
4 Counsel reviewed Defendant’s document production, including relevant policies, and analyzed putative
5 class data, including a 20% sampling of putative class member time and payroll records. *Id.* ¶ 4.

6 Further, Class Counsel are highly experienced in this type of litigation. As shown in the
7 supporting declarations, Class Counsel have significant experience in class actions and employment
8 wage and hour matters. Gavron Decl. ¶¶ 15-24; Declaration of B. James Fitzpatrick (“Fitzpatrick Decl.”)
9 ¶ 13; Declaration of Laura L. Franklin (“Franklin Decl.”) ¶¶ 4-5; Declaration of Larry W. Lee (“Lee
10 Decl.”) ¶¶ 10-11.

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

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

19 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been
20 potentially responsible for Defendant’s costs. Maravilla Decl. ¶ 14; Reyes Decl. ¶ 15. As such, should
21 individual current or former employees of Defendant bring individual claims on the same causes of
22 action, they would each face the uncertainty of prevailing and the possibility of paying costs to
23 Defendant. Accordingly, such claims likely would not be brought by many of these current and former
24 employees – thus, this lawsuit achieves a true benefit for the Class that they might not otherwise get or
25 seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs
26 nor any of the Class Members will be required to pay for Defendant’s litigation costs.

27 The risks of this case were weighed by Class Counsel and should be considered a significant
28 factor by the Court in its determination of final approval. Class Counsel obtained a significant settlement

for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members or Class Representatives.

The Stipulation of Settlement also affords the Class prompt, fair relief while avoiding significant legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all. While Class Counsel believe that 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. Class Counsel have also assessed the same risks in connection with the current settlement. Because the settlement provides immediate and substantial relief, without the attendant risks and delay of continued litigation – not to mention the threat of litigation fees and costs – Class Counsel believe that the settlement warrants the Court's final approval.

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

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

As noted above, continued litigation could have led to appeals on several issues. On the other hand, the settlement that was reached provides to all Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, Class Members would be left without a remedy as a practical matter and courts across the State would have to address the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also Newberg* § 11.41. Here, this case could have involved years of further litigation.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel support the settlement as fair, reasonable, and adequate, and in the best interest of

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

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

8 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
9 funds remain after 180 days of the mailing of the individual settlement payment checks, the Parties have
10 agreed that all such uncashed settlement funds shall be distributed to the *cy pres* recipient Watsonville
11 Law Center, in accordance with Code of Civil Procedure § 384. Class Counsel do not have a conflict of
12 interest with Watsonville Law Center. Fitzpatrick Decl. ¶ 17; Franklin Decl. ¶ 7; Lee Decl. ¶ 6; Gavron
Decl. ¶ 13.

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

14 The amount of the proposed settlement is a direct result of the effort and work of Class Counsel.
15 The settlement before this Court inures to the benefit of Defendant's employees and is the direct result
16 of Class Counsel's efforts. As set forth in the declarations of Class Counsel, a considerable amount of
17 work done by Class Counsel achieved an enormous benefit to the Class.

18 The revised Gross Settlement Amount of \$709,389.00 is the result of a considerable expenditure
19 of time, effort, skill, and money by Class Counsel. Class Counsel engaged in litigation and discovery, as
20 well as arbitration proceedings, over the course of three years. Class Counsel also obtained data
21 pertaining to the number of putative class members and aggrieved employees, as well as Defendant's
22 policies regarding meal and rest periods, timekeeping, overtime, reimbursement, payment of final
23 wages, among others. The information provided by Defendant allowed Plaintiffs to review and analyze
24 the liability and potential exposure. After thoroughly investigating the facts relating to the class and
25 PAGA claims alleged in this lawsuit and engaging in a thorough study of the legal principles applicable
26 to the claims asserted against Defendant, a full-day mediation with an experienced mediator, and further
27 negotiations conducted over the course of several months, the Parties were able to reach the current
28 settlement. Class Counsel shouldered the risk that it might recover no fee at all and may even lose the

1 considerable sum it advanced in expenses. Counsel’s requested fee, therefore, should be granted in full.

2 Class Counsel seeks a fee award calculated as one-third (1/3) of the total value of the Gross
3 Settlement Amount, or \$236,463.00 ($\$709,389.00 / 3 = \$236,463.00$), as compensation for the successful
4 prosecution and resolution of this action. Under California law, the award of attorneys’ fees in common
5 fund wage and hour class action settlements should start with the percentage method. *See Laffitte v.*
6 *Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state
7 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
8 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
9 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
10 created”). Under the percentage of the fund method, the Court’s objective remains to “mimic the
11 market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner)
12 (“When a fee is set by a court rather than by contract, the object is to set it at a level that will
13 approximate what the market will set.... The judge, in other words, is trying to mimic the market in
14 legal services”).

15 An award of one-third of the fund in attorneys’ fees mimics the marketplace, as it “is supported
16 by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the
17 case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008
18 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of*
19 *Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653, 659 n.
20 11 (Fall 2003)). Indeed, “empirical studies [that] show that...fee awards in class actions average around
21 one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

22 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the
23 fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported by a lodestar cross-check
24 that employed a multiplier of 2.13. *Id.* at 487. The Court in *Laffitte* explained that when cross-checking a
25 percentage fee request against the lodestar method, the court should examine the imputed multiplier in
26 the lodestar calculation and, only when the multiplier is “extraordinarily high or low [should] the trial
27 court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier
28 within a justifiable range.” *Id.* at 505.

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

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice specifically notified Class Members that Class Counsel would be seeking 1/3 of the Gross Settlement Amount as attorneys’ fees. Here, because the escalator clause has been triggered, the request for attorneys’ fees increased proportionately and so too will the Class Members’ respective shares of the settlement. To date, no Class Member has objected to the settlement or the request for attorneys’ fees and there is a 100% participation rate. This strong favorable response also supports the requested fees.

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

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

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

24 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by
25 the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See*
26 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an
27 employment class action case and analyzing the multiplier awarded in over 30 cases). Federal district
28 courts applying California law have likewise routinely approved cross-check multipliers between 2 and

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

With respect to Class Counsel's lodestar, Class Counsel and their support staff will have expended approximately 471 hours litigating this case, which includes approximately 15 hours of anticipated time spent after final approval responding to correspondence and phone calls from Class Members, the Settlement Administrator, and defense counsel. Fitzpatrick Decl. ¶ 9, Ex. A; Lee Decl. ¶ 8, Ex. A; Gavron Decl. ¶ 22, Ex. A. Class Counsel request hourly rates ranging from \$500 to \$595 per hour, which contemplates a rate commensurate with the jurisdiction in which this action was litigated. Fitzpatrick Decl. ¶ 11; Lee Decl. ¶ 12; Gavron Decl. ¶ 25. 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). The fee award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Class Counsel seek compensation involve only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

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).

1 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill
2 and experience, the nature of the work performed, the relevant area of expertise and the attorney's
3 customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

4 Class Counsel's skill and experience justify the requested rates. As shown in the supporting
5 declarations, Class Counsel have significant experience in the area of employment and wage and hour
6 class actions. Specifically, Class Counsel's practice focuses on representing employees in employment
7 matters, particularly wage and hour cases. Fitzpatrick Decl. ¶ 13; Franklin Decl. ¶¶ 4-5; Lee Decl. ¶¶ 10-
8 11; Gavron Decl. ¶¶ 15-24. As such, based on the hours and applicable rate, Class Counsel's lodestar
9 amount through the finalization of this settlement – without a multiplier – will be approximately
10 \$251,298.00. Fitzpatrick Decl. ¶ 11; Lee Decl. ¶ 12; Gavron Decl. ¶ 25.

11 Once the court establishes the lodestar amount, it may enhance the lodestar number by applying
12 a multiplier in order to adjust the fees awarded to an amount appropriate to the circumstances of the
13 case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors include the difficulty of the
14 questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to
15 which the litigation precluded other employment, and the percentage-of-the-fund the attorney would
16 have received on the fair market. *Id.*, *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive,
17 and the court may consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*,
18 24 Cal. 4th 1122, 1139 (2001).

19 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-
20 benefit; namely, no objections by class members, commendable conduct by counsel, and significant
21 recoveries by class members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at
22 51-53. As in *Lealao*, the Settlement Class was notified of the settlement and attorneys' fee with no
23 objections. The extreme effort undertaken by counsel, as shown by their hours and the significantly high
24 number of claims being paid out, shows commendable conduct.

25 The multiplier should be enhanced because of the contingent nature of counsel's fee recovery.
26 The risks in taking on a class action case are enormous, not the least of which is time and effort. As this
27 Court very well knows, not only do these cases require substantial work, but there exist significant risks.

28 Finally, based upon Class Counsel's lodestar of \$251,298.00 Plaintiff's request for a negative

multiplier of 0.94 (\$236,463.00 ÷ \$251,298.00) is reasonable and fair, particularly based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *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). As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For these reasons, Class Counsel's request for attorneys' fees in the amount of \$236,463.00 should be approved as fair, reasonable, and adequate.

VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of litigation costs, in the amount of \$12,653.90 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$30,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel's declaration, the costs were all directly incurred in the prosecution of this action, including but not limited to, filing fees, service of process costs, postage costs, and mediation fees. Gavron Decl. ¶ 27, Ex. B; Fitzpatrick Decl. ¶ 15, Ex. B. As such, the requested costs should be approved as fair and reasonable.

VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND 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 on the Declaration of Yami Burns, the settlement administration fees expended in this matter amount to a total of \$12,950.00, which is the amount that was agreed upon by the Parties. Admin. Decl. ¶ 17, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. PLAINTIFF HAS PROVIDED NOTICE TO THE LWDA

On February 15, 2024, Plaintiff uploaded the Order Granting Motion for Preliminary Approval of Class Action Settlement to the LWDA's website. Gavron Decl. ¶ 28; Ex. C. Concurrent with the

1 filing of this Motion, Plaintiff uploaded this motion and proposed order to the LWDA's website. *Id.* ¶
2 28.

3 **IX. CONCLUSION**

4 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
5 respectfully submits that the standards for final approval have been met and the terms of the Settlement
6 Agreement are fair, adequate, and reasonable. Accordingly, Plaintiff respectfully requests that the Court
7 grant this Motion and enter an Order in the form proposed and submitted.

8
9 DATED: July 3, 2024

DIVERSITY LAW GROUP, P.C.



10
11 By: _____

Larry W. Lee

12 Max W. Gavron

13 Attorneys for Plaintiffs Maria Maravilla and Juan Torres
14 Reyes
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