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

SPENCER NORMAN, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

B & H GLOBAL MARKETING, LLC, a
California limited liability company;
GOLDEN STATE CRUSHING, a
business organization, form unknown; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 34-2022-00314707

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

Date: December 1, 2023

Time: 9:00 a.m.

Dept.: 27

Complaint Filed: January 26, 2022

Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 1, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Jill H. Talley, judge presiding, in Department 27 of the above referenced Court, located at 720 9th Street, Sacramento, California 95814, Plaintiff Spencer Norman (“Plaintiff”) will and hereby does move this Court for an Order:

1. Granting final approval of the Joint Stipulation and Settlement Agreement (“Stipulation” or “Settlement Agreement”) in this matter;

2. Approving the revised Gross Settlement Amount of \$189,524.86 based on the Settlement Agreement’s Escalator Clause;

3. Approving distribution of the settlement funds to the Participating Class Members pursuant to the terms of the Settlement Agreement;

4. Approving Plaintiff’s request for an enhancement payment of \$10,000.00 to the Class Representative pursuant to the terms of the Settlement Agreement;

5. Approving Class Counsel’s request for an award of attorneys’ fees of one-third of the revised Gross Settlement Amount of \$189,524.86, or \$63,174.94, and reimbursement of actual litigation costs of \$8,018.41, pursuant to the terms of the Settlement Agreement;

6. Approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$6,250.00, pursuant to the terms of the Settlement Agreement;

7. Approving Plaintiff’s request for payment to the California Labor & Workforce Development Agency (“LWDA”) for \$7,500.00 pursuant to the Private Attorneys General Act and the terms of the Settlement Agreement; and

8. Entering final judgment as to all Participating Class Members in this action.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown by the lack of any opt-outs and objections to 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 Point and Authorities and the
2 supporting Declarations of Max W. Gavron, Mai Tulyathan, Kelsey A. Webber, Plaintiff Spencer
3 Norman, and Yami Burns of Phoenix Settlement Administrators, and upon the oral arguments of
4 counsel (should there be any), and on the complete records and file herein.

5
6 DATED: November 6, 2023

DIVERSITY LAW GROUP, P.C.

7
8 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiff and the Class

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1 **I. INTRODUCTION**

2 Plaintiff Spencer Norman (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation and Settlement Agreement (“Stipulation” or “Settlement Agreement”) and revised Gross
4 Settlement Amount of \$189,524.86.

5 As preliminarily approved by the Court, the Settlement Agreement provides for a
6 \$160,000.00 **non-reversionary** fund to be created for the benefit of the Class, from which
7 attorneys’ fees, litigation costs, enhancement payment to the named Plaintiff, payment of PAGA
8 penalties, including payment to the California Labor & Workforce Development Agency
9 (“LWDA”), and costs of settlement administration are to be paid. Due to an increase in the number
10 of workweeks worked during the Class Period¹, and pursuant to the Settlement Agreement’s
11 Escalator Clause, the Settlement Administrator calculated a \$29,524.86 increase in the Gross
12 Settlement Amount over the initial \$160,000.00 amount. Taking into account the Escalator Clause,
13 this brings the Gross Settlement Amount to \$189,524.86. The entire Net Settlement Amount, after
14 the above deductions, will be paid to all Class Members who did not opt-out of the settlement
15 (“Participating Class Members”). Further, the Gross Settlement Amount includes a \$10,000.00
16 payment pursuant to the PAGA, of which 75% will go to the LWDA, and 25% of which will be
17 distributed to Eligible Aggrieved Employees, and a \$1,000.00 payment to Participating Exempt
18 Class Members.

19 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
20 Approval of Class Action Settlement. The Court preliminarily approved this settlement on July 11,
21 2023, directing distribution of Class Notice and scheduling the hearing for final approval of
22 settlement (the “Preliminary Approval Order”).

23 As directed by the Court, the Settlement Administrator selected by the Parties – Phoenix
24 Settlement Administrators – distributed the Notice of Class Action Settlement (“Class Notice”) to
25

26 ¹ Following the receipt of the Class List from Defendants, on July 24, 2023, the Settlement Administrator
27 informed the Parties of the increase in the number of actual workweeks worked during the Class Period from
28 the estimated 1,810 workweeks to 2,325 workweeks. Based on the actual number of workweeks, the
settlement Administrator calculated a \$29,524.86 increase in the Gross Settlement Amount. (Declaration of
Yami Burns (“Admin Decl.”) at ¶ 12.)

63 Class Members on the Class List provided by Defendants B&H Global Marketing, LLC and Golden State Crushing (collectively, “Defendants”). (Declaration of Yami Burns (“Admin Decl.”) at ¶¶ 3, 5.) **There have been no requests for exclusions and/or objections to the settlement submitted by any Class Member.** (*Id.* at ¶¶ 8-9.) Finally, there were no disputes submitted by Class Members to the Settlement Administrator, and as such, there are no outstanding disputes from Class Members. (*Id.* at ¶ 10.) As such, there is a 100 percent participation rate. In light of the lack of objections and opt-outs from Class Members, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

In addition to the results of the notice process, the following represent the basic points previously covered in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement that support final approval of the settlement:

- The total settlement sum of \$189,524.86 is **non-reversionary**;
- The settlement is fair given that Participating Class Members will receive (*after deductions for attorneys’ fees, costs, etc.*) a monetary share of the Net Settlement Amount—on average, approximately \$1,445.74 to each Participating Class Member, with the estimated highest Individual Settlement Share being \$8,187.54 (*See* Admin Decl. at ¶ 14);
- Class Members did not need to submit claim forms to participate in the Settlement, but are being paid automatically;
- The allocation reflects that payment of Individual Settlement Shares will be paid to Participating Non-Exempt Class Members on a pro rata basis, based on the number of workweeks each Class Member worked during the Class Period;
- The settlement provides for a payment of \$1,000 to be allocated proportionately among the Participating Exempt Employees based on the number of pay periods each Participating Exempt Employee received allegedly defective wage statements;
- The Settlement also provides for a \$10,000.00 payment attributable to the satisfaction of PAGA claims (the “PAGA Payment”), of which 75%, or \$7,500.00, will go to the State of California’s LWDA as a beneficiary of this Settlement pursuant to the PAGA, and 25%, or

1 \$2,500.00, will be distributed among Eligible Aggrieved Employees on a pro rata basis;

2 ▪ Plaintiff's counsel conducted significant investigation in this case, including the
3 exchange of informal discovery and class data, time and payroll records, and Defendants' relevant
4 wage and hour policies; and

5 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained to
6 administer the settlement for approximately \$6,250.00 (Admin Decl. at ¶ 17).

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

9 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
10 **SETTLEMENT**

11 The notice procedures required by the Preliminary Approval Order have been followed and
12 satisfy all due process rights of Class Members. Specifically, the Preliminary Approval Order
13 contemplated that the Class Notice, as approved in the Preliminary Approval Order, be sent to all
14 Class Members by first class mail, as specified in the settlement. The Preliminary Approval Order
15 contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement
16 Administrator.

17 After the Settlement Administrator received the Class List from Defendants, the Parties
18 were informed of the increase in the number of actual workweeks worked from the estimated 1,810
19 workweeks to 2,325 workweeks, which triggered the Settlement Agreement's Escalator Clause.
20 (Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 7.) Specifically, the Settlement
21 Administrator calculated a \$29,524.86 increase in the Gross Settlement Amount as a result of the
22 Escalator Clause. (Admin Decl. at ¶ 12; Tulyathan Decl. at ¶ 8.) Taking this into account, this
23 brings the Gross Settlement Amount to \$189,524.86. (Tulyathan Decl. at ¶ 8.) The Parties made
24 slight modifications to the Class Notice to reflect the revised Gross Settlement Amount, which
25 includes revising the initial \$160,00.00 amount to reflect the revised Gross Settlement Amount of
26 \$189,524.86, and the attorneys' fees from \$53,333.33 to an amount not to exceed \$63,174.94, to
27 reflect one-third of the revised Gross Settlement Amount. (Tulyathan Decl. at ¶¶ 9-10, Ex. A.) No
28 other substantive changes were made to the Class Notice. (*Id.*)

1 The Settlement Administrator completed the notice dissemination process as contemplated
2 by the Settlement Agreement. As clearly stated in the Declaration of Yami Burns, notice was
3 provided to Class Members, pursuant to the Preliminary Approval Order. On July 11, 2023, the
4 Settlement Administrator received the Class List from Defendants' counsel containing information
5 pertaining to Class Members. (Admin Decl. at ¶ 3.) The Class List contained 63 individuals
6 identified as Class Members. (*Id.*) Prior to mailing the Class Notice, the Settlement Administrator
7 conducted a National Change of Address (NCOA) search to correct and/or update the Class List in
8 case of any address changes. (*Id.* at ¶ 4.) On August 2, 2023, the Settlement Administrator mailed
9 the Class Notice to all 63 individuals on the Class List via U.S. first class mail. (*Id.* at ¶ 5.)

10 From the date of mailing, 9 Class Notice packets were returned to the Settlement
11 Administrator due to incorrect address. None were returned with forwarding addresses. (Admin
12 Decl. at ¶ 6.) The Settlement Administrator subsequently conducted skip tracing to identify updated
13 addresses for all of the Class Notice packets that were returned. (*Id.*) From that process, the
14 Settlement Administrator obtained updated addresses for 7 Class Members and subsequently
15 remailed those Class Notice packets via U.S. first class mail. (*Id.*) As of the date of this filing, 2
16 Class Notices remain undeliverable as updated addresses could not be obtained by the Settlement
17 Administrator via skip tracing. (*Id.* at ¶ 7.) Further, the Class Notice provided Class Members with
18 the Class Counsel's and the Settlement Administrator's contact information, where they could
19 further seek information regarding the settlement, ask questions, and update their addresses.
20 (Admin Decl. Ex. A.)

21 The provision of sending the notice to Class Members as described above meets the
22 requirements for the "best notice practicable" in this case as necessary to protect the due process
23 rights of Class Members. (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12
24 (provision of "best notice practicable" with description of the litigation and explanation of opt-out
25 rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75 (individual
26 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
27 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best practicable notice is that which
28 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

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

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* (1987) 196 Cal.App.3d 1263, 1271.)

Here, the Class includes all non-exempt employees of Defendants in California from January 26, 2018, to February 17, 2023 (the “Class Period”), as well as exempt employees of Defendants in California who received allegedly defective wage statements from January 26, 2021 to February 17, 2023. There are 63 individuals that comprise the Class. (Admin Decl. at ¶ 3.) This is more than the minimum required to certify a class.

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

2. There is a Community of Interest

The “community of interest” requirement embodies three separate factors: (1) predominant

1 common questions of law or fact; (2) class representatives whose claims are typical of the class; and
2 (3) class representatives who can adequately represent the class. (*Richmond*, 29 Cal.3d at p. 470;
3 *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1234.)

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

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

10 In this case, Plaintiff alleges that Defendants, as a matter of their corporate policy, practice,
11 or procedure, failed to provide compliant off-duty meal and rest periods, or pay meal and rest
12 period premium compensation in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and
13 512, and failed to provide accurate itemized wage statements in violation of Labor Code § 226(a).
14 In this regard, Plaintiff alleges that employees were required to remain on work premises, carry
15 employer-issued radios, and respond to incoming calls – subject to an immediate return to work –
16 during meal and rest breaks. Plaintiff alleges that employees were not paid premium pay in lieu of
17 the missed breaks, were not paid such wages upon separation of employment, and are thus owed
18 waiting time penalties.

19 Plaintiff also alleges that Defendants violated Labor Code § 226(a) by failing to provide
20 accurate itemized wage statements. More specifically, Plaintiff alleges that the wage statements
21 failed to identify the correct rates of pay for premium wages and correct gross and net wages
22 earned. Further, Plaintiff alleges as another violation that the wage statements failed to identify the
23 address of the employer. As these are all uniform corporate policies, practices, and procedures of
24 Defendants, the claims can be jointly tried and thus the predominance requirement is satisfied.

25 Defendants deny that liability could be established on a class-wide basis and contend that
26 liability and damages would need to be conducted on a case-by-case basis.

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

28 The purported class representative’s claim must be “typical” but not necessarily identical to

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

8 Plaintiff was subject to the same policies, practices, and procedures as his fellow Class
9 Members. In this regard, Plaintiff worked for Defendants as a non-exempt employee from about
10 August 30, 2021, to about September 15, 2021. (Declaration of Spencer Norman (“Norman Decl.”)
11 at ¶ 2.) Like all Class Members, Plaintiff was subjected to these same policies and practices. (*Id.* at
12 ¶¶ 3-4.) Specifically, during meal and rest breaks, Plaintiff alleges he was required to remain on
13 work premises, carry a radio, and respond to incoming calls subject to an immediate return to work.
14 (*Id.* at ¶ 3.) Plaintiff was not paid premium pay in lieu of the allegedly missed breaks and was not
15 paid all wages owed upon separation of employment. (*Id.*) Plaintiff also alleges that he received
16 inaccurate wage statements that did not comply with Labor Code § 226(a). (*Id.* at ¶ 4.) In other
17 words, Plaintiff was subjected to the same policies and practices as other Class Members. Thus,
18 typicality is satisfied.

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

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

23 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
24 been raised or presented. (Norman Decl. at ¶ 6.) Plaintiff has taken all necessary steps to represent
25 the interests of the Class, including discussing the case with his counsel, searching for, gathering,
26 and providing information and documents to his counsel, and reviewing the various documents and
27 pleadings in this case, including the PAGA letter, complaint, Settlement Agreement, and his
28 declarations. (*Id.* at ¶ 5.) For such reasons, Plaintiff has adequately represented the Class and will

1 continue to do so.

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

3 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness
4 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
5 prevailing on one or more of the causes of action or theories alleged in his Complaint, the
6 possibility of non-certification, and potential for appeals. These risks on class certification are
7 compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014)
8 59 Cal.4th 1.

9 As stated above, Defendants allege that Plaintiff would not be able to obtain class
10 certification. Based on the foregoing, there were risks that Plaintiff would not have obtained the
11 total amount of damages and penalties alleged on behalf of the class, and a substantial amount of
12 complex issues that would have necessitated significant expenditure of time and expenses.
13 Therefore, the risks, expenses and complexity of further litigation warrant granting of this Motion.

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

17 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
18 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
19 Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement
20 Agreement was the product of negotiation between highly able and experienced attorneys on both
21 sides who possessed the relevant data and extensive legal research which they had carefully
22 analyzed. (Tulyathan Decl. at ¶ 3.) The Parties engaged in arm's length negotiations at mediation
23 with a highly experienced mediator, Daniel J. Turner, Esq. (*Id.* at ¶ 4.)

24 The results after dissemination of the Class Notice support confirmation of the Court's
25 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
26 fact that **no Class Members opted out and/or submitted any objections to the settlement.**
27 (Admin Decl. at ¶¶ 8-9.) The Court may appropriately infer that the class action settlement is fair,
28 adequate, and reasonable, given that no class member has submitted a request for exclusion and/or

1 an objection. (*See Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.)

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

4 **1. Standard of Review**

5 On a motion for final approval of a class action settlement under California Code of Civil
6 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
7 settlement is "fair, adequate and reasonable." (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir.
8 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n* (1983) 459 U.S. 1217.)
9 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the
10 interests of the class are better served by the settlement than by further litigation." (*See Manual for*
11 *Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL").) The law favors
12 settlement, particularly in class actions and other complex cases, where substantial resources can be
13 conserved by avoiding the time, cost, and rigors of formal litigation. (*See Alba Conte & Herbert B.*
14 *Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle* (9th
15 Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
16 950.)

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

28 A court's approval of a class action settlement will only be reversed for a clear abuse of

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

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

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

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

2. The Settlement is Presumed to Be Fair

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

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

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

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm’s length after a full day of mediation with an experienced wage-and-hour mediator, Daniel J. Turner, Esq. (Tulyathan Decl. at ¶ 4.) Additionally, Class Counsel engaged in informal discovery before mediation. (*Id.*) Specifically, Class Counsel reviewed class data, including the number of putative class members, the number of weeks worked and pay periods at issue, time and payroll records, the number of wage statements at issue, as well as information

1 pertaining to Defendants’ policies, practices, and procedures pertaining to meal and rest periods,
2 timekeeping, and wage statement practices. (*Id.* at ¶ 3.) The exchange of informal discovery
3 allowed Class Counsel to conduct a full analysis of exposure. (*Id.*)

4 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
5 supporting declarations, Class Counsel has significant experience in class actions and employment
6 wage and hour matters. (Tulyathan Decl. at ¶¶ 18-21; Declaration of Max W. Gavron (“Gavron
7 Decl.”) at ¶¶ 10-12; Declaration of Kelsey A. Webber (“Webber Decl.”) at ¶¶ 7-8.)

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

10 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
11 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
12 inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768,
13 806 (“present value of the damages plaintiffs would likely recover if successful, appropriately
14 discounted for the risk of not prevailing, should be compared with the amount of the proposed
15 settlement”) (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 1 53, 157; *Boyd v.*
16 *Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.)

17 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
18 been potentially responsible for Defendants’ costs. (Norman Decl. at ¶ 9.) As such, should any
19 individual employee of Defendants bring individual claims on the same causes of action, they
20 would each face the uncertainty of prevailing and the possibility of paying costs to Defendants.
21 Accordingly, such claims likely would not be brought by many of these employees – thus, this
22 lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals.
23 Here, given that a fair and reasonable settlement has been reached, neither Plaintiff, nor any of the
24 Class Members will be required to pay for Defendants’ litigation costs.

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

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

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

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

18 Here, the settlement that was reached provides to all Class Members – regardless of their
19 means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
20 Class Members would be left without a remedy as a practical matter and courts across the State
21 would have to address the issues presented here in a piecemeal, costly, and time-consuming
22 manner. The settlement in this case is therefore consistent with the “overriding public interest in
23 settling and quieting litigation” that is “particularly true in class action suits.” (*See Van Bronkhorst*,
24 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at § 11.41.)

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

26 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
27 interest of the Class Members as a whole. (Tulyathan Decl. at ¶ 14; Gavron Decl. at ¶ 5; Webber
28 Decl. at ¶ 10.) Similarly, counsel for Defendants are in favor of this settlement. The endorsement

1 of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled
2 to significant weight by the Court in its final approval determination. (*See Officers for Justice*, 688
3 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F.Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.)

4 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENT**
5 **SHOULD BE APPROVED**

6 Class Representative Spencer Norman requests a total enhancement of \$10,000.00. Plaintiff
7 provided significant assistance with the lawsuit, including discussing the case with Class Counsel
8 on multiple occasions, searching for and providing documents and information regarding
9 Defendants' practices at issue in the case, including his employment documents and pay records,
10 and reviewing the various files and pleadings submitted in this case, including his PAGA letter, the
11 complaint, settlement agreement, and his declarations. (Norman Decl. at ¶ 5.) Accordingly,
12 Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

13 In addition to the invaluable services that he provided, Plaintiff took significant risks, both
14 professionally and monetarily, in acting as the Class Representative, seeking benefits on behalf of
15 the Class. (*Id.* at ¶ 9.) Because the claims alleged by the Class Representative involved the
16 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
17 Defendants, had he not prevailed in this action. (*Id.*) Despite this, however, Plaintiff agreed to
18 pursue this case on behalf of the other employees.

19 Also, given that future employers are much less likely to hire individuals who have filed
20 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
21 significant risk in not being able to find suitable employment and/or face retaliation from
22 prospective employers, all as a result of filing of this case against Defendants. (*Id.*) Plaintiff took
23 these risks upon himself to the benefit of the Class. As a result, Class Members did not have to file
24 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have
25 to face the potential for retaliation and not getting future employment had they filed a lawsuit,
26 which is a public record. These are significant benefits that weigh in favor of granting the
27 requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to
28 the Class, and Plaintiff took on substantial risks in helping to get this financial benefit to the Class.

As such, the enhancement should be awarded to Plaintiff for his commitment, dedication, and risks taken for this litigation.

Finally, Plaintiff provided a general release and waiver of all claims, including a waiver under California Civil Code § 1542, which other Class Members did not have to do. (Norman Decl. at ¶ 10; Stipulation at ¶ III.M.) This is a more extensive release than that provided by the class at large, also supporting the request for the enhancement.

Courts have routinely granted approval of settlements containing such enhancements. (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 Incentive award to class representative in ERISA case).

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated as one-third (1/3) of the revised Gross Settlement Amount, or \$63,174.94, for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.)

The California Supreme Court issued its ruling regarding the award of attorney's fees in

1 wage and hour class action settlements in *Laffitte*. Under California law, the award of attorneys’
2 fees in common fund wage and hour class action settlements is proper under the percentage method.
3 (*See Laffitte v. Robert Half Int’l* (2016) 1 Cal.5th 480, 503 (“We join the overwhelming majority of
4 federal and state courts in holding that when class action litigation establishes a monetary fund for
5 the benefit of the class members, and the trial court in its equitable powers awards class counsel a
6 fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
7 appropriate percentage of the fund created”).) Under the percentage of the fund method, the
8 Court’s objective remains to “mimic the market” in fixing a reasonable fee. (*See Gaskill v. Gordon*
9 (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) (“When a fee is set by a court rather than by contract,
10 the object is to set it at a level that will approximate what the market will set....The judge, in other
11 words, is trying to mimic the market in legal services.”).)

12 Here, the fee award representing one-third of the revised Gross Settlement Amount falls
13 within that range and is consistent with other rulings of other courts and comprehensive surveys of
14 class action settlements and fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011
15 U.S. Dist. LEXIS 61796, 23 (recognizing that “courts may award attorney’s fees in the 30-40%
16 range in wage and hour class actions that result in recovery of a common fund under \$10 million”);
17 *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-*
18 *2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action
19 litigation nationwide conclude that fees in the range sought here are consistent with market rates).)

20 The results delivered by Class Counsel also support the requested percentage of the fund.
21 Here, Plaintiff and his counsel secured a \$189,524.86 non-reversionary common fund settlement.

22 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
23 relevant to the... reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir.
24 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation
25 of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically
26 notified Class Members that Class Counsel would be seeking up to \$63,174.94 in attorneys’ fees.
27 To date, no Class Member has objected to the settlement. This strong favorable response also
28 supports the requested fees.

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

4 No one expects a lawyer whose compensation is contingent upon his
5 success to charge, when successful, as little as he would charge a client
6 who had agreed to pay for his services, regardless of success. Nor,
7 particularly in complicated cases producing large recoveries, is it just
8 to make a fee depend solely on the reasonable amount of time
9 expended.
10 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) For Class Counsel, the fees
11 here were wholly contingent in nature and the case presented far more risk than the usual contingent
12 fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially
13 drawn-out battle with corporate defendants.

14 As secondary support for the percentage of the fund method, courts have discretion to
15 "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court
16 "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial
17 court's primary determination of the fee as a percentage of the common fund and thus does not
18 impose an absolute maximum or minimum on the potential fee award." (*Laffitte*, 1 Cal.5th at p.
19 505; *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 ("[The lodestar cross-
20 check does not trump the primary reliance on the percentage of common fund method").)

21 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar
22 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
23 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court
24 is not necessarily required to make such an adjustment." (*Id.*) Thus, a lodestar cross-check is
25 aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing
26 a cross-check "undermines" one of the primary reasons for using the percentage method: aligning
27 counsel's incentives with the benefits delivered to the class and discouraging protracted litigation.
28 (*Id.* at p. 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); *Report of*
the Third Circuit Task Force, Court Awarded Attorney Fees (1985) 108 F.R.D. 237, 258; *Lealao v.*
Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 29-30 (citing the recommendations of the

1 Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach
2 set forth in this Report are now echoed by many authorities, who have been most vocal about the
3 manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked
4 trial judge”).)

5 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
6 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also, e.g.,*
7 *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52
8 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at p. 60 (applying
9 a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78
10 (1988) (affirming a 2.34 multiplier without remand).) The intermediate court in *Laffitte*, after
11 finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13
12 multiplier. (*Laffitte*, 231 Cal.App.4th at pp. 881-82.) The intermediate court opinion was affirmed
13 in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

14 With respect to Class Counsel’s lodestar, to date, approximately 164.4 hours have been
15 expended by Class Counsel in this matter. (Tulyathan Decl. at ¶ 22, Ex. B; Gavron Decl. at ¶ 13,
16 Ex. A; Webber Decl. at ¶ 12.) Moreover, Class Counsel expects to incur approximately 8
17 additional hours in finalizing this settlement, including handling any post-approval matters and
18 settlement issues that may arise. (Tulyathan Decl. at ¶ 23.) Mr. Gavron and Ms. Tulyathan request
19 an hourly rate of \$600.00 per hour. (Tulyathan Decl. at ¶ 24; Gavron Decl. at ¶ 14.) Mr. Webber
20 requests an hourly rate of \$650.00. (Webber Decl. at ¶ 12.) The courts are quite liberal in the
21 evidence required to prove an attorney’s hours. Detailed time records are not required. An
22 attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours
23 worked on a particular case is sufficient evidence to support an award of attorney fees, even in the
24 absence of detailed time records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

25 Reasonable hours include, in addition to time spent during litigation, the time spent before
26 the action is filed, including time spent interviewing the clients, investigating the facts and the law,
27 and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.)
28 Further, the fee award should include fees incurred to establish and defend the attorneys’ fee claim.

1 (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639 [*Serrano IV*].) Thus, Class Counsel requests that the
2 court find that these hours were reasonable in this litigation.

3 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
4 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
5 1095.) The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
6 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and
7 the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61
8 Cal.App.4th 629, 632-33.)

9 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
10 declarations, Class Counsel have significant experience in the area of employment and wage and
11 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in
12 employment matters, particularly wage and hour cases. (Tulyathan Decl. at ¶ 17; Gavron Decl. at ¶
13 10; Webber Decl. at ¶¶ 7-8.) As such, based on the hours and applicable rate, the total lodestar to
14 be expended by Class Counsel through finalizing this settlement will be approximately
15 \$103,755.00, based on 172.4 total hours. (Tulyathan Decl. at ¶¶ 22-24, Ex. B; Gavron Decl. at ¶¶
16 13-14, Ex. A; Webber Decl. at ¶ 12.)

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

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

Here, based upon Plaintiff's counsel's lodestar of \$103,755.00, Plaintiff's request for a fee award of \$63,174.94 is more than reasonable and fair. As the Court can see, the lodestar exceeds the requested fee amount, such that it would result in a *negative* multiplier. As such, the requested fee award in the amount of \$63,174.94 is fair and reasonable, and should be awarded in its entirety.

VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of costs, in the amount of \$8,018.41 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$15,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Plaintiff's counsel's declarations, the costs were all directly incurred in the prosecution of this action, including but not limited to, court filing and service fees, postage fees, expert fees, and costs associated with mediation. (Tulyathan Decl. at ¶ 25, Ex. A; Webber Decl. at ¶ 14, Ex. A.) As such, the requested costs should be approved as fair and reasonable.

VII. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED

As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement funds from Individual Settlement Share checks issued to Participating Class Members remain after the expiration date, the Parties have agreed that all such uncashed settlement funds be distributed to the California State Controller's Unpaid Wage Fund.

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

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown on the Declaration of Yami Burns, the settlement administration fees expended in this matter amount to a total of \$6,250.00, which is less than the amount that was agreed upon by the Parties. (Admin Decl. at ¶ 17.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

//

1 **IX. CONCLUSION**

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

5 Accordingly, Plaintiff respectfully request that the Court enter an Order in the form
6 proposed and submitted:

- 7 1. Granting final approval to the proposed Settlement Agreement in this action;
8 2. Approving the revised Gross Settlement Amount of \$189,524.86;
9 2. Approving distribution of the settlement funds to Settlement Class Members
10 pursuant to the terms of the Settlement Agreement;
11 3. Approving Plaintiff's request for an award of the Class Representative Enhancement
12 Payment of \$10,000.00, with payment pursuant to the terms of the Settlement Agreement;
13 4. Approving Class Counsel's request for an award to Class Counsel of \$63,174.94 in
14 attorneys' fees and \$8,018.41 in actual costs, with payment pursuant to the terms of the Settlement
15 Agreement;
16 5. Approving Plaintiff's request for payment of the settlement administration costs to
17 Phoenix Settlement Administrators in the amount of \$6,250.00, with payment pursuant to the terms
18 of the Settlement Agreement; and
19 6. Approving Plaintiff's request for payment to the LWDA for \$7,500.00, with
20 payment pursuant to the terms of the Settlement Agreement; and
21 7. Entering final judgment as to all Participating Class Members and Eligible
22 Aggrieved Employees in this action.

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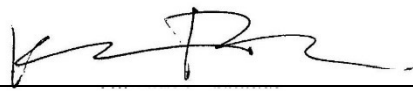
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1 DATED: November 6, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee

5 Max W. Gavron

6 Mai Tulyathan

7 Attorneys for Plaintiff and the Class