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

MELISSA MOSS, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SARES REGIS OPERATING COMPANY,
L.P.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01201041-CU-OE-CXC

[Assigned for all purposes to the Hon. William
Claster, Dept. CX104]

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

Date: May 5, 2023

Time: 9:00 a.m.

Dept.: CX104

Complaint Filed: May 17, 2021

FAC Filed: August 16, 2021

SAC Filed: June 21, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on May 5, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable William Claster, judge presiding, in Department
4 CX104 of the above referenced Court located at 751 W. Santa Ana Blvd., Santa Ana, California
5 92701, Plaintiff Melissa Moss (“Plaintiff”) will seek an Order: (1) granting final approval of the
6 Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Stipulation” or
7 “Settlement Agreement”) in this matter; (2) approving distribution of the settlement payments to
8 the Settlement Class Members pursuant to the terms of the Settlement Agreement; (3) approving
9 Plaintiff’s request for an award of the Class Representative Payment of \$10,000.00 to Plaintiff
10 pursuant to the terms of the Settlement Agreement; (4) approving Plaintiff’s request for an award
11 of attorneys’ fees of approximately one-third (1/3) of the \$212,500.00 Maximum Settlement
12 Amount, or \$70,762.50, and reimbursement of litigation costs of \$11,125.35 pursuant to the
13 terms of the Settlement Agreement; (5) approving Plaintiff’s request for payment of the claims
14 administration payment to Phoenix Settlement Administrators in the amount of \$7,500.00
15 pursuant to the terms of the Settlement Agreement; (6) approving Plaintiff’s request for payment
16 to the California Labor & Workforce Development Agency for \$5,625.00 pursuant to the terms
17 of the Settlement Agreement; and (7) entering final judgment as to all members of the Settlement
18 Class in this action.

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

25 This Motion will be based on the attached Memorandum of Point and Authorities and the
26 supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L.
27 Marder, Plaintiff Melissa Moss, and Kevin Lee of Phoenix Settlement Administrators, and upon
28 the oral arguments of counsel (should there be any), and on the complete records and file herein.

1 DATED: April 13, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

4
5 Attorneys for Plaintiff, the Class, and Aggrieved
6 Employees

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1 **I. INTRODUCTION**

2 Plaintiff Melissa Moss (“Plaintiff”) seeks the Court’s final approval of the class action
3 settlement with Defendant Sares Regis Operating Company, L.P. (“Defendant”). The settlement
4 provides for a \$212,500.00 **non-reversionary** fund to be created for the benefit of the Class,
5 from which attorneys’ fees, litigation costs, payment to the Class Representative, payment to the
6 California Labor & Workforce Development Agency (“LWDA”), and claims administration
7 costs are to be paid. The net settlement fund after these deductions will be paid to all Class
8 Members who did not opt-out of the settlement.

9 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
10 Approval of Class Action Settlement. On November 15, 2022, the Court preliminarily approved
11 this Settlement, directing distribution of the Notice of Proposed Class Action Settlement (“Class
12 Notice”) and scheduling the hearing for final approval of settlement (the “Preliminary Approval
13 Order”). As directed by the Court, the Claims Administrator distributed the Class Notice to 185
14 Class Members. Declaration of Kevin Lee (“Admin Decl.”) ¶¶ 5, 6. There have been *zero* (0)
15 objections filed to the Settlement. *Id.* at ¶ 10. Moreover, to date, there has only been *one* (1)
16 request for exclusion from the settlement. *Id.* at ¶ 9. As such, there is a 99.46% participation rate.
17 *Id.* at ¶ 12. This favorable response by the Class supports the Court’s Preliminary Approval
18 Order finding that the Settlement was fair, adequate, and reasonable and the granting of the
19 instant Motion.

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

- 23 ▪ The Settlement provides a total settlement sum of \$212,500.00 which is **non-**
24 **reversionary**;
- 25 ▪ The settlement is fair given that Settlement Class Members will receive (*after*
26 *deductions for fees, costs, etc. and without applicable taxes, withholdings, and*
27 *employee garnishments*) a substantial amount of money (on average, each
28 Settlement Class Member will receive approximately \$560.39). Admin Decl. ¶

15;

- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid evenly to all Paycard Class Members and on a pro rata basis to all Meal/Rest Class Members, based on the number of weeks worked by each Class Member;
- Plaintiff conducted significant investigation in this case, including exchanges of information by Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administration, was retained for \$7,500.00; and
- California's LWDA will also be the beneficiary of this settlement as it will receive \$5,625.00, should this settlement be granted final approval.

With this additional information, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. THE CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT.

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Notice of Proposed Class Action Settlement (the "Class Notice") be sent to all Class Members by first class mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Claims Administrator.

As clearly stated in the Declaration of the Claims Administrator, notice was provided to Class Members. On December 15, 2022, the Claims Administrator received a Class Member mailing list from Defendant's counsel that included 185 Class Members. Admin Decl. ¶ 3. On or about January 4, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* at ¶ 5. As part of the administration process, the Claims

1 Administrator re-mailed the Class Notice to eleven (11) Class Members using newly updated
2 addresses. *Id.* at ¶ 7. As of the date of the filing of this Motion, only one (1) Class Notice
3 remains undeliverable. *Id.* at ¶ 9.

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

14 Here, the Class Members were provided with a mailing regarding the settlement that
15 explained the settlement and allowed Class Members to seek information, ask questions, seek
16 additional forms, and object, if so desired. As such, proper notice has been given to the Class
17 Members. *See Lundell v. Dell, Inc.*, 2006 WL 3507938, at *1 (N.D. Cal. Dec. 5, 2006) (holding
18 that notice sent via email and first class mail constituted the “best practicable notice” and
19 satisfied due process requirements); *see also Boring v. Bed Bath & Beyond*, 2014 WL 2967474,
20 at *1 (N.D. Cal. June 30, 2014) (same). Thus, the Court may proceed to determine the fairness
21 and adequacy of the settlement and enter its Order granting final approval, secure in the
22 knowledge that all absent Class Members have been given the opportunity to participate fully in
23 the claims, exclusion, and the approval process.

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

26 **A. The Terms, Negotiation, and Reception of the Settlement by Class Members**
27 **All Strongly Support the Conclusion that the Settlement is Fair, Adequate,**
28 **and Reasonable.**

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. 168 Cal. App. 4th 116, 130, 133 (2008). Here, Class Counsel has conducted extensive informal discovery and investigation and, in light of the strength and weaknesses of Plaintiff's claims, Class Counsel submits that this settlement is fair pursuant to *Kullar*.

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement [ROA 63] and the Supplemental Statement [ROA 94], the Parties highlight the following facts. The Settlement Agreement was the product of negotiation between highly able and experienced attorneys on both sides, possessed of the relevant data and extensive legal research which they had carefully analyzed. Declaration of Nicholas Rosenthal ("Rosenthal Decl.") ¶ 2; Declaration of Kristen Agnew ("Agnew Decl.") ¶ 2. In addition, the resolution of this case was reached only after the production of detailed payroll data, and further drawn-out negotiations. Rosenthal Decl. ¶ 2; Agnew Decl. ¶ 2. Based on the class data, Class Counsel was able to calculate a range of potential damages and penalties. Rosenthal Decl. ¶ 2; Agnew Decl. ¶ 2. The detailed summary of the calculations is as follows:

Violation	Maximum Exposure
Meal and Rest Break Claim	\$5,250.00
Wage Statement Claim	\$41,450
Waiting Time Penalties – Underpayment of Meal and/or Rest Premiums	\$636,422.40
Waiting Time Penalties – Paycard Claims	\$76,809.60
PAGA Penalties	\$91,000
TOTAL	\$850,932.00

(See Plaintiff's Supplemental Statement [ROA 94] at pp. 6:3-7:1; Declaration of Nicholas Rosenthal in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement

1 [ROA 64] at p. 6:5-15.) Thus, in the present case, the gross settlement is approximately 24.97%
2 of Defendant's maximum exposure.

3 Based on their own independent investigations and evaluations, the Parties and their
4 respective counsel are of the opinion that settlement for the consideration and on the terms set
5 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
6 the Class and Defendant in light of all known facts and circumstances and the expenses and risks
7 inherent in litigation.

8 **B. Under Well-Established Legal Principles, the Court Should Grant Final**
9 **Approval of the Settlement.**

10 **1. Standard of Review**

11 On a motion for final approval of a class action settlement, a court's inquiry is whether
12 the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688
13 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217
14 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
15 "the interests of the class are better served by the settlement than by further litigation." *See*
16 *Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL").
17 The law favors settlement, particularly in class actions and other complex cases, where
18 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
19 *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41 (2008); *Class*
20 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*
21 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

22 Although the Court possesses "broad discretion" in determining that a proposed class
23 action settlement is fair, the Court's role must be limited to the extent necessary to reach a
24 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
25 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
26 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court
27 should give due regard to what is otherwise a "private consensual agreement" between the
28 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.

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

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

As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp.* cautioned: “[i]t cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.’” 85 Cal. App. 4th 1135, 1146 (2000).

2. The Settlement is Presumed to Be Fair

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

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

Dunk, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146; *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 1387.

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

As previously noted in the Motion for Preliminary Approval, this current settlement was negotiated at arm's length and only after detailed payroll information and class data was produced and analyzed. Rosenthal Decl. ¶ 2.

Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. Rosenthal Decl. ¶ 4; Lee Decl. ¶¶ 4, 5; Agnew Decl. ¶¶ 4-7, 9; Marder Decl. ¶¶ 4-8.

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

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); *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

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.

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

1 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding
2 significant legal and factual battles that otherwise may have prevented the Class from obtaining
3 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious and
4 can be successfully litigated, they are experienced and fully understand the inherent risks and
5 uncertainty involved with such matters as the resolution of class certification, the outcome of a
6 potential trial, and the outcome of any appeals that would inevitably follow should the Class
7 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
8 settlement. Because the settlement provides immediate and substantial relief, without the
9 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
10 costs—Class Counsel believe that the settlement warrants the Court's final approval.

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

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

18 As noted in the Motion for Preliminary Approval, continued litigation could have led to
19 appeals on a number of issues. On the other hand, the settlement that was reached provides to all
20 Class Members—regardless of their means—fair relief in a prompt and efficient manner. Were
21 the Court to deny final approval, the Class Members would be left without a remedy as a
22 practical matter and courts across the State would have to address the issues presented here in a
23 piecemeal, costly, and time-consuming manner. The settlement in this case is therefore
24 consistent with the “overriding public interest in settling and quieting litigation” that is
25 “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted);
26 *see also 4 Newberg* § 11.41.

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

28 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best

1 interest of the Class Members as a whole. Rosenthal Decl. ¶ 2; Lee Decl. ¶ 2; Agnew Decl. ¶ 2;
2 Marder Decl. ¶ 2. Similarly, counsel for Defendant is in favor of this settlement. The
3 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
4 adequate is entitled to significant weight by the Court in its final approval determination. *See*
5 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*,
6 151 F.3d at 1242.

7 **IV. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE AWARD SHOULD**
8 **BE APPROVED**

9 Plaintiff requests, and Defendant does not oppose, a service award of \$10,000.00,
10 pursuant to the terms of the Settlement Agreement. Plaintiff requests that this Court approve
11 such service payment in light of the efforts Plaintiff put into this case, the absence of any
12 objection to the service payments, and the excellent result achieved.

13 As shown in the supporting Declaration of Melissa Moss (“Moss Decl.”), Plaintiff
14 estimates that she spent more than ten hours fulfilling her responsibilities as Class
15 Representative. Moss Decl. ¶ 5. Plaintiff had numerous telephonic discussions with Class
16 Counsel regarding the case, searched for and provided various documents relating to the lawsuit,
17 including her pay records, reviewed various files and pleadings in this case, including the PAGA
18 letter, the complaints, the Stipulation and Joint Stipulation of Class Action and PAGA Settlement
19 and Release of Claims (“Stipulation” or “Settlement Agreement”). *Id.*

20 In addition to the invaluable services that she provided, Plaintiff took significant risks,
21 both professionally and monetarily, in acting as the Class Representative. Because the claims
22 alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have
23 possibly faced paying the costs of Defendant, had she not prevailed in this action. Moss Decl. ¶
24 7. Moreover, given that future employers are much less likely to hire individuals who have filed
25 suit against their prior employer, particularly cases of this nature, Plaintiff could face negative
26 employment prospects in the future. *Id.* at ¶ 8.

27 Plaintiff took these risks upon herself and the whole Class benefited from this. Class
28 Members did not have to file individual lawsuits and bear the risks of payment of costs if they

1 did not prevail, nor did they have to face the potential for retaliation and not getting future
2 employment had they filed a lawsuit which is a public record. These are significant benefits that
3 weigh in favor of granting the requested enhancement.

4 Finally, as part of the Settlement, Plaintiff also agreed to give a general release of their
5 individual claims, something that the Class Members did not have to do. Moss Decl. ¶ 9. Thus,
6 Plaintiff has sacrificed their own individual rights for those of the Class Members. This is a
7 significant factor to take into account that further warrants the award of the requested service
8 amount.

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

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

21 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the
22 Settlement Agreement and this Motion. The proposed settlement provides substantial benefits to
23 the Class and was reached after aggressive investigation and litigation by Class Counsel. Class
24 Counsel and Plaintiff achieved a \$212,500 common fund for the benefit of the Class to
25 compensate the Class for the claims alleged. There have been no objections filed against the
26 Settlement or to Class Counsel's request for attorneys' fees in the amount of \$70,762.50 and
27 costs in the amount of up to \$11,125.35, which is substantially less than the maximum allowable
28 amount of \$20,000.00. Rosenthal Decl. ¶ 8, Ex. B. In fact, there has not been a single objection

1 to the settlement among the 185 Class Members. As more fully detailed below, Class Counsel's
2 request for attorneys' fees and reimbursement of costs, is fair, reasonable, and adequate.

3 Class Counsel seeks a fee award calculated as approximately 33.33% of the total value of
4 the Settlement for the successful prosecution and resolution of this action. Recently, the
5 California Supreme Court issued a ruling regarding the award of attorney's fees in wage and
6 hour class action settlements. Under California law, the award of attorneys' fees in common fund
7 wage and hour class action settlements should start with the percentage method. *See Laffitte v.*
8 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and
9 state courts in holding that when class action litigation establishes a monetary fund for the
10 benefit of the class members, and the trial court in its equitable powers awards class counsel a
11 fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
12 appropriate percentage of the fund created."). Under the percentage of the fund method, the
13 Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v.*
14 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than
15 by contract, the object is to set it at a level that will approximate what the market will set.... The
16 judge, in other words, is trying to mimic the market in legal services.").

17 An award of 33.33% of the fund in attorneys' fees mimics the marketplace as it "is
18 supported by the fact that typical contingency fee agreements provide that class counsel will
19 recover 33.33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*
20 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
21 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
22 *Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11) (Fall 2003). Indeed, "empirical studies [that]
23 show that...fee awards in class actions average around one-third of the recovery." *Chavez v.*
24 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

25 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
26 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
27 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
28 "extraordinarily high or low [should] the trial court [] consider whether the percentage method

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

2 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
3 percent of the common fund is consistent with, and in the range of, awards in other class action
4 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
5 representing 33.33% of the fund clearly falls within that range, and is consistent with other
6 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical*
7 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
8 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were
9 between 25 percent and 35 percent, with almost no awards more than 35 percent.”); Eisenberg &
10 Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
11 Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation
12 nationwide conclude that fees representing one-third of the total recovery is consistent with
13 market rates).

14 The results delivered by Class Counsel also support the requested percentage of the fund.
15 Here, Plaintiff and her counsel secured a \$212,500 common fund settlement.

16 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
17 is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
18 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
19 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
20 Notice specifically notified Class Members that Class Counsel would be seeking 33.33% of the
21 Maximum Settlement Amount as attorneys’ fees. To date, no Class Member has objected to the
22 settlement. This strong favorable response also supports the requested fees.

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

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

1
2 495 F. 2d 448, 470 (2d Cir. 1974). Here, it is clear that a common fund of \$212,500 has been
3 created as the entire amount is to be paid out without any reversion. For Class Counsel, the fees
4 here were wholly contingent in nature and the case presented far more risk than the usual
5 contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a
6 potentially drawn-out battle with a defendant that has retained premier defense counsel.

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

15 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
16 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
17 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
18 court is not necessarily required to make such an adjustment.” *Id.* (emphasis added). Thus, a
19 lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required;
20 in many cases, performing a cross-check “undermines” one of the primary reasons for using the
21 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
22 discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a
23 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*
24 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29-30 (citing the recommendations of
25 the Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar
26 approach set forth in this Report are now echoed by many authorities, who have been most vocal
27 about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already
28 overworked trial judge.”).

Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*, *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

With respect to Class Counsel’s lodestar, to date, over 117.10 hours have been expended by Class Counsel in this matter. Agnew Decl. ¶ 8; Rosenthal Decl. ¶ 5. Moreover, Class Counsel expects to incur approximately five additional hours of attorney time in finalizing this settlement. Rosenthal Decl. ¶ 5. Ms. Agnew and Mr. Rosenthal request an hourly rate of \$700.00 per hour. Agnew Decl. ¶ 9; Rosenthal Decl. ¶ 6.

Further, courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the

1 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
2 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
3 4th 629, 632-33 (1998).

4 Class Counsel's skill and experience justify the requested rate. As shown in the
5 supporting declarations, Class Counsel have significant experience in the area of employment
6 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
7 employees in employment matters, particularly wage and hour cases. Agnew Decl. ¶¶ 4-7, 9; Lee
8 Decl. ¶ 4, 5; Marder Decl. ¶¶ 4-8; Rosenthal Decl. ¶ 4. As such, based on the hours and
9 applicable rate, the total lodestar to be expended by Class Counsel through finalizing this
10 settlement will be approximately \$85,470. Agnew Decl. ¶ 9; Rosenthal Decl. ¶ 6.

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

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

25 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
26 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal.App.4th at 52 (the promptness
27 of settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*
28 courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not

1 punished, for achieving this goal in a timely fashion. *Id.*

2 The multiplier should be enhanced by the contingent nature of counsel's fee recovery.
3 The risks in taking on a class action case are enormous, not the least of which is time and effort.
4 Not only was there significant risk taken upon by Class Counsel, but their ability to obtain the
5 current settlement should be seen as quite commendable. As explained previously, Defendant
6 maintained that there were significant obstacles. Thus, the risk involved in this case was quite
7 significant for Plaintiff and her counsel, and in the face of such risks, the current settlement was
8 still able to be obtained by Class Counsel.

9 Here Class Counsel's lodestar of \$85,470 exceeds the amount requested in attorneys' fees
10 (\$70,762.50). This demonstrates that the requested fees are reasonable and fair, particularly
11 based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct.
12 App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards in
13 class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014
14 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based
15 on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa*
16 *Capital Corp.*, 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund,
17 based on a multiplier of 2.52).

18 As such, the requested fee award is fair and reasonable, and should be awarded in its
19 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
20 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
21 Class Counsel's request for attorneys' fees in the amount of \$70,762.50 is fair, reasonable, and
22 adequate.

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

25 The request for reimbursement of costs, in the amount of \$11,125.35, is fair and
26 reasonable. The costs are all litigation related costs, which have been detailed in the supporting
27 declarations of Class Counsel. Rosenthal Decl. ¶ 8, Ex. B. Significantly, the costs sought are
28 significantly less than the \$20,000.00 permitted by the Settlement Agreement, such that the

1 remaining amount will be distributed to Class Members.

2 **VII. THE CLAIMS ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
3 **APPROVED**

4 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Claims
5 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
6 funds. As shown on the Declaration of Kevin Lee, the class administration fees expended in this
7 matter amount to a total of \$7,500.00. Admin Decl. ¶ 18. For such reasons, it is requested that
8 the Claims Administrator's fees be approved.

9 **VIII. CONCLUSION**

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

13 Accordingly, Plaintiff respectfully request that the Court enter an Order in the form
14 proposed and submitted:

- 15 1. Granting final approval to the proposed Settlement Agreement in this action;
- 16 2. Approving distribution of the settlement funds to the class members pursuant to
17 the terms of the Settlement Agreement;
- 18 3. Approving Plaintiff's request for an award of a payment of \$10,000.00 to the
19 Class Representative, with payment pursuant to the terms of the Settlement Agreement;
- 20 4. Approving Plaintiff's request for an award to Class Counsel for \$70,762.50 in
21 attorneys' fees and \$11,125.35 in costs, with payment pursuant to the terms of the Settlement
22 Agreement;
- 23 5. Approving Plaintiff's request for payment of the claims administration costs to
24 Phoenix Settlement Administrators in the amount of \$7,500.00, with payment pursuant to the
25 terms of the Settlement Agreement;
- 26 6. Approving Plaintiff's request for payment to the LWDA for \$5,625.00 with
27 payment pursuant to the terms of the Settlement Agreement; and
- 28 7. Entering final judgment as to all members of the Class in this action.

1
2 DATED: April 13, 2023

DIVERSITY LAW GROUP, P.C.

3
4 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

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6 Attorneys for Plaintiff, the Class, and Aggrieved
7 Employees
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On April 13, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
12 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
13 **AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 **3. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 18 **4. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**
19 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 20 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
21 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 22 **6. DECLARATION OF KEVIN LEE REGARDING ADMINISTRATION OF CLASS**
23 **ACTION SETTLEMENT**
- 24 **7. DECLARATION OF MELISSA MOSS IN SUPPORT OF PLAINTIFF'S MOTION**
25 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 26 **8. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION**
27 **SETTLEMENT AND JUDGMENT**

28 on the interested parties in this action as follows:

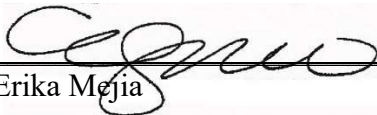
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Attorney for Defendant Sares Regis Operating Company, L.P.

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the One Legal E-Filing System at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 13, 2023, at Los Angeles, California.


Erika Mejia