

B. James Fitzpatrick (SBN: 129056)
Alison L. Baker (SBN: 193601)
Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Howard L. Magee (State Bar No. 185199)
Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Christine S. Lee (State Bar No. 339947)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
hmagee@diversitylaw.com
lwlee@diversitylaw.com
mgavron@diversitylaw.com
christine@diversitylaw.com

Attorneys for Plaintiffs
RYAN CHANLEY, OLIVIER LARA, VERONICA MEDINA, and CELIA OROZCO on
behalf of themselves and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

RYAN CHANLEY on behalf of himself
and all similarly situated employees

Plaintiff,

vs.

GROWERS TRANSPLANTING, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22CV002837

(Assigned to the Honorable Thomas W. Wills,
Dept. 15)

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

Date: September 13, 2024
Time: 8:30 a.m.
Dept: 15

Action Filed: September 22, 2022
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on September 13, 2024, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Thomas W. Wills in Department
4 15 of the above-referenced Court, located at 1200 Aguajito Road, Monterey, California 93940,
5 Plaintiffs Ryan Chanley, Olivier Lara, Veronica Medina, and Celia Orozco (together,
6 “Plaintiffs”) will and hereby do move the Court for an Order: (1) granting final approval to the
7 Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement
8 Agreement”) in this action; (2) approving distribution of the settlement funds to the Class
9 Members pursuant to the terms of the Agreement; (3) approving Plaintiffs’ request for an
10 award of the Service Awards to Plaintiffs pursuant to the terms of the Agreement; (4)
11 approving Plaintiffs’ request for an award of attorneys’ fees to Class Counsel of approximately
12 one-third of the \$700,000.00 Gross Settlement Amount, or \$233,333.33, and reimbursement of
13 litigation costs of \$26,347.85, pursuant to the terms of the Agreement; (5) approving
14 Plaintiffs’ request for payment of the Settlement Administration Costs to Phoenix Settlement
15 Administrators in the amount of \$17,950.00 pursuant to the terms of the Agreement; (6)
16 approving Plaintiffs’ request for payment to the California Labor and Workforce Development
17 Agency of \$37,500.00 pursuant to the terms of the Agreement; and (7) entering final judgment
18 as to all members of the Class in this action.

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

24 This Motion will be based on the attached Memorandum of Points and Authorities and
25 the supporting Declarations of B. James Fitzpatrick, Howard L. Magee, Larry W. Lee, Max
26 W. Gavron, Christine S. Lee, Ryan Chanley, Olivier Lara, Veronica Medina, Celia Orozco,
27 and Kevin Lee of Phoenix Settlement Administrators, and upon the oral arguments of counsel

28 //

1 (should there be any) and on the complete records and file herein.
2

3 DATED: August 21, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

4
5 By: 

6 B. James Fitzpatrick

7 Howard L. Magee

8 Larry W. Lee

9 Max W. Gavron

10 Attorneys for Plaintiffs Ryan Chanley, Olivier
11 Lara, Veronica Medina, and Celia Orozco
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	8
II. NOTICE TO THE CLASS.....	9
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL.....	11
A. Strength of Plaintiffs' Case and Likelihood of Certifying the Class	11
B. Defendants' Defenses	11
C. Risks, Expenses, and Complexity of Further Litigation	11
D. The Terms, Negotiation, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable	12
E. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement	12
1. Standard of Review.....	12
2. The Circumstances Surrounding this Settlement Give Rise to a Presumption of Fairness.....	14
3. Two-Way Fees/Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	15
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	16
5. The Opinion of Experienced Counsel Favors Final Approval	16
6. Discovery and Settlement Discussions Undertaken in this Action Favor Final Approval	17
IV. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS SHOULD BE APPROVED	17
V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED.....	18
VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS.....	25
VII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED	25
VIII. PLAINTIFFS HAVE PROVIDED NOTICE TO THE LWDA	25
IX. CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	14, 15
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	20, 22
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	22
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d. 695 (1967)	12
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	14, 15
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629 (1998)	24
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122 (2001)	25
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	20, 21, 22
<i>Laffitte v. Robert Half Int'l</i> , 231 Cal. App. 4th 860 (2014)	21, 22
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553 (1986)	24
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000)	24
<i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462 (1981)	12
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	24
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621 (1982)	24
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495 (2009)	22
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	12
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	22, 25

Federal Cases

<i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993)	14
<i>Boyd v. Bank of Am. Corp.</i> , 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)	25
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979)	16, 18
<i>Byrd v. Civil Serv. Comm'n</i> , 459 U.S. 1217 (1983)	14
<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993)	14
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	13, 14
<i>Craft v. County of San Bernardino</i> , 624 F. Supp. 2d 1113 (C.D. Cal. 2008)	23

1	<i>Dyer v. Wells Fargo Bank, N.A.</i> , 303 F.R.D. 326 (N.D. Cal. 2014).....	23
2	<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	11
3	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D. Cal. 1980)	15, 17
4	<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	20
5	<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998).....	20
6	<i>Girsh v. Jepson</i> , 521 F.2d 153 (3d Cir. 1975).....	16, 17
7	<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....	23
8	<i>In re General Motors Corp.</i> , 55 F.3d 768 (3d Cir. 1995)	16
9	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294 (3d Cir. 2005)	22
10	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....	14, 15
11	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234 (9th Cir. 1998)	14, 18
12	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	11
13	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54 (1980)	24
14	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615 (9th Cir. 1982).....	14, 17
15	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985).....	11
16	<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261 (D.C. Cir. 1993)	21
17	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943 (9th Cir. 1976).....	14, 17
18	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F. Supp. 3d 1200 (C.D. Cal. 2014).....	25
19	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043 (9th Cir. 2002)	23
20	<i>Willner v. Manpower Inc.</i> , No. 11-CV-02846-JST, 2015 WL 3863625 (N.D. Cal. June 22, 2015).....	23
21	<i>Young v. Katz</i> , 447 F.2d 431 (5th Cir. 1971)	17
22	Statutes	
23	California Code of Civil Procedure Section 382.....	13
24	Other Authorities	
25	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.41 (2008).....	14, 17
26	Brickman, <i>Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees</i> , 81 Wash U. L. Q. 653 (Fall 2003)	20
27	Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-</i>	
28		

1	2008, 7 J. of Empirical Leg. Stud. 248 (2010).....	21
2	Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> , 7 J.	
3	Empirical Leg. Stud. 811 (2010)	21
4	<i>Manual for Complex Litigation, Fourth</i> § 21.6 (Fed. Jud. Ctr., 4th ed. 2004)	14
5	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237 (1985)	
		22

6 **Rules**

7	California Rule of Court 3.769.....	13
---	-------------------------------------	----

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Plaintiffs Ryan Chanley, Olivier Lara, Veronica Medina, and Celia Orozco
3 (collectively, “Plaintiffs”) seek final approval of the Joint Stipulation of Class Action and
4 PAGA Settlement (“Agreement” or “Settlement Agreement”) with Defendants Growers
5 Transplanting, Inc. and Nor-West, Inc. (together, “Defendants”) (jointly with Plaintiffs, the
6 “Parties”). The settlement provides for a \$700,000.00 fund created for the benefit of the Class,
7 from which attorneys’ fees, litigation costs, service payment to the Plaintiffs, payment to the
8 California Labor and Workforce Development Agency (“LWDA”), and costs of settlement
9 administration are to be paid.

10 The history of this litigation was previously detailed in Plaintiffs’ Preliminary
11 Approval Motion. This Court preliminarily approved this settlement on May 2, 2024, directing
12 distribution of the Notice of Pendency of Class Action and Proposed Settlement and
13 scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

14 As directed by the Court, the Settlement Administrator distributed the Class Notice.
15 Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Admin. Decl.”) ¶¶
16 3-6. To date, zero (0) individuals have requested exclusion from the settlement. Admin. Decl.
17 ¶ 8. Zero Class Members have filed an objection to the settlement. *Id.* ¶ 9. As such, there is a
18 100% participation rate.

19 In sum, as a result of the settlement administration process, the lack of opt-outs, and
20 the amount of class funds being paid out to Class Members, the Court may confirm its
21 preliminary approval as the lack of opposition from the Class supports the Court’s initial
22 finding that the settlement is fair and reasonable.

23 In addition to the positive results of the notice process, the following summary of the
24 basic points outlined in this memorandum supports approval of the settlement:

- 25 ▪ The settlement provides a total settlement sum of \$700,000.00;
- 26 ▪ Class Members did not need to submit claim forms to participate in the
27 settlement, but are being paid automatically;
- 28 ▪ The allocation reflects that payment of claims will be paid to all Class Members

1 in proportion to the number of workweeks each Class Member worked during
2 the Class Period, with an average payment of \$212.53 per person, a high of
3 \$1,775.08, and a low of \$8.07 (Admin. Decl. ¶ 14);

- 4 ▪ Plaintiffs’ counsel conducted significant investigation in this case, including
5 conducting informal discovery and significant exchanges of information
6 regarding class data, including the number of putative class members and
7 aggrieved employees, number of pay periods at issue, sample wage statements
8 and time records, as well as documents pertaining to Defendants’ policies
9 regarding the payment of meal and rest period premiums, business
10 reimbursements, and COVID health checks necessary for Plaintiffs to fully
11 evaluate this case;
- 12 ▪ In addition to the Class, California’s LWDA will also benefit from this
13 settlement, as it will receive \$37,500.00, should this settlement be granted final
14 approval;
- 15 ▪ A highly regarded administrator, Phoenix Settlement Administrators
16 (“Phoenix”), was retained for an estimated payment of \$17,950.00; and
- 17 ▪ None of the settlement funds will revert to Defendants.

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

20 **II. NOTICE TO THE CLASS**

21 The notice procedures set forth in the Preliminary Approval Order have been followed
22 and satisfy all the due process rights of the Class Members.

23 The Preliminary Approval Order contemplated that the Notice of Pendency of Class
24 Action and Proposed Settlement (“Class Notice”) be sent to all Class Members by first class
25 mail, as specified in the Agreement. The Preliminary Approval Order specified that Phoenix
26 would serve as the Settlement Administrator.

27 As described in the Declaration of Kevin Lee Phoenix provided the Class Notice to
28 Class Members in the manner required by the Preliminary Approval Order. On or about May

1 28 and May 29, 2024, the Settlement Administrator received a mailing list from Defendants’
2 counsel that included the names, contact, and employment data for 1,658 Class Members.
3 Admin. Decl. ¶ 3. On June 14, 2024, after updating the mailing addresses through the National
4 Change of Address Database, the Class Notice was sent to all Class Members via first class
5 mail. *Id.* ¶ 5.

6 In total, sixty-two (62) Class Notices were returned due to deficient addresses. Admin.
7 Decl. ¶ 6. Out of that number, Forty-six (46) Class Notices were re-mailed with updated
8 addresses obtained by Phoenix using an advanced research tool, as set forth in the Preliminary
9 Approval Order. *Id.* The Class Notice provided Class Members with the contact information
10 for Class Counsel so that Class Members could seek information regarding the settlement,
11 pose questions to the Settlement Administrator, and update their addresses. Ultimately, only
12 sixteen (16) Class Notices were determined to be undeliverable. Admin. Decl. ¶ 6.

13 The provision of Class Notice to Class Members constitutes the “best notice
14 practicable” to those class members, and therefore protects the due process rights of those
15 individuals. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of
16 “best notice practicable” with description of the litigation and explanation of opt-out rights
17 satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual
18 notice must be sent to class members who can be identified through reasonable means);
19 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable
20 notice is that which is “reasonably calculated, under all the circumstances, to apprise interested
21 parties of the pendency of the action and afford them an opportunity to present their
22 objections”).

23 Here, Class Members were provided mailed notices regarding the settlement that
24 explained the terms of the settlement and allowed Class Members to seek information, ask
25 questions, opt-out, and object, if so desired. As such, proper notice has been given to the Class.
26 Thus, the Court may determine the fairness and adequacy of the settlement and enter its Order
27 granting final approval, secure in the knowledge that all absent Class Members have been
28 given the opportunity to participate fully in the claims, exclusion, and the approval process.

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

3 **A. Strength of Plaintiffs’ Case and Likelihood of Certifying the Class**

4 In order to proceed as a class, there are two requirements which must be met –
5 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704
6 (1967). “The community of interest requirement embodies three factors: (1) predominant
7 common questions of law or fact; (2) class representatives with claims or defenses typical of
8 the class; and (3) class representatives who can adequately represent the class.” *Richmond v.*
9 *Dart Industries*, 29 Cal. 3d. 462, 470 (1981). *See also Vasquez v. Superior Court*, 4 Cal. 3d
10 800, 809 (1971) (there are two basic requirements which must exist to sustain a class action:
11 “[t]he first is existence of an ascertainable class, and the second is a well-defined community
12 of interest in the questions of law and fact involved”).

13 Here, the Court previously certified the Class on May 2, 2024. As such, all of the
14 factors for class certification have already been met.

15 **B. Defendants’ Defenses**

16 Defendants assert that they have complied with the Labor Code, including paying
17 employees for time spent undergoing COVID temperature checks, and argue that class
18 certification is not appropriate. Defendants also assert a number of defenses including that (1)
19 Plaintiffs’ class claims are not appropriate due to arbitration agreements and severance
20 agreements signed by a portion of the putative class; (2) Defendants maintained facially
21 compliant written policies with regard to meal and rest breaks, payment of wages, and work-
22 related reimbursements; and (3) any omission of information on the wage statements was not a
23 “knowing and intentional failure” by Defendants.

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

25 The fairness settlement at issue is fair and reasonable, factoring in the significant risks
26 associated with this case. These include the risk that Plaintiffs would not prevail on the merits,
27 the possibility of non-certification, and the risk that any favorable judgment Plaintiffs might
28 obtain would be challenged and possibly overturned on appeal.

1 Defendants have maintained that there is no liability. As stated above, Defendants’
2 position throughout the instant litigation has been that its labor practices complied with
3 California law, and therefore, Class Members will be unable to prevail on any of their claims.

4 Therefore, the risks, expenses, and complexity of further litigation warrant granting of
5 this Motion.

6 **D. The Terms, Negotiation, and Reception of the Settlement by Class Members**
7 **All Strongly Support the Conclusion that the Settlement is Fair, Adequate,**
8 **and Reasonable**

9 The evidence that Plaintiffs supplied in support of their Motion for Preliminary
10 Approval of Class Action Settlement amply demonstrated that the negotiation process that led
11 to settlement was conducted at arm’s length and in good faith. In addition, Plaintiffs highlight
12 the following facts: (1) the Settlement Agreement was the product of negotiation between
13 highly able and experienced attorneys on both sides who possessed the relevant data and
14 extensive legal research which they had carefully analyzed (Declaration of Max W. Gavron
15 (“Gavron Decl.”) ¶ 3); (2) the results after mailing the Class Notice support confirmation of
16 the Court’s preliminary approval of the settlement with final approval of the settlement, as
17 evidenced by the fact that no Class Member submitted a Request for Exclusion to the
18 settlement (Admin. Decl. ¶ 8); and (3) no Class Members filed an Objection to the settlement
19 (Admin. Decl. ¶ 9).

20 Courts may appropriately infer that the class action settlement is fair, adequate, and
21 reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v.*
22 *City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992). Here, zero Class Members objected to the
23 settlement; therefore, it may be inferred that the settlement is fair, reasonable, and adequate.

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

26 **1. Standard of Review**

27 On a motion for final approval of a class action settlement under California Code of
28 Civil Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether

1 the settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*,
2 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S.
3 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final
4 approval, when “the interests of the class are better served by the settlement than by further
5 litigation.” *See Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed.
6 2004). The law favors settlement, particularly in class actions and other complex cases, where
7 substantial resources can be conserved by avoiding the time, cost, and rigors of formal
8 litigation. *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (2008);
9 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v.*
10 *Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

11 Although the Court possesses “broad discretion” in determining that a proposed class
12 action settlement is fair, the scope of the Court’s inquiry is limited to the extent necessary to
13 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by,
14 or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
15 reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625.

16 Accordingly, the Court should give due regard to what is otherwise a “private consensual
17 agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993
18 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
19 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; *Manual for Complex*
20 *Litigation* § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical, but
21 limited to approving the proposed settlement, disapproving it, or imposing conditions on it.
22 The judge cannot rewrite the agreement”). A court’s approval of a class action settlement will
23 only be reversed for abuse of discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794,
24 1801 (1996); *Officers for Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that
25 the district court’s decision was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at 1276;
26 *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151
27 F.3d 1234, 1238 (9th Cir. 1998).

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

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

8 85 Cal. App. 4th 1135, 1146 (2000).

9 **2. The Circumstances Surrounding this Settlement Give Rise to a**
10 **Presumption of Fairness**

11 The Court should begin its analysis by recognizing that a presumption that the
12 settlement is fair applies to this case and thus the settlement should be approved:

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

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

20 The settlement in the case at bar is subject to a presumption of fairness and therefore
21 warrants approval. As previously noted in the application for Preliminary Approval, the
22 settlement was negotiated at arm’s length, after a full day of mediation with neutral Michael
23 Loeb, Esq., and a failed prior mediation. Gavron Decl. ¶ 5.

24 In addition, Class Counsel conducted extensive factual investigation before reaching a
25 settlement. The Parties engaged in two, separate full-day mediations with experienced neutrals
26 and reviewed class data, a sampling of time and pay records, and Defendants’ relevant policies
27 and other records. Class Counsel had a detailed understanding of the case and understood the
28 strengths and weaknesses of Plaintiffs’ claims. Gavron Decl. ¶ 5.

Class Counsel is highly experienced in this type of litigation. As shown in the
supporting declarations, Class Counsel has significant experience in wage and hour matters
and class actions. Gavron Decl. ¶¶ 11-17; Declaration of B. James Fitzpatrick (“Fitzpatrick

Decl.”) ¶ 13; Declaration of Howard L. Magee (“Magee Decl.”) ¶¶ 4-5; Declaration of Larry W. Lee (“L. Lee Decl.”) ¶¶ 12-13; Declaration of Christine S. Lee (“C. Lee Decl.”) ¶¶ 5-7.

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

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

If Plaintiffs were to pursue this case without settlement and not prevail, Plaintiffs would be potentially responsible for Defendants’ fees and costs. Likewise, were individual employees of Defendants to bring individual claims on the same causes of action, they would each face the same uncertainty of prevailing and the same possibility of becoming liable to pay fees and costs to Defendants. Accordingly, such claims likely would not be brought by many of the current and former employees who make up the Class – thus, this lawsuit achieves a true benefit for the Class that they might not otherwise realize as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs nor any of the Class Members will be required to pay for Defendants’ litigation fees and costs. Thus, the risks undertaken by Class Counsel and the Class should be considered a significant factor by the Court in its determination of final approval. The settlement provides a fair recovery to the Class, and it also eliminates the risk of costs to the Class.

The Settlement Agreement also affords finality, avoiding significant legal and factual battles that might otherwise prevent the Class from obtaining any recovery at all. While Class Counsel believe the Class Members’ claims are meritorious and can be successfully litigated, counsel are experienced and fully understand the risks of trial and the possibility of an adverse judgment, notwithstanding counsel’s confidence in the case. The risk of an undesired outcome

1 at trial and on any subsequent appeals are inherent in all litigation. Given the complexity of
2 this particular case, those risks are more pronounced than usual. Class Counsel has assessed
3 such risks in connection with the current settlement. Because the settlement provides
4 immediate and substantial relief, without the attendant risks and delay of continued litigation –
5 not to mention the threat of litigation fees and costs – Class Counsel believe that the settlement
6 warrants the Court’s final approval.

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

9 Another factor considered by courts in approving a settlement is the complexity,
10 expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*,
11 521 F.2d at 157. In applying this factor, the court must weigh the benefits of the settlement
12 against the expense and delay involved in achieving an equivalent or more favorable result at
13 trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

14 The settlement provides Class Members fair relief in a prompt and efficient manner
15 without requiring Class Members to pay out of pocket costs and legal fees. Were the Court to
16 deny final approval, most of the Class Members would be left without a remedy as a practical
17 matter, and courts across the State would have to address the issues presented here in a
18 piecemeal, costly, and time-consuming manner, handling numerous individual lawsuits. The
19 settlement in this case is therefore consistent with the “overriding public interest in settling and
20 quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529
21 F.2d at 950 (footnote omitted); *see also 4 Newberg* § 11.41.

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

23 Class Counsel supports the settlement as fair, reasonable and adequate, and in the best
24 interest of the Class as a whole. Gavron Decl. ¶ 5; Fitzpatrick Decl. ¶ 2; Magee Decl. ¶ 3; L.
25 Lee Decl. ¶ 2; C. Lee Decl. ¶ 2. Counsel for Defendants are likewise in favor of this
26 settlement. The endorsement of qualified and well-informed counsel of a settlement as fair,
27 reasonable, and adequate is entitled to significant weight by the Court in its final approval
28 determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.

Supp. at 617; *Linney*, 151 F.3d at 1242.

**6. Discovery and Settlement Discussions Undertaken in this Action
Favor Final Approval**

Prior to negotiating the settlement, Class Counsel engaged in lengthy investigation on a number of topics and categories. For example, Plaintiffs reviewed numerous documents related to Defendants' written policies regarding the payment of meal and rest premiums, business reimbursements, and COVID health checks, data pertaining to the number of putative class members and aggrieved employees and the number of pay periods at issue, and a ten percent sample of payroll and timekeeping data for the putative class. The Parties also engaged in two all-day mediations before finally reaching this settlement. Gavron Decl. ¶ 4.

Class Counsel worked tirelessly throughout the duration of this case and was prepared to present Plaintiffs' case at trial before the Parties were able to reach a settlement in this matter. As detailed above, each of the factors counsel strongly in favor of final approval of the settlement by this Court.

**IV. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS SHOULD
BE APPROVED**

Class Representatives and Plaintiffs Ryan Chanley, Olivier Lara, Veronica Medina, and Celia Orozco request a service award of \$5,000.00 to each Plaintiff. Plaintiffs met with Class Counsel to discuss the case, including providing substantive information and documents regarding Defendants' practices. Accordingly, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that they provided, Plaintiffs also took significant risks, personally, professionally, and monetarily, in acting as the Class Representatives seeking benefits on behalf of the Class. Because the claims alleged by the Class Representatives provide for the payment of fees and costs to the prevailing party, Plaintiffs undertook the risk that they may be required to pay Defendants' fees and costs in the event that Defendants prevailed in this action.

Moreover, Plaintiffs were active participants in the prosecution of this case. Plaintiffs

1 met with Class Counsel on numerous occasions, had numerous phone conferences with Class
2 Counsel, provided information and documents to Class Counsel, and reviewed various case
3 documents. Declaration of Ryan Chanley (“Chanley Decl.”) ¶ 4; Declaration of Olivier Lara
4 (“Lara Decl.”) ¶ 4; Declaration of Veronica Medina (“Medina Decl.”) ¶4; Declaration of Celia
5 Orozco (“Orozco Decl.”) ¶ 4.

6 Plaintiffs took these risks upon themselves for the benefit of the Class. Class Members
7 did not have to file individual lawsuits and bear the risks of payment of fees and costs if they
8 did not prevail, nor did they have to face the potential for retaliation and not getting future
9 employment had they filed a lawsuit which is a public record. These are significant benefits
10 that weigh in favor of granting the requested service payment. Moreover, this litigation has
11 resulted in a significantly valuable benefit to the Class, and Plaintiffs took on substantial risks
12 in helping to get this financial benefit to the Class. As such, the service payment should be
13 awarded to Plaintiffs for their commitment, dedication, and risks taken for this litigation.

14 **V. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED**

15 The amount of the proposed settlement is a direct result of the effort and work of Class
16 Counsel over the past two years. The settlement before this Court inures to the benefit of
17 Defendants’ employees and is the direct result of Class Counsel’s efforts. As set forth in the
18 declarations of Class Counsel, a considerable amount of work done by Class Counsel achieved
19 an enormous benefit to the Class.

20 The \$700,000.00 settlement amount is the result of a considerable expenditure of time,
21 effort, skill, and money by Class Counsel. Class Counsel obtained data pertaining to the
22 number of putative class members and aggrieved employees, number of pay periods at issue,
23 and sample payroll and timekeeping data for the putative class, as well as Defendants’ written
24 policies. The information provided by Defendants allowed Plaintiffs to review and analyze the
25 liability and potential exposure. After thoroughly investigating the facts relating to the class
26 and PAGA claims alleged in this lawsuit, and engaging in a thorough study of the legal
27 principles applicable to the claims asserted against Defendants, two full-day mediations with
28 were conducted to reach the current settlement. Class Counsel shouldered the risk that they

1 might recover no fee at all and may even lose the considerable sums they advanced in
2 expenses. Counsel's requested fee, therefore, should be granted in full.

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

16 An award of one-third, or approximately 33.3%, of the fund in attorneys' fees mimics
17 the marketplace, as it "is supported by the fact that typical contingency fee agreements provide
18 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is
19 tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July
20 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing*
21 *Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed,
22 "empirical studies [that] show that...fee awards in class actions average around one-third of
23 the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

24 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
25 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported
26 by a lodestar cross-check that employed a multiplier of 2.13. *Id.* at 487. The court in *Laffitte*
27 explained that when cross-checking a percentage fee request against the lodestar method, the
28 court should examine the imputed multiplier in the lodestar calculation and, only when the

multiplier is “extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing one-third 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*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class Notice specifically notified Class Members that Class Counsel would be seeking \$233,333.33 of the settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement or the request for attorneys’ fees. This strong favorable response also supports the requested fees.

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to “cross-check” the amount of fees calculated by way of percentage. The *Laffitte* court emphasized, however, that “the lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or

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

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

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

Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in over 30 cases). Federal district courts applying California law have likewise routinely approved cross-check multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations). Other courts have found even higher multipliers to be reasonable by comparison to other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008) (approving a 5.2 multiplier on a cross-check after surveying a large body of cases affirming a higher multiplier).

With respect to Class Counsel’s lodestar, Class Counsel will have expended approximately 485.7 hours litigating this case, which includes approximately 15 hours of anticipated time spent after final approval responding to correspondence and phone calls from Class Members, the Settlement Administrator, and Defense Counsel. Fitzpatrick Decl. ¶ 9, Ex. A; Magee Decl. ¶ 8, Ex. A; L. Lee Decl. ¶ 6, Ex. A; Gavron Decl. ¶ 19, Ex. A; C. Lee Decl. ¶ 9, Ex. A. Additionally, paralegals for Mr. Fitzpatrick’s firm spent approximately 31 hours on this matter. Fitzpatrick Decl. ¶ 9; Ex. A. Thus, the total number of hours expected to be invested in this case through resolution is approximately 516.7. Class Counsel request an hourly rate of between \$400.00 and \$595.00 per hour. Fitzpatrick Decl. ¶ 11; Magee Decl. ¶ 10; L. Lee Decl. ¶ 10; Gavron Decl. ¶ 21; C. Lee Decl. ¶ 8. Paralegals at Fitzpatrick & Swanston bill at a rate of \$185 per hour. Fitzpatrick Decl. ¶ 10. The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours

1 worked on a particular case is sufficient evidence to support an award of attorney fees, even in
2 the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

10 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
11 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
12 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*,
13 the attorney’s skill and experience, the nature of the work performed, the relevant area of
14 expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*,
15 61 Cal. App. 4th 629, 632-33 (1998).

16 Class Counsel’s skill and experience justify the requested rates. As shown in the
17 supporting declarations, Class Counsel have significant experience in the area of employment
18 and wage and hour class actions. Specifically, Class Counsel’s practice focuses on
19 representing employees in employment matters, particularly wage and hour cases. Fitzpatrick
20 Decl. ¶ 13; Magee Decl. ¶ 5; L. Lee Decl. ¶¶ 11-17; C. Lee Decl. ¶ 7. As such, based on the
21 hours and applicable rate, Class Counsel’s lodestar amount through the finalization of this
22 settlement – without a multiplier – will be approximately \$279,361.50. Fitzpatrick Decl. ¶ 11;
23 Magee Decl. ¶ 10; L. Lee Decl. ¶ 10; Gavron Decl. ¶ 23; C. Lee Decl. ¶ 9.

24 Once the court establishes the lodestar amount, it may enhance the lodestar number by
25 applying a multiplier in order to adjust the fees awarded to an amount appropriate to the
26 circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors
27 include the difficulty of the questions involved and the skill in presenting them, the contingent
28 nature of the fee award, the extent to which the litigation precluded other employment, and the

percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

Lealao contains several factors justifying an enhancement based on the percentage-of-the-benefit, namely, commendable conduct by counsel, and significant recoveries by class members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorneys' fee request. The extreme effort undertaken by counsel, as shown by their hours and the significantly high value being paid for claims, shows considerable skill.

The multiplier should be enhanced because of the contingent nature of counsel's fee recovery. The risks in taking on a class action case are enormous, not the least of which is time and effort. As this Court knows, substantial litigation has been undertaken by Class Counsel in this case, and to date, Class Counsel has yet to recover any fees for their work. This type of risk and effort justifies a multiplier, particularly in view of the contingent nature of the fee arrangement in this case.

Thus, the risks are very real and substantial for Class Counsel. Not only have Class Counsel undertaken a significant risk in this matter, but in the face of that risk they have achieved an excellent settlement. Thus, their work in obtaining the settlement in this matter has been commendable.

Finally, based upon Class Counsel's lodestar of \$279,361.50, Plaintiffs' request for a negative multiplier of 0.8 is reasonable and fair, particularly based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of

2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For these reasons, Class Counsel's request for attorneys' fees in the amount of \$233,333.33 should be approved as fair, reasonable, and adequate.

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

The request for reimbursement of costs, in the amount of \$26,347.85 is fair and reasonable. The costs are all litigation-related costs, which have been detailed in the supporting declarations of Class Counsel. Fitzpatrick Decl. ¶ 15 Ex. B; Gavron Decl. ¶ 24, Ex. B. The authority for the court to award this is the Parties' Settlement Agreement and the California Labor Code. As such, this request should be approved.

VII. THE SETTLEMENT ADMINISTRATION 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 in the Declaration of Kevin Lee, the settlement administration costs expended in this matter amount to a total of \$17,950.00, which is the amount that was agreed upon by the Parties and preliminarily approved by the Court. Admin. Decl. ¶ 17. For such reasons, it is requested that the settlement administration costs be approved.

VIII. PLAINTIFFS HAVE PROVIDED NOTICE TO THE LWDA

Concurrent with the filing of this Motion, Plaintiffs' counsel provided notice to the Labor and Workforce Development Agency. Gavron Decl. ¶ 25.

IX. CONCLUSION

For all of the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs respectfully submit that the standards for final approval have been met. Thus, the terms of the Settlement Agreement are fair, adequate, and reasonable and final approval should be granted.

1 Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form
2 proposed and submitted:

- 3 1. Granting final approval to the proposed Settlement Agreement in this action;
- 4 2. Approving distribution of the settlement funds to the Class Members pursuant to
5 the terms of the Settlement Agreement;
- 6 3. Approving Plaintiffs' request for payment of the Service Award to the Class
7 Representatives, with payment pursuant to the terms of the Settlement Agreement;
- 8 4. Approving Plaintiffs' request for an award to Class Counsel of \$233,333.33 in
9 attorneys' fees and \$26,347.85 in costs, with payment pursuant to the terms of the Settlement
10 Agreement;
- 11 5. Approving Plaintiffs' request for payment to the LWDA of \$37,500.00, with
12 payment pursuant to the terms of the Settlement Agreement;
- 13 6. Approving Plaintiffs' request for payment of the settlement administration costs
14 to Phoenix Settlement Administrators in the amount of \$17,950.00, with payment pursuant to
15 the terms of the Settlement Agreement;
- 16 7. Entering final judgment as to all members of the Class in this action.

17
18 DATED: August 21, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

19
20 By: 

21 B. James Fitzpatrick
22 Howard L. Magee
23 Larry W. Lee
24 Max W. Gavron

25 Attorneys for Plaintiffs Ryan Chanley, Olivier
26 Lara, Veronica Medina, and Celia Orozco
27
28