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

SHARON MORRIS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

COMMUNITY HOSPITAL OF THE
MONTEREY PENINSULA, a California
nonprofit corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 21CV001953

(Assigned to the Honorable Thomas W. Wills,
Dept. 15)

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

Date: September 9, 2022

Time: 8:30 a.m.

Dept.: 15

Complaint Filed: June 16, 2021

FAC Filed: August 6, 2021

SAC Filed: January 24, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on September 9, 2022, at 8:30 a.m. before the Honorable
3 Thomas W. Wills, judge presiding in Department 15 of the above-referenced Court, located at
4 1200 Aguajito Road, Monterey, California 93940, Plaintiff Sharon Morris (“Plaintiff”) will and
5 hereby does move the Court for an Order:

6 (1) granting final approval to the Joint Stipulation of Class Action Settlement
7 (“Stipulation” or “Settlement Agreement”) in this action;

8 (2) approving distribution of the settlement funds to the Class Members pursuant to the
9 terms of the Settlement Agreement;

10 (3) approving Plaintiff’s request for an award of the Class Representative enhancement
11 payment of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

12 (4) approving Class Counsel’s request for an award of attorneys’ fees of one-third of the
13 \$1,450,000.00 gross settlement amount, and reimbursement of actual litigation costs of \$3,209.95,
14 pursuant to the terms of the Settlement Agreement;

15 (5) approving Plaintiff’s request for payment of the settlement administration costs to
16 Phoenix Settlement Administrators in the amount of \$23,750.00 pursuant to the terms of the
17 Settlement Agreement;

18 (6) approving Plaintiff’s request for payment to the LWDA for \$37,500.00 pursuant to the
19 PAGA and the terms of the Settlement Agreement; and

20 (7) entering final judgment as to all members of the Class in this action.

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

1 should be granted final approval.

2 This Motion is based on the Memorandum of Points and Authorities and the supporting
3 Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, Plaintiff Sharon Morris, and
4 Kevin Lee of Phoenix Settlement Administrators, and upon the oral arguments of counsel
5 (should there be any), and on the complete records and file herein.

6
7 DATED: August 15, 2022

DIVERSITY LAW GROUP, P.C.

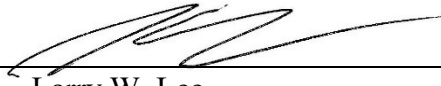
8
9 By: 
10 Larry W. Lee
11 Mai Tulyathan
12 Attorneys for Plaintiff, the Class, and Aggrieved
13 Employees

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1 **I. INTRODUCTION**

2 Plaintiff Sharon Morris (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action Settlement (“Stipulation” or “Settlement Agreement”). The
4 Settlement Agreement provides for a \$1,450,000.00 **non-reversionary** fund to be created for the
5 benefit of the Class, from which attorneys’ fees, litigation costs, service payment to the named
6 Plaintiff, payment to the California Labor and Workforce Development Agency (“LWDA”), and
7 costs of settlement administration are to be paid. The entire Net Settlement Amount after these
8 deductions will be paid to all Class 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. The Court preliminary approved this settlement on May
11 13, 2022, directing distribution of class notice and scheduling the hearing for final approval of
12 the settlement (the “Preliminary Approval Order”).

13 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
14 Settlement Administrators—distributed the Class Notice to 3,074 Class Members. Declaration
15 of Kevin Lee on behalf of Phoenix Settlement Administrators (“Phoenix Decl.”) ¶ 5. Of the ten
16 (10) Class Notices that have been returned, four (4) were returned with forwarding addresses and
17 were promptly remailed to the updated address affixed thereto. *Id.* Of the six (6) Class Notices
18 returned from the Post Office without a forwarding address, four (4) updated addresses were
19 obtained and the Class Notice was promptly re-mailed. *Id.* As a result, only two (2) Class
20 Notices remain undeliverable. *Id.* ¶ 7. To date, only nineteen (19) requests for exclusion has
21 been submitted to the Settlement Administrator. *Id.* ¶ 8. **No objections or disputes** to the
22 settlement have submitted by Class Members. *Id.* ¶¶ 9-10. As such, the settlement has a
23 significantly high participation rate of **99.38%**. *Id.* ¶ 11. In light of this positive response from
24 Class Members, an inference can be made that the Class supports the Court’s Preliminary
25 Approval Order finding that the Settlement Agreement is fair and reasonable. Declaration of
26 Larry W. Lee (“Lee Decl.”) ¶ 6.

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

the basic points supporting final approval of the settlement:

- The settlement provides a total settlement sum of \$1,450,000.00, 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 \$287.96 to each Participating Class Member, with the estimated highest individual settlement payment being \$458.19 (*see* Phoenix Decl. ¶ 13);

- 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 amounts will be paid to 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.

- Plaintiff's counsel conducted significant investigation in this case, including conducting informal discovery and significant exchanges of information regarding class data, including the number of putative class members and aggrieved employees, number of pay periods at issues, sample payroll and timekeeping data for the putative class, and Defendant's various policy documents regarding payment of sick pay/paid time off and meal and rest period premiums necessary for Plaintiff to fully evaluate this case;

- A highly regarded settlement administrator, Phoenix Settlement Administrators, was retained to administer the settlement for approximately \$23,750.00 (*see* Phoenix Decl. ¶ 16); 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 section 2699(1)(2) and no objections or disputes to the Settlement by the LWDA were received by Plaintiff's Counsel. Lee Decl. ¶¶ 7-8.

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

1 Approval Order.

2 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
3 **SETTLEMENT**

4 The notice procedures required by the Preliminary Approval Order have been followed
5 and satisfy all due process rights of Class Members. Specifically, the Preliminary Approval
6 Order contemplated that the Notice of Class Action Settlement (“Notice Packet”), as approved in
7 the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in
8 the Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement
9 Administrators would serve as the Settlement Administrator.

10 As clearly stated in the Declaration of Kevin Lee on behalf of Phoenix Settlement
11 Administrators, notice was provided to all Class Members. On June 2, 2022, the Settlement
12 Administrator received a Class Member mailing list from Defendant’s counsel that included
13 3,074 Class Members. Phoenix Decl. ¶ 3. Prior to mailing the Notice Packet, the Settlement
14 Administrator conducted a National Change of Address (NCOA) search to correct and/or update
15 the Class List and Data in case of any address changes. *Id.* ¶ 4. On June 7, 2022, the Settlement
16 Administrator mailed the Notice Packet to all Class Members on the mailing list via U.S. first
17 class mail. *Id.* ¶ 5. From the date of mailing, ten (10) Notice Packet packets were returned to the
18 Settlement Administrator due to incorrect addresses. *Id.* ¶ 6. The Settlement Administrator
19 conducted skip tracing to identify updated addresses for the six (6) Notice Packet packets, and
20 subsequently re-mailed them via U.S. first class mail. *Id.* As of the date of this filing, two (2)
21 Notice Packets remain undeliverable. *Id.* ¶ 7. Further, the Notice Packet provided Class
22 Members with Class Counsel’s and the Settlement Administrator’s contact information and
23 website, where they could further seek information regarding the settlement, ask questions,
24 review pleadings in the case, and update their address.

25 The provision of sending the notice to Class Members as described above meets the
26 requirements for the “best notice practicable” in this case as necessary to protect the due process
27 rights of Class Members. *See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12
28 (provision of “best notice practicable” with description of the litigation and explanation of opt-

1 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75
2 (individual notice must be sent to class members who can be identified through reasonable
3 means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best
4 practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise
5 interested parties of the pendency of the action and afford them an opportunity to present their
6 objections”).

7 Here, all Class Members were provided with a mailing that explained the settlement and
8 allowed Class Members to seek information, ask questions, and exclude themselves and/or object
9 to the settlement, if so desired. As such, proper notice has been given to the Class Members.
10 Thus, the Court may determine the fairness and adequacy of the Settlement and enter its Order
11 granting final approval, secure in the knowledge that all absent Class Members have been given
12 the opportunity to participate fully in the settlement, exclusion, and the approval process.

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

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

16 In order to proceed as a class, there are two requirements which must be met—
17 ascertainability and community of interest. *See Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695,
18 704; *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 809 (there are two basic requirements
19 which must exist to sustain a class action: “[t]he first is existence of an ascertainable class, and
20 the second is a well-defined community of interest in the questions of law and fact involved.”).
21 “The community of interest requirement embodies three factors: (1) predominant common
22 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
23 (3) class representatives who can adequately represent the class.” *Richmond v. Dart Industries*
24 (1981) 29 Cal. 3d 462, 470.

25 **1. The Class is Ascertainable**

26 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section
27 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
28 available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*

(1987) 196 Cal. App. 3d 1263, 1271.

Here, the Class consists of “All current and former non-exempt employees employed by Defendant in the State of California from June 16, 2017, through July 22, 2021 (the “Class Period”).” Based on Defendant’s records, there are 3,055 individuals that comprise the Class. Phoenix 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 all of the above Class Members. Phoenix Decl. ¶¶ 3-5.

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.* (1999) 73 Cal. App. 4th 1225, 1234.

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* (2003) 29 Cal. 4th 1096, 1104-05.

In the present case, Plaintiff alleges that Defendant is liable to the Class for failure to pay sick pay and meal and rest period premium pay at the correct regular rate of pay in violation of Labor Code §§ 201-203, 226.7, 246, and 512. In this regard, Plaintiff contends that Defendant failed to factor non-discretionary incentive wages, including shift differential wages (such as “PMDiff” wages), into the calculation of the regular rate for purposes of paying sick pay and meal and rest period premium wages, and thus Plaintiff and employees were underpaid sick pay and meal and rest pay compensation.

As these are all uniform corporate policies, practices, and procedures of Defendant as

1 alleged by Plaintiff, the claims can be jointly tried and thus the predominance requirement is
2 satisfied. Defendant denies all of these claims, denies that liability could be established on a
3 class-wide basis, and contends instead that liability and damages, if any, would need to be
4 conducted on a case-by-case basis.

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

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

14 Plaintiff asserts she was subjected to the same payroll policies and practices as all other
15 Class Members. In this regard, Plaintiff was employed by Defendant as a non-exempt employee
16 from about September 28, 1987, until on or about May 6, 2021. Declaration of Sharon Morris
17 ("Morris Decl.") ¶ 2. Like other members of the Class, Plaintiff alleges she was underpaid sick
18 pay wages and meal and rest period premium pay. *Id.* ¶ 3.

19 Based on the above, Plaintiff contends she was subjected to the same policies and
20 practices as other Class Members. Accordingly, typicality is satisfied.

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

22 The class representative, through qualified counsel, must be capable of "vigorously and
23 tenaciously" protecting the interests of the class members. *Simons v. Horowitz* (1984) 151 Cal.
24 App. 3d 834, 846.

25 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
26 been raised or presented. Morris Decl. ¶ 5. Plaintiff has taken all necessary steps to represent
27 the interests of the Class, including providing information and documents to her counsel,
28 discussing the lawsuit with her counsel on several occasions, and reviewing the various

1 pleadings including the complaints, PAGA letters, settlement agreement, and declarations
2 submitted in this case. *Id.* ¶ 4. For such reasons, Plaintiff has adequately represented the Class
3 Members and will continue to do so.

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

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

11 As stated above, Defendant alleges that Plaintiff would not be able to obtain class
12 certification. Based on the foregoing, there were risks that Plaintiff would not have obtained the
13 total amount of damages and penalties alleged on behalf of the class, and a substantial amount of
14 complex issues that would have necessitated significant expenditure of time and expenses.
15 Therefore, the risks, expenses and complexity of further litigation warrant granting of this
16 Motion.

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

19 Without reiterating the Parties' showing that the Settlement Agreement and the
20 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
21 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
22 Settlement Agreement was the product of negotiations between highly able and experienced
23 attorneys on both sides who possessed the relevant data and extensive legal research which they
24 had carefully analyzed. Lee Decl. ¶ 3. The Parties engaged in arm's length negotiations with an
25 experienced neutral, Mike Masuda, Esq., that resulted in the settlement. *Id.*

26 The results after mailing of the Notice Packet support confirmation of the Court's
27 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
28 fact that only nineteen (19) Class Members opted out and zero (0) Class Members submitted a

1 written objections or disputes to the settlement. Phoenix Decl. ¶¶ 8-10. With the significantly
2 high rate of participation in the settlement by Class Members (99.38%), the Court may
3 appropriately infer that the class action settlement is fair, adequate, and reasonable. *See Class*
4 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.

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

7 **1. Standard of Review**

8 On a motion for final approval of a class action settlement under California Code of Civil
9 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
10 settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n* (9th Cir.
11 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n* (1983) 459 U.S.
12 1217. A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
13 "the interests of the class are better served by the settlement than by further litigation." *See*
14 *Manual for Complex Litigation, Fourth* (Fed. Jud. Ctr., 4th ed. 2004) § 21.6 at 309 ("MCL").
15 The law favors settlement, particularly in class actions and other complex cases, where
16 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
17 *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* (4th ed. 2002) § 11.41;
18 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco*
19 *Corp.* (9th Cir. 1976) 529 F.2d 943, 950.

20 Although the Court possesses "broad discretion" in determining that a proposed class
21 action settlement is fair, the Court's role must be limited to the extent necessary to reach a
22 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
23 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
24 adequate to all concerned. *See Officers for Justice*, 688 F.2d at p. 625. Accordingly, the Court
25 should give due regard to what is otherwise a "private consensual agreement" between the
26 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.* (N.D. Cal. 1993) 1993 WL
27 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, *aff'd*
28 *sub nom.*; *City of Seattle*, 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,

1 or imposing conditions on it. The judge cannot rewrite the agreement”).

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

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

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

18 (2000) 85 Cal. App. 4th 1135, 1146.

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

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

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

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

29 The settlement in the case at bar warrants approval and carries a presumption of fairness.
30 As previously noted in the application for Preliminary Approval, this current settlement was
31 negotiated at arm’s length after a full day of mediation through an experienced wage-and-hour
32 mediator, Mike Masuda, Esq. Lee Decl. ¶ 3.

33 Second, Class Counsel engaged in extensive factual investigation before settling,
34 including the exchange of informal discovery before mediation. Specifically, Class Counsel

1 reviewed class data, including data pertaining to the number of class members and aggrieved
2 employees, number of pay periods at issue, sample payroll and timekeeping data for the putative
3 class, and Defendant's various policy documents regarding payment of sick pay/paid time off
4 and meal and rest period premiums. *Id.* ¶ 4.

5 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
6 supporting declarations, Class Counsel has significant experience in class actions and
7 employment wage and hour matters. Lee Decl. ¶¶ 16-17; Declaration of William L. Marder
8 ("Marder Decl.") ¶¶ 4-8; Declaration of Mai Tulyathan ("Tulyathan Decl.") ¶¶ 7-10.

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

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

18 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
19 been potentially responsible for Defendant's costs. Morris Decl. ¶ 9. As such, should individual
20 current or former employee of Defendant bring individual claims on the same causes of action,
21 they would each face the uncertainty of prevailing and the possibility of paying costs to
22 Defendant. Accordingly, such claims likely would not be brought by many of these current and
23 former employees – thus, this lawsuit achieves a true benefit for the Class that they might not
24 otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been
25 reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant's
26 litigation costs.

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

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

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

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

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

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

has never been certified by a California court before.

5. The Opinion of Experienced Counsel Favors Final Approval

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

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

As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement funds remain after 180 days of the mailing of the individual settlement payment checks, the Parties have agreed that all such uncashed settlement funds shall be distributed to the *cy pres* recipient Watsonville Law Center, a non-profit organization that provides free legal services and referral information to low-income individuals, in accordance with C.C.P. § 384. Class Counsel and Plaintiff do not have any relationship of any kind with Watsonville Law Center. Lee Decl. ¶ 9; Marder Decl. ¶ 3; Tulyathan ¶ 6; Morris Decl. ¶ 6.

V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Class Representative Sharon Morris requests a total enhancement of \$10,000.00. Plaintiff provided significant assistance with the lawsuit, including discussing the case with Class Counsel on multiple occasions, searching for and providing documents and information regarding Defendant's practices at issue in the case, and reviewing the various files and pleadings submitted in this case. Morris Decl. ¶ 4. Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that he provided, Plaintiff also took significant risks, both professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the Class. *Id.* ¶ 9. Because the claims alleged by the Class Representative involved the

1 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
2 Defendant, had she not prevailed in this action. *Id.* Despite this, however, Plaintiff agreed to
3 pursue this case on behalf of the Class.

4 Also, given that future employers are much less likely to hire individuals who have filed
5 employment-related lawsuits, particularly cases of this nature, the Class Representative also
6 faced significant risk in not being able to find suitable employment and/or face retaliation from
7 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
8 risks upon herself to the benefit of the Class. *Id.* ¶ 9. Class Members did not have to file
9 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
10 have to face the potential for retaliation and not getting future employment had they filed a
11 lawsuit which is a public record. These are significant benefits that weigh in favor of granting
12 the requested enhancement. Moreover, this litigation has resulted in a significantly valuable
13 benefit to the Class (*i.e.*, an average award to Class Members in the amount of \$287.96, with the
14 highest individual settlement payment to Class Members of \$458.19), and Plaintiff took on
15 substantial risks in helping to get this financial benefit to the Class. As such, the enhancement
16 should be awarded to Plaintiff for her commitment, dedication, and risks taken for this litigation.

17 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
18 § 1542, which other Class Members did not have to do. Settlement Agreement ¶ 67; Morris
19 Decl. ¶ 10. This is a more extensive release than that provided by the Class at large, also
20 supporting the request for the enhancement.

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

1 \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998)
2 142 F.3d 1004, 1016 (affirming \$25,000 incentive award to class representative in ERISA case).

3 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

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

8 The \$1,450,000.00 settlement amount is the result of a considerable expenditure of time,
9 effort, skill, and money by Class Counsel. Class Counsel obtained data pertaining to the number
10 of putative class members and aggrieved employees, number of pay periods at issue, and sample
11 payroll and timekeeping data for the putative class, as well as Defendant's policies regarding the
12 payment of sick pay/paid time off and meal and rest period premiums. The information provided
13 by Defendant allowed Plaintiff to review and analyze the liability and potential exposure. After
14 thoroughly investigating the facts relating to the class and PAGA claims alleged in this lawsuit,
15 and engaging in a thorough study of the legal principles applicable to the claims asserted against
16 Defendant, a full-day mediation with experience mediator, Mike Masuda, Esq. was conducted to
17 reach the current settlement. Class Counsel shouldered the risk that it might recover no fee at all
18 and may even lose the considerable sum it advanced in expenses. Counsel's requested fee,
19 therefore, should be granted in full.
20

21 Class Counsel seeks a fee award calculated as approximately 33% of the total value of
22 the Settlement Fund as compensation for the successful prosecution and resolution of this action.
23 Under California law, the award of attorneys' fees in common fund wage and hour class action
24 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th
25 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that
26 when class action litigation establishes a monetary fund for the benefit of the class members, and
27 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
28 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund

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

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

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

22 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
23 percent of the common fund is consistent with, and in the range of, awards in other class action
24 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
25 representing 35% of the fund clearly falls within that range, and is consistent with other
26 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical*
27 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
28

1 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were
2 between 25 percent and 35 percent, with almost no awards more than 35 percent”); Eisenberg &
3 Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
4 Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation
5 nationwide conclude that fees representing one-third of the total recovery is consistent with
6 market rates).

7 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
8 is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
9 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
10 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice
11 specifically notified Class Members that Plaintiff’s Counsel would be seeking \$483,333.33 of the
12 settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement or
13 the request for attorneys’ fees. This strong favorable response also supports the requested fees.

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

22 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means
23 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
24 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
25 range, but the court is not necessarily required to make such an adjustment.” *Id.* (emphasis
26 added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-
27 checks are not required; in many cases, performing a cross-check “undermines” one of the
28

1 primary reasons for using the percentage method: aligning counsel’s incentives with the benefits
2 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain
3 the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court*
4 *Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing
5 the recommendations of the Third Circuit Task Force with approval and observing that “[t]he
6 criticisms of the lodestar approach set forth in this Report are now echoed by many authorities,
7 who have been most vocal about the manner in which it exacerbates the problem of ‘cheap
8 settlements’ and burdens already overworked trial judge.”).

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

19 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
20 awarded by the percentage method showing that the majority of multipliers awarded are “in the
21 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming
22 a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
23 over 30 cases). Federal district courts applying California law have likewise routinely approved
24 cross-check multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower*
25 *Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a
26 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
27 *N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar
28

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 will have expended approximately 288.6 hours litigating this case, which does not include approximately 40 hours of anticipated time spent after final approval responding to correspondence and phone calls from class members, the class administrator, and defense counsel. (Lee Decl. ¶¶ 13-14, Ex. A; Marder Decl. ¶¶ 9-10, Ex. A; Tulyathan ¶¶ 11-12, Ex. A.) Thus, the total number of hours expected to be invested in this case through resolution is approximately 328.6. Class Counsel requests an hourly rate of \$500.00 and \$750.00 per hour. (Lee Decl. ¶ 15; Marder Decl. ¶ 11; Tulyathan ¶ 13.) 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 seeks 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

1 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
2 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
3 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
4 4th 629, 632-33 (1998).

5 Class Counsel's skill and experience justify the requested rates. As shown in the
6 supporting declarations, Class Counsel have significant experience in the area of employment
7 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
8 employees in employment matters, particularly wage and hour cases. (Lee Decl. ¶¶ 16-17;
9 Marder Decl. ¶¶ 4-8; Tulyathan ¶¶ 7-10.) As such, based on the hours and applicable rate, Class
10 Counsel's lodestar amount through the finalization of this settlement – without a multiplier – will
11 be approximately \$217,000.00 (Lee Decl. ¶ 15; Marder Decl. ¶ 11; Tulyathan ¶ 13.)

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

21 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
22 the-benefit, namely, commendable conduct by counsel, and significant recoveries by Class
23 Members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As in
24 *Lealao*, the Class was notified of the settlement and attorneys' fee request. The extreme effort
25 undertaken by counsel, as shown by their hours and the significantly high value being paid for
26 claims, shows considerable skill.

27 The multiplier should be enhanced because of the contingent nature of counsel's fee
28 recovery. The risks in taking on a class action case are enormous, not the least of which is time

1 and effort. As this Court very well knows, not only do these cases require substantial work, but
2 there exists significant risks. Indeed, just as one example before this very Court, Class Counsel
3 litigated a wage and hour class action for many years, prevailing on class certification and
4 summary judgment motions, but only later to have this Court decertify the case, partially finding
5 in favor of the employer at trial, and whittling the case down to 3 aggrieved employees. This
6 type of risk and effort in such cases justify a multiplier, particularly in view of the contingent
7 nature of the fee arrangement in this case.

8 Thus, the risks are very real and substantial for Class Counsel. Not only have Plaintiff's
9 counsel undertaken a significant risk in this matter, but in the face of that risk they have achieved
10 an excellent settlement. Thus, their work in obtaining the settlement in this matter has been
11 commendable.

12 Finally, based upon Plaintiff's counsel's lodestar of \$217,000.00, Plaintiff's request for a
13 multiplier of 2.2 is reasonable and fair, particularly based on the factors described above.
14 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (Ct. App.2001) (noting that courts using
15 the lodestar method to calculate attorney fees awards in class actions typically apply multipliers
16 in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal.
17 Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and
18 hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210
19 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

20 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety.
21 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the
22 successful litigation of this action on behalf of all Class Members. For these reasons, Class
23 Counsel's request for attorneys' fees in the amount of \$483,333.33 should be approved as fair,
24 reasonable, and adequate.
25

26 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
27 **OF COSTS**

28 The request for reimbursement of litigation costs, in the amount of \$3,209.95 is fair and

reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek up to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this action, including but not limited to, filing and service fees, court fees, CourtCall fees, postage fees, costs associated with mediation, and expert fees. Lee Decl. ¶ 18, Ex. B. As such, this requested costs should be approved as fair and reasonable.

VIII. 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 Kevin Lee, the settlement administration fees expended in this matter amount to a total of \$23,750.00, which is the amount that was agreed upon by the Parties. Phoenix Decl. ¶ 16, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

IX. PLAINTIFF HAS PROVIDED NOTICE TO THE LWDA

On May 16, 2022, Plaintiff uploaded the Order Granting Motion for Preliminary Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 19; Ex. C. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and proposed order to the LWDA's website. *Id.* at ¶ 20.

X. CONCLUSION

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

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

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;

1 3. Approving Plaintiff's request for an award of the class representative
2 enhancement of \$10,000.00, with payment pursuant to the terms of the Settlement Agreement;

3 4. Approving Class Counsel's request for an award to Class Counsel for
4 \$483,333.33 in attorneys' fees and \$3,209.95 in costs, with payment pursuant to the terms of the
5 Settlement Agreement;

6 5. Approving Plaintiff's request for payment of the settlement administration costs
7 to Phoenix Settlement Administrators in the amount of \$23,750.00, with payment pursuant to the
8 terms of the Settlement Agreement;

9 6. Approving Plaintiff's request for payment to the LWDA for \$37,500.00, with
10 payment pursuant to the terms of the Settlement Agreement; and

11 7. Entering final judgment as to all members of the Class in this action.
12

13 DATED: August 15, 2022

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
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 August 15, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF KEVIN LEE WITHRESPECT TO SETTLEMENT NOTICE**
ADMINISTRATION
- 13 **3. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 14 **4. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 16 **6. DECLARATION OF SHARON MORRIS IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 17 **7. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION**
SETTLEMENT AND JUDGMENT

18 on the interested parties in this action as follows:

19 Elizabeth R. Leitzinger
20 eleitzinger@fentonkeller.com
21 Marco A. Lucido
22 MLucido@FentonKeller.com
23 FENTON & KELLER
24 2801 Monterey-Salinas Highway
25 Post Office Box 791
26 Monterey, California 93942-0791
27
28

*Attorneys for Defendant
Community Hospital of the Monterey Peninsula*

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, 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 August 15, 2022, at Los Angeles, California.



Erika Mejia