

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

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

Attorneys for Plaintiff and the Class

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

ANTONIO JESUS JARAMILLO DE LA CRUZ,
as an individual and on behalf of all others
similarly situated, and as a private attorney
general,

Plaintiff,

vs.

WEIDNER PROPERTY MANAGEMENT, LLC,
a Washington limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00308697

[Assigned for all purposes to Department 22,
Hon. Lauri A. Damrell]

**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 Antonio Jesus Jaramillo De La Cruz;
Declaration of Lluvia Islas; [Proposed] Order
and Final Judgment]*

Date: February 16, 2024
Time: 9:00 a.m.
Department: 22

Complaint Filed: September 22, 2021
FAC Filed: February 28, 2022

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

2 **PLEASE TAKE NOTICE** that on February 16, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 22 of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff, Antonio Jesus Jaramillo De La Cruz, will and hereby does seek an Order:

- 5 1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement, as
6 modified by the Amendment to Joint Stipulation of Class Action and PAGA Settlement (the
7 “Agreement”) in this action;
- 8 2. approving distribution of the settlement funds to Settlement Class Members and PAGA
9 Employees pursuant to the terms of the Agreement;
- 10 3. approving Plaintiff’s request for a service award of \$10,000.00 to the Class Representative
11 pursuant to the terms of the Agreement;
- 12 4. approving Class Counsel’s request for an award of attorneys’ fees of 33⅓% of the
13 \$201,346.46 Gross Settlement Amount, or \$67,115.49, and reimbursement of litigation costs
14 of \$5,181.97 pursuant to the terms of the Agreement;
- 15 5. approving Plaintiff’s request for payment of the settlement administration costs to Phoenix
16 Settlement Administrators in the amount of \$6,500.00 pursuant to the terms of the
17 Agreement;
- 18 6. approving Plaintiff’s request for payment to the Labor & Workforce Development Agency of
19 \$10,500.00 pursuant to the terms of the Agreement; and
- 20 7. entering final judgment as to all members of the Settlement Class in this action.

21 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
22 Court approval of the settlement of a purported class action and allows the Court to grant final
23 certification of a class for settlement purposes. The overwhelmingly positive Class response—as shown
24 by the lack of any objections to the settlement and also the lack of any opt outs—supports that the
25 settlement is fair, reasonable, and adequate, and should be granted final approval.

26 This motion will be based on the attached Memorandum of Points and Authorities, the
27 supporting Declarations of Larry W. Lee, Simon L. Yang, Plaintiff Antonio Jesus Jaramillo De La Cruz,
28

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

3 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Rule 1.06 (A), the court will
4 make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The
5 complete text of the tentative rulings for the department may be downloaded off the court's website. If
6 the party does not have online access, they may call the dedicated phone number for the department as
7 referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court
8 day before the hearing and receive the tentative ruling. If you do not call the court and the opposing
9 party by 4:00 p.m. the court day before the hearing, no hearing will be held.

10 DATED: January 24, 2024

DIVERSITY LAW GROUP, P.C.

11 By: _____

12 Larry W. Lee

13 Simon L. Yang

14 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On September 22, 2021, Plaintiff, Antonio Jesus Jaramillo De La Cruz, initiated this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, Weidner Property Management, LLC (“Action”). On behalf of Sick Pay Class Members, Non-Exempt Class Members, and Exempt Class Members (collectively, “Class Members”), and as a proxy for the State, the Action pursues class action and PAGA claims for alleged Labor Code violations for (1) unpaid overtime; (2) unpaid sick pay wages; (3) failure to provide meal and rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; and (6) failure to reimburse business expenses.

Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action and PAGA Settlement, as modified by the Amendment to Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”). The Agreement provides for a \$201,346.46 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, a service award to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”) and PAGA Employees, and costs of settlement administration are to be paid. The net settlement fund after these deductions will be paid to Settlement Class Members.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. On October 20, 2023, the Court held a hearing on preliminary approval of this settlement. It directed distribution of the Notice of Class Action Settlement (“Class Notice”) and scheduled 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 189 Class Members. Declaration of Lluvia Islas with Respect to Notice and Settlement Administration (“Admin Decl.”) ¶¶ 5, 10.¹ No objections have been made. *Id.* ¶ 8. Nor have any requests for exclusion been submitted. *Id.* ¶ 7. As such, there is a 100% participation rate. Based on the Class Member response, an inference can be made that the Class finds the settlement is fair and reasonable.

¹ All Class Members—including one Class Member who was inadvertently omitted from the initial mailing—have been mailed the Class Notice. Admin Decl. ¶ 10. This one Class Member may timely submit an objection or request for exclusion through February 26, 2024. *Id.*

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

- 3 ▪ The settlement provides a total settlement sum of \$201,346.46;
- 4 ▪ The settlement is fair given that Class Members will receive (*after* deductions for fees, costs,
5 etc.) a substantial amount of money (on average, each Sick Pay Class Member and each Non-
6 Exempt Class Member will receive approximately \$564.93; on average, each Exempt Class
7 Member will receive approximately \$289.85; and on average, each PAGA Employee will
8 additionally receive another \$22.88, *see* Admin Decl. ¶¶ 13-15);
- 9 ▪ Plaintiff conducted significant investigation in this case, including substantial informal
10 discovery and exchanges of information by Plaintiff and Defendant of class data for the
11 entire class necessary for Plaintiff to fully evaluate this case; and
- 12 ▪ California's LWDA will also be the beneficiary of this settlement as it will receive
13 \$10,500.00, should this settlement be granted final approval.

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

15 DISCUSSION

16 I. Class Members Were Provided Notice of the Settlement.

17 The notice procedures required by the Preliminary Approval Order, have been followed and
18 satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that
19 Phoenix Settlement Administrators would serve as the Administrator. It also contemplated that the Class
20 Notice to be sent to all Class Members by first class mail, as specified in the Agreement, would enable
21 Class Members to contact Class Counsel, seek additional information regarding the settlement, leave
22 questions for the Administrator, and update their addresses.

23 As the Admin Declaration states, notice was provided to Class Members, as required by the
24 Preliminary Approval Order. On November 6, 2023, the Administrator received a Class Member
25 mailing list from Defendant's counsel that included 189 Class Members. Admin Decl. ¶ 3. On
26 November 6, 2023, the Administrator conducted a National Change of Address ("NCOA") search to
27 update the Class Member mailing list of addresses as accurately as possible. *Id.* ¶ 4. On November 17,
28 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.*
¶ 5. No Class Notices were returned; none of the Class Notices remain undeliverable. *Id.* ¶ 6.²

² As referenced in the prior footnote, one of the recipients of the Class Notice informed the Administrator that she was not the intended recipient of the Class Notice. Admin Decl. ¶ 10. After the

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 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 is determined by examining (1) the class definition, (2) the size
20 of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County*
21 *Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *see also* Code Civ. Proc. § 382.

22 Here, the Class includes all Sick Pay Class Members, Non-Exempt Class Members, and Exempt
23 Class Members. Sick Pay Class Members include all current or former non-exempt employees of
24 Defendant in the State of California who were paid sick pay wages in any workweek from September
25 22, 2017, through April 1, 2023, in which they also earned non-hourly remuneration, including but not
26 limited to non-discretionary bonuses and rent discount incentives. Agreement § 1.5.1. Non-Exempt

27
28 Administrator conferred with Defendant, the inadvertent recipient was informed that she was not a Class
Member, and the intended Class Member recipient was sent Class Notice. *Id.*

1 Class Members include all current or former non-exempt employees of Defendant in the State of
2 California from February 10, 2021, through April 1, 2023. *Id.* § 1.5.2. Exempt Class Members include
3 all current or former exempt employees of Defendant in the State of California from September 22,
4 2017, through April 1, 2023. *Id.* § 1.5.3.³

5 There are 189 individuals that comprise the Class. Admin Decl. ¶ 3. This is more than the
6 minimum required to certify a class. Within the context of manageability, the issue is whether there
7 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at
8 1274-75. Here, Class Members have already been identified and have already been sent notice.

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

10 The “community of interest” requirement embodies three separate factors: (1) predominant
11 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
12 class representatives who can adequately represent the class. *Richmond v. Dart Industries, Inc.*, 29 Cal.
13 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

19 Here, Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or
20 procedure, underpaid sick pay and overtime, failed to provide meal and rest periods, furnished unlawful
21 wage statements, and failed to reimburse business expenses. While Defendant denies that liability could
22 be established on a class-wide basis and contends instead that liability would need to be conducted on a
23 case-by-case basis, common questions predominate Plaintiff’s theories of liability.

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

25 A class representative’s claim must be “typical” but not necessarily identical to the claims of
26 other class members; it is sufficient that the representative is similarly situated so that he or she will

27 ³ The settlement also defines a group of 153 PAGA Employees. Admin Decl. ¶ 15. PAGA Employees
28 include all Class Members who worked in the State of California from July 14, 2020, through April 1,
2023. Agreement §§ 1.17, 1.18.

1 have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983).
2 Courts look to “whether the action is based on conduct which is not unique to the named Plaintiff” and
3 whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d
4 497, 508 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
5 named representative aligns with the interests of the class.” *Id.* at 508.

6 Plaintiff was employed by Defendant and alleges that he was subjected to the same payroll
7 policies and wage statement practices as all other Class Members. Specifically, like other members of
8 the Class, Plaintiff alleges he was not paid timely during employment, and he was not fully paid at the
9 end of his employment. Declaration of Antonio Jesus Jaramillo De La Cruz (“De La Cruz Decl.”) ¶ 2.
10 Plaintiff also alleges he was regularly required to use his personal cell phone for work-related purposes,
11 including to perform daily COVID health screenings before work, but was not reimbursed for cell phone
12 related expenses. *Id.* He also alleges that he was not provided with accurate itemized wage statements.
13 *Id.* In sum, Plaintiff alleges he was subjected to the same policies and practices as other Class Members.
14 Plaintiff’s claims thus are typical to those of Class Members.

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

16 The class representative, through qualified counsel, must be capable of “vigorously and
17 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
18 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
19 been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class,
20 including providing information and documents to his counsel and reviewing pleadings in this case. De
21 La Cruz Decl. ¶¶ 3-6. For such reasons, Plaintiff has adequately represented Class Members.

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

23 Defendant asserts that even assuming that a class could have been certified, Plaintiff would be
24 unable to establish classwide liability. For example, Defendant provided Plaintiff with information about
25 various defenses, including for example some based on a prior class action settlement and others based
26 on factual disputes regarding Plaintiff’s allegations. Moreover, even if Plaintiff prevailed on the merits,
27 Defendant contested the extent of liability. For example, with respect to liability for underpaid wages,
28 overtime, and additional hours of regular rate wages, Defendant contended that it would not be subject

1 to Section 203 penalties, based either on the prior class action settlement or on a good faith defense.⁴
2 Likewise, with respect to wage statement liability, Defendant disputed whether Plaintiff could prevail on
3 its theory that wage statements failed to state the name of the legal entity that was the employer and
4 further contended that liability under Section 226(e) would be subject to additional defenses requiring
5 proof of injuries resulting from knowing and intentional violations. Finally, with respect to PAGA
6 penalties, Defendant contended that the circumstances were such that PAGA penalties would be subject
7 to discretionary reductions. Based thereon, Defendant continues to maintain that it is not liable for the
8 allegations made by Plaintiff or for the amounts alleged by Plaintiff.

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

10 Plaintiff believes that a class can be certified. Plaintiff, however, also believes in the fairness of
11 the settlement when factoring in the uncertainty and risks involved in not prevailing on the theory of
12 liability alleged in the Complaint, the possibility of non-certification, and the potential for appeals.

13 There is always a risk that the court will not grant certification of the class. As Defendant alleges
14 that a class could not have been certified, there was at least a substantial risk that Plaintiff would not
15 have obtained the total amount of damages alleged, and a substantial number of complex issues that
16 would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
17 and complexity of further litigation warrant granting of this motion.

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

20 Without reiterating the details in the Preliminary Approval Motion showing that the Agreement
21 (and the negotiation process that led up to it) is fair and adequate, Plaintiff highlights the following facts.
22 The Agreement was the product of negotiation between highly able and experienced attorneys on both
23 sides who possessed the relevant data and extensive legal research which they had carefully analyzed.
24 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 4-5.

25 Following notice to the Class, not a single request for exclusion or objection to the settlement has
26 been received. Admin Decl. ¶¶ 7-8. The Court may appropriately infer that the class action settlement is
27 fair, adequate, and reasonable, given that not a single Class Member has submitted an objection. *See*

28 _____
⁴ Except as otherwise noted, all “Section” references are to the Labor Code.

1 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992). Indeed, the Class Member
2 response suggests the preliminarily approved settlement should now be granted final approval.

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

4 On a motion for final approval of a class action settlement under Code of Civil Procedure section
5 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry is whether the settlement is “fair,
6 adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).
7 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of
8 the class are better served by the settlement than by further litigation.” *See Manual for Complex*
9 *Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement,
10 particularly in class actions and other complex cases, where substantial resources can be conserved by
11 avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg,
12 *Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
13 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

14 Although the Court possesses “broad discretion” in determining that a proposed class action
15 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
16 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
18 *Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise
19 a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways,*
20 *Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
21 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial
22 role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement,
23 disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

24 As the Court of Appeal has cautioned:

25 It cannot be overemphasized that neither the trial court in approving the settlement nor
26 this Court in reviewing that approval have the right or duty to reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
28 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.

1 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

2 A court's review and approval of a PAGA settlement is subject to a similar standard as that for
3 class action settlement approval. A court should evaluate a PAGA settlement to determine whether it is
4 fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
5 deter future ones, and to maximize enforcement of state labor laws. *Moniz v. Adecco USA, Inc.*, 72 Cal.
6 App. 5th 56, 77 (2021).

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

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

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

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

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

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

23 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
24 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
25 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("[P]resent
26 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
27 of not prevailing, should be compared with the amount of the proposed settlement."); *Girsh v. Jepson*,
28 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

1 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been
2 potentially responsible for Defendant's costs. Likewise, any other current or former employees that
3 bring individual claims also would face the uncertainty of prevailing and the possibility of paying costs
4 to Defendant. For that reason, many of these current and former employees likely would not pursue
5 claims. This lawsuit thus achieves a true benefit for the Class that they otherwise might not get or even
6 seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff
7 nor any of the Class Members will be required to pay for Defendant's litigation costs.

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

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

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

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

27 While continued litigation could have led to appeals on several issues, the settlement that was
28 reached provides to all Class Members—regardless of their means—fair relief in a prompt and efficient

1 manner. Were the Court to deny final approval, the Class Members would be left without a remedy as a
2 practical matter and courts across the State would have to address the issues presented here in a
3 piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with
4 the “overriding public interest in settling and quieting litigation” that is “particularly true in class action
5 suits.” *See Van Bronkhorst*, 529 F.2d at 950; *see also 4 Newberg* § 11.41. Here, litigation of this case
6 through trial and appeals would require extended litigation.

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

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

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

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

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

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

22 Class Representative Antonio Jesus Jaramillo De La Cruz requests a service award of
23 \$10,000.00. Plaintiff met with Class Counsel to provide substantive information regarding Defendant’s
24 practices. De La Cruz Decl. ¶ 3. Plaintiff provided invaluable information, evidence, and documents that
25 resulted in this settlement.

26 In addition to the invaluable services that he provided and the hours he devoted to the litigation
27 on behalf of the Class, De La Cruz Decl. ¶ 3, Plaintiff took significant risks, both professionally and
28 monetarily, in acting as Class Representative to seek benefits for the Class. Because the claims Plaintiff

1 alleged involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying
2 the costs of Defendant had he not prevailed in this action. *Id.* ¶ 8. Moreover, Plaintiff understood that an
3 individual case would have resolved much faster than a class action and involved much less financial
4 risk than a class action. Despite this, Plaintiff agreed to pursue this case on behalf of the Class. *Id.* ¶ 4.

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

16 Equally important, Plaintiff provided a general release and waiver of the protections of Civil
17 Code section 1542. De La Cruz Decl. ¶ 9. This is a more extensive release than that provided by the
18 Class at large and also supports the request for the award.⁵

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

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

21 Class Counsel seeks a fee award calculated at 33⅓% of the total value of the settlement for the
22 successful prosecution and resolution of this action. California state and federal courts have recognized
23 that an appropriate method for determining award of attorneys' fees is based on a percentage of the total

24 ⁵ Courts have routinely granted approval of settlements containing such incentive awards. *See Van*
25 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
26 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)
27 (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141
28 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*
Columbia Gas Transmission Corp., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each
class representative); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.
27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*,
142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative).

1 value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
2 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
3 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

4 Indeed, the California Supreme Court has confirmed that the award of attorneys' fees in common
5 fund wage and hour class action settlements may be based on the percentage method. *See Laffitte v.*
6 *Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state
7 courts in holding that when class action litigation establishes a monetary fund for the benefit of the class
8 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
9 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
10 created"). Here, the percentage method supports the requested fees.

11 First, the fee award representing 33⅓% of the fund falls within the accepted range of fee awards
12 and is consistent with other rulings of other courts and comprehensive surveys of class action
13 settlements and fee awards. A fee award of 33⅓% of the fund is consistent with "empirical studies [that]
14 show that ... fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix,*
15 *Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008). Indeed, attorneys' fees awards of up to 35% of the fund are
16 within the expected range. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their*
17 *Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and
18 concluding that "[m]ost fee awards were between 25 percent and 35 percent").

19 Second, the results delivered by Class Counsel also support the requested percentage of the fund.
20 Here, Plaintiff and his counsel secured a \$201,346.46 settlement and zero Class Members chose to opt
21 out. Zero chose to object.

22 Third, "the response of the class members to attorneys' fee notice, though not decisive, is
23 relevant to the ... reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
24 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the
25 market" for fees is well supported. *Id.* at 1269. Here, the Class Notice specifically notified the Class that
26 Class Counsel would be seeking \$67,115.49 in attorneys' fees. Again, there were no objections.

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

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

4 495 F.2d 448, 470 (2d Cir. 1974). Here, a settlement has been reached in the amount of \$201,346.46.

5 For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk
6 than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as
7 well as a long battle with a corporate Defendant who had retained a premier and highly experienced
8 defense firm. For such reasons, Class Counsel's request for attorneys' fees in the amount of \$67,115.49
9 is fair, reasonable, and adequate.

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

11 The amount requested is reasonable for an additional reason. While the primary method
12 employed to determine fees is the percentage method, courts have discretion to use the lodestar method
13 to "cross-check" the amount of fees calculated by way of percentage. As the California Supreme Court
14 has emphasized, "the lodestar calculation, when used in this manner, does not override the trial court's
15 primary determination of the fee as a percentage of the common fund and thus does not impose an
16 absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis
17 added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-
18 check does not trump the primary reliance on the percentage of common fund method]").

19 Courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4 or even
20 higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).⁶ Indeed, the intermediate
21 court in *Laffitte*—after finding that "2 to 4" is a reasonable range for multipliers on a cross-check—
22 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.⁷ Moreover, the Ninth Circuit has cited
23 with approval a comprehensive study of fees awarded by the percentage method showing that the
24 majority of multipliers awarded are "in the 1.5-3.0" range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
25

26 ⁶ *Accord Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *Sutter*
27 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
28 cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
multiplier without remand).

⁷ The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

1 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and
2 analyzing the multiplier awarded in over 30 cases).⁸

3 With respect to Class Counsel's lodestar, at least 103.8 hours have been expended by just one of
4 Class Counsel litigating this case. Yang Decl. ¶ 9, Ex. B. Moreover, Class Counsel expects to incur
5 approximately 10.0 hours of anticipated time spent to attend the final approval hearing, secure final
6 approval, as well as respond to post-final approval phone calls and correspondence from the
7 Administrator, defense counsel, and Class Members. Yang Decl. ¶ 9. Courts are quite liberal in the
8 evidence required to prove an attorney's hours.⁹

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

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

20 Here, Mr. Yang's hourly rate is \$750. Yang Decl. ¶ 8. Plaintiffs' Counsel's skill and experience
21 justify the requested rates. As shown in the supporting declarations, Plaintiffs' Counsel has significant
22

23 ⁸ Federal district courts applying California law have likewise routinely approved cross-check
24 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
25 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
26 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
27 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).

28 ⁹ 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).

1 experience in the area of employment and wage and hour class and representative actions. Plaintiffs'
2 Counsel's practices focus on representing employees in employment matters, particularly wage and hour
3 cases on a contingency basis. Lee Decl. ¶¶ 6-8; Yang Decl. ¶¶ 5-7.

4 Based on the rate and 113.8 total hours, the lodestar for just one of the Class Counsel through the
5 finalization of this settlement will be approximately \$85,350.00. Yang Decl. ¶ 9. In sum, the lodestar for
6 just one of the Class Counsel litigating this matter exceeds the requested attorneys' fees and results in a
7 negative multiplier of approximately 0.786. Again, the requested fees are reasonable and fair, based on
8 the factors described above. The cross-check also supports the requested fees.

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

10 The request for reimbursement of costs, in the amount of \$5,181.97 is fair and reasonable. As set
11 forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this
12 action. Lee Decl. ¶ 9, Ex. A. As such, this request should be approved.

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

14 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
15 Administrators, are to be paid out of the class settlement funds. As shown in the Declaration of Lluvia
16 Islas, the settlement administration fees expended in this matter amount to a total of \$6,500.00. Admin
17 Decl. ¶ 15, Ex. B. For such reasons, it is requested that the Administrator's fees be approved.

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

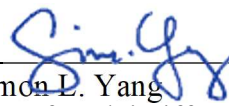
19 Plaintiff has uploaded the Order Granting Plaintiff's Motion for Preliminary Approval of Class
20 Action Settlement to the LWDA's website. Lee Decl. ¶ 11. Concurrent with the filing of this motion,
21 Plaintiff also has uploaded the final approval motion to the LWDA. *Id.*

22 **CONCLUSION**

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

26 DATED: January 24, 2024

DIVERSITY LAW GROUP, P.C.

27 By: 

Simon D. Yang

Attorneys for Plaintiff

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 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On January 24, 2024, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL
12 OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND
13 AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S
15 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S
17 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 18 **4. [PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF
19 CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**
- 20 **5. DECLARATION OF LLUVIA ISLAS WITH RESPECT TO NOTICE AND
21 SETTLEMENT ADMINISTRATION**
- 22 **6. DECLARATION OF ANTONIO JESUS JARAMILLO DE LA CRUZ IN
23 SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS
24 ACTION SETTLEMENT**

25 on the interested parties in this action as follows:

26
27 George W. Abele *Attorneys for Defendant Weidner*
Jennifer Milazzo *Property Management, LLC*
Paul Hastings LLP
515 S. Flower Street, 25th Floor GeorgeAbele@paulhastings.com
Los Angeles, CA 90071 jennifermilazzo@paulhastings.com
FrancineSheldon@paulhastings.com

28 Kelsey A. Webber *Attorneys for Plaintiff*
Shaelyn A. Stewart
WEBBER & EGBERT Kelsey.Webber@webberlawgroup.com
EMPLOYMENT LAW, P.C. Shaelyn.Stewart@webberlawgroup.com

1 1610 R. Street, Suite 300
2 Sacramento, California 95811

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

9 I declare under penalty of perjury under the laws of the State of California that the above
10 is true and correct. Executed on January 24, 2024, at Los Angeles, California.

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Erika Mejia