

Larry W. Lee (State Bar No. 228175)  
Kristen M. Agnew (State Bar No. 247656)  
Nicholas Rosenthal (State Bar No. 268297)  
**DIVERSITY LAW GROUP, P.C.**  
515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
(213) 488-6555  
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)  
**Polaris Law Group**  
501 San Benito Street, Suite 200  
Hollister, CA 95023  
(831) 531-4214  
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Class

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

DEWEY ANDERSON, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

GRAHAM PACKAGING PET  
TECHNOLOGIES, INC., a Delaware  
corporation; and DOES 1 through 50,  
inclusive,

Defendant.

Case No.: CV-21-005550

(Assigned to the Hon. Sonny S. Sandhu, Dept. 24)

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

Date: August 15, 2023

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: October 8, 2021

FAC Filed: February 8, 2022

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on August 15, 2023, at 8:30 a.m., or as soon thereafter as  
3 the matter may be heard, before the Honorable Sonny S. Sandhu, Judge presiding in Department  
4 24 of the above-referenced Court located at 801 10th Street, Modesto, California 95354, Plaintiff  
5 Dewey Anderson (“Plaintiff”) will and hereby does move this Court for an Order:

- 6 (1) granting final approval to the Joint Stipulation of Class Action Settlement and  
7 Release of Claims (“Stipulation” or “Settlement Agreement”) in this action;
- 8 (2) approving distribution of the settlement funds to the Class Members pursuant to  
9 the terms of the Settlement;
- 10 (3) approving Plaintiff’s request for an award of the class representative enhancement  
11 payment of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement;
- 12 (4) approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class  
13 Counsel for 1/3 of the \$513,919.71 gross settlement fund, or \$171,306.57, and  
14 reimbursement of litigation costs of \$9,591.65, pursuant to the terms of the  
15 Settlement;
- 16 (5) approving Plaintiff’s request for payment of the settlement administration costs to  
17 Phoenix Settlement Administrators in the amount of \$8,500.00, pursuant to the  
18 terms of the Settlement; and
- 19 (6) entering final judgment as to all members of the Settlement Class in this action.

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

26 This Motion will be based on the attached Memorandum of Points and Authorities and  
27 the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L.  
28 Marder, Plaintiff Dewey Anderson, and Yami Burns of Phoenix Settlement Administrators, the

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

2  
3 DATED: July 24, 2023

DIVERSITY LAW GROUP, P.C.

4  
5 By:   
6 Larry W. Lee  
7 Kristen M. Agnew  
8 Nicholas Rosenthal  
9 Attorneys for Plaintiff and the Class  
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## TABLE OF CONTENTS

|      |                                                                                                                                                                                              |    |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION.....                                                                                                                                                                            | 8  |
| II.  | CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT .....                                                                                                                            | 10 |
| III. | THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THUS THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL .....                                                                        | 11 |
| A.   | Strength of Plaintiff’s Case and Likelihood of Certifying the Class .....                                                                                                                    | 11 |
| 1.   | The Class is Ascertainable.....                                                                                                                                                              | 11 |
| 2.   | There is a Community of Interest.....                                                                                                                                                        | 12 |
| a.   | There are Predominant Common Questions of Law and Fact.....                                                                                                                                  | 12 |
| b.   | Plaintiff’s Claims are Typical of the Class Claims .....                                                                                                                                     | 13 |
| c.   | Plaintiff Adequately Represented the Class .....                                                                                                                                             | 13 |
| B.   | Defendant’s Allegations and Chances of Class Certification.....                                                                                                                              | 14 |
| C.   | Risks, Expenses and Complexity of Further Litigation .....                                                                                                                                   | 14 |
| D.   | The Negotiation and Terms of the Settlement, and the Reception of the Settlement by Class Members Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable..... | 15 |
| E.   | Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement .....                                                                                       | 15 |
| 1.   | Standard of Review.....                                                                                                                                                                      | 15 |
| 2.   | The Settlement is Presumed to Be Fair.....                                                                                                                                                   | 16 |
| 3.   | Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval .....                                                                                                    | 17 |
| 4.   | The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval .....                                                                            | 18 |
| 5.   | The Opinion of Experienced Counsel Favors Final Approval .....                                                                                                                               | 19 |
| IV.  | THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED .....                                                                                                                      | 19 |
| V.   | THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED.....                                                                                                                                        | 20 |
| VI.  | THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS.....                                                                                                                         | 22 |
| VII. | THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE APPROVED .....                                                                                                                       | 23 |

|                               |           |
|-------------------------------|-----------|
| <b>VIII. CONCLUSION .....</b> | <b>23</b> |
|-------------------------------|-----------|

## TABLE OF AUTHORITIES

### Page(s)

#### **State Cases**

|                                                                                                     |        |
|-----------------------------------------------------------------------------------------------------|--------|
| <i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1146 (2000) | 16, 17 |
| <i>Berkeley Cement, Inc. v. Regents of Univ. of Calif.</i> (2019) 30 Cal. App. 5th 1133.....        | 22     |
| <i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 66 n.11 (2008).....                          | 21     |
| <i>Classen v. Weller</i> , 145 Cal. App. 3d 27, 45 (1983) .....                                     | 13     |
| <i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d. 695, 704 (1967).....                                    | 11     |
| <i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996) .....                            | 16, 17 |
| <i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....                                   | 14     |
| <i>Gibson v. Bobroff</i> (1996) 49 Cal. App. 4th 1202.....                                          | 22     |
| <i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016) .....                             | 20, 21 |
| <i>Laffitte v. Robert Half Int'l</i> , 231 Cal. App. 4th 860, 871 (2014) .....                      | 21     |
| <i>Lockheed Martin Corp. v. Superior Court</i> , 29 Cal. 4th 1096, 1104-05 (2003) .....             | 13     |
| <i>Reese v. Wal-Mart Stores, Inc.</i> (1999) 73 Cal. App. 4th 1225, 1234 .....                      | 12     |
| <i>Reyes v. San Diego County Board of Supervisors</i> , 196 Cal. App. 3d 1263, 1271 (1987) .....    | 12     |
| <i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462, 470 (1981).....                               | 11, 12 |
| <i>Simons v. Horowitz</i> (1984) 151 Cal. App. 3d 834, 846 .....                                    | 13     |
| <i>Thon v. Thompson</i> (1994) 29 Cal. App. 4th 1546.....                                           | 22     |
| <i>Vasquez v. Superior Court</i> , 4 Cal.3d 800, 809 (1971).....                                    | 11     |

#### **Federal Cases**

|                                                                                                       |                |
|-------------------------------------------------------------------------------------------------------|----------------|
| <i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993) .....                                      | 16             |
| <i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).....                         | 17, 19         |
| <i>Byrd v. Civil Serv. Comm'n</i> , 459 U.S. 1217 (1983).....                                         | 15             |
| <i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993) .....               | 16             |
| <i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268, 1291 .....                  | 15             |
| <i>Eisen v. Carlisle &amp; Jacquelin</i> (1974) 417 U.S. 156, 174-75 .....                            | 10             |
| <i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980) .....                   | 17, 19         |
| <i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) | 21             |
| <i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....                                     | 21             |
| <i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975).....                                       | 17, 18         |
| <i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497, 508 (9th Cir. 1992).....                           | 13             |
| <i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995).....                              | 17             |
| <i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....        | 16, 17         |
| <i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998) .....                   | 16, 19         |
| <i>Mullane v. Central Hanover Bank &amp; Trust Co.</i> (1950) 339 U.S. 306, 314 .....                 | 11             |
| <i>Officers for Justice v. Civil Serv. Comm'n</i> , 688 F.2d 615, 625 (9th Cir. 1982) .....           | 15, 16, 18, 19 |
| <i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797, 811-12 .....                             | 10             |

|   |                                                                                 |        |
|---|---------------------------------------------------------------------------------|--------|
| 1 | <i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261, 1272 (D.C. Cir. 1993) .....   | 22     |
| 2 | <i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9th Cir. 1976) ..... | 15, 19 |
| 3 | <i>Young v. Katz</i> , 447 F.2d 431, 433-34 (5th Cir. 1971).....                | 18     |

## Statutes

|    |                                                             |            |
|----|-------------------------------------------------------------|------------|
| 4  | Business and Professions Code § 17200, <i>et seq.</i> ..... | 8          |
| 5  | California Code of Civil Procedure § 1033.5 .....           | 23         |
| 6  | California Code of Civil Procedure § 382 .....              | 11, 12, 15 |
| 7  | Labor Code § 1194.....                                      | 8          |
| 8  | Labor Code § 226(a) .....                                   | 8          |
| 9  | Labor Code § 2698, <i>et seq.</i> .....                     | 8          |
| 10 | Labor Code § 510.....                                       | 8          |
| 11 | Labor Code § 558.....                                       | 8          |
| 12 | Labor Code §§ 201-203 .....                                 | 8          |

## Other Authorities

|    |                                                                                                                                                                          |        |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 13 | <i>4 Newberg on Class Actions</i> , 4th § 11.41 (2008) .....                                                                                                             | 15, 19 |
| 14 | Brickman, <i>Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-</i><br><i>Competitive Fees</i> (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11 ..... | 21     |
| 15 | Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> ,<br>7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) .....       | 22     |
| 16 | Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> , 7 J. Empirical<br>Leg. Stud. 811, 833 (2010) .....                              | 21     |
| 17 | <i>Manual for Complex Litigation Fourth</i> (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 30915, 16                                                                     |        |

## Rules

|    |                                      |    |
|----|--------------------------------------|----|
| 18 | California Rule of Court 3.769 ..... | 15 |
|----|--------------------------------------|----|

1 **I. INTRODUCTION**

2 On October 8, 2021, Plaintiff Dewey Anderson (“Plaintiff”) filed a complaint on behalf  
3 of himself and all similarly situated employees against Defendant Graham Packaging PET  
4 Technologies, Inc. (“Defendant”) in the Superior Court of the State of California for the County  
5 of Stanislaus. The initial complaint alleged, *inter alia*, class action claims for: (1) violations of  
6 Labor Code §§ 510, 558, and 1194; (2) violations of Labor Code §§ 201-203; (3) violations of  
7 Labor Code § 226(a); and (4) violations of Business and Professions Code § 17200, *et seq.*

8 On February 8, 2022, Plaintiff filed a first amended complaint adding a cause of action  
9 for violation of California Labor Code § 2698, *et seq.*, the Private Attorneys General Act  
10 (“PAGA”). The first amended complaint is the operative Complaint (“Complaint”).<sup>1</sup>

11 Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action  
12 Settlement and Release of Claims (“Stipulation” or “Settlement Agreement”). In sum, the  
13 Settlement Agreement provides for a \$513,919.71 **non-reversionary** fund to be created for the  
14 benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the  
15 Plaintiff, and costs of settlement administration are to be paid. After these deductions are made,  
16 the entire net settlement fund will be paid to all Class Members who did not opt-out of the  
17 Settlement (“Settlement Class Members”).

18 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval  
19 Motion. This Court preliminarily approved this settlement on April 6, 2023, directing  
20 distribution of class notice and scheduling the hearing for final approval of settlement (the  
21 “Preliminary Approval Order”).

22 As directed by the Court, the Settlement Administrator distributed the Notice of Class  
23 Action Settlement (“Class Notice”) to 382 Class Members. (Declaration of Yami Burns (“Burns  
24 Decl.”) at ¶ 5.) The deadline for Class Members to submit requests for exclusion, file objections,  
25 or submitting a dispute was June 19, 2023. (Burns Decl. ¶¶ 8, 9, 10.) Thus far, zero (0) requests  
26

27  
28 <sup>1</sup> The Parties reached a separate settlement on Plaintiff’s PAGA Claim. The Court approved the Parties’ settlement on the PAGA claim by order dated March 29, 2023.

1 for exclusion, zero (0) objections, and zero (0) wage statement disputes have been filed. (*Id.*)  
2 As such, there is a 100% participation rate by Class Members. Thus, an inference can be made  
3 that the Class supports the Court's Preliminary Approval Order finding that the Settlement  
4 Agreement is fair and reasonable.

5 In sum, in light of the settlement administration process and the results thereof, the lack  
6 of any opt-outs, and the amount of class funds being paid out to the Class Members, the Court  
7 should confirm its preliminary approval as this process supports the Court's initial finding that  
8 the Settlement is fair and reasonable.

9 In addition to the results of the notice process, for the same reasons as set forth earlier in  
10 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following represent  
11 the basic points previously covered that support approval of the settlement:

- 12       ▪ The Settlement provides a total settlement sum of \$513,919.71<sup>2</sup> which is **non-**  
13       **reversionary**;
- 14       ▪ The Settlement is fair given that all Class Members will receive (*after deductions*  
15       *for fees, costs, etc.*) on average, approximately \$823.35 per person (*See Burns*  
16       Decl. ¶ 14);
- 17       ▪ Class Members did not need to submit claim forms to participate in the  
18       settlement, but are being paid automatically;
- 19       ▪ The allocation reflects that payment of claims will be paid to all Class Members  
20       on a pro-rata basis, based on the number of wage statements each Class Member  
21       received during the Class Period;
- 22       ▪ Plaintiff investigated the claims at issue, including exchanges of information by  
23       Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to  
24       fully evaluate this case;

---

26  
27 <sup>2</sup> The total number of Wage Statements through June 30, 2022, was eight thousand seventy-two (8,072), which  
28 exceeds the Escalator Clause by nine hundred twenty-eight (928). The Escalator Clause was triggered; thus, the  
settlement amount increased \$14,919.71, which increased the previous Maximum Settlement Amount of  
\$499,000.00 to \$513,919.71 (\$499,000.00 + \$14,919.71).

- 1           ▪       A highly regarded administrator, Phoenix Settlement Administrators (“Phoenix”),  
2                       was retained for fees of \$8,500.00; and

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

5 **II.     CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**  
6 **SETTLEMENT**

7           The notice procedures required by the Preliminary Approval Order have been followed  
8 and satisfy all due process rights of Class Members. The Preliminary Approval Order  
9 contemplated that the Class Notice be sent to all Class Members by first-class mail, as specified  
10 in the settlement. The Preliminary Approval Order contemplated, further, that Phoenix would  
11 serve as the Settlement Administrator.

12           As clearly stated in the Burns Declaration, notice was provided to all Class Members as  
13 required by the Preliminary Approval Order. (Burns Decl. ¶ 5.) On April 24, 2023, the  
14 Settlement Administrator received a Class Member mailing list from Defendant’s counsel that  
15 included 382 Class Members. (*Id.* at ¶ 3.)

16           On May 5, 2023, the Settlement Administrator sent each Class Member a Class Notice  
17 via first-class mail. (*Id.* at ¶ 5.) From the date of mailing four (4) Class Notices were returned.  
18 (*Id.* at ¶ 6.) As of date of this declaration, one (1) Class Notice remains undeliverable since an  
19 updated address could not be obtained via skip trace. (*Id.* at ¶ 7.) Further, the Class Notice  
20 provided Class Members with Class Counsel’s contact information and information about how  
21 they could seek further information regarding the settlement, leave questions for the Settlement  
22 Administrator, and update their mailing address.

23           The provision of sending the Class Notice to Class Members as described above meets  
24 the requirements for the “best notice practicable” in this case as necessary to protect the due  
25 process rights of class members. (*See, e.g., Phillips Petroleum Co. v. Shutts* (1985) 472 U.S.  
26 797, 811-12(provision of “best notice practicable” with description of the litigation and  
27 explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417  
28 U.S. 156, 174-75 (individual notice must be sent to class members who can be identified through

reasonable means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (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 sent a mailing regarding the settlement that satisfies due process rights. The mailing described the litigation, provided an explanation of the terms of the settlement, explained Class Members’ rights, allowed Class Members to seek additional information with Class Counsel contact information, and explained ways for Class Members to opt out or object, if so desired. As such, this constitutes proper notice to the Class Members.

Accordingly, 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.

### **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THUS 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.* (1967) 67 Cal. 2d. 695, 704.) Under California law, 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.” (*Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 809.) “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* (1981) 29 Cal. 3d. 462, 470.)

#### **1. The Class is Ascertainable**

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 is determined by examining “(1) class definition, (2) the size of the class, and (3) the means

1 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*,  
2 (1987) 196 Cal. App. 3d 1263, 1271.)

3 Here, the Class is defined as: (1) “all current and former non-exempt employees of  
4 Defendant in the State of California who earned non-discretionary incentive wages, including but  
5 not limited to, wellness pay and referral bonuses, and overtime wages during the same  
6 workweek, at any time from October 8, 2017, through August 31, 2022” (the “Regular Rate  
7 Class” or “Regular Rate Class Members”); (2) “all current and former non-exempt employees of  
8 Defendant in the State of California who earned non-discretionary incentive wages, including but  
9 not limited to, shift premiums and wellness pay, and sick pay during the same workweek, and  
10 whose employment ended at any time from October 8, 2018, through August 31, 2022” (the  
11 “Sick Pay Class” or “Sick Pay Class Members”); and (3) “all current and former non-exempt  
12 employees of Defendant in the State of California who earned shift premium wages at any time  
13 from October 8, 2020, through August 31, 2022” (the “Wage Statement Class” or “Wage  
14 Statement Class Members”). There are 382 individuals that comprise the Class. (Burns Decl. at  
15 ¶ 3.) This is far more than the minimum required to certify a class. Within the context of  
16 manageability, the issue is whether there exists sufficient means for identifying class members at  
17 the remedial stage. (*Reyes, supra*, 196 Cal. App. 3d at pp. 1274-75.) Class Members have  
18 already been identified by Defendant and Notice has been provided to all of the Class Members.  
19 Accordingly, the Class is ascertainable under Code of Civil Procedure § 382.

## 20 **2. There is a Community of Interest**

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

### 25 **a. There are Predominant Common Questions of Law and Fact**

26 “The ultimate question in every case of this type [class actions] is whether...the issues  
27 which may be jointly tried, when compared with those requiring separate adjudication, are so  
28 numerous and substantial that the maintenance of a class action would be advantageous to the

1 judicial process and to the litigants.” (*Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal. 4th  
2 1096, 1104-05.)

3 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,  
4 violated the California Labor Code by failing to pay all overtime and sick pay wages owed and  
5 failing to provide accurate itemized wage statements. Defendant denies that liability could be  
6 established on a class-wide basis. Defendant contends instead that liability and damages would  
7 need to be conducted on a case-by-case basis, and that Plaintiff’s legal theories lack merit.

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

9 The purported class representative’s claim must be “typical” but not necessarily identical  
10 to the claims of other class members; it is sufficient that the representative is similarly situated so  
11 that he or she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983)  
12 145 Cal. App. 3d 27, 45.) Courts look to whether class members have similar injuries, “whether  
13 the action is based on conduct which is not unique to the named [p]laintiff,” and whether other  
14 class members were injured by the same conduct. (*Hanon v. Dataproducts Corp.* (9th Cir. 1992)  
15 976 F.2d 497, 508.) The purpose of the typicality requirement “is to assure that the interest of  
16 the named representative aligns with the interests of the class.” (*Id.* at p. 508.)

17 Here, Plaintiff was subjected to the same policies and practices as other Class Members.  
18 Plaintiff was employed by Defendant as a non-exempt employee. Plaintiff alleges that he, like  
19 all other Class Members, was not paid all overtime and sick pay wages owed and was not  
20 provided compliant wage statements. (Declaration of Dewey Anderson (“Anderson Decl.”) ¶¶  
21 3-5.) Specifically, like other members of the class, Plaintiff alleges that he was not paid all  
22 overtime wages and sick pay wages owed and he received wage statements that did not  
23 accurately identify correct rates of pay and gross and net wages earned. Thus, Plaintiff’s claims  
24 are typical to those of Class Members.

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

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

1 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues  
2 been raised or presented. (Anderson Decl. ¶ 8.) Plaintiff has taken all necessary steps to  
3 represent the interests of the Class, including providing information and documents to his  
4 counsel and reviewing pleadings and documents in this case. (*Id.* at ¶¶ 6, 7.) For such reasons,  
5 Plaintiff has adequately represented the Class Members and will continue to do so.

6 **B. Defendant's Allegations and Chances of Class Certification**

7 Defendant asserts that individualized issues predominate in this case, including without  
8 limitation, whether Defendant provided accurate wage statements in compliance with the law. In  
9 any event, even assuming that a class could be certified, Defendant denies any and all liability  
10 and wrongdoing, and contends that it complied with the California Labor Code at all times.  
11 Although Defendant denies any liability, Defendant agreed to the Settlement to avoid the cost of  
12 further litigation.

13 **C. Risks, Expenses and Complexity of Further Litigation**

14 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the  
15 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff  
16 involved in not prevailing on one or more of the causes of action or theories alleged in his  
17 operative complaint at trial, the possibility of non-certification, the possibility that the Court may  
18 award only a small percentage of PAGA penalties, and the potential for any appeals. These risks  
19 of class certification are compounded by the California Supreme Court's holding in *Duran v.*  
20 *U.S. Bank Nat'l Ass'n* (2014) 59 Cal. 4th 1.

21 Defendant has maintained that there is no liability. As stated above, Defendant alleges  
22 that a class could not have been certified. There is always a risk that the court will not grant  
23 certification of the class, wherein the class will not be entitled to any damages. Based on the  
24 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of  
25 damages and/or penalties alleged, and a substantial amount of complex issues that would have  
26 necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and  
27 complexity of further litigation warrant granting of this Motion.

28 //

1           **D.     The Negotiation and Terms of the Settlement, and the Reception of the**  
2           **Settlement by Class Members Strongly Support the Conclusion that the**  
3           **Settlement is Fair, Adequate, and Reasonable**

4           The Settlement was the product of negotiation between highly able and experienced  
5 attorneys on both sides who possessed the relevant data and extensive legal research which they  
6 had carefully analyzed. (Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 3.)

7           The response to the Class Notice also fully support confirmation of the Court’s  
8 preliminary approval of the settlement. None of the Class Members submitted requests for  
9 exclusion, objections to the settlement, or wage statement disputes. (Burns Decl. ¶¶ 8-10.) In  
10 light of overwhelmingly positive response to the settlement, the Court may appropriately infer  
11 that the settlement is fair, adequate, and reasonable, when among other reasons, no Class  
12 Members have opted out or objected to it. (*See Class Plaintiffs v. City of Seattle* (9th Cir. 1992)  
13 955 F.2d 1268, 1291 (reaction of class members to the settlement is a factor supporting approval  
14 of a class action settlement.)

15           **E.     Under Well-Established Legal Principles, the Court Should Grant Final**  
16           **Approval of the Settlement**

17           **1.     Standard of Review**

18           On a motion for final approval of a class action settlement under California Code of Civil  
19 Procedure § 382 and Rule 3.769 of the California Rules of Court, a court’s inquiry at this  
20 juncture is whether the settlement is “fair, adequate and reasonable.” (*Officers for Justice v.*  
21 *Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom., Byrd v. Civil Serv.*  
22 *Comm’n* (1983) 459 U.S. 1217.) A settlement is fair, adequate, and reasonable, and therefore  
23 merits final approval, when “the interests of the class are better served by the settlement than by  
24 further litigation.” *See Manual for Complex Litigation (Fourth)* (Fed. Judicial Center 2004), §  
25 21.6 at p. 309 (“MCL”).) The law favors settlement, particularly in class actions and other  
26 complex cases, where substantial resources can be conserved by avoiding the time, cost, and  
27 rigors of formal litigation. (*See 4 Newberg on Class Actions* (2008) 4th § 11.41; *Class Plaintiffs*  
28 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir.  
1976) 529 F.2d 943, 950.)

1 Although the Court possesses “broad discretion” in determining that a proposed class  
2 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a  
3 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion  
4 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and  
5 adequate to all concerned parties. (*See Officers for Justice, supra*, 688 F.2d at p. 625.)  
6 Accordingly, the Court should give due regard to what is otherwise a “private consensual  
7 agreement” between the parties. *Id.*; *see also Church v. Consol. Freightways, Inc.* (N.D. Cal.  
8 1993) 1993 WL 149840 at \*2 ; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989)  
9 720 F. Supp. 1379; *MCL* § 21.6 at p. 309 (“The judicial role in reviewing a proposed settlement  
10 is critical, but limited to approving the proposed settlement, disapproving it, or imposing  
11 conditions on it. The judge cannot rewrite the agreement

12 A court’s approval of a class action settlement will only be reversed for a clear abuse of  
13 discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Officers for*  
14 *Justice, supra*, 688 F.2d at p. 626 (reversal of class settlement “only upon a strong showing that  
15 the district court’s decision was a clear abuse of discretion”); *Class Plaintiffs, supra*, 955 F.2d at  
16 p. 1276; *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453; *Linney v. Cellular Alaska P’ship*  
17 (9th Cir. 1998) 151 F.3d 1234, 1238.)

18 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*  
19 (2000) 85 Cal. App. 4th 1135, 1146:

20 It cannot be overemphasized that neither the trial court in approving the settlement  
21 nor this Court in reviewing that approval have the right or duty to reach any ultimate  
22 conclusions on the issues of fact and law which underlie the merits of the dispute.  
23 It is well settled that in the judicial consideration of proposed settlements, ‘the  
24 [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.

## 25 2. The Settlement is Presumed to Be Fair

26 The Court should begin its analysis with the presumption that the settlement is fair and  
27 should be approved:  
28

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

4 (*Dunk*, 48 Cal. App. 4th at p. 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at p.  
5 1146; *accord*, *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash.*  
6 *Pub Power Supply*, *supra*, 720 F. Supp. at p. 1387.)

7 The settlement here warrants approval and carries a presumption of fairness. As  
8 previously noted in the Motion for Preliminary Approval, this settlement was negotiated at arm's  
9 length between the Parties and their counsel. (Rosenthal Decl. ¶ 5.)

10 Second, Class Counsel engaged in extensive factual investigation before settling,  
11 including an extensive review and analysis of class data and information pertaining Defendant's  
12 policies and practices relevant to the class claims. (Rosenthal Decl. ¶ 3.) Further, Class Counsel  
13 is highly experienced in this type of litigation. As shown in the supporting declarations, Class  
14 Counsel has significant experience in class actions and employment wage and hour matters.  
15 (Rosenthal Decl. ¶¶ 8, 9; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 3-5; Declaration of  
16 Kristen Agnew ("Agnew Decl.") ¶¶ 3-8; Declaration of William L. Marder ("Marder Decl.") ¶¶  
17 3-10.)

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

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

27 If Plaintiff pursued this case without settlement and did not prevail, Plaintiff would be  
28 potentially responsible for Defendant's fees and costs. Likewise, if any individual current or

1 former employees of Defendant brought individual claims on the same causes of action, they  
2 would each face the uncertainty of prevailing and the same possibility of becoming liable to pay  
3 fees and costs to Defendant. Accordingly, such claims likely would not be brought by many of  
4 these current and former employees who make up the Settlement Class. Thus, this lawsuit  
5 achieves a true benefit for the Settlement Class that they might not otherwise get or seek as  
6 individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff  
7 nor any of the Class Members will be required to pay for Defendant's litigation fees and costs.  
8 Thus, the risks undertaken by Class Counsel should be considered a significant factor by the  
9 Court in its determination of final approval. The Settlement provides a fair recovery to Class  
10 Members and eliminates the risk of costs to Class Members or the Class Representative.

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

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

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

28 Here, as noted above, continued litigation could potentially have led to appeals on a

1 number of issues. On the other hand, the settlement that was reached provides all Class  
2 Members—regardless of their means—with fair relief in a prompt and efficient manner. Were  
3 the Court to deny final approval, the Class Members would be left without a remedy as a  
4 practical matter and courts across the State would have to address the issues presented here in a  
5 piecemeal, costly, and time-consuming manner. The settlement here is therefore consistent with  
6 the “overriding public interest in settling and quieting litigation” that is “particularly true in class  
7 action suits.” (*See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at  
8 § 11.41.) Here, this case could have potentially involved years of litigation, as evidenced by the  
9 Parties’ litigation record and history in similar wage and hour cases.

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

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

#### 18 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE** 19 **APPROVED**

20 Class Representative Dewey Anderson requests an enhancement of \$10,000.00 in  
21 accordance with the terms of the Settlement Agreement. Plaintiff met with Class Counsel and  
22 had numerous discussions about the case. (Anderson Decl. ¶ 6.) Plaintiff also provided  
23 substantive information and documents regarding Defendant’s policies and practices to help  
24 support the class claims alleged in this case. (*Id.*) Accordingly, Plaintiff provided invaluable  
25 information, evidence, and documents that resulted in this settlement. Plaintiff estimates that he  
26 spent approximately 35 hours assisting in the prosecution of this matter. (*Id.* ¶ 7.)

27 In addition to the invaluable services that he provided, Plaintiff took significant risks,  
28 personally, professionally, and monetarily in acting as the Class Representative, seeking benefits

1 on behalf of the class. (Anderson Decl. ¶ 11.) Because the claims alleged by Plaintiff involved  
2 the payment of costs to the prevailing party, Plaintiff undertook the risk that he may be required  
3 to pay Defendant's fees and costs, in the event that Defendant prevailed in this action.  
4 Moreover, Plaintiff understood that an individual case would have resolved much faster than a  
5 class action and involved much less financial risk than a class action. Despite this, however,  
6 Plaintiff agreed to pursue this case on behalf of the class. (*Id.* at ¶ 11.) Significantly, given that  
7 future employers are much less likely to hire individuals who have filed employment-related  
8 lawsuits, particularly cases of this nature, Plaintiff also faced significant risk in not being able to  
9 find suitable prospective employment, as a result of filing of this case against Defendant. (*Id.* at  
10 ¶ 12).

11 Plaintiff took these risks upon himself for the benefit of the Class. Class Members did  
12 not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail,  
13 nor did they have to face the potential for retaliation and not getting future employment had they  
14 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of  
15 granting the requested enhancement. Moreover, this litigation has resulted in a significantly  
16 valuable benefit to the Class, and Plaintiff took on substantial risks in helping Class Members  
17 obtain this financial benefit. As such, the enhancement should be awarded to Plaintiff for his  
18 commitment, dedication, and risks taken for this litigation.

## 19 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

20 Class Counsel seeks a fee award calculated as one-third of the total value of the  
21 settlement for the successful prosecution and resolution of this action. Recently, the California  
22 Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class  
23 action settlements. Under California law, the award of attorneys' fees in common fund wage and  
24 hour class action settlements should start with the percentage method. (*See Laffitte v. Robert*  
25 *Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state  
26 courts in holding that when class action litigation establishes a monetary fund for the benefit of  
27 the class members, and the trial court in its equitable powers awards class counsel a fee out of  
28 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* (7th Cir. 1998) 160 F.3d 361, 363 (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 one-third 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% if the case is resolved before trial and 40% if the case is tried.” (*Fernandez v. Victoria Secret Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. \*16 n. 59 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11).) Indeed, “empirical studies [that] show that...fee awards in class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.)

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund, which is the same percentage of fee award sought in this case. (*Laffitte*, 1 Cal. 5th at p. 506.) And this was based on a lodestar amount that required a multiplier of 2.13. (*Id.* at p. 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 p. 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* (2014) 231 Cal. App. 4th 860, 871.) Here, the fee award representing 33 1/3% of the fund 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* (2010) 7 J. Empirical Leg. Stud. 811, 833 (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*

1 (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation  
2 nationwide conclude that fees representing one-third of the total recovery is consistent with  
3 market rates).)

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

12 As such, the requested fee award is fair and reasonable, and should be awarded in its  
13 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to  
14 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,  
15 Class Counsel’s request for attorneys’ fees in the amount of \$171,306.57<sup>3</sup> is fair, reasonable, and  
16 adequate.

17 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**  
18 **OF COSTS**

19 The request for reimbursement of costs, in the amount of \$9,591.65 is fair and  
20 reasonable. The costs are all litigation-related costs, which have been detailed in the supporting  
21 declaration of Class Counsel. (Rosenthal Decl. ¶ 10, Ex. A.) The authority for the court to  
22 award this is the Parties’ Settlement Agreement and the California Labor Code.

23 With regard to the request for reimbursement of travel and meals, Plaintiff cites *Thon v.*  
24 *Thompson* (1994) 29 Cal. App. 4th 1546, *Gibson v. Bobroff* (1996) 49 Cal. App. 4th 1202, and  
25 *Berkeley Cement, Inc. v. Regents of Univ. of Calif.* (2019) 30 Cal. App. 5th 1133. Specifically,  
26

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27  
28 <sup>3</sup> Attorneys’ fees were increased from \$166,333.33 with an additional \$4,973.24, totaling \$171,306.57 due to the  
Escalator Clause increase.

1 in *Berkeley Cement*, the most recent case, the issue addressed by the Court was whether  
2 mediation-related expenses incurred by a party is recoverable under California Code of Civil  
3 Procedure § 1033.5, despite the fact that the mediation was completely voluntary and not court-  
4 ordered. (*Id.* at 1140.) After considering the arguments of both sides, the Court held that such  
5 expenses are recoverable even if the mediation was not court-ordered, when the mediation is a  
6 reasonably necessary means of resolving the dispute and avoiding the expenses of a trial. (*Id.* at  
7 1142.)

8 As such, Plaintiff's request should be approved.

9 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**  
10 **APPROVED**

11 Plaintiff also requests that the Court approve administration costs to the Settlement  
12 Administrator, Phoenix Settlement Administrators, in the amount of \$8,500.00, which is less  
13 than the estimated amount that was agreed upon by the Parties. As detailed in the Declaration of  
14 Ms. Burns submitted herewith, Phoenix performed duties in connection with this Settlement that  
15 were integral in effectuating the Settlement and the Notice process. Among other things,  
16 Phoenix calculated each Class Member's individual settlement payment, updated addresses  
17 contained in the class data supplied by Defendant, formatted and distributed Class Notices to all  
18 382 Class Members, and otherwise administered the Settlement. (Burns Decl. ¶¶ 3, 5.) For such  
19 reasons, it is requested that the Settlement Administrator's fees be approved.

20 **VIII. CONCLUSION**

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

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

- 26 1. granting final approval to the proposed Settlement Agreement in this action;  
27 2. approving distribution of the settlement funds to the Class Members pursuant to  
28 the terms of the Settlement Agreement;

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

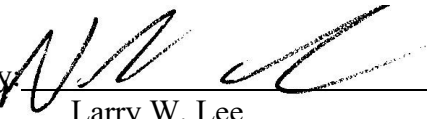
3           4.       approving Plaintiff Counsel's request for an award to Class Counsel for  
4 \$171,306.57 in attorneys' fees and \$9,591.65 in costs with payment pursuant to the terms of the  
5 Settlement Agreement;

6           5.       approving Plaintiff's request for payment of the settlement administration costs to  
7 Phoenix Settlement Administrators in the amount of \$8,500.00 with payment pursuant to the  
8 terms of the Settlement Agreement; and

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

10  
11 DATED: July 24, 2023

DIVERSITY LAW GROUP, P.C.

12  
13 By  \_\_\_\_\_

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3  
4 STATE OF CALIFORNIA ]  
5 COUNTY OF LOS ANGELES ]ss.  
6 ]

7 I am employed in the County of Los Angeles, State of California. I am over the age of  
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite  
9 1250, Los Angeles, California 90071.

10 On July 24, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL  
12 OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND  
13 AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF YAMI BURNS REGARDING SETTLEMENT NOTICE  
15 ADMINISTRATION**
- 16 **3. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S  
17 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 18 **4. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION  
19 FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 20 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S  
21 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 22 **6. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S  
23 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 24 **7. DECLARATION OF DEWEY ANDERSON IN SUPPORT OF PLAINTIFF'S  
25 MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 26 **8. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT  
27 AND JUDGMENT**

28 on the interested parties in this action as follows:

Jason E. Murtagh  
[jason.murtagh@bipc.com](mailto:jason.murtagh@bipc.com)  
Mary R Hackett  
[mary.hackett@bipc.com](mailto:mary.hackett@bipc.com)  
Stephanie G. Klinko

[stephanieklanko@bipc.com](mailto:stephanieklanko@bipc.com)

BUCHANAN INGERSOLL & ROONEY LLP

One America Plaza

600 West Broadway, Suite 1100

San Diego, CA 92101

*Attorneys for Defendant Graham Packaging PET Technologies, Inc.*

  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](http://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.

s I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 24, 2023, at Los Angeles, California.

  
Erika Mejia