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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

JOSE VALENCIA, an individual,
BRANDON JEROUE, an individual, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SENTINEL TRANSPORTION, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV00951

[Assigned for all purposes to the Hon. James F.
Rigali, Department SM Dept. 2]

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

Date: June 25, 2024

Time: 8:30 a.m.

Dept.: SM Dept. 2

Action Filed: April 29, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on June 25, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable James F. Rigali, judge presiding, in Department SM
4 Department 2 of the above referenced Court located at 312-C East Cook Street, Santa Maria,
5 California 93454, Plaintiffs Jose Valencia and Brandon Jeroue (“Plaintiffs”) will and hereby do
6 move this Court for an Order:

7 1. granting final approval to the Joint Stipulation of Class and Representative Action
8 Settlement (“Agreement” or “Settlement Agreement”) in this action;

9 2. approving distribution of the settlement funds to the Settlement Class Members
10 pursuant to the terms of the Settlement Agreement;

11 3. Approving Plaintiffs’ request for Enhancement Payments of \$10,000.00 to each
12 Plaintiff pursuant to the terms of the Settlement Agreement;

13 4. Approving Class Counsel’s request for an award of attorneys’ fees of
14 approximately one-third of the Gross Settlement Amount, or \$188,333.33, and reimbursement of
15 actual litigation costs of \$16,754.98, pursuant to the terms of the Settlement Agreement;

16 5. Approving Plaintiffs’ request for payment of the Settlement Administration Costs
17 to Phoenix Settlement Administrators in the amount of \$10,000.00, pursuant to the terms of the
18 Settlement Agreement;

19 6. Approving Plaintiffs’ request for payment to the California Labor & Workforce
20 Development Agency (“LWDA”) of \$37,500.00, pursuant to the California Labor Code Private
21 Attorneys General Act and the terms of the Settlement Agreement; 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
24 provides for court approval of the settlement of a purported class action and allows the Court to
25 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
26 response, as shown by the lack of objections and single opt-out to the settlement, there is no
27 question that the settlement is fair, reasonable, and adequate and thus should be granted final
28 approval.

1 This Motion will be based on the attached Memorandum of Points and Authorities and the
2 supporting Declarations of Larry W. Lee, Kristen M. Agnew, William L. Marder, Plaintiff Jose
3 Valencia, Plaintiff Brandon Jeroue, and Lluvia Islas of Phoenix Settlement Administrators, upon
4 the oral arguments of counsel (should there be any), and on the complete records and file herein.

5
6 DATED: May 31, 2024

DIVERSITY LAW GROUP, P.C.

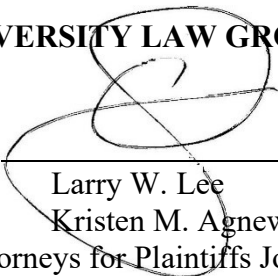
7
8 By: 
9 Larry W. Lee
10 Kristen M. Agnew
11 Attorneys for Plaintiffs Jose Valencia and
12 Brandon Jeroue

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class and representative Private Attorneys General Act
4 (“PAGA”) action. Plaintiffs Jose Valencia and Brandon Jeroue (the “Class Representatives” or
5 “Plaintiffs”) worked as a non-exempt employees for Defendant Sentinel Transportation, LLC
6 (“Defendant”). Plaintiffs allege that Defendant: (a) failed to reimburse business expenses, in
7 violation of Labor Code section 2802; (b) failed to provide accurate, itemized wage statements,
8 in violation of Labor Code section 226(a); (c) failed to pay all minimum, regular, overtime, and
9 reporting time wages, in violation of Labor Code sections 510, 1174, 1198 and 1199; (d)
10 engaged in Unfair Business Practices in violation of the UCL; and (e) violated PAGA, Labor
11 Code section 2698 *et. seq.* As a result, Plaintiffs contend that Class Members and Aggrieved
12 Employees are entitled to damages, penalties, attorneys’ fees, and costs. Defendant denies each,
13 every, and all of the allegations of the Complaint.

14 Prior to the settlement of this action, Plaintiffs and Defendant (the “Parties”) engaged in
15 the exchange of discovery and a thorough study of the legal principles applicable to the claims
16 asserted against Defendant. With the assistance of an experienced mediator, the Parties were
17 ultimately able to reach the current settlement. The terms of the settlement provide that
18 Defendant shall pay the gross settlement amount of \$565,000.00 (“Gross Settlement Fund”). On
19 average, each Settlement Class Member will receive approximately \$748.43, and each Aggrieved
20 Employee will receive approximately \$47.35. Significantly, the Gross Settlement Fund is non-
21 reversionary, such that no monies will revert back to Defendant.

22 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
23 risks and uncertainty of class certification and the merits of this case. Further, notice of the
24 settlement was provided to the class by Phoenix Settlement Administrators in the manner
25 approved by the Court. Not a single objection was received, and only one (1) request for
26 exclusion from the settlement was submitted. Thus, there is a 99.73 % participation rate.
27 Therefore, the Parties respectfully request that the Court grant this Motion for Final Approval of
28 Class Action Settlement.

1 **II. THE PAYMENTS TO THE SETTLEMENT CLASS MEMBERS AND**
2 **AGGRIEVED EMPLOYEES**

3 The Settlement requires Defendant to pay the gross amount of \$565,000.00 (the “Gross
4 Settlement Fund”). The entire Gross Settlement Fund is non-reversionary, such that no monies
5 will revert back to Defendant. There are 374 Settlement Class Members. *See* Declaration of
6 Lluvia Islas on behalf of Phoenix Settlement Administrators (“Phoenix”) (“Admin Decl.”) ¶ 12.

7 The Net Settlement Amount is estimated to be \$279,911.69. *See* Admin. Decl. ¶ 11. The
8 Net Settlement Amount is based on the following:

9	Gross Settlement Fund	\$565,000.00
10	Less Class Counsel Fees	(\$188,333.33)
11	Less Class Counsel Costs	(\$16,754.98)
12	Less Enhancement Payments	(\$20,000.00)
13	Less PAGA Settlement Amount	(\$50,000.00)
14	<u>Less Settlement Administration Costs</u>	<u>(\$10,000.00)</u>
15	Payout Fund	\$279,911.69

16 *See id.*

17 Pursuant to the terms of the Settlement Agreement, Settlement Class Members will
18 receive a proportionate share of the Net Settlement, based on the number of pay periods each
19 Settlement Class Member worked during the Class Period. *See* SA § E-9. There are 374
20 Settlement Class Members, with a total of 22,185 pay periods at issue during the Class Period.
21 *See* Admin Decl. ¶ 11. Based on estimated settlement calculations at this time, the estimated
22 average payment to each Settlement Class Member will be \$748.43, and the highest payment to a
23 Settlement Class Member is estimated to be \$2,245.85. *See id.*

24 The Settlement allocates \$50,000.00 of the Gross Settlement Fund toward penalties under
25 the Private Attorneys General Act (“PAGA Settlement Amount”), of which 75%, or \$37,500.00,
26 shall be paid to the Labor and Workforce Development Agency (“LWDA”), and 25%, or
27 \$12,500.00 (“Net PAGA Payment”), shall be paid to Aggrieved Employees who worked during
28 the PAGA Period. *See* SA §§ E-7, 10. Aggrieved Employees will receive a proportionate share

1 of the Net PAGA Payment based on the number of pay periods worked during the PAGA Period.
2 *See id.* at § E-10. Based on the estimated calculations at this time, the average Individual PAGA
3 Payment to each Aggrieved Employee is estimated to be \$47.35 and the highest payment is
4 estimated to be \$75.85. *See* Admin. Decl. ¶ 13. All Class Members who are Aggrieved
5 Employees will receive an Individual PAGA Payment. *See* SA § F-6.

6 **III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
7 **SETTLEMENT**

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

14 As clearly stated in the Declaration of Declaration of Lluvia Islas, notice was provided to
15 Class Members. On March 28, 2024, the Settlement Administrator received the Class List from
16 Defendant's Counsel, which contained employee names, last known mailing addresses, Social
17 Security numbers, and number of pay periods worked by during the Class Period and PAGA
18 Period. *See* Admin. Decl. ¶ 3. The file included 413 individuals, including 375 Class Members.
19 *See id.* On April 12, 2024, the Settlement Administrator mailed the Notice Packet to all 413
20 individuals on the mailing list via U.S. first class mail. *See id.* at ¶ 5. From the date of mailing,
21 18 Notice Packets were returned to the Settlement Administrator due to an incorrect address. *See*
22 *id.* at ¶ 6. The Settlement Administrator conducted a National Change of Address ("NCOA")
23 search to correct and/or update the Class Member addresses and re-mailed the Notice Packets to
24 the updated addresses thereto. *See id.* As of the date of this filing, five Notice Packets remain
25 undeliverable. *See id.* at ¶ 7. Further, the Notice Packet provided Class Members with Class
26 Counsel's and the Settlement Administrator's contact information, where they could further seek
27 information regarding the settlement, ask questions, and update their address. *See id.* at ¶ 5, Ex.
28 A.

1 The provision of sending the notice to class members as described above meets the
2 requirements for the “best notice practicable” in this case as necessary to protect the due process
3 rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
4 (provision of “best notice practicable” with description of the litigation and explanation of opt-
5 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974)
6 (individual notice must be sent to class members who can be identified through reasonable
7 means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best
8 practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise
9 interested parties of the pendency of the action and afford them an opportunity to present their
10 objections”). As such, proper notice has been given to the Class Members. Thus, the Court may
11 proceed to determine the fairness and adequacy of the Settlement and enter its Order granting
12 final approval, secure in the knowledge that all absent Class Members have been given the
13 opportunity to participate fully in the claims, exclusion, and the approval process.

14 **IV. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

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

18 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
19 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
20 conducted sufficient discovery, and the settlement is reasonable in light of the strengths of the
21 plaintiff’s claims. As discussed in the Motion for Preliminary Approval, Class Counsel have
22 conducted extensive formal and informal discovery and investigation and, in light of the strength
23 and weaknesses of Plaintiffs’ claims, Class Counsel submits that this settlement is fair pursuant
24 to *Kullar*.

25 Without reiterating the Parties’ showing that the Settlement Agreement and the
26 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
27 Preliminary Approval, the Parties highlight the following facts. The Settlement Agreement was
28 the product of negotiation between highly able and experienced attorneys on both sides. *See*

1 Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶¶ 2-13; Declaration of Larry W. Lee (“Lee
2 Decl.”) ¶¶ 2, 5, 6; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 2-11. In addition, the
3 resolution of this case was reached with the assistance of an experienced mediator and only after
4 the production of data relevant to the potential value of the class and PAGA claims. *See* Agnew
5 Decl. ¶¶ 3, 4. Based on the information provided by Defendant, Class Counsel was able to
6 determine, among other things, approximations of the total number of Class Members and
7 Aggrieved Employees, the number of pay periods worked during the Class Period and PAGA
8 Period, and the average rate of pay for all employees. *See id.* at ¶ 4. Class Counsel calculated a
9 range of potential damages and penalties, and estimated that Defendant’s realistic liability
10 exposure is approximately \$3,518,482.40. *See id.* at ¶ 6. Thus, in the present case, Class Counsel
11 estimates that the Gross Settlement Fund is approximately 16.05% of the maximum recovery of
12 the class and representative PAGA claims.

13 The results after mailing of the Class Notice further support confirmation of the Court’s
14 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
15 fact that *there is not a single Class Member who has objected to the current settlement and*
16 *only one Class Member submitted a request to opt-out.* *See* Admin. Decl. ¶¶ 8-10. The Court
17 may appropriately infer that the class action settlement is fair, adequate, and reasonable when,
18 among other reasons, few, or no class members object to it. *See Class Plaintiffs v. City of Seattle*,
19 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th
20 Cir. 2004) (approving settlement with 45 objections and 500 opt-outs from a 90,000-person
21 class, representing 0.05% and 0.56% of the class, respectively); *Chun-Hoon v. McKee Foods*
22 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class members opted out,
23 court found that positive class reaction “strongly supports settlement”). Here, the lack of any
24 objections and single opt-out to this current settlement is an indication that Class Members
25 themselves view the settlement as fair, adequate, and reasonable.

26 **B. Standard of Review**

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

1 is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625
2 (9th Cir. 1982), *cert. denied subnom.*; *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A
3 settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
4 interests of the class are better served by the settlement than by further litigation.” *See Manual*
5 *for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law
6 favors settlement, particularly in class actions and other complex cases, where substantial
7 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Alba*
8 *Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class*
9 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*
10 *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 Court’s role must be limited to the extent necessary to reach a
13 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
14 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
15 adequate to all concerned. *See Officers for Justice*, 688 F.2d at p. 625. Accordingly, the Court
16 should give due regard to what is otherwise a “private consensual agreement” between the
17 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
18 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d*
19 *sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a
20 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
21 or imposing conditions on it. The judge cannot rewrite the agreement”).

22 A court’s approval of a class action settlement will only be reversed for a clear abuse of
23 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
24 *Justice*, 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision
25 was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar*, 1993
26 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
27 1998). As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

28 It cannot be overemphasized that neither the trial court in approving

1 the settlement nor this Court in reviewing that approval have the
2 right or duty to reach any ultimate conclusions on the issues of fact
3 and law which underlie the merits of the dispute. It is well settled
4 that in the judicial consideration of proposed settlements, ‘the [trial]
5 judge does not try out or attempt to decide the merits of the
6 controversy,’ [citation] and the appellate court ‘need not and should
7 not reach any dispositive conclusions on the admittedly unsettled
8 legal issue.

85 al. App. 4th 1135, 1146 (2000).

7 **C. The Settlement is Presumed to Be Fair**

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

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

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

16 The settlement in the case at bar warrants approval and carries a presumption of fairness.
17 As previously noted in the application for Preliminary Approval, this current settlement was
18 negotiated at arm’s-length after a full day of mediation and subsequent negotiations with an
19 experienced wage-and-hour mediator, Francis J. Ortman III. Agnew Decl. ¶ 2. Additionally,
20 Class Counsel engaged in formal and informal discovery before mediation, including reviewing
21 and analyzing the production of class data, and information pertaining to Defendant’s payroll
22 policies and practices. *See id.* at ¶¶ 3, 4. The exchange of information allowed Class Counsel to
23 conduct a full analysis of exposure. *See id.* at ¶¶ 4-6.

24 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
25 supporting declarations, Class Counsel possesses significant experience in class actions and
26 employment wage and hour matters. Agnew Decl. ¶¶ 7-13, 15; Lee Decl. ¶¶ 4-6; Marder Decl.
27 ¶¶ 4-11.

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D. Two-Way 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 pursued this case without settlement and failed to prevail, Plaintiffs would have been potentially responsible for Defendant’s costs. As such, if other employees of Defendant brought individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by many of these individuals – thus, this lawsuit achieves a true benefit for the Class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs nor any Class Members will be required to pay for Defendant’s litigation costs.

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

The Settlement Agreement also affords the Class prompt, fair relief while avoiding significant legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all. While Class Counsel believe the Class Members’ claims are meritorious and can be successfully litigated, they are experienced and fully understand the inherent risks and uncertainty involved with such matters as the resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that would inevitably follow should the Class prevail at trial. Class Counsel have also assessed the same risks in connection with the current

1 settlement. Because the settlement provides immediate and substantial relief, without the
2 attendant risks and delay of continued litigation – not to mention the threat of litigation fees and
3 costs – Class Counsel believe that the settlement warrants the Court’s final approval.

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

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

11 As noted above, continued litigation could have led to appeals on several issues. On the
12 other hand, the settlement that was reached provides to all Class Members – regardless of their
13 means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
14 Class Members would be left without a remedy as a practical matter and courts across the State
15 would have to address the issues presented here in a piecemeal, costly, and time-consuming
16 manner. The settlement in this case is therefore consistent with the “overriding public interest in
17 settling and quieting litigation” that is “particularly true in class action suits.” *See Van*
18 *Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case
19 has already involved years of litigation.

20 **F. The Opinion of Experienced Counsel Favors Final Approval**

21 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
22 interest of the Class Members as a whole. *See Agnew Decl.* ¶ 2; *Lee Decl.* ¶ 2; *Marder Decl.* ¶ 2.
23 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and
24 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
25 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at p.
26 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.

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1 **III. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
2 **SHOULD BE APPROVED**

3 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
4 settlement funds remain after 180 days of the mailing of the Individual Settlement Payment
5 and/or Individual PAGA Payment checks, the Parties have agreed that all such uncashed
6 settlement funds shall be distributed to Legal Aid at Work as a *cy pres* recipient. *See* SA § G-2.
7 Class Counsel provided declarations in conjunction with preliminary approval demonstrating
8 they do not have any conflicts of interest with the proposed *cy pres* recipient. *See* Declarations of
9 Kristen M. Agnew, Larry W. Lee, and William L. Marder (filed February 1, 2024).

10 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS**
11 **SHOULD BE APPROVED**

12 Class Representatives Jose Valencia and Brandon Jeroue each request an enhancement
13 payment of \$10,000.00 each (\$20,000.00). The Class Representatives provided invaluable
14 information, evidence, and documents that resulted in this settlement. They had numerous
15 discussions regarding the lawsuit with Class Counsel, searched for and provided substantive
16 documents and information regarding Defendant's policies and practices at issue in this case, and
17 reviewed pleadings and other documents in this case. *See* Valencia Decl. ¶¶ 7-10; Jeroue Decl.
18 ¶¶ 6-9. The Class Representatives estimate that they individually spent between sixteen to thirty
19 hours throughout the pendency of the case assisting Class Counsel in litigating the case. *See*
20 Valencia Decl. ¶ 10; Jeroue Decl. ¶ 9.

21 In addition to the invaluable services that they provided, the Class Representatives also
22 took significant risks, both professionally and monetarily, in acting as the class representatives,
23 seeking benefits on behalf of the Class. *See* Valencia Decl. ¶ 5, 11, 12; Jeroue Decl. ¶ 10-12.
24 Because the claims alleged by the Class Representatives involved the payment of costs to the
25 prevailing party, they could have possibly faced paying the costs of Defendant, had they not
26 prevailed in this action. Despite these risks, however, the Class Representatives agreed to pursue
27 this case on behalf of the Class.

28 Also, given that future employers are much less likely to hire individuals who have filed

1 employment-related lawsuits, particularly cases of this nature, the Class Representatives also
2 faced significant risk in not being able to find suitable employment and/or face retaliation from
3 prospective employers as a result of filing of this case against Defendant. They took these risks
4 upon themselves to the benefit of the Class. *See* Valencia Decl. ¶ 5, 11; Jeroue Decl. ¶ 10. Class
5 Members did not have to file individual lawsuits and bear the risks of payment of costs if they
6 did not prevail, nor did they have to face the potential for retaliation and not getting future
7 employment had they filed a lawsuit which is a public record. These are significant benefits that
8 weigh in favor of granting the requested enhancement. As such, the Enhancement Payments
9 should be awarded to Plaintiffs for their commitment, dedication, and risks taken for this
10 litigation.

11 Finally, Plaintiffs provided a general release of all claims and a waiver under California
12 Civil Code section 1542, which other Class Members did not have to do. *See* SA ¶ D-3; Valencia
13 Decl. ¶ 11; Jeroue Decl. ¶ 11. This is a more extensive release than that provided by the Class at
14 large, also supporting the request for the enhancement.

15 Courts have routinely granted approval of settlements containing such enhancements. *See*
16 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
17 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
18 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
19 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
20 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
21 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
22 *Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)
23 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142
24 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative in
25 ERISA case).

26 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

27 Class Counsel seeks a fee award calculated at approximately one-third of the Gross
28 Settlement Fund, or \$188,333.33, for the successful prosecution and resolution of this action.

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

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

21 Here, the fee award representing approximately one-third of the fund clearly falls within
22 that range and is consistent with other rulings of other courts and comprehensive surveys of class
23 action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS
24 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that "courts may award attorney's fees in the 30-
25 40% range in wage and hour class actions that result in recovery of a common fund under \$10
26 million"); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
27 *Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of
28 class action litigation nationwide conclude that fees in the range sought here are consistent with

1 market rates). The results delivered by Class Counsel also support the requested percentage of
2 the fund. Here, the Class Representatives and their counsel secured a \$565,000.00 non-
3 reversionary common fund settlement.

4 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
5 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
6 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
7 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice
8 Packet specifically notified Class Members that Class Counsel would be seeking up to
9 \$188,333.33 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
10 strong favorable response also supports the requested fees.

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

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

18 495 F.2d 448, 470 (2d Cir. 1974). For Class Counsel, the fees here were wholly contingent in
19 nature and the case presented far more risk than the usual contingent fee case. Among the risks
20 was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a
21 corporate Defendant.

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

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

15 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
16 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
17 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
18 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
19 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland*
20 *Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The
21 intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a
22 cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at pp. 881-82. The
23 intermediate court opinion was affirmed in full by the California Supreme Court in its new
24 decision guiding lower courts on assessing fees.

25 With respect to Class Counsel’s lodestar, to date, at least approximately 160.50 hours
26 have been expended by Class Counsel in this matter. *See* Agnew Decl. ¶ 14, Ex. A; Lee Decl. ¶
27 7, Ex. A. Moreover, Class Counsel expects to incur approximately three additional hours in
28 finalizing this settlement, including handling any post-approval matters and settlement issues that

1 may arise. *See* Agnew Decl. ¶ 14. Ms. Agnew requests an hourly rate of \$800.00 per hour. *See*
2 Agnew Decl. ¶ 15. Mr. Lee requests an hourly rate of \$900.00 per hour. *See* Lee Decl. ¶ 8. The
3 courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time
4 records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney
5 as to the number of hours worked on a particular case is sufficient evidence to support an award
6 of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App.
7 3d 553, 559 (1986).

8 Reasonable hours include, in addition to time spent during litigation, the time spent
9 before the action is filed, including time spent interviewing the clients, investigating the facts and
10 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
11 62 (1980). Further, the fee award should include fees incurred to establish and defend the
12 attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class
13 Counsel requests that the court find that these hours were reasonable in this litigation. A
14 reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience
15 in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The
16 court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney’s
17 skill and experience, the nature of the work performed, the relevant area of expertise and the
18 attorney’s customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629,
19 632-33 (1998).

20 Here, Class Counsel’s skill and experience justify the requested rate. As shown in the
21 supporting declarations, Class Counsel have significant experience in the area of employment
22 and wage and hour class actions. Specifically, Class Counsel’s practice focuses on representing
23 employees in employment matters, particularly wage and hour cases. *See* Agnew Decl. ¶¶ 9-13,
24 15; Lee Decl. ¶¶ 4-6; Marder Decl. ¶¶ 4-11. As such, based on the hours and applicable rate, the
25 total lodestar to be expended by Class Counsel through finalizing this settlement will be
26 approximately \$131,090.00. *See* Agnew Decl. ¶ 14, Ex. A; Lee Decl. ¶ 7, Ex. A.

27 Once the court establishes the lodestar amount, it may enhance the fee award by a
28 multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. The pertinent

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

7 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
8 the-benefit, namely, no objections by Class Members, commendable conduct by counsel, and
9 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*,
10 82 Cal.App.4th at 51-53. As in *Lealao*, the Class Members were notified of the Settlement and
11 attorneys' fees with no objections. The extreme effort undertaken by counsel, as shown by their
12 hours and the significantly high amount of claims being paid out, shows commendable conduct.

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

18 The multiplier should be enhanced by the contingent nature of counsel's fee recovery.
19 The risks in taking on a class action case are enormous, not the least of which is time and effort.
20 Not only was there significant risk taken upon by Class Counsel, but their ability to obtain the
21 current settlement should be seen as quite commendable.

22 Here based upon Class Counsel's lodestar of \$131,090.00, the requested fees result in a
23 multiplier of 1.436 [$\$188,333.33$ (requested fees) $\div$ $\$131,090.00$ (lodestar amount)]. This
24 demonstrates that the requested fees are reasonable and fair, particularly based on the factors
25 described above. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct. App. 2001) (noting
26 that courts using the lodestar method to calculate attorney fees awards in class actions typically
27 apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS
28 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 such reasons, Class Counsel's request for attorneys' fees in the amount of \$188,333.33 is 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 \$16,754.98 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel's declaration, the costs were all directly incurred in the prosecution of this action, including but not limited to, filing fees, service of process costs, mediation fees, and other litigation costs. *See* Agnew Decl. ¶ 16, Ex. B. As such, the requested costs should be approved as fair and reasonable.

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 on the Declaration of Lluvia Islas the settlement administration costs expended in this matter amount to a total of \$10,000.00, which is the amount that was agreed upon by the Parties. Admin. Decl. ¶ 14, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. NOTICE TO THE LWDA

Concurrent with the filing of this Motion, Plaintiffs provided notice to the LWDA. Agnew Decl. ¶ 17, Ex. C.

//

1 **IX. CONCLUSION**

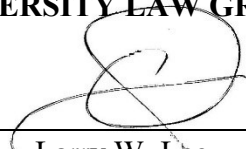
2 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs
3 respectfully submit that the standards for final approval have been met and the terms of the
4 Settlement Agreement are fair, adequate, and reasonable.

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

- 7 1. Granting final approval to the proposed Settlement Agreement in this action;
8 2. Approving distribution of the settlement funds to the Settlement Class Members
9 pursuant to the terms of the Settlement Agreement;
10 3. Approving Plaintiffs' request for an award of the Enhancement Payment of
11 \$10,000.00 to each Plaintiff (\$20,000.00), with payment pursuant to the terms of the Settlement
12 Agreement;
13 4. Approving Class Counsel's request for an award to Class Counsel for
14 \$188,333.33 in attorneys' fees and \$16,754.98 in costs, with payment pursuant to the terms of
15 the Settlement Agreement;
16 5. Approving Plaintiffs' request for payment of the Settlement Administration Costs
17 to Phoenix Settlement Administrators in the amount of \$10,000.00, with payment pursuant to the
18 terms of the Settlement Agreement;
19 6. Approving Plaintiffs' request for payment to the LWDA for \$37,500.00, with
20 payment pursuant to the terms of the Settlement Agreement; and
21 7. Entering final Judgment in the form proposed and submitted as to all members of
22 the Class in this action.

23
24 DATED: May 31, 2024

DIVERSITY LAW GROUP, P.C.

25
26 By: 
27 Larry W. Lee
28 Kristen M. Agnew
Attorneys for Plaintiffs and the Class