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

AMY OROZCO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BETTS COMPANY, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 34-2021-00309846

(Assigned to the Hon. Lauri A. Damrell, Dept. 28)

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

Date: October 27, 2023

Time: 9:00 a.m.

Dept.: 28

Complaint Filed: October 15, 2021

FAC Filed: December 27, 2021

SAC Filed: March 9, 2022

Trial Date: Not Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 27, 2023, at 9:00 a.m. before the Honorable Lauri A. Damrell, judge presiding in Department 28 of the above-referenced Court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiff Amy Orozco (“Plaintiff”) will seek an Order:

1. Granting final approval to the Joint Stipulation of Class Action and PAGA Settlement and Release (“Stipulation” or “Settlement Agreement”) in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff’s request for an award of the Class Representative enhancement award of \$5,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;
4. Approving Class Counsel’s request for an award of attorneys’ fees of approximately one-third of the \$90,000.00 Gross Settlement Amount, and reimbursement of actual litigation costs of \$10,270.18, pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$5,995.00 pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiff’s request for payment to the LWDA for \$3,750.00 pursuant to the PAGA and the terms of the Settlement Agreement; and
7. Entering final judgment as to all members of the Class in this action.
8. 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. The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the settlement. In light of the overwhelmingly positive response, as shown by the lack of objections to the settlement and high percentage of Class Members participating in the settlement, there is no question that the settlement is fair, reasonable, and adequate and thus should be granted final approval.

1 This Motion will be based on the attached Memorandum of Points and Authorities and the
2 supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, Plaintiff Amy
3 Orozco, and Yami Burns of Phoenix Settlement Administrators, upon the oral arguments of counsel
4 (should there be any), and on the complete records and file herein.

5
6 DATED: October 5, 2023

DIVERSITY LAW GROUP, P.C.

7
8 By: 
9 Larry W. Lee
10 Kristen M. Agnew
11 Nicholas Rosenthal
12 Attorneys for Plaintiff and the Class

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1 **I. INTRODUCTION**

2 Plaintiff Amy Orozco (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action and PAGA Settlement and Release (“Stipulation” or “Settlement
4 Agreement”) with Defendant Betts Company (“Defendant”). The Settlement Agreement provides
5 for a \$90,000.00 **non-reversionary** fund to be created for the benefit of the Class,¹ from which
6 attorneys’ fees, litigation costs, enhancement payment to the named Plaintiff, payment of PAGA
7 penalties to the California Labor and Workforce Development Agency (“LWDA”) and Aggrieved
8 Employees,² and costs of settlement administration are to be paid. The entire Net Settlement
9 Amount after these deductions will be paid to all Class Members who did not opt-out of the
10 Settlement.

11 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
12 Approval of Class Action Settlement. The Court preliminary approved this settlement on July 14,
13 2023, directing distribution of Notice Packet and scheduling the hearing for final approval of the
14 settlement (the “Preliminary Approval Order”).

15 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
16 Settlement Administrators—distributed the Notice Packet to 75 Class Members. Declaration of
17 Yami Burns on behalf of Phoenix Settlement Administrators (“Phoenix Decl.”) ¶ 5. All 75 Notice
18 Packets have been deemed by the Settlement Administrator to have been delivered to the Class
19 Members. *Id.* ¶ 6. To date, zero (0) Requests for Exclusion have been submitted to the Settlement
20 Administrator. *Id.* ¶ 7. Zero (0) Notices of Objection have been submitted by any Class Members.
21 *Id.* ¶ 8. As such, the settlement has a significantly high participation rate of **100%**. In light of this
22 positive response from Class Members, an inference can be made that the Class supports the
23

24 ¹ The “Class” as preliminarily approved by the Court consists of all current and former non-exempt
25 employees of Defendant in the State of California who were paid “Opt-Out OT” wages and/or who
26 received Opt-Out wages or other bonuses in the same pay period as a meal/rest period premium
27 and/or paid sick leave wages anytime during the Class Period.

28 ² “Aggrieved Employees” are defined as all current and former non-exempt employees of
Defendant in the State of California who were paid “Opt-Out OT” wages and/or who received Opt-
Out wages or other bonuses in the same pay period as a meal/rest period premium and/or paid sick
leave wages anytime during the PAGA Period.

1 Court’s Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.
2 Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 6.

3 In addition to the results of the notice process, for the same reasons as set forth earlier in
4 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represents
5 the basic points supporting final approval of the settlement:

6 ▪ The settlement provides a total settlement sum of \$90,000.00, which is **non-**
7 **reversionary**;

8 ▪ The settlement is fair given that participating Class Members will receive (*after*
9 *deductions for fees, costs, etc.*) a substantial amount of money—on average, approximately \$449.80
10 to each Participating Class Member, with the estimated highest individual settlement payment being
11 \$1,320.06 (*See* Phoenix Decl. ¶ 12);

12 ▪ Class Members did **not** need to submit claim forms to participate in the settlement,
13 but will automatically receive a check for their individual share of the settlement;

14 ▪ The allocation reflects that payment of Individual Settlement Payments will be paid
15 to Class Members on a *pro rata* basis, based on the number of weeks worked by each respective
16 Class Member between May 21, 2020, through October 31, 2022 (the “Class Period”), as compared
17 to the total number of weeks worked by all Class Members during the Class Period.

18 ▪ Plaintiff’s counsel conducted significant investigation in this case, including
19 conducting informal discovery and significant exchanges of information regarding class data,
20 including the number of putative class members, the hourly rates of pay, number of workweeks,
21 payroll data for the putative class, and pertinent policies regarding meal and rest periods, Opt-Out
22 pay, and sick leave necessary for Plaintiff to fully evaluate this case;

23 ▪ A highly regarded settlement administrator, Phoenix Settlement Administrators, was
24 retained to administer the settlement for approximately \$5,995.00 (*See* Phoenix Decl. ¶ 15); and

25 ▪ The State of California’s LWDA will also be the beneficiary of this settlement, as it
26 will receive \$3,750.00 pursuant to the PAGA, should this settlement be granted final approval.
27 Timely notice of the PAGA settlement was provided to the LWDA pursuant to Cal. Lab. Code
28 section 2699(1)(2) and no objections to the Settlement by the LWDA were received by Plaintiff’s

counsel. Rosenthal Decl. ¶ 8.

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

II. 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. Specifically, the Preliminary Approval Order contemplated that the Notice of Class Action Settlement (“Notice Packet”), as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Declaration of Yami Burns on behalf of Phoenix Settlement Administrators, notice was provided to all Class Members. On July 21, 2023, the Settlement Administrator received a Class Member mailing list from Defendant’s counsel that included 75 Class Members. Phoenix Decl. ¶ 3. Prior to mailing the Notice Packet, the Settlement Administrator conducted a National Change of Address (NCOA) search to correct and/or update the class list in case of any address changes. *Id.* ¶ 4. On July 28, 2023, the Settlement Administrator mailed the Notice Packet to all Class Members on the mailing list via U.S. first class mail. *Id.* ¶ 5. From the date of mailing, zero (0) Notice Packets were returned to the Settlement Administrator due to incorrect addresses. *Id.* ¶ 6. Further, the Notice Packet provided Class Members with Class Counsel’s and the Settlement Administrator’s contact information and website, where they could further seek information regarding the settlement, ask questions, review pleadings in the case, and update their address.

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 (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, all Class Members were provided with a mailing that explained the settlement and allowed Class Members to seek information, ask questions, and exclude themselves and/or object to the settlement, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may 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 settlement, exclusion, and the approval process.

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

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

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

1. The Class is Ascertainable

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987).

Here, the Class consists of “all current and former non-exempt employees of Defendant in

1 the State of California who were paid “Opt-Out OT” wages and/or who received Opt-Out wages or
2 other bonuses in the same pay period as a meal/rest period premium and/or paid sick leave wages
3 anytime during the Class Period.” Based on Defendant’s records, there are 75 individuals that
4 comprise the Class. Phoenix Decl. ¶ 3. This is more than the minimum required to certify a class.

5 Within the context of manageability, the issue is whether there exists sufficient means for
6 identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at pp. 1274-75. Class
7 Members have already been identified by Defendant and notice was provided to all of the above
8 Class Members. Phoenix Decl. ¶ 5.

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
12 (3) class representatives who can adequately represent the class. *Richmond*, 29 Cal. 3d at p. 470;
13 *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
16 which may be jointly tried, when compared with those requiring separate adjudication, are so
17 numerous and substantial that the maintenance of a class action would be advantageous to the
18 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096,
19 1104-05 (2003).

20 In the present case, Plaintiff alleges that Defendant is liable to the Class for (i) failure to
21 provide accurate, itemized wage statements in violation of Labor Code § 226(a); (ii) failure to pay
22 meal and rest period premium at the regular rate of pay in violation of Labor Code §§ 226.7 and
23 512; (iii) failure to pay sick pay at the regular rate of pay in violation of Labor Code §§ 201-204
24 and 246; and (iv) engaging in Unfair Business Practices in violation of the California Labor Code,
25 the applicable IWC Wage Orders, and the UCL. With respect to Plaintiff’s claims under Labor
26 Code §§ 201-204, 226.7, 246, and 512, Plaintiff contends that Defendant failed to pay meal and rest
27 period premium and sick pay wages at the correct regular rate of pay. Plaintiff also alleges
28 derivative and independent wage statement claims under Labor Code § 226(a). Specifically, as a

1 result of the regular rate claims above, Plaintiff asserts that the corresponding wage statements
2 issued to Plaintiff and other employees failed to identify the required information under Labor Code
3 § 226(a). With respect to the independent 226(a) claim, Plaintiff asserts that Defendant issued
4 inaccurate wage statements whenever “Opt-Out OT” wages were paid. In this regard, whenever
5 Opt-Out OT” wages were paid, Defendant allegedly failed to list the hourly rates of pay and
6 corresponding hours worked on wage statements in violation of Labor Code § 226(a).

7 As these are all uniform corporate policies, practices, and procedures of Defendant as
8 alleged by Plaintiff, the claims can be jointly tried and thus the predominance requirement is
9 satisfied. Defendant denies all of these claims, denies that liability could be established on a class-
10 wide basis, and contends instead that liability and damages, if any, would need to be conducted on a
11 case-by-case basis.

12 **b. Plaintiff’s Claims are Typical of the Class Claims**

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

21 Plaintiff asserts she was subjected to the same payroll policies and practices as all other
22 Class Members. In this regard, Plaintiff was employed by Defendant as a non-exempt employee
23 from about June 2019, until about September 13, 2021. Declaration of Amy Orozco (“Orozco
24 Decl.”) ¶ 2. Like other members of the Class, Plaintiff alleges that she was underpaid meal and rest
25 period premiums and sick pay wages. *Id.* ¶ 3. Additionally, Plaintiff also claims that she was not
26 issued accurate wage statements whenever she was paid “Opt-Out OT” wages. *Id.* ¶ 4.

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

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

2 The class representative, through qualified counsel, must be capable of “vigorously and
3 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
4 834, 846 (1984).

5 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
6 been raised or presented. Orozco Decl. ¶ 6. Plaintiff has taken all necessary steps to represent the
7 interests of the Class, including providing information and documents to her counsel, discussing the
8 lawsuit with her counsel on several occasions, and reviewing the various pleadings including the
9 complaints, PAGA letter, settlement agreement, and declarations submitted in this case. *Id.* ¶¶ 5-8.
10 For such reasons, Plaintiff has adequately represented the Class members and will continue to do
11 so.

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

13 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness
14 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
15 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
16 possibility of non-certification, and potential for appeals. These risks on class certification are
17 compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.
18 4th 1 (2014).

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

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

27 Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation
28 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement

1 Agreement was the product of negotiations between highly able and experienced attorneys on both
2 sides who possessed the relevant data and extensive legal research which they had carefully
3 analyzed. Rosenthal Decl. ¶ 3. The Parties engaged in arm's length negotiations at mediation with
4 an highly experienced and known mediator, Tripper Ortman, Esq. *Id.*

5 The results after mailing of the Notice Packet support confirmation of the Court's
6 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
7 fact that zero (0) Class Member opted out and zero (0) Class Members submitted any written
8 objections to the Settlement. Phoenix Decl. ¶¶ 7-9. With the significantly high rate of participation
9 in the settlement by Class Members (**100%**), the Court may appropriately infer that the class action
10 settlement is fair, adequate, and reasonable. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
11 1291 (9th Cir. 1992).

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

14 **1. Standard of Review**

15 On a motion for final approval of a class action settlement under California Code of Civil
16 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
17 settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
18 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983).
19 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the
20 interests of the class are better served by the settlement than by further litigation." *See Manual for*
21 *Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL"). The law favors
22 settlement, particularly in class actions and other complex cases, where substantial resources can be
23 conserved by avoiding the time, cost, and rigors of formal litigation. *See Alba Conte & Herbert B.*
24 *Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*,
25 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
26 1976).

27 Although the Court possesses "broad discretion" in determining that a proposed class action
28 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,

1 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to
2 all concerned. *See Officers for Justice*, 688 F.2d at p. 625. Accordingly, the Court should give due
3 regard to what is otherwise a “private consensual agreement” between the parties. *Id.*; *see also*
4 *Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub.*
5 *Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*,
6 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical,
7 but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The
8 judge cannot rewrite the agreement”).

9 A court’s approval of a class action settlement will only be reversed for a clear abuse of
10 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*,
11 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision was a clear
12 abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar*, 1993 WL 326453
13 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

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

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

23 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

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

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

27 [A] presumption of fairness exists where: (1) the settlement is reached
28 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 p. 1802; *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 p. 1387.

1 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
2 previously noted in the application for Preliminary Approval, this current settlement was negotiated
3 at arm's length after a full day of mediation and continued settlement discussions through an
4 experienced wage-and-hour mediator, Tripper Ortman, Esq. Rosenthal Decl. ¶ 3.

5 Second, Class Counsel engaged in extensive factual investigation before settling, including
6 exchange of informal discovery before mediation. Specifically, Class Counsel reviewed class data
7 pertaining to the number of putative class members, the hourly rates of pay, number of workweeks,
8 as well as payroll data for the putative class, and pertinent policies regarding meal and rest periods,
9 Opt-Out pay, and sick leave. *Id.* ¶ 4. Class Counsel subsequently evaluated and calculated the
10 potential class and PAGA penalties available in this case. *Id.*

11 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
12 supporting declarations, Class Counsel has significant experience in class actions and employment
13 wage and hour matters. Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 7-9; Declaration of Kristen
14 M. Agnew ("Agnew Decl.") ¶¶ 7-12; Rosenthal Decl. ¶¶ 10, 11.

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

17 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
18 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
19 inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir.
20 1995) ("present value of the damages plaintiffs would likely recover if successful, appropriately
21 discounted for the risk of not prevailing, should be compared with the amount of the proposed
22 settlement") (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v.*
23 *Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

24 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
25 been potentially responsible for Defendant's costs. Orozco Decl. ¶ 9. As such, should individual
26 current or former employees of Defendant bring individual claims on the same causes of action,
27 they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant.
28 Accordingly, such claims likely would not be brought by many of these current and former
employees – thus, this lawsuit achieves a true benefit for the class that they might not otherwise get

1 or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither
2 Plaintiff nor any of the Class Members will be required to pay for Defendant's litigation costs.

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

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

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

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

24 As noted above, continued litigation could have led to appeals on several issues. On the
25 other hand, the settlement that was reached provides to all Class Members – regardless of their
26 means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
27 Class Members would be left without a remedy as a practical matter and courts across the State
28 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

1 settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*,
2 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case could have
3 involved years of litigation, especially given that the sick pay regular rate class claim has never
4 been certified by a California court before.

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

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

12 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS** 13 **SHOULD BE APPROVED**

14 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
15 settlement funds remain after 180 days of the mailing of the individual settlement checks, the
16 Parties have agreed that all such uncashed settlement funds shall be distributed to the *cy pres*
17 recipient Boys and Girls Clubs of Fresno County, a non-profit organization that provides social and
18 educational programs for youth development, in accordance with C.C.P. § 384.

19 **V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE** 20 **APPROVED**

21 Class Representative Amy Orozco requests a total enhancement of \$5,000.00. Plaintiff
22 provided significant assistance with the lawsuit, including discussing the case with Class Counsel
23 on multiple occasions, searching for and providing documents and information regarding
24 Defendant’s practices at issue in the case, including her pay records and employment documents,
25 and reviewing the various files and pleadings submitted in this case. Orozco Decl. ¶ 5. Plaintiff
26 spent approximately 40 hours in the prosecution of this matter. (*Id.* ¶ 5.) Accordingly, Plaintiff
27 provided invaluable information, evidence, and documents that resulted in this settlement.

28 In addition to the invaluable services that he provided, Plaintiff also took significant risks,
both professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of

1 the Class. Orozco Decl. ¶ 9. Because the claims alleged by the Class Representative involved the
2 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
3 Defendant, had she not prevailed in this action. *Id.* Despite this, however, Plaintiff agreed to pursue
4 this case on behalf of the Class.

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 faced
7 significant risk in not being able to find suitable employment and/or face retaliation from
8 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
9 risks upon herself to the benefit of the Class. Orozco Decl. ¶ 9. Class Members did not have to file
10 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have
11 to face the potential for retaliation and not getting future employment had they filed a lawsuit which
12 is a public record. These are significant benefits that weigh in favor of granting the requested
13 enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the Class,
14 *i.e.*, average award to Class Members in the amount of \$1,320.06 with the highest Individual
15 Settlement Payment to Class Members of \$449.80, and Plaintiff took on substantial risks in helping
16 to get this financial benefit to the Class. As such, the enhancement should be awarded to Plaintiff
17 for her commitment, dedication, and risks taken for this litigation.

18 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
19 § 1542, which other Class Members did not have to do. Settlement Agreement ¶ 74; Orozco Decl. ¶
20 10. This is a more extensive release than that provided by the Class at large, also supporting the
21 request for the enhancement.

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

1 C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000
2 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th
3 Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

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

5 Class Counsel seeks a fee award calculated at one-third of the Gross Settlement Amount, or
6 \$30,000.00, for the successful prosecution and resolution of this action. California state and federal
7 courts have recognized that an appropriate method for determining award of attorneys' fees is based
8 on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple*
9 *Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977)
10 [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West,*
11 *Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust
12 enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so
13 that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*,
14 *supra*, 557 F.2d at p. 769.

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

25 Here, the fee award representing approximately one-third of the fund clearly falls within that
26 range and is consistent with other rulings of other courts and comprehensive surveys of class action
27 settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23
28 (S.D. Cal. 2011) (recognizing that "courts may award attorney's fees in the 30-40% range in wage

1 and hour class actions that result in recovery of a common fund under \$10 million”); *see also*
2 Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7
3 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation
4 nationwide conclude that fees in the range sought here are consistent with market rates). The results
5 delivered by Class Counsel also support the requested percentage of the fund. Here, Plaintiff and
6 her counsel secured a \$90,000.00 non-reversionary common fund settlement.

7 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
8 relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
9 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
10 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice
11 Packet specifically notified Class Members that Class Counsel would be seeking up to \$30,000.00
12 in attorneys’ fees. To date, no Class Member has objected to the settlement. This strong favorable
13 response also supports the requested fees.

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

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

21 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). For Class Counsel, the
22 fees here were wholly contingent in nature and the case presented far more risk than the usual
23 contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a
24 potentially drawn-out battle with a corporate defendant. As such, the requested fee should be
25 awarded. As secondary support for the percentage of the fund method, courts have discretion to
26 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
27 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial
28 court’s primary determination of the fee as a percentage of the common fund and thus does not

1 impose an absolute maximum or minimum on the potential fee award.” (*Laffitte*, 1 Cal.5th at p.
2 505; *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 (“[The lodestar cross-
3 check does not trump the primary reliance on the percentage of common fund method”).)

4 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
5 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
6 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court
7 is not necessarily required to make such an adjustment.” (*Id.*) Thus, a lodestar cross-check is
8 aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing
9 a cross-check “undermines” one of the primary reasons for using the percentage method: aligning
10 counsel’s incentives with the benefits delivered to the class and discouraging protracted litigation.
11 (*Id.* at p. 506 (finding trial courts “retain the discretion to forgo a lodestar cross-check”); *Report of*
12 *the Third Circuit Task Force, Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 258; *Lealao v.*
13 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 29-30 (citing the recommendations of the
14 Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach
15 set forth in this Report are now echoed by many authorities, who have been most vocal about the
16 manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked
17 trial judge”).)

18 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
19 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also, e.g.,*
20 *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52
21 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at p. 60 (applying
22 a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78
23 (1988) (affirming a 2.34 multiplier without remand).) The intermediate court in *Laffitte*, after
24 finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13
25 multiplier. (*Laffitte*, 231 Cal.App.4th at pp. 881-82.) The intermediate court opinion was affirmed
26 in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

27 With respect to Class Counsel’s lodestar, to date, approximately 95.7 hours have been
28 expended by Class Counsel in this matter. (Lee Decl. at ¶ 10, Ex. A; Rosenthal Decl. ¶ 12, Ex. A;

1 Agnew Decl. at ¶ 13, Ex. A) Mr. Lee requests an hourly rate of \$800.00 per hour. (Lee Decl. at ¶
2 11.) Mr. Rosenthal requests an hourly rate of \$700.00 per hour. (Rosenthal Decl. at ¶ 15.) Ms.
3 Agnew requests an hourly rate of \$750.00 per hour. (Agnew Decl. at ¶ 14.) The courts are quite
4 liberal in the evidence required to prove an attorney's hours. Detailed time records are not required.
5 An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours
6 worked on a particular case is sufficient evidence to support an award of attorney fees, even in the
7 absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

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

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

20 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
21 declarations, Class Counsel have significant experience in the area of employment and wage and
22 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in
23 employment matters, particularly wage and hour cases. (Lee Decl. at ¶¶ 7-9; Rosenthal Decl. at ¶¶
24 10-11; Agnew Decl. at ¶¶ 7-12.) As such, based on the hours and applicable rate, the total lodestar
25 to be expended by Class Counsel through finalizing this settlement will be approximately
26 \$68,365.00 based on 95.7 total hours. (Lee Decl. at ¶ 10; Ex. A; Rosenthal Decl. at ¶ 12, Ex. A.;
27 Agnew Decl. at ¶ 13, Ex. A.)

28 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier

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

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

12 Here based upon Class Counsel’s lodestar of \$68,365.00, Plaintiff’s request for a multiplier
13 of **.44** is reasonable and fair, particularly based on the factors described above and that it is **well**
14 **below** the typical range of multipliers awarded by the court. (*Wershba v. Apple Computer, Inc.* (Ct.
15 App. 2001) 91 Cal.App.4th 224 (noting that courts using the lodestar method to calculate attorney
16 fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am.*
17 *Corp.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the common fund, based
18 on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital*
19 *Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the common fund, based on a
20 multiplier of 2.52).)

21 As such, the requested fee award is fair and reasonable, and should be awarded in its
22 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
23 ensure the successful litigation of this action on behalf of all class members. For such reasons,
24 Class Counsel’s request for attorneys’ fees in the amount of \$30,000.00 is fair, reasonable, and
25 adequate.

26 Additionally, Plaintiff is aware of and has agreed to the split of attorneys’ fees between
27 counsel on this case. (Orozco Decl. ¶ 11).

28 //

1 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
2 **COSTS**

3 The request for reimbursement of litigation costs, in the amount of \$10,270.18 is fair and
4 reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek up
5 to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in
6 Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of this
7 action, including but not limited to, filing and service fees, mediation costs, CourtCall fees, and
8 postage fees. Rosenthal Decl. ¶ 16, Ex. B. As such, this requested costs should be approved as fair
9 and reasonable.

10 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
11 **APPROVED**

12 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
13 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds.
14 As shown on the Declaration of Yami Burns, the settlement administration fees expended in this
15 matter amount to a total of \$5,995.00, which is the amount that was agreed upon by the Parties.
16 Phoenix Decl. ¶ 15, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees
17 be approved.

18 **IX. CONCLUSION**

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

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

- 24 1. Granting final approval to the proposed Settlement Agreement in this action;
- 25 2. Approving distribution of the settlement funds to the Class Members pursuant to the
26 terms of the Settlement Agreement;
- 27 3. Approving Plaintiff's request for an award of the Class Representative enhancement
28 of \$5,000.00, with payment pursuant to the terms of the Settlement Agreement;
4. Approving Class Counsel's request for an award to Class Counsel for \$30,000.00 in

1 attorneys' fees and \$10,270.18 in costs, with payment pursuant to the terms of the Settlement
2 Agreement;

3 5. Approving Plaintiff's request for payment of the settlement administration costs to
4 Phoenix Settlement Administrators in the amount of \$5,995.00, with payment pursuant to the terms
5 of the Settlement Agreement;

6 6. Approving Plaintiff's request for payment to the LWDA for \$3,750.00, with
7 payment pursuant to the terms of the Settlement Agreement; and

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

9
10 DATED: October 5, 2023

DIVERSITY LAW GROUP, P.C.

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