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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

EVERETT ALEXANDER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KBR TECHNICAL SERVICES, INC., a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVSB2133085

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

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

Date: September 21, 2023

Time: 9:00 a.m.

Dept.: S-26

Complaint Filed: November 9, 2021

FAC Filed: November 29, 2022

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on September 21, 2023, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable David Cohn, judge presiding, in Department S-26 of
4 the above referenced Court located at 247 West Third Street, San Bernardino, California 92415,
5 Plaintiff Everett Alexander (“Plaintiff”) will and hereby does move this Court for an Order:

- 6 (1) granting final approval to the Joint Stipulation of Class Action and PAGA Settlement
7 (“Stipulation” or “Settlement Agreement”) in this action;
- 8 (2) approving distribution of the settlement funds to the Class Members pursuant to the
9 terms of the Settlement;
- 10 (3) approving Plaintiff’s request for an award of the class representative enhancement
11 payment of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement;
- 12 (4) approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class
13 Counsel for 1/3 of the \$1,500,000.00 gross settlement fund, or \$500,000.00, and
14 reimbursement of litigation costs of \$12,840.20, pursuant to the terms of the
15 Settlement;
- 16 (5) approving Plaintiff’s request for payment of the settlement administration costs to
17 Phoenix Settlement Administrators in the amount of \$12,500.00, pursuant to the terms
18 of the Settlement;
- 19 (6) approving Plaintiff’s request for payment to the California Labor & Workforce
20 Development Agency (“LWDA”) for \$37,500.00, pursuant to the terms of the
21 Settlement; and
- 22 (7) entering final judgment as to all members of the Settlement Class in this action.

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

27 This Motion will be based on the attached Memorandum of Points and Authorities and the
28 supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L.

1 Marder, Plaintiff Everett Alexander, and Taylor Mitzner of Phoenix Settlement Administrators, the
2 oral arguments of counsel (should there be any), and on the complete records and file herein.

3
4 DATED: August 29, 2023

DIVERSITY LAW GROUP, P.C.

5
6 By: 
7 Larry W. Lee
8 Kristen M. Agnew
9 Nicholas Rosenthal
10 Attorneys for Plaintiff, the Class, and Settlement
11 Aggrieved Employees
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1 **I. INTRODUCTION**

2 On November 9, 2021, Plaintiff Everett Alexander (“Plaintiff”) filed the operative class
3 action complaint on behalf of himself and all similarly situated employees against Defendant KBR
4 Technical Services, Inc. (“Defendant”) in the Superior Court of the State of California for the County
5 of San Bernardino. The class action complaint alleges a cause of action for violation of Labor Code
6 § 226. Declaration of Nick Rosenthal (“Rosenthal Decl”) at ¶ 2.

7 On January 5, 2022, Plaintiff filed a related action against Defendant in the Superior Court of
8 the State of California, County of San Bernardino, Case Number CIVSB2200363 (the “PAGA
9 Action”). *Id.* ¶ 3. The PAGA Action is a representative action complaint and alleges a cause of action
10 for violation of Labor Code § 2698, et seq., predicated on an underlying violation of Labor Code §
11 226. *Id.* ¶ 3.

12 On November 21, 2022 Plaintiff filed a Joint Stipulation for Leave to File a First Amended
13 Complaint, in which the Parties agreed to allow Plaintiff to file a first amended complaint in the
14 Action solely for the purpose of obtaining the Court’s approval of the Parties’ settlement agreement.
15 *Id.* ¶ 4. The first amended complaint alleges two causes of action for violation of Labor Code §§ 226
16 and 2698, et seq., and combines the allegations of the Action and the PAGA Action. *Id.* ¶ 4. The first
17 amended complaint also names Defendant’s affiliated companies (Centauri, LLC (also known as
18 NTG), KBR Monterrey S.A. de C.V., Tech Staffing Resources, KBR Wyle Services, LLC, and KBR
19 Services, LLC) as defendants. *Id.* ¶ 4. On November 29, 2022, the Court signed the order granting
20 the Parties’ stipulation, and the first amended complaint was deemed to have been filed. The first
21 amended complaint is the operative Complaint (“Complaint”). As alleged in the Complaint, Plaintiff
22 seeks to represent the Class Members and other aggrieved employees. Plaintiff further seeks
23 damages, penalties, interest, attorneys’ fees, and costs. *Id.*

24 Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action and
25 PAGA Settlement (“Stipulation” or “Settlement Agreement”). In sum, the Settlement Agreement
26 provides for a \$1,500,000.00 **non-reversionary** fund to be created for the benefit of the Class, from
27 which attorneys’ fees, litigation costs, enhancement payment to the Plaintiff, payment to the
28 California Labor & Workforce Development Agency (“LWDA”), and costs of settlement

administration are to be paid. After these deductions are made, the entire net settlement fund will be paid to all Class Members who did not opt-out of the Settlement (“Settlement Class Members”).

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. This Court preliminarily approved this settlement on May 5, 2023, directing distribution of class notice and scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Settlement Administrator distributed the Notice of Class Action Settlement (“Class Notice”) to 950 Class Members. (Declaration of Taylor Mitzner (“Mitzner Decl.”) ¶ 5.) The deadline for Class Members to submit requests for exclusion or file objections was July 28, 2023. *Id.* ¶¶ 8-9. Zero (0) requests for exclusion, objections, and workweek disputes have been filed, and 22 notices were undeliverable. *Id.* ¶¶ 8-10. As such, thus far there is a 100% participation rate by Class Members. Thus, 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 sum, in light of the settlement administration process and the results thereof, the lack of any opt-outs, and the amount of class funds being paid out to the Class Members, the Court should confirm its preliminary approval as this process supports the Court’s initial finding that the Settlement is fair and reasonable.

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

- The Settlement provides a total settlement sum of \$1,500,000.00 which is **non-reversionary**;
- The Settlement is fair given that all Class Members will receive (*after deductions for fees, costs, etc.*) on average, approximately \$962.80 per person (*See* Mitzner Decl. ¶ 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 claims will be paid to all Class Members on a

pro-rata basis, based on the number of qualifying wage statements each Class Member received during the Class Period;

- Plaintiff investigated the claims at issue, including exchanges of information by Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administrators (“Phoenix”), was retained for fees of \$12,500.00; and
- The LWDA will also be a beneficiary of this Settlement as it will receive \$37,500.00, should this Settlement be granted final approval.

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

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

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

As clearly stated in the Taylor Mitzner Declaration, notice was provided to all Class Members as required by the Preliminary Approval Order. (Mitzner Decl. ¶ 5.) On May 30, 2023, the Settlement Administrator received a Class Member mailing list from Defendant’s counsel that included 950 Class Members. (*Id.* ¶ 3.)

On June 13, 2023, the Settlement Administrator sent each Class Member a Class Notice via first class mail. (*Id.* ¶ 5.) Twenty-two (22) Class Notices were returned with a forwarding address. (*Id.* ¶ 6.) As of date of this declaration, zero (0) Class Notices are considered undeliverable. (*Id.* ¶ 7.) Further, the Class Notice provided Class Members with Class Counsel’s contact information and information about how they could seek further information regarding the settlement, leave questions for the Settlement Administrator, and update their mailing address.

The provision of sending the Class Notice to Class Members as described above meets the

1 requirements for the “best notice practicable” in this case as necessary to protect the due process
2 rights of class members. (*See, e.g., Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12
3 (provision of “best notice practicable” with description of the litigation and explanation of opt-out
4 rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75 (individual
5 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
6 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best practicable notice is that which is
7 “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
8 the action and afford them an opportunity to present their objections”).)

9 Here, the Class Members were sent a mailing regarding the settlement that satisfies due
10 process rights. The mailing described the litigation, provided an explanation of the terms of the
11 settlement, explained Class Members’ rights, allowed Class Members to seek additional information
12 with Class Counsel contact information, and explained ways for Class Members to opt out or object,
13 if so desired. As such, this constitutes proper notice to the Class Members.

14 Accordingly, the Court may proceed to determine the fairness and adequacy of the Settlement
15 and enter its Order granting final approval, secure in the knowledge that all absent Class Members
16 have been given the opportunity to participate fully in the claims, exclusion, and the approval
17 process.

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

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

21 In order to proceed as a class, there are two requirements which must be met—
22 ascertainability and community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d. 695,
23 704.) Under California law, there are two basic requirements which must exist to sustain a class
24 action: “[t]he first is existence of an ascertainable class, and the second is a well-defined community
25 of interest in the questions of law and fact involved.” (*Vasquez v. Superior Court* (1971) 4 Cal. 3d
26 800, 809.) “The community of interest requirement embodies three factors: (1) predominant
27 common questions of law or fact; (2) class representatives with claims or defenses typical of the
28 class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*

1 *Industries* (1981) 29 Cal. 3d 462, 470.)

2 **1. The Class is Ascertainable**

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

7 Here, the Class is defined as: “(1) all former and current employees of Defendant, Centauri,
8 LLC (also known as NTG), KBR Monterrey S.A. de C.V., and/or Tech Staffing Resources, LLC in
9 the state of California at any time during the Covered Period [November 1, 2020 through October 7,
10 2022] who received one or more wage statements during the Covered Period and who do not opt-out
11 of the settlement; and (2) all non-exempt current and former employees of KBR Wyle Services, LLC
12 and/or KBR Services, LLC who worked in the state of California at any time during the Covered
13 Period who received one or more wage statements with overtime or double time pay during the
14 Covered Period and who do not opt-out of the settlement.” (the “Class”). There are 950 individuals
15 that comprise the Class. (Salinas Decl. ¶ 3.) This is far more than the minimum required to certify a
16 class. Within the context of manageability, the issue is whether there exists sufficient means for
17 identifying class members at the remedial stage. (*Reyes, supra*, 196 Cal. App. 3d at pp. 1274-75.)
18 Class Members have already been identified by Defendant and Notice has been provided to all of the
19 Class Members. Accordingly, the Class is ascertainable under Code of Civil Procedure § 382.

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

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

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

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

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

2 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
3 violated the California Labor Code by failing to identify the legal name and address of the employer,
4 as well as the correct rates of pay for overtime and/or double time wages, on wages statements issued
5 to employees. Defendant denies that liability could be established on a class-wide basis. Defendant
6 contends instead that liability and damages would need to be conducted on a case-by-case basis, and
7 that Plaintiff’s legal theories lack merit.

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

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

17 Here, Plaintiff was subjected to the same policies and practices as other Class Members.
18 Plaintiff was employed by Defendant as a non-exempt employee. Plaintiff alleges that he, like all
19 other Class Members, was not provided compliant wage statements. (Declaration of Everett
20 Alexander (“Alexander Decl.”) ¶ 3.) Specifically, like other members of the class, Plaintiff alleges
21 that he received wage statements that do not identify the legal name and address of the employer, as
22 well as the correct rates of pay for overtime and/or double time wages. Thus, Plaintiff’s claims are
23 typical to those of Class Members.

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

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

28 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues been

1 raised or presented. (Alexander Decl. ¶ 6.) Plaintiff has taken all necessary steps to represent the
2 interests of the Class, including providing information and documents to his counsel and reviewing
3 pleadings and documents in this case. (*Id.* ¶¶ 4-7.) For such reasons, Plaintiff has adequately
4 represented the Class Members and will continue to do so.

5 **B. Defendant's Allegations and Unlikelihood of Class Certification**

6 Defendant asserts that individualized issues predominate in this case, including without
7 limitation, whether Defendant provided accurate wage statements in compliance with the law. In any
8 event, even assuming that a class could be certified, Defendant asserts that it and the other named
9 defendants have complied with all laws. Based thereon, Defendant continues to maintain that it and
10 the other named defendants are not liable for the allegations made by the Plaintiff.

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

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

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

26 //

27 //

28 //

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

4 Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation
5 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
6 Approval of Class Action Settlement, the Parties highlight several key facts. First, the Settlement
7 was the product of negotiation between highly able and experienced attorneys on both sides who
8 possessed the relevant data and extensive legal research which they had carefully analyzed.
9 (Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 6.) Thus, this Settlement is the result of
10 arm’s length negotiations, and should be granted final approval.

11 Second, the results after mailing of the Class Notice also fully support confirmation of the
12 Court’s preliminary approval of the settlement, as evidenced by the 100% participation rate. In other
13 words as of the date of this filing, none of the Class Members submitted exclusions to the settlement
14 or filed an objection to the settlement. (Mitzner Decl. ¶¶ 11.) In light of overwhelmingly positive
15 response to the settlement, the Court may appropriately infer that the settlement is fair, adequate, and
16 reasonable, when among other reasons, no Class Members have opted out or objected to it. (*See*
17 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (reaction of class members to
18 the settlement is a factor supporting approval of a class action settlement.)

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

21 **1. Standard of Review**

22 On a motion for final approval of a class action settlement under California Code of Civil
23 Procedure § 382 and California Rules of Court, Rule 3.769, a court’s inquiry at this juncture is
24 whether the settlement is “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n*
25 (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom., Byrd v. Civil Serv. Comm’n* (1983) 459 U.S.
26 1217.) A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
27 interests of the class are better served by the settlement than by further litigation.” (*See Manual for*
28 *Complex Litigation Fourth* (Fed. Judicial Center 2004), § 21.6 at p. 309 (“MCL”).) The law favors

1 settlement, particularly in class actions and other complex cases, where substantial resources can be
2 conserved by avoiding the time, cost, and rigors of formal litigation. (*See 4 Newberg on Class*
3 *Actions* (2008) 4th § 11.41; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276;
4 *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

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

16 A court’s approval of a class action settlement will only be reversed for a clear abuse of
17 discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Officers for Justice,*
18 *supra*, 688 F.2d at p. 626 (reversal of class settlement “only upon a strong showing that the district
19 court’s decision was a clear abuse of discretion”); *Class Plaintiffs, supra*, 955 F.2d at p. 1276;
20 *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453; *Linney v. Cellular Alaska P’ship* (9th Cir.
21 1998) 151 F.3d 1234, 1238.)

22 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000)
23 85 Cal. App. 4th 1135, 1146:

24 It cannot be overemphasized that neither the trial court in approving the settlement nor
25 this Court in reviewing that approval have the right or duty to reach any ultimate
26 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
27 well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge
28 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.

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

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

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

7 (*Dunk*, 48 Cal. App. 4th at p. 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at p.
8 1146; *accord*, *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub*
9 *Power Supply*, *supra*, 720 F. Supp. at p. 1387.)

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

13 Second, Class Counsel engaged in extensive factual investigation before settling, including an
14 extensive review and analysis of class data and information pertaining Defendant's policies and
15 practices relevant to the class claims. (Rosenthal Decl. ¶ 6.) Further, Class Counsel is highly
16 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
17 significant experience in class actions and employment wage and hour matters. (Rosenthal Decl. ¶¶
18 10-11; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 3, 4; Declaration of Kristen Agnew ("Agnew
19 Decl.") ¶¶ 3-8; Declaration of William L. Marder ("Marder Decl.") ¶¶ 3-7.)

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

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

1 If Plaintiff pursued this case without settlement and not prevail, Plaintiff would be potentially
2 responsible for Defendant's fees and costs. Likewise, were any individual current or former
3 employees of Defendant (and/or the other named defendants) to bring individual claims on the same
4 causes of action, they would each face the uncertainty of prevailing and the same possibility of
5 becoming liable to pay fees and costs to Defendant. Accordingly, such claims likely would not be
6 brought by many of these current and former employees who make up the Settlement Class. Thus,
7 this lawsuit achieves a true benefit for the Settlement Class that they might not otherwise get or seek
8 as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff
9 nor any of the Class Members will be required to pay for Defendant's litigation fees and costs. Thus,
10 the risks undertaken by Class Counsel should be considered a significant factor by the Court in its
11 determination of final approval. The Settlement provides a fair recovery to Class Members and
12 eliminates the risk of costs to Class Members or the Class Representative.

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

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

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

1 (*Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-34.)

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

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

13 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
14 interest of the Class Members as a whole. (Lee Decl. ¶ 2; Agnew Decl. ¶ 2; Rosenthal Decl. ¶ 5;
15 Marder Decl. ¶ 2.) Similarly, counsel for Defendant is in favor of the settlement. The endorsement
16 of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to
17 significant weight by the Court in its final approval determination. (*See Officers for Justice*, 688
18 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.)

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

21 Class Representative Everett Alexander requests an enhancement of \$10,000.00 in
22 accordance with the terms of the Settlement Agreement. Plaintiff met with Class Counsel and had
23 several discussions about the case. (Alexander Decl. ¶ 4, 5, 8.) Plaintiff also provided substantive
24 information and documents regarding Defendant’s policies and practices to help support the class
25 claims alleged in this case. (*Id.*) Accordingly, Plaintiff provided invaluable information, evidence,
26 and documents that resulted in this settlement.

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

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

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

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

19 Class Counsel seeks a fee award calculated as one-third of the total value of the settlement for
20 the successful prosecution and resolution of this action. Recently, the California Supreme Court
21 issued its ruling regarding the award of attorney’s fees in wage and hour class action settlements.
22 Under California law, the award of attorneys’ fees in common fund wage and hour class action
23 settlements should start with the percentage method. (*See Laffitte v. Robert Half Int’l* (2016) 1 Cal.
24 5th 480, 503 (“We join the overwhelming majority of federal and state courts in holding that when
25 class action litigation establishes a monetary fund for the benefit of the class members, and the trial
26 court in its equitable powers awards class counsel a fee out of that fund, the court may determine the
27 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).) Under the
28 percentage of the fund method, the Court’s objective remains to “mimic the market” in fixing a

1 reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) (“When a fee
2 is set by a court rather than by contract, the object is to set it at a level that will approximate what the
3 market will set....The judge, in other words, is trying to mimic the market in legal services”).)

4 An award of one-third of the fund in attorneys’ fees “mimics the marketplace” as it is
5 “supported by the fact that typical contingency fee agreements provide that class counsel will recover
6 33% if the case is resolved before trial and 40% if the case is tried.” (*Fernandez v. Victoria Secret*
7 *Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. *16 n. 59 (citing Brickman, *Effective Hourly*
8 *Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81
9 Wash U. L. Q. 653, 659 n. 11).) Indeed, “empirical studies [that] show that...fee awards in class
10 actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th
11 43, 66 n.11.)

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

18 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent
19 of the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
20 (*Laffitte v. Robert Half Int’l* (2014) 231 Cal. App. 4th 860, 871.) Here, the fee award representing 33
21 1/3% of the fund clearly falls within that range and is consistent with other comprehensive surveys of
22 class action settlements and fee awards. (*See Fitzpatrick, An Empirical Study of Class Action*
23 *Settlements and Their Fee Award* (2010) 7 J. Empirical Leg. Stud. 811, 833 (analyzing 444 cases
24 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent,
25 with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action*
26 *Settlements: An Empirical Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16
27 (independent studies of class action litigation nationwide conclude that fees representing one-third of
28 the total recovery is consistent with market rates).)

1 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
2 relevant to the...reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir.
3 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation
4 of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically
5 notified Class Members that Plaintiff’s Counsel would be seeking up to \$500,000.00 of the
6 settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement or the
7 request for attorneys’ fees. This strong favorable response also supports the requested fees.

8 When the primary method employed to determine fees is the percentage method, courts have
9 discretion to use the lodestar method to “cross-check” the amount of fees calculated by way of
10 percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when used in this
11 manner, does not override the trial court’s primary determination of the fee as a percentage of the
12 common fund and thus does not impose an absolute maximum or minimum on the potential fee
13 award.” (*Laffitte, supra*, 1 Cal. 5th at p. 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.* (3d
14 Cir. 2005) 396 F.3d 294, pp. 306-307 (“[The lodestar cross-check does not trump the primary
15 reliance on the percentage of common fund method”).)

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

1 trial judge.”.)

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

12 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded
13 by the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0”
14 range. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (affirming a multiplier
15 of 3.65 in an employment class action case and analyzing the multiplier awarded in over 30 cases).)
16 Federal district courts applying California law have likewise routinely approved cross-check
17 multipliers between 2 and 3 in employment cases. (*See, e.g., Willner v. Manpower Inc.* (N.D. Cal.
18 June 22, 2015) No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (affirming a 2.10 multiplier on
19 settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014)
20 303 F.R.D. 326, 334 (approving attorneys' fees that resulted in lodestar multiplier of 2.83); *Hopkins*
21 *v. Stryker Sales Corp.* (N.D. Cal. Feb. 6, 2013) No. 11-CV-02786-LHK, 2013 WL 496358, at *5
22 (approving a multiplier of 2.76 in settlement of Labor Code violations).) Other courts have found
23 even higher multipliers to be reasonable by comparison to other cases. (*See Craft v. County of San*
24 *Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113, 1125-26 (approving a 5.2 multiplier on a cross-
25 check after surveying a large body of cases affirming a higher multiplier).)

26 With respect to Class Counsel’s lodestar, to date, approximately 377.1 hours have been
27 expended by Class Counsel in this matter. (Lee Decl. ¶ 6, Ex. A; Agnew Decl. ¶ 9, Ex. A; Rosenthal
28 Decl. ¶ 12, Ex. A; Marder Decl. ¶ 8, Ex. A.) Mr. Lee requests an hourly rate of \$750.00 per hour.

1 (Lee Decl. ¶ 7.) Ms. Agnew requests an hourly rate of \$700.00 per hour. (Agnew Decl. ¶ 10.) Mr.
2 Rosenthal requests an hourly rate of \$700.00 per hour. (Rosenthal Decl. ¶ 13.) Mr. Marder requests
3 an hourly rate of \$750.00 per hour. (Marder Decl. ¶ 9.) The courts are quite liberal in the evidence
4 required to prove an attorney's hours. Detailed time records are not required. An attorney's
5 testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a
6 particular case is sufficient evidence to support an award of attorney fees, even in the absence of
7 detailed time records." (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.)

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

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

20 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
21 declarations, Class Counsel have significant experience in the area of employment and wage and
22 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in
23 employment matters, particularly wage and hour cases. (Lee Decl. ¶¶ 3, 4; Agnew Decl. ¶¶ 3-8;
24 Rosenthal Decl. ¶¶ 10, 11; Marder Decl. ¶¶ 3-7.) As such, based on the hours and applicable rate,
25 Class Counsel's lodestar amount through finalization of this settlement (without a multiplier) will be
26 approximately \$270,410.00. (Lee Decl. ¶ 7; Agnew Decl. ¶ 10; Rosenthal Decl. ¶ 13; Marder Decl. ¶
27 9.) As such, a multiplier of 1.85 is required to reach \$500,000.00.

28 Indeed, this is a very low multiplier. (*Wershba v. Apple Computer, Inc.* (Ct. App. 2001) 91

1 Cal. App. 4th 224 (noting that courts using the lodestar method to calculate attorney fees awards in
2 class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal.
3 Nov. 18, 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the common fund, based on a
4 multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*
5 (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the common fund, based on a multiplier
6 of 2.52).)

7 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety.
8 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the
9 successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's
10 request for attorneys' fees in the amount of \$500,000.00 is fair, reasonable, and adequate.

11 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
12 **COSTS**

13 The request for reimbursement of costs, in the amount of \$12,840.20 is fair and reasonable.
14 The costs are all litigation-related costs, which have been detailed in the supporting declaration of
15 Class Counsel. (Lee Decl. ¶ 8, Ex. B.) The authority for the court to award this is the Parties'
16 Settlement Agreement and the California Labor Code.

17 With regard to the request for reimbursement of travel and meals, Plaintiff cites *Thon v.*
18 *Thompson* (1994) 29 Cal. App. 4th 1546, *Gibson v. Bobroff* (1996) 49 Cal. App. 4th 1202, and
19 *Berkeley Cement, Inc. v. Regents of Univ. of Calif.* (2019) 30 Cal. App. 5th 1133. Specifically, in
20 *Berkeley Cement*, the most recent case, the issue addressed by the Court was whether mediation
21 related expenses incurred by a party is recoverable under California Code of Civil Procedure §
22 1033.5, despite the fact that the mediation was completely voluntary and not court-ordered. (*Id.* at
23 1140.) After considering the arguments of both sides, the Court held that such expenses are
24 recoverable even if the mediation was not court-ordered, when the mediation is a reasonably
25 necessary means of resolving the dispute and avoiding the expenses of a trial. (*Id.* at 1142.)

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

27 //

28 //

1 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
2 **APPROVED**

3 Plaintiff also requests that the Court approve administration costs to the Settlement
4 Administrator, Phoenix Settlement Administrators, in the amount of \$12,500.00, which is less than
5 the estimated amount that was agreed upon by the Parties. As detailed in the Declaration of Taylor
6 Mitzner submitted herewith, Phoenix performed duties in connection with this Settlement that were
7 integral in effectuating the Settlement and the Notice process. Among other things, Phoenix
8 calculated each Class Member's individual settlement payment, updated addresses contained in the
9 class data supplied by Defendant, formatted and distributed Class Notices to all 950 Class Members,
10 and otherwise administered the Settlement. (Mitzner Decl. ¶ 2.) For such reasons, it is requested that
11 the Settlement Administrator's fees be approved.

12 **VIII. CONCLUSION**

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

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

- 18 1. granting final approval to the proposed Settlement Agreement in this action;
- 19 2. approving distribution of the settlement funds to the Class Members pursuant to the
20 terms of the Settlement Agreement;
- 21 3. approving Plaintiff's request for an award of the class representative enhancement of
22 \$10,000.00 to Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
- 23 4. approving Plaintiff Counsel's request for an award to Class Counsel for \$500,000.00 in
24 attorneys' fees and \$12,840.20 in costs with payment pursuant to the terms of the Settlement
25 Agreement;
- 26 5. approving Plaintiff's request for payment of the settlement administration costs to
27 Phoenix Settlement Administrators in the amount of \$12,500.00 with payment pursuant to the terms
28 of the Settlement Agreement;

1 6. approving Plaintiff's request for payment to the LWDA for \$37,500.00 with payment
2 pursuant to the terms of the Settlement Agreement; and

3 7. entering final judgment as to all members of the Class in this action.
4
5

6 DATED: August 29, 2023

DIVERSITY LAW GROUP, P.C.

7
8 By: 
9 Larry W. Lee
10 Kristen M. Agnew
11 Nicholas Rosenthal
12 Attorneys for Plaintiff, the Class, and Settlement
13 Aggrieved Employees
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20 Erika Mejia