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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

MELISSA HEBDON, on behalf of herself and all similarly aggrieved employees, Plaintiff, v. MISSION HEALTHCARE SERVICES, LLC; HEALTHY LIVING NETWORK RESOURCES, LLC; HEALTHY LIVING AT HOME - MONTEREY, LLC; and DOES 1 through 50, inclusive, Defendants.	Case No.: 22CV000226 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: July 1, 2025 Time: 10:00 a.m. Dept.: 14

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 1, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Carrie M. Panetta, judge presiding, in Department 14 of the above referenced Court, located at 1200 Aguajito Road, Monterey, California 93940, Plaintiffs Melissa Hendon and Annette Lewis ("Plaintiffs") will and hereby do seek an Order:

move this Court for the following relief with respect to the Joint Stipulation of Class Action and Representative Action Settlement ("Agreement" or "Settlement Agreement") entered into by Plaintiffs and Defendants Mission Healthcare Services, LLC, Healthy Living Network Resources, LLC and Healthy Living at Home – Monterey, LLC (together, "Defendants") (Plaintiffs and Defendants shall collectively be referred to as the "Parties"):

1. granting final approval of the Joint Stipulation of Class and Representative Action Settlement ("Agreement" or "Settlement Agreement") in this matter;

2. approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;

3. approving Plaintiffs' request for an Enhancement Payment of $10,000.00 to each Class Representative (totaling $20,000.00) pursuant to the terms of the Settlement Agreement;

4. approving Plaintiffs' request for an award of attorneys' fees to Class Counsel for approximately one-third of the Settlement Amount, *i.e.* $408,333.33, and reimbursement of litigation costs of $48,410.79 pursuant to the terms of the Settlement Agreement;

5. approving Plaintiffs' request for payment of the settlement administration costs to of Phoenix Settlement Administrators in the amount of $24,000.00 pursuant to the terms of the Settlement Agreement; and

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

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

This Motion will be based on the attached Memorandum of Points and Authorities, and the supporting Declarations of B. James Fitzpatrick, Laura L. Franklin, Larry W. Lee, Kristen M. Agnew, Andrew H. Swartz and Plaintiff Melissa Hebdon, Plaintiff Annette Lewis and Taylor Mitzner on behalf of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

Dated: June 6, 2025

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.
SWARTZ & KENNEDY

By: ______________________________
B. James Fitzpatrick
Larry W. Lee
Kristen M. Agnew
Andrew H. Swartz

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class and representative PAGA action arising from Defendants' Mission Healthcare Services, LLC, Healthy Living Network Resources, LLC and Healthy Living at Home – Monterey, LLC (together, "Defendants") alleged violation of the California Labor Code. Prior to the settlement of this Action, Plaintiffs Melissa Hebdon and Annette Lewis ("Plaintiffs") and Defendants (jointly referred to as the "Parties") thoroughly investigated the facts relating to the claims alleged in the operative Complaint against Defendants. The Parties each propounded and responded to written discovery, and Defendants produced time and payroll records for Class Members. Thereafter, the Parties participated in three full days of private mediation and were ultimately able to reach the current settlement.

The terms of the settlement provide that Defendants shall pay a Gross Settlement Amount of $1,225,000.00. On average, each Settlement Class Members will receive approximately $334.65. Significantly, the entire settlement amount is non-reversionary, such that no monies will revert back to Defendants.

The Parties believe that this amount is fair, adequate, and reasonable, especially given the risks and uncertainty of class certification and the merits of this case. Further, notice of the settlement was provided to the class by Phoenix Settlement Administrators in the manner approved by the Court. Not a single objection was received and only two (2) requests for exclusion from the Settlement were submitted. Thus, there is a 99.88% participation rate. Therefore, the Parties respectfully request that the Court grant this Final Approval of Class Action Settlement

II. THE PAYMENTS TO THE SETTLEMENT CLASS & AGGRIEVED EMPLOYEES

The Settlement provides a Gross Settlement Amount of $1,225,000.00. The entire Gross Settlement Amount is non-reversionary, such that no monies will revert back to Defendants. There are 1,716 Settlement Class Members. *See* Declaration of Taylor Mitzner on behalf of Phoenix Settlement Administrators ("Admin Decl.") ¶ 13.

The Net Settlement Amount is estimated to be $574,255.88. *See* Admin. Decl. ¶ 15. The Net Settlement Amount is based on the following:

Gross Settlement Amount	**$1,225,000.00**
Less Class Counsel Fees	($408,333.33)
Less Class Counsel Costs	($48,410.79)
Less Enhancement Payment to Plaintiff Hebdon	($10,000.00)
Less Enhancement Payment to Plaintiff Lewis	($10,000.00)
Less PAGA Allocation	($150,000.00)
Less Settlement Administration Costs	($24,000.00)
Net Settlement Amount	**$574,255.88**

Pursuant to the terms of the Settlement Agreement, Settlement Class Members will receive a proportionate share of the Net Settlement Amount based on the total number of pay periods worked during the Class Period. There are 1,716 Settlement Class Members, with a total of 54,253 pay periods. *See* Admin. Decl. ¶ 13. Based on estimated settlement calculations at this time, the estimated average payment to each Settlement Class Member will be $334.65, and the highest payment to a Settlement Class Member is estimated to be $804.44. *See id*. at ¶ 16.

The Settlement allocates $150,000.00 of the Gross Settlement Amount to PAGA penalties ("PAGA Allocation"), of which 75%, or $112,500.00 shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%, or $37,500.00 to PAGA Employees ("Net PAGA Payment"). *See* Admin. Decl. ¶ 17. PAGA Employees will receive a proportionate share of the Net PAGA Payment based on the number of pay periods worked during the PAGA Period. *See id*. Based on the estimated calculations at this time, the average Individual PAGA Payment to each Aggrieved Employee is estimated to be $20.26 and the highest payment is estimated to be $56.61. *See id*. All Class Members who are PAGA Employees, including individuals who requested exclusion from the Settlement, will receive an Individual PAGA Payment.

III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

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

As clearly stated in the Administrator's Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On November 27, 2024, the Settlement Administrator received the Class List from Defendants' Counsel that included 1,718 Class Members. *See* Admin Decl. ¶ 3.[1] On or about December 12, 2024, each of the persons identified on the mailing list were sent the Notice via first class mail. *See id.* at ¶ 7. As part of the administration process, the Settlement Administrator has re-mailed Notices to twenty-two (22) updated addresses Class Members using newly updated addresses after performing a skip-trace using the U.S. Postal Service National Change of Address Database, one of the most comprehensive address databases available for skip tracing. *See id.* at ¶ 8. As of the date of this filing, there are <u>no</u> Notices that remain undeliverable. *See id.* at ¶ 9. Further, the Notice provided Class Members with Class Counsel's contact information, where they could further seek information regarding the settlement, leave questions for the Settlement Administrator, and update their address. *See id*. at ¶ 7, Exhibit A.

The provision of sending the notice to Class Members as described above meets the requirements for the "best notice practicable" in this case as necessary to protect the due process rights of Class Members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12

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[1] At the time of settlement, the Parties previously estimated that there were approximately 2,537 Class Members. However, following preliminary approval, Class Counsel notified Defendants that the Class List contained significantly fewer Class Members than expected. *See* Declaration of Patricia T. Stambelos, ¶ 6. Defense counsel reviewed the records and calculations and determined that their experts had inadvertently transposed numbers in their data presentation and had failed to exclude duplicative information from the data set. *See id.* at ¶ 7. The revised and corrected Class List contained 1,718 individuals identified as Class Members, who worked a total of 54,355 weeks during the Class Period. *See id.* at ¶ 8, 9.

(1985) (provision of "best notice practicable" with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950) (best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"). Here, the Class Members were provided with a mailing regarding the settlement that explained the settlement and allowed Class Members to seek information, ask questions, and object, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may proceed to determine the fairness and adequacy of the settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

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

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

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

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval, the Parties highlight the following facts. The Settlement Agreement was the product of three-full day mediations and extended negotiation between highly able and experienced attorneys on both sides. *See* Declaration of Kristen M. Agnew ("Agnew Decl.") ¶¶ 2-7; Declaration of Laura L. Franklin ("Franklin Decl.") ¶ 2; Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶ 4; Declaration of Larry W. Lee ("Lee Decl.") ¶ 2; Declaration of Declaration of Andrew H. Swartz ("Swartz Decl.") ¶ 2, 9, 10. In addition, the resolution of this case was reached only after the production of data relevant to the potential value of the claims. *See* Agnew Decl. ¶¶ 3,4. Class Counsel retained Econ One to review the payroll data and perform a comprehensive damage analysis in preparation for mediation. *See id*. at ¶ 4. With Econ One's assistance, and based on the data provided by Defendants, Class Counsel was able to calculate a range of potential damages and penalties. *See id*. at ¶¶ 4, 5. Class Counsel estimated that Defendants' maximum liability exposure is approximately $15,859,572.93. *See id*. at ¶ 5. Thus, in the present case, the Gross Settlement Amount is approximately 7.70% of the maximum recovery of the class and representative PAGA claims. *See id*.

The results after mailing of the Class Notice further support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that ***there is not a single Class Member who has objected to the current settlement and only two (2) Class Members submitted a request to opt-out.*** *See* Admin. Decl. ¶¶ 10-12. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable when, among other reasons, few, or no class members object to it. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen. Elec.,* 361 F.3d 566, 577 (9th Cir. 2004) (approving settlement with 45 objections and 500 opt-outs from a 90,000-person class, representing 0.05% and 0.56% of the class, respectively); *Chun–Hoon v. McKee Foods Corp*., 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class members opted out, court found that positive class reaction "strongly supports settlement"). Here, the lack of any objections and nominal opt-outs to this current settlement is an indication that Class Members themselves view the settlement as fair, adequate, and reasonable.

B. Under Well-Established Legal Principles, the Court Should Grant

Final Approval of the Settlement

1. Standard of Review

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

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

A court's approval of a class action settlement will only be reversed for a clear abuse of discretion. *See Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*

Justice, 688 F.2d at 626 ("reverse only upon a strong showing that the district court's decision was a clear abuse of discretion"); *Class Plaintiffs*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

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

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

2. The Settlement is Presumed to Be Fair

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

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

Dunk, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the Motion for Preliminary Approval, this current settlement was negotiated at arm's length and with the assistance of a neutral mediator. *See* Agnew Decl. ¶¶ 2-5. Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. *See id*. at ¶¶ 7-13; Franklin Decl. ¶ 3, 4; Fitzpatrick Decl. ¶ 12; Lee Decl. ¶¶ 10, 11; Swartz Decl. ¶ 15.

3. Two-Way Costs and Other Risks Inherent in Continued

Litigation Favor Final Approval

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

If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been potentially responsible for Defendants' costs. As such, should any individual bring individual claims against Defendants on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendants. Accordingly, such claims likely would not be brought—thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs, nor any of the Class Members will be required to pay for Defendants' litigation costs.

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

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

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

Another factor considered by courts in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In applying this factor, the Court must weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *See Young v. Katz*, 447 F.2d 431, 433-434 (5th Cir. 1971). As noted in the Motion for Preliminary Approval, continued litigation could have led to appeals on a number of issues. On the other hand, the settlement that was reached provides to all Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members would be left without a remedy as a practical matter and courts across the State would have to address the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with the "overriding public interest in settling and quieting litigation" that is "particularly true in class action suits." *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at 950**Error! Bookmark not defined.** (footnote omitted); *see also* 4 *Newberg* at § 11.41.

5. The Opinion of Experienced Counsel Favors Final Approval

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

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V. THE REQUESTED ENHANCEMENT PAYMENTS SHOULD BE APPROVED

Plaintiffs have requested, and Defendants do not oppose, an Enhancement Payment of $10,000 to each Class Representative, pursuant to the terms of the Settlement Agreement. Plaintiffs request that this Court approve such Enhancement Payments in light of the efforts Plaintiffs put into this case, the absence of any objection to the Enhancement Payments, and the excellent result achieved. As shown in the supporting declarations, the Class Representatives spent a significant amount of time: (i) engaging in telephonic and in-person discussions with Class Counsel regarding the case; (ii) searching for documents relating to their claims, including pay records, policy manuals, and emails; (iii) reviewing various files and pleadings in this case, including the PAGA Notice, the Complaint, the First Amended Complaint and their declarations; and (iv) reviewing the Settlement Agreement. *See* Declaration of Melissa Hebdon ("Hebdon Decl.") ¶ 10; Declaration of Annette Lewis ("Lewis Decl.") ¶ 9. The Class Representatives have continuously been kept apprised of the status of this case. *See* Hebdon Decl. ¶ 10; Lewis Decl. ¶ 9.

In addition to the invaluable services they provided, Plaintiffs also took a significant risk, both professionally and monetarily, in acting as Class Representatives. Because the claims alleged by Plaintiffs involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendants had they not prevailed in this action. *See* Hebdon Decl. ¶ 8; Lewis Decl. ¶ 6. Despite this, however, Plaintiffs agreed to pursue this case on behalf of the Class.

Also, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, the Class Representatives could face negative employment prospects in the future. The Class Representatives took such risks upon themselves and the whole Class benefited from this. Class Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits, even apart from the time the Class Representatives have spent working on this case, that weigh in favor of granting the requested enhancement.

Finally, as part of the class settlement, Plaintiffs also agreed to give a general release of their individual claims, something that the Class Members did not have to do. *See* Settlement Agreement § E-1. Thus, the Class Representatives have sacrificed their own individual rights for those of the Class Members. This is a significant factor to take into account that further warrants the award of the requested service amount.

Courts have routinely granted approval of settlements containing such enhancements. *See e.g., Herrera v. Federal Express Corporation*, 2020 WL 2951122 at *7 (C.D. Cal. March 31, 2020) (noting that case law supports enhancements of $10,000); *Potter v. Big Text Trailer Manufacturing, Inc.*, 2020 WL 1942619 at *10 (C.D. Cal. March 20, 2020) (awarding $10,000 enhancement where plaintiff spent 30-40 hours on the matter and entered into a general release); *Smith v. Experian Information Solutions, Inc.*, 2020 WL 6689209 at *7 (C.D. Cal. Nov. 9, 2020); *Aikhan v. Goodrich Corporation*, 2020 WL 49191382 at *9 (C.D. Cal. June 25, 2020); *Thomas v. Cognizant Technology Solutions U.S. Corporation*, 2013 WL 12371622 at *9 (C.D. Cal. June 24, 2013; *Djukich v. AutoNation, Inc.*, 2015 WL 13756099 at *14 (C.D. Cal. Nov. 12, 2015). Moreover, it should be noted that there were no objections by any members of the Class to the proposed Enhancement Payments. For such reasons, the Class Representatives respectfully request that this Court approve the award of the Enhancement Payments.

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel's application for an award of attorneys' fees in an amount of one-third (33.33%) of the Gross Settlement Amount is fair and reasonable. Class Counsel has achieved an excellent settlement in this litigation, as set forth in the Settlement Agreement and this Motion. The proposed settlement provides substantial benefits to the Class and was reached after aggressive investigation and litigation by Class Counsel. Furthermore, there have been no objections filed against the Settlement or to Class Counsel's request for attorneys' fees in the amount of $408,333.33. As more fully detailed below, Class Counsel's request for attorneys' fees is fair, reasonable, and adequate.

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

An award of 33.33% of the fund in attorneys' fees mimics the marketplace as it "is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33.33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11) (Fall 2003). Indeed, "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).

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at 505.

Moreover, in the *Laffitte* intermediate court decision, the court observed that "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing 33.33% of the Gross Settlement Amount clearly falls within that range, and is consistent with other comprehensive surveys of class action settlements and fee awards. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.

Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

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

In addition, it is recognized that one of the primary factors justifying an enhanced attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974):

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

Here, it is clear that a common fund of $1,225,000.00has been created as the entire amount is to be paid out without any reversion. For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. *See* Lee Decl. ¶ 3. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a defendant that has retained premier defense counsel.

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

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

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

With respect to Class Counsel's lodestar, to date, over 577.70 hours have been expended by Class Counsel in this matter. [2] *See* Fitzpatrick Decl. ¶ 8, Exhibit A; Lee Decl. ¶ 5, Exhibit A; Swartz Decl. ¶ 4. Moreover, Class Counsel expects to incur additional hours of attorney time in finalizing this settlement. *See* Fitzpatrick Decl. ¶ 8; Lee Decl. ¶ 5. Class Counsel each request an hourly rate of $595.00 per hour. *See* Fitzpatrick Decl. ¶ 10; Lee Decl. ¶ 7; Swartz Decl. at ¶ 4. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Here, Class Counsel's skill and experience justify the requested rate. As shown in the supporting declarations, Class Counsel have significant experience in the area of employment and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. *See* Agnew Decl. ¶¶ 7, 9-13; Franklin Decl. ¶ 3, 4; Fitzpatrick Decl. ¶ 12; Lee Decl. ¶¶ 10, 11; Swartz

[2] In addition to the time expended by the attorneys, there is approximately 41.50 hours of paralegal time billed to the matter. *See* Fitzpatrick Decl. ¶ 8, Exhibit A. The hourly rate for paralegals is $185.00 per hour. *See id*. at ¶ 9.

Decl. ¶ 15. As such, based on the hours and applicable rate, the total lodestar to be expended by Class Counsel through finalizing this settlement will be approximately $343,731.50 [$595 x 577.70].

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

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

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

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

Here based upon Class Counsel's lodestar of $343,731.50, the requested fees result in a multiplier of approximately 1.187 ($408,333.33 (requested fees) ÷ $343,731.50 (lodestar amount). This demonstrates that the requested fees are reasonable and fair, particularly based on the factors described above. *Wershba v. Apple Computer, Inc*., 91 Cal.App.4th 224 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp*., 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp*., 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's request for attorneys' fees in the amount of $408,333.33 is fair, reasonable, and adequate.

VII. <u>THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS</u>

The request for reimbursement of costs, in the amount of $48,410.79 is fair and reasonable. Pursuant to the terms of the Settlement Agreement, Plaintiffs are allowed to seek reimbursement of litigation costs up to a maximum of $60,000.00. To date, Class Counsel have expended $48,410.79 in litigation related costs. *See* Lee Decl. ¶ 8, Exhibit B; Fitzpatrick Decl. ¶ 14, Exhibit B. The authority for the court to award this is the Parties' Settlement Agreement and Labor Code sections 226, 1194, 2802, and 2698 *et. seq*. As such, this request should be approved.

VIII. <u>THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED</u>

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the Gross Settlement Amount. In total, the settlement administration costs total $24,000.00. *See* Admin. Decl. ¶ 19,

Exhibit B. Thus, settlement administration fees in the amount of $24,000.00, as agreed to in the Settlement Agreement, should be approved.

IX. NOTICE HAS BEEN PROVIDED TO THE LWDA

On October 11, 2024, Class Counsel uploaded the Court's Order Granting Preliminary Approval to the LWDA's website. *See* Agnew Decl. ¶ 14. The LWDA has not responded or objected to this settlement. *See id.* On June 6, 2025, Class Counsel uploaded this Motion and Proposed Order to the LWDA's website. *See id* at ¶ 15.

X. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs respectfully submit that the standards for final approval have been met, and the terms of the Settlement Agreement are fair, adequate and reasonable. Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement Agreement;
2. Approving distribution of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement;
3. Approving the Class Representatives' request for individuals Enhancement Payments with payment pursuant to the terms of the Settlement Agreement;
4. Approving the Class Representatives' request for an award of the Class Counsel's fees and litigation costs with payment pursuant to the terms of the Settlement Agreement;
5. Approving the Class Representatives' request for payment of the settlement administration costs with payment pursuant to the terms of the Settlement Agreement;

Entering judgment as to all members of the Settlement Class in this action; and Setting a Compliance Hearing date.

Dated: June 6, 2025

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.
SWARTZ & KENNEDY

By: ______________________________
B. James Fitzpatrick
Larry W. Lee
Kristen M. Agnew
Andrew H. Swartz

Attorneys for Plaintiffs

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On June 6, 2025, I served the following document(s) described as:

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

2. **DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

3. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

4. **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

5. **DECLARATION OF LAURA L. FRANKLIN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

6. **DECLARATION OF TAYLOR MITZNER REGARDING NOTICES AND SETTLEMENT ADMINISTRATION**

7. **DECLARATION OF ANDREW SWARTZ IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

8. **DECLARATION OF MELISSA HEBDON IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

9. **DECLARATION OF ANNETTE LEWIS IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

10. **DECLARATION OF PATRICIA STAMBELOS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

11. **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows:

Patricia T. Stambelos Stambelos Law Office 543 Country Club Dr., Ste B209 Simi Valley, CA 93065	*Attorneys for Defendants Mission Healthcare Services, LLC, Healthy Living at Home – Monterey, LLC, and Healthy Living Network Resources, LLC* patricia@patriciastambelos.com
Gregory M. Saylin Kody L. Condos HOLLAND & HART LLP 222 South Main Street, Suite 2200 Salt Lake City, UT 84101	*Attorneys for Defendants Mission Healthcare Services, LLC, Healthy Living at Home – Monterey, LLC, and Healthy Living Network Resources, LLC* GMSaylin@hollandhart.com KLCondos@hollandhart.com
Andrew H. Swartz SWARTZ & KENNEDY 550 Hartnell St Ste A1 Monterey, CA 93940-2816	*Attorneys for Plaintiffs, MELISSA HEBDON and ANNETTE LEWIS, on behalf of themselves and all other similarly situated employees* andy@swartzkennedylaw.com

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 6, 2025, at Los Angeles, California.

Erika Mejia