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

RENE VELASQUEZ, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

AIR TRANSPORT INTERNATIONAL, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2021-00307289

[Assigned for all purposes to Department 25,
Hon. Jill H. Talley]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of William L. Marder; Declaration of Rene
Velasquez; Declaration of Kevin Lee; [Proposed]
Order and Final Judgment]*

Date: January 6, 2023
Time: 9:00 a.m.
Department: 25

Complaint Filed: September 1, 2021

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 6, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 10C, of the above-entitled court located at 720 9th Street,
4 Sacramento, California 95814, Plaintiff, Rene Velasquez, will and hereby does seek an Order:

- 5 1. granting final approval to the Amended Joint Stipulation of Class Action and PAGA
6 Settlement (the “Agreement”) in this action;
- 7 2. approving distribution of the settlement funds to Settlement Class Members pursuant to the
8 terms of the Agreement;
- 9 3. approving Plaintiff’s request for a Service Award of \$10,000.00 to the Class Representative
10 pursuant to the terms of the Agreement;
- 11 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
12 \$250,000.00 Gross Settlement Amount, or \$83,333.33, and reimbursement of litigation costs
13 of \$3,805.46, pursuant to the terms of the Agreement;
- 14 5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix
15 Settlement Administrators in the amount of \$5,000.00, pursuant to the terms of the
16 Agreement;
- 17 6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency of
18 \$26,526.50, pursuant to the terms of the Agreement; and
- 19 7. entering final judgment as to all members of the Settlement Class in this action.

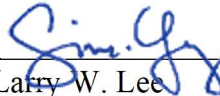
20 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
21 Court approval of the settlement of a purported class action and allows the Court to grant final
22 certification of a class for settlement purposes. In light of the overwhelmingly positive response,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

26 This motion will be based on the attached Memorandum of Points and Authorities, the
27 supporting Declarations of Larry W. Lee, William L. Marder, Plaintiff Rene Velasquez, and Kevin Lee
28

1 of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any), and on
2 the complete records and file herein.

3 DATED: December 13, 2022

DIVERSITY LAW GROUP, P.C.

4 By: 
5 Larry W. Lee
6 Simon L. Yang
7 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On September 1, 2021, Plaintiff, Rene Velasquez, filed this class action against Defendant, Air Transport International, Inc., in the Superior Court of California for the County of Sacramento. The operative first amended complaint (the “Complaint”) alleges two causes of action for violation of Labor Code section 226(a) and for penalties under Section 2698 et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The Complaint alleges that Defendant’s failure to furnish wage statements that accurately show Defendant’s name or to show its address at all violates Section 226(a).

Plaintiff now seeks the Court’s final approval of the Amended Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”). The Agreement provides for a \$250,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, service award to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Class Members.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. This Court preliminarily approved this settlement on September 12, 2022, directing distribution of the Notice of Class Action and PAGA Settlement (“Class Notice”) and scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Administrator, Phoenix Settlement Administrators, distributed the Class Notice to 103 Class Members. Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin Decl.”) ¶ 5. To date, one request for exclusion has been received, and no objections have been filed. *Id.* ¶¶ 8, 9. As such, there is a 99.02% participation rate. *Id.* ¶ 11. Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

In addition to the results of the notice process, the points discussed in Plaintiff’s Preliminary Approval Motion also support final approval of the settlement:

- The settlement provides a total settlement sum of \$250,000.00;
- The settlement is fair given that Settlement Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money (on average, each Settlement Class Member will receive approximately \$1,102.75), *see* Admin Decl. ¶ 14;

- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Class Members in proportion to the number of applicable wage statements received by each Class Member during the Class Period;
- Plaintiff conducted significant investigation in this case, including informal discovery and 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 Administrators, was retained for fees of \$5,000.00 only; and
- California's LWDA will also be the beneficiary of this settlement as it will receive \$26,526.50, should this settlement be granted final approval.

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

DISCUSSION

I. Class Members Were Provided Notice of the Settlement.

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

As clearly stated in the Admin Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On September 23, 2022, the Administrator received a Class Member mailing list from Defendant's counsel that included 103 Class Members. Admin Decl. ¶ 3. On September 30, 2022, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 5. From the date of mailing, four Class Notices were returned due to an incorrect address and two Class Notices were then re-mailed to an updated address after performing an address trace and/or using the forwarding address provided by the Post Office. *Id.* ¶¶ 4-6. As of the date of this filing, only two Class Notices remained undeliverable because an updated address could not be located despite skip tracing efforts. *Id.* ¶ 7. Further, the Class Notice provided Class Members with Class Counsel's contact information, where they could further seek information regarding the settlement, leave questions for the Administrator, and update their address.

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

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

14 **II. The Fair, Adequate, and Reasonable Settlement Should Be Given Final Approval.**

15 **A. The Strength of the Case and Likelihood of Class Certification Support Approval.**

16 The Court already addressed the requirements for certifying a class for settlement purposes in its
17 Order granting preliminary approval. Plaintiff briefly addresses the requirements again here.

18 **1. The Class Is Ascertainable.**

19 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 “is
20 determined by examining (1) class definition, (2) the size of the class, and (3) the means available for
21 identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App. 3d
22 1263, 1271 (1987). Here, the Class is defined as: “all current or former employees of Defendant, Air
23 Transport International, Inc., in the State of California who were issued a wage statement at any time
24 from July 29, 2020, through August 3, 2021.” There are 103 individuals that comprise the Class. Admin
25 Decl. ¶ 3. This is more than the minimum required to certify a class. Within the context of
26 manageability, the issue is whether there exists sufficient means for identifying class members at the
27 remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members have been identified by Defendant,
28 and notice was already provided to the Class Members.

1 **2. There Is a Community of Interest.**

2 The “community of interest” requirement embodies three separate factors: (1) predominant
3 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
4 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29
5 Cal.3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

6 **a. There Are Predominant Common Questions of Law and Fact.**

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

11 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
12 violated the Labor Code by its failure to provide accurate wage statements. Defendant denies that
13 liability could be established on a class-wide basis and contends instead that liability and damages
14 would need to be conducted on a case-by-case basis.

15 **b. Plaintiff’s Claims Are Typical of the Class Claims.**

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

23 Plaintiff was employed by Defendant and alleges that he was subjected to the same payroll
24 policies as all other Class Members. Specifically, like other members of the Class, Plaintiff received
25 wage statements that he alleges did not show “Air Transport International, Inc.” or show the company’s
26 address. Declaration of Rene Velasquez (“Velasquez Decl.”) ¶ 2. Plaintiff alleges he was subjected to
27 the same policies and practices as other Class Members. Thus, Plaintiff’s claims are typical to those of
28 Class Members.

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

2 The class representative, through qualified counsel, must be capable of “vigorously and
3 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
4 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
5 been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class,
6 including providing information and documents to his counsel and reviewing pleadings in this case.
7 Velasquez Decl. ¶¶ 3-5. For such reasons, Plaintiff has adequately represented Class Members.

8 **B. Defendant’s Allegations and Position on Class Certification Support Approval.**

9 Defendant asserts that even assuming that a class could have been certified, Plaintiff would be
10 unable to establish a “knowing and intentional” violation of Section 226(a) and that employees suffered
11 no injuries from Defendant’s omission of “Air Transport International, Inc.” and the company’s address
12 from its wage statements. Based thereon, Defendant continues to maintain that it is not liable for the
13 allegations made by the Plaintiff.

14 **C. Risks, Expenses, and Complexity of Further Litigation Support Approval.**

15 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the fairness of
16 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
17 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
18 possibility of non-certification, and potential for appeals.

19 Defendant alleges that a class could not have been certified. There is always a risk that the court
20 will not grant certification of the class, wherein the class will not be entitled to any damages. Based on
21 the foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of
22 damages alleged, and a substantial number of complex issues that would have necessitated significant
23 expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation
24 warrant granting of this motion.

25 **D. The Settlement Terms and Negotiation—as Well as the Class Member Response—**
26 **All Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.**

27 Without reiterating the Parties’ showing that the Agreement and the negotiation process that led
28 up to it was fair and adequate, as set forth in detail in the Preliminary Approval Motion, the Parties

1 highlight the following facts. The Agreement was the product of negotiation between highly able and
2 experienced attorneys on both sides who possessed the relevant data and extensive legal research which
3 they had carefully analyzed. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

4 The results after mailing of the Class Notice support confirmation of the Court’s preliminary
5 approval of the settlement with final approval of the settlement, as evidenced by the fact that to date,
6 only one request for exclusion and zero objections to the settlement have been received. Admin Decl. ¶¶
7 8-9. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable,
8 given that not a single Class Member has submitted an objection. *See Class Plaintiffs v. City of Seattle*,
9 955 F.2d 1268, 1291 (9th Cir. 1992).

10 **III. Well-Established Legal Principles Support Final Approval of the Settlement.**

11 On a motion for final approval of a class action settlement under Code of Civil Procedure section
12 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair,
13 adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982),
14 *cert. denied subnom.*; *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A settlement is fair, adequate,
15 and reasonable, and therefore merits final approval, when “the interests of the class are better served by
16 the settlement than by further litigation.” *See Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed.
17 Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement, particularly in class actions and other
18 complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of
19 formal litigation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed.
20 2002); *Class 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 action
23 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
24 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
25 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
26 *Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise
27 a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways*,
28 *Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp.

1 1379 (D. Ariz. 1989), *aff'd sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial
2 role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement,
3 disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

4 As the Court of Appeal has cautioned:

5 It cannot be overemphasized that neither the trial court in approving the settlement nor
6 this Court in reviewing that approval have the right or duty to reach any ultimate
7 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
8 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.

9 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

10 **A. The Settlement is Presumed to Be Fair**

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

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

15 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); *accord*, *Ellis v. Naval Air Rework*
16 *Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F.Supp. at 1387.

17 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
18 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
19 arm’s length. Lee Decl. ¶¶ 4-5. Class Counsel engaged in extensive factual investigation before settling,
20 including the exchange of informal discovery and class data enabling Class Counsel to evaluate the full
21 extent of Defendant’s potential liability. *Id.* ¶ 4. Further, Class Counsel is highly experienced in this type
22 of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class
23 actions and employment wage and hour matters. *Id.* ¶¶ 6-8; Declaration of Simon L. Yang (“Yang
24 Decl.”) ¶¶ 4-6; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-11.

25 **B. Two-Way Costs and Other Risks Inherent in Litigation Favor Final Approval.**

26 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
27 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
28 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) (“present

1 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
2 of not prevailing, should be compared with the amount of the proposed settlement”); *Girsh v. Jepson*,
3 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 616-17 (N.D. Cal. 1979).

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

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

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

25 **C. The Complexity, Expense, and Likely Duration of Continued Litigation Against**
26 **Defendant Favor Final Approval.**

27 Another factor considered by courts in approving a settlement is the complexity, expense, and
28 likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In

1 applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
2 involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-
3 34 (5th Cir. 1971).

4 As noted above, continued litigation could have led to appeals on several issues. On the other
5 hand, the settlement that was reached provides to all Class Members—regardless of their means—fair
6 relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members
7 would be left without a remedy as a practical matter and courts across the State would have to address
8 the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case
9 is therefore consistent with the “overriding public interest in settling and quieting litigation” that is
10 “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950; *see also 4 Newberg* §
11 11.41. Here, litigation of this case through trial would have required years of litigation.

12 **D. The Opinion of Experienced Counsel Favors Final Approval.**

13 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of
14 the Class Members as a whole. Lee Decl. ¶ 5; Yang Decl. ¶ 2; Marder Decl. ¶ 2. Similarly, counsel for
15 Defendant is in favor of this settlement. The endorsement of qualified and well-informed counsel of a
16 settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final
17 approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485
18 F.Supp. at 617; *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

19 **IV. The Proposed Payments and Procedures Should Be Approved.**

20 **A. The Proposed Procedure for Uncashed Settlement Checks Should Be Approved.**

21 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
22 funds remain after 180 days, the Parties have agreed that the funds (upon the expiration date) would
23 escheat to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member.
24 None of the settlement funds will revert to Defendant or be diverted to a *cy pres* recipient.

25 **B. The Requested Class Representative Service Award Should Be Approved.**

26 Class Representative Rene Velasquez requests a service award of \$10,000.00. Plaintiff met with
27 Class Counsel to provide substantive information regarding Defendant’s practices. Velasquez Decl. ¶ 3.
28 Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

1 In addition to the invaluable services that he provided, Plaintiff took significant risks, both
2 professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the Class.
3 Because the claims alleged by the Class Representative involved the payment of costs to the prevailing
4 party, Plaintiff could have possibly faced paying the costs of Defendant had he not prevailed in this
5 action. Moreover, Plaintiff understood that an individual case would have resolved much faster than a
6 class action and involved much less financial risk than a class action. Despite this, however, Plaintiff
7 agreed to pursue this case on behalf of the Class. *Id.* ¶ 8.

8 Also, given that future employers are much less likely to hire individuals who have filed
9 employment-related lawsuits, particularly cases of this nature, the Class Representative also faces
10 significant risk in not being able to find suitable employment, all as a result of filing of this case against
11 Defendant. Plaintiff took these risks upon himself to the benefit of the Class. *Id.* ¶ 8. Class Members did
12 not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
13 they have to face the potential for retaliation and not getting future employment had they filed a lawsuit
14 which is a public record. These are significant benefits that weigh in favor of granting the requested
15 award. Moreover, this litigation has resulted in a significantly valuable benefit to the Class, and Plaintiff
16 took on substantial risks in helping to get this financial benefit to the Class. As such, the award should
17 be granted to Plaintiff for his commitment, dedication, and risks taken for this litigation.

18 Equally important, Plaintiff provided a general release and waiver of the protections of Civil
19 Code section 1542. Velasquez Decl. ¶ 9. This is a more extensive release than that provided by the Class
20 at large, also supporting the request for the award.

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

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

3 **C. The Requested Attorneys' Fees Should Be Approved.**

4 **1. The Percentage of the Fund Method Supports the Requested Fees.**

5 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
6 successful prosecution and resolution of this action. California state and federal courts have recognized
7 that an appropriate method for determining award of attorneys' fees is based on a percentage of the total
8 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
9 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ; *Boeing Co. v. Van Gemert*, 444 U.S. 472,
10 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
11 equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
12 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden
13 alone." *Vincent*, 557 F.2d at 769.

14 The California Supreme Court has provided guidance regarding the award of attorneys' fees in
15 wage and hour class action settlements. Under California law, the award of attorneys' fees in common
16 fund wage and hour class action settlements should start with the percentage method. *See Laffitte v.*
17 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
18 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
19 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
20 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
21 created"). Under the percentage of the fund method, a court's objective remains to "mimic the market"
22 in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) ("When
23 a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what
24 the market will set The judge, in other words, is trying to mimic the market in legal services.").

25 First, the fee award representing 33⅓% of the fund clearly falls within that range and is
26 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
27 fee awards. Attorneys' fees awards of 35% of the fund are within the expected range in the "market in
28 legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7

1 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
2 “[m]ost fee awards were between 25 percent and 35 percent”).¹

3 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
4 Here, Plaintiff and his counsel secured a \$250,000.00 settlement and only one of the Class Members
5 chose to opt out. Zero chose to object.

6 Third, “the response of the class members to attorneys’ fee notice, though not decisive, is
7 relevant to the ... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
8 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
9 market” for fees is well supported. *Id.* at 1269. In this case, the Class Notice specifically notified Class
10 Members that Class Counsel would be seeking \$83,333.33 in attorneys’ fees.

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

13 No one expects a lawyer whose compensation is contingent upon his success to charge,
14 when successful, as little as he would charge a client who had agreed to pay for his
15 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.

16 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$250,000.00 has been
17 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
18 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
19 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
20 experienced defense firm. For such reasons, Class Counsel’s request for attorneys’ fees in the amount of
21 \$83,333.33 is fair, reasonable, and adequate.

24 ¹ Such an attorneys’ fees award of the fund mimics the market and “is supported by the fact that typical
25 contingency fee agreements provide that class counsel will recover 33% if the case is resolved before
26 trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16
27 n.59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers:
Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an
28 attorneys’ fees award of 35% of the fund is consistent with “empirical studies [that] show that ... fee
awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App.
4th 43, 66 n.11 (2008).

1 **2. The Lodestar Cross-Check Supports the Requested Fees.**

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

10 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even
11 higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Sutter Health*
12 *Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-
13 check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a
14 lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
15 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable
16 range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.²
17 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the
18 percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See*
19 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an
20 employment class action case and analyzing the multiplier awarded in over 30 cases).³

21
22 ² The intermediate court opinion was affirmed in full by the California Supreme Court in its decision
23 guiding lower courts on assessing fees.

24 ³ Federal district courts applying California law have likewise routinely approved cross-check
25 multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
26 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
27 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
28 attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 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 after surveying a large body of cases affirming a higher multiplier).

1 With respect to Plaintiff's Counsel's lodestar, at least 109.8 hours have been expended by just
2 two of the three Class Counsel litigating this case. Yang Decl. ¶ 8, Ex. A. Moreover, Plaintiff's Counsel
3 expects to incur approximately 5.0 hours of anticipated time spent to attend the final approval hearing
4 and secure final approval, as well as after approval to respond to correspondence and phone calls from
5 the administrator, defense counsel, and Class Members. *Id.* The courts are quite liberal in the evidence
6 required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony
7 alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is
8 sufficient evidence to support an award of attorney fees, even in the absence of detailed time records."
9 *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

10 Reasonable hours include, in addition to time spent during litigation, the time spent before the
11 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
12 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee
13 award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v.*
14 *Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel seeks compensation involve
15 only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

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

21 Here, Mr. Marder's hourly rate is \$750. Marder Decl. ¶ 14. Mr. Yang's hourly rate is \$725. Yang
22 Decl. ¶ 7. Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the
23 supporting declarations, Plaintiff's Counsel has significant experience in the area of employment and
24 wage and hour class and representative actions. Plaintiff's Counsel's practice focuses on representing
25 employees in employment matters, particularly wage and hour cases on a contingency basis. Lee Decl.
26 ¶¶ 6-8; Marder Decl. ¶¶ 5-12 Yang Decl. ¶¶ 4-6. As such, based on the hours and applicable rate, the
27 lodestar for just two of Class Counsel through the finalization of this settlement—without a multiplier—
28

1 will be approximately \$84,105.00, which *exceeds the fee requested* by Plaintiff here. *Id.* Accordingly,
2 the cross-check supports the fee requested.

3 **D. The Court Should Approve the Request for Reimbursement of Costs.**

4 The request for reimbursement of costs, in the amount of \$3,805.46 is fair and reasonable. As set
5 forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this
6 action. Lee Decl. ¶ 9, Ex. A. The authority for the Court to award this is the Parties' Agreement and
7 Sections 226 and 2699. As such, this request should be approved.

8 **E. The Administrator's Fees and Costs Should Be Approved.**

9 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
10 Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Kevin
11 Lee, the settlement administration fees expended in this matter amount to a total of \$5,000.00, which is
12 the amount that was agreed upon by the Parties. Admin Decl. ¶ 16. For such reasons, it is requested that
13 the Administrator's fees be approved.

14 **V. Notice to the LWDA Has Been Provided.**

15 On September 15, 2022, Plaintiff uploaded the Order Granting Plaintiff's Motion for Preliminary
16 Approval of Class Action Settlement to the LWDA's website. Lee Decl. ¶ 10. Concurrent with the filing
17 of this motion, Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

18 **CONCLUSION**

19 Plaintiff respectfully submits that the standards for final approval have been met and the terms of
20 the Agreement are fair, adequate, and reasonable. Accordingly, Plaintiff respectfully requests that the
21 Court enter an Order in the form proposed and submitted.

22 DATED: December 13, 2022

DIVERSITY LAW GROUP, P.C.

23 By: _____
24

Simon L. Yang

Simon L. Yang

Attorneys for Plaintiff
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