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12 of all similarly situated and aggrieved employees

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14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF RIVERSIDE**

17 MARIANO GAGLIARDI, individually and on  
18 behalf of all similarly situated and aggrieved  
19 employees,

20 Plaintiff,

21 v.

22 RALPH LAUREN RETAIL, INC., a Delaware  
23 Corporation doing business in California, and  
24 DOES 1 to 100,

25 Defendants.

26 AND CONSOLIDATED ACTION.

Case No. CVRI2103581

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

Date: November 20, 2024

Time: 8:30 a.m.

Dept.: 1

Reservation ID: Per July 12, 2024 Order

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

2 **PLEASE TAKE NOTICE** that on November 20, 2024, at 8:30 a.m. before the Honorable  
3 Harold W. Hopp, judge presiding, in Department 1 of the above-referenced Court, located at 4050  
4 Main Street, Riverside, California 92501, Plaintiffs Mariano Gagliardi and Angelica Romero  
5 (together, “Plaintiffs”) will and hereby do move the Court for an Order:

6 (1) granting final approval to the Stipulation for Settlement of Class and Representative  
7 Action Claims (“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 Agreement;

10 (3) approving Plaintiffs’ request for an award of the service award of \$10,000.00 to  
11 each plaintiff pursuant to the terms of the Settlement Agreement;

12 (4) approving Plaintiffs’ Counsel’s request for an award to Class Counsel in the amount  
13 of \$125,000.00 for attorneys’ fees and reimbursement of actual costs in the amount of \$22,153.30  
14 pursuant to the terms of the Settlement Agreement;

15 (5) approving Plaintiffs’ request for payment of the settlement administration costs to  
16 Phoenix Settlement Administrators in the amount of \$12,750.00 with payment pursuant to the  
17 terms of the Settlement Agreement; and

18 (6) entering final judgment as to all members of the Participating Class in this action.

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

24 This Motion will be based on the attached Memorandum of Points and Authorities, the  
25 supporting Declarations of Adam Rose, Larry W. Lee, Max W. Gavron, William L. Marder,  
26 Mariano Gagliardi, Angelica Romero, and Lluvia Islas of Phoenix Settlement Administrators, the  
27 oral arguments of counsel (should there be any), and on the complete records and file herein.

28

1 DATED: October 28, 2024

FRONTIER LAW CENTER  
DIVERSITY LAW GROUP, P.C.  
POLARIS LAW GROUP

3  
4 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiffs and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On November 16, 2023, Plaintiffs Mariano Gagliardi and Angelica Romero (together,  
4 “Plaintiffs”) filed a Consolidated Second Amended Complaint (“SAC”) against Defendant Ralph  
5 Lauren Retail, Inc. (“RL” or “Defendant”) (Plaintiffs and Defendant are collectively referred to as  
6 “Parties”) in this Action, alleging the following causes of action: (1) failure to pay wages; (2)  
7 failure to pay overtime; (3) failure to provide compliant meal periods; (4) failure to provide  
8 complaint rest periods; (5) failure to provide accurate wage statements; (6) waiting time penalties;  
9 (7) violation of the Unfair Competition Law; and (8) violation of the Private Attorneys General Act  
10 (“PAGA”), predicated on RL’s alleged violations of Labor Code §§ 201, 202, 203, 226, 226.7, 512,  
11 558, and 1194. Plaintiffs seek damages, penalties, attorneys’ fees, and costs.

12 Plaintiffs now seek the Court’s final approval of the Stipulation for Settlement of Class and  
13 Representative Action Claims (“Settlement Agreement”). In sum, the Settlement Agreement  
14 provides for a \$375,000.00 **non-reversionary** fund to be created for the benefit of the Class, from  
15 which attorneys’ fees, litigation costs, service awards to the Plaintiffs, and costs of settlement  
16 administration are to be paid. After these deductions are made, the entire net settlement fund will  
17 be paid to all Class Members who did not opt-out of the settlement (“Participating Class  
18 Members”).

19 The history of this litigation was previously detailed in Plaintiffs’ Preliminary Approval  
20 Motion. This Court preliminarily approved this settlement on July 12, 2024, directing distribution  
21 of class notice and scheduling the hearing for final approval of settlement (the “Preliminary  
22 Approval Order”).

23 As directed by the Court, the Settlement Administrator distributed the Notice of Class and  
24 Representative Action Claims (“Class Notice”) to 933 Class Members. Declaration of Lluvia Islas  
25 (“Admin. Decl.”) ¶ 5. The deadline for Class Members to submit requests for exclusion, file  
26 objections, or submit a dispute was October 10, 2024. Admin. Decl. ¶¶ 8-10. Thus far, zero (0)  
27 requests for exclusion were received and two (2) objections and zero (0) disputes have been filed.  
28 *Id.*; Ex. B (Objections). As such, there is a 100% participation rate by Class Members. Thus, an

1 inference can be made that the Class supports the Court's Preliminary Approval Order finding that  
2 the Settlement Agreement is fair and reasonable.

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

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

- 10       ▪ The settlement provides a total settlement sum of \$375,000.00, which is **non-**  
11       **reversionary**;
- 12       ▪ The settlement is fair given that all Class Members will receive (*after deductions for*  
13       *fees, costs, etc.*) on average, approximately \$189.01 per person (*See Admin. Decl. ¶*  
14       13) The highest Individual Settlement Share to be paid is approximately  
15       \$745.18, and the lowest Individual Settlement Share to be paid is approximately  
16       \$1.10;
- 17       ▪ The highest Individual PAGA Payment to be paid is approximately \$19.81, the  
18       lowest Individual PAGA Payment to be paid is \$0.03 and the average Individual  
19       PAGA Payment to be paid is approximately \$5.02 (*See Admin. Decl. ¶* 14);
- 20       ▪ Class Members did not need to submit claim forms to participate in the settlement,  
21       but are being paid automatically;
- 22       ▪ The allocation reflects that payment of claims will be paid to all Class Members on  
23       a pro-rata basis, based on the number of workweeks each Class Member worked  
24       during the Class Period;
- 25       ▪ Plaintiffs investigated the claims at issue, including exchanges of information by  
26       Plaintiffs and Defendant of class data for the entire class necessary for Plaintiffs to  
27       fully evaluate this case;
- 28       ▪ A highly regarded administrator, Phoenix Settlement Administrators ("Phoenix"),

1 was retained for fees of \$12,750.00; and

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

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

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

11 As clearly stated in the Declaration of Islas notice was provided to all Class Members as  
12 required by the Preliminary Approval Order. Admin. Decl. ¶ 5. On August 12, 2024, the Settlement  
13 Administrator received a Class Member mailing list from Defendant’s counsel that included 933  
14 Class Members. *Id.* ¶ 3.

15 On August 26, 2024, the Settlement Administrator sent each Class Member a Class Notice  
16 via first class mail. *Id.* ¶ 5. From the date of mailing, eighteen (18) Class Notices were returned. *Id.*  
17 ¶ 6. As of date of this declaration, eleven (11) Class Notices are considered undeliverable. *Id.* ¶ 7.  
18 Further, the Class Notice provided Class Members with Class Counsel’s contact information and  
19 information about how they could seek further information regarding the settlement, leave  
20 questions for the Settlement Administrator, and update their mailing address.

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

of the action and afford them an opportunity to present their objections”).

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

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

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

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

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

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

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

Here, the Class is defined as: “All hourly, non-exempt Polo Ralph Lauren Factory Store

employees employed by Defendant Ralph Lauren Retail, Inc. in California during the Class Period who did not sign an electronic arbitration agreement” (the “Class”). There are 933 individuals that comprise of the Class. Admin. Decl. ¶ 5. This is far more than the minimum required to certify a class. Within the context of manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes, supra*, 196 Cal. App. 3d at pp. 1274-75. Class Members have already been identified by Defendant and notice has been provided to all of the Class Members. Accordingly, the Class is ascertainable under Code of Civil Procedure § 382.

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

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

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

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

Plaintiffs allege that Defendant, as a matter of its corporate policy, practice, or procedure, violated the California Labor Code by failing to pay for time spent undergoing security checks while off-the-clock, failing to pay sick pay and overtime at the correct regular rate of pay, failing to provide proper meal and rest periods, failing to pay all wages owed upon separation of employment, and failing to provide accurate itemized wage statements. Defendant denies that liability could be established on a class-wide basis. Defendant contends instead that liability and damages would need to be conducted on a case-by-case basis, and that Plaintiffs’ legal theories lack merit.

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

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

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

8 Here, Plaintiffs were subjected to the same policies and practices as other Class Members.  
9 Plaintiffs were employed by Defendant as non-exempt employees. Plaintiffs allege that they, like  
10 all other Class Members, were required to undergo security checks after being clocked out of work.  
11 Plaintiffs allege that they were not paid for the time spent undergoing these security checks.  
12 Declaration of Mariano Gagliardi (“Gagliardi Decl.”); Declaration of Angelica Romero (“Romero  
13 Decl.”) ¶ 3. Plaintiff also allege that they were not paid sick pay and overtime wages at the correct  
14 regular rate of pay, were not provided proper meal and rest periods, were not paid all wages owed  
15 upon separation of employment, and were not provided compliant wage statements. Gagliardi  
16 Decl.; Romero Decl. ¶ 3. Specifically, like other members of the Class, Plaintiffs allege that they  
17 received wage statements that did not accurately identify the hourly rates of pay or number of hours  
18 worked due to the underpayment of wages. Thus, Plaintiffs’ claims are typical to those of Class  
19 Members.

#### 20 c. Plaintiffs Adequately Represented the Class

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

24 Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues  
25 been raised or presented. Gagliardi Decl.; Romero Decl. ¶ 5. Plaintiffs have taken all necessary  
26 steps to represent the interests of the Class, including providing information and documents to their  
27 counsel and reviewing pleadings and documents in this case. Gagliardi Decl.; Romero Decl. ¶ 4. For  
28 such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

1           **B. Defendant’s Allegations and Chances of Class Certification**

2           Defendant asserts a number of defenses including that Defendant maintained facially  
3 compliant written policies with regard to meal and rest breaks and payment of wages, compensated  
4 employees for security inspection procedures, and that any omission of information on the wage  
5 statements was not a “knowing and intentional failure” by Defendant, among other arguments. In  
6 any event, even assuming that a class could be certified, Defendant asserts that it has complied with  
7 all laws. Based thereon, Defendant continues to maintain that it is not liable for the allegations  
8 made by the Plaintiffs.

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

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

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

24           **D. The Negotiation and Terms of the Settlement, and the Reception of the**  
25           **Settlement by Class Members Strongly Support the Conclusion that the**  
26           **Settlement is Fair, Adequate, and Reasonable**

27          Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation  
28 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary  
Approval of Class and Representative Action Settlement. The settlement was the product of

1 negotiation between highly able and experienced attorneys on both sides who possessed the  
2 relevant data and legal research which they had carefully analyzed. Declaration of Max W. Gavron  
3 (“Gavron Decl.”) ¶ 3.

4 Further, the results after mailing of the Class Notice also fully support confirmation of the  
5 Court’s preliminary approval of the settlement, as evidenced by the 100% participation rate. In  
6 other words, only two (2) objections (or 0.20% (2 objectors / 933 class members) were submitted  
7 and zero (0) requests for exclusion or disputes were submitted. Admin. Decl. ¶¶ 8-10. In light of  
8 overwhelmingly positive response to the settlement, the Court may appropriately infer that the  
9 settlement is fair, adequate, and reasonable, when among other reasons, no Class Members have  
10 opted out and few have objected to it. *See, e.g., Jasper v. C.R. England, Inc.* (C.D. Cal. Nov. 3,  
11 2014) (granting final approval where 2% of the class objected); *Wren v. RGIS Inventory*  
12 *Specialists*, 2011 WL 1230826, at \*11 (N.D. Cal. Apr. 1, 2011) (finding that “minimal number of  
13 objections” strongly supported settlement approval where 16 class members out of approximately  
14 62,594 (0.02% of 1/5th of 1.0%) filed objections); *see also, Carter v. City of Los Angeles* (2014)  
15 224 Cal.App.4th 808, 820, *citing Dunk, supra*, 48 Cal.App.4th at 1802 (finding that settlement  
16 terms to be presumably fair when there is a low percentage of objectors.); *see also Churchill*  
17 *Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir.2004) (affirming order approving settlement  
18 with 45 objections out of 90,000 notices sent).

19 The objections submitted do not pertain to any particular term of the settlement and seem to  
20 generally state that the class members did not sign paperwork regarding their hourly rate of pay.  
21 *See* Admin Decl. Ex. B. Accordingly, given the overwhelming approval of the settlement by class  
22 members, the Court should finally approve the settlement.

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

25 **1. Standard of Review**

26 On a motion for final approval of a class action settlement under California Code of Civil  
27 Procedure § 382 and California Rules of Court, Rule 3.769, a court’s inquiry at this juncture is  
28 whether the settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv.*  
*Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom., Byrd v. Civil Serv. Comm’n*

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

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

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

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

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

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

## 7 **2. 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 reached through arm’s-  
11 length bargaining; (2) investigation and discovery are sufficient to allow counsel and  
12 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)  
13 the percentage of objectors is small.

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

17 The settlement here warrants approval and carries a presumption of fairness. As previously  
18 noted in the Motion for Preliminary Approval, this settlement was negotiated at arm’s length  
19 between the Parties and their counsel. Gavron Decl. ¶ 4.

20 Second, Class Counsel engaged in extensive factual investigation before settling, including  
21 conducting significant meet and confer discussions with opposing counsel to obtain informal data  
22 and documents and to discuss the merits of the claims on behalf of the Class. Gavron Decl. ¶ 3.  
23 Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting  
24 declarations, Class Counsel has significant experience in class actions and employment wage and  
25 hour matters. Gavron Decl. ¶¶ 7-13; Declaration of Adam Rose (“Rose Decl.”); Declaration of  
26 Larry W. Lee (“Lee Decl.”) ¶¶ 3-5; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-9.

## 27 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation** 28 **Favor Final Approval**

29 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court  
30 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks  
31 inherent in continued litigation. *See In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806

1 (“present value of the damages plaintiffs would likely recover if successful, appropriately  
2 discounted for the risk of not prevailing, should be compared with the amount of the proposed  
3 settlement”) (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v.*  
4 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 616-17.

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

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

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

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

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

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

17 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best  
18 interest of the Class Members as a whole. Rose Decl.; Lee Decl. ¶ 2; Gavron Decl. ¶ 2; Marder  
19 Decl. ¶ 2. Similarly, counsel for Defendant is in favor of the settlement. The endorsement of  
20 qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to  
21 significant weight by the Court in its final approval determination. *See Officers for Justice*, 688  
22 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.

#### 23 **IV. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS SHOULD BE** 24 **APPROVED**

25 Class Representatives Mariano Gagliardi and Angelica Romero each request a service  
26 award of \$10,000.00 in accordance with the terms of the Settlement Agreement. Plaintiffs met with  
27 their respective Class Counsel and had numerous discussions about the case. Gagliardi Decl.;  
28 Romero Decl. ¶ 4. Plaintiffs also provided substantive information and documents regarding

1 Defendant's policies and practices to help support the class claims alleged in this case. Gagliardi  
2 Decl.; Romero Decl. ¶ 4. Accordingly, Plaintiffs provided invaluable information, evidence, and  
3 documents that resulted in this settlement. Mariano Gagliardi estimates that he spent approximately  
4 25-30 hours assisting in the prosecution of this matter. Gagliardi Decl. Angelica Romero estimates  
5 that she spent approximately 30-35 hours assisting in the prosecution of this matter. Romero Decl.  
6 ¶ 4. Plaintiff Gagliardi's individual settlement share to be paid is approximately \$180.33,  
7 consisting of \$175.67 for the class amount and \$4.67 for the PAGA amount. Plaintiff  
8 Romero's individual settlement share to be paid is approximately \$392.83, consisting of  
9 \$382.66 for the class amount and \$10.17 for the PAGA amount. Admin. Decl. ¶ 12.

10 In addition to the invaluable services that they provided, Plaintiffs took significant risks,  
11 personally, professionally, and monetarily in acting as Class Representatives, seeking benefits on  
12 behalf of the Class. Gagliardi Decl.; Romero Decl. ¶ 7. Because the claims alleged by Plaintiffs  
13 involved the payment of costs to the prevailing party, Plaintiffs undertook the risk that they may be  
14 required to pay Defendant's fees and costs, in the event that Defendant prevailed in this action.  
15 Moreover, Plaintiffs understood that an individual case would have resolved much faster than a  
16 class action and involved much less financial risk than a class action. Despite this, however,  
17 Plaintiffs agreed to pursue this case on behalf of the class. Gagliardi Decl.; Romero Decl. ¶ 7.

18 Plaintiffs took these risks upon themselves for the benefit of the Class. Class Members did  
19 not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail,  
20 nor did they have to face the potential for retaliation and not getting future employment had they  
21 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of  
22 granting the requested enhancements. Moreover, this litigation has resulted in a significantly  
23 valuable benefit to the Class, and Plaintiffs took on substantial risks in helping Class Members  
24 obtain this financial benefit. As such, the service awards should be awarded to Plaintiffs for their  
25 commitment, dedication, and risks taken for this litigation.

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

27 Class Counsel seeks a fee award calculated as approximately one-third of the total value of  
28 the settlement for the successful prosecution and resolution of this action. Recently, the California

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

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

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

27 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3  
28 percent of the common fund is consistent with, and in the range of, awards in other class action

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

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1272. A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class Notice specifically notified Class Members that Class Counsel would be seeking \$125,000.00 of the settlement fund as attorneys’ fees. To date, only two (2) Class Members have objected to the settlement and even considering those objections, they do not relate to the request for attorneys’ fees. This strong favorable response also supports the requested fees.

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

Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,

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

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

22 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded  
23 by the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0”  
24 range. *See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (affirming a multiplier  
25 of 3.65 in an employment class action case and analyzing the multiplier awarded in over 30 cases).  
26 Federal district courts applying California law have likewise routinely approved cross-check  
27 multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower Inc.* (N.D. Cal.  
28 June 22, 2015) No. 11-CV-02846-JST, 2015 WL 3863625, at \*7 (affirming a 2.10 multiplier on

1 settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014)  
2 303 F.R.D. 326, 334 (approving attorneys' fees that resulted in lodestar multiplier of 2.83); *Hopkins*  
3 *v. Stryker Sales Corp.* (N.D. Cal. Feb. 6, 2013) No. 11-CV-02786-LHK, 2013 WL 496358, at \*5  
4 (approving a multiplier of 2.76 in settlement of Labor Code violations). Other courts have found  
5 even higher multipliers to be reasonable by comparison to other cases. *See Craft v. County of San*  
6 *Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113, 1125-26 (approving a 5.2 multiplier on a cross-  
7 check after surveying a large body of cases affirming a higher multiplier).

8 With respect to Class Counsel's lodestar, to date, approximately 278.1 hours have been  
9 expended by Class Counsel in this matter. Rose Decl.; Lee Decl. ¶ 6, Ex. A; Gavron Decl. ¶ 14, Ex.  
10 A; Marder Decl. ¶ 10, Ex. A. Mr. Rose requests an hourly rate of \$800 per hour. Rose Decl.. Mr.  
11 Lee requests an hourly rate of \$850.00 per hour. Lee Decl. ¶ 7. Mr. Gavron requests an hourly rate  
12 of \$650.00 per hour. Gavron Decl. ¶ 16. Mr. Marder requests an hourly rate of \$850.00 per hour.  
13 Marder Decl. ¶ 10. The courts are quite liberal in the evidence required to prove an attorney's  
14 hours. Detailed time records are not required. An attorney's testimony alone may suffice:  
15 "Testimony of an attorney as to the number of hours worked on a particular case is sufficient  
16 evidence to support an award of attorney fees, even in the absence of detailed time records."  
17 *Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.

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

24 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
25 experience in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084,  
26 1095. The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the  
27 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and  
28 the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App.

1 4th 629, 632-33.

2 Class Counsel's skill and experience justify the requested rate. As shown in the supporting  
3 declarations, Class Counsel have significant experience in the area of employment and wage and  
4 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in  
5 employment matters, particularly wage and hour cases. Rose Decl.; Lee Decl. ¶¶ 3-5; Gavron Decl.  
6 ¶¶ 7-13; Marder Decl. ¶¶ 3-9. As such, based on the hours and applicable rate, Class Counsel's  
7 lodestar amount through finalization of this settlement (without a multiplier) will be approximately  
8 \$214,535.00, which far exceeds the fees requested in this settlement. Rose Decl.; Lee Decl. ¶ 7;  
9 Gavron Decl. ¶ 16; Marder Decl. ¶¶ 3-9.

10 As a result of the above-enumerated hours, Plaintiffs' Counsel are requesting a a negative  
11 multiplier of approximately 0.58 to reach \$125,000.00. Plaintiffs were informed of the fee division  
12 between Class Counsel in writing prior to the filing of this matter. Gagliardi Decl.; Romero Decl. ¶  
13 9.

14 As such, the requested fee award is fair and reasonable, and should be awarded in its  
15 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to  
16 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,  
17 Class Counsel's request for attorneys' fees in the amount of \$125,000.00 is fair, reasonable, and  
18 adequate.

19 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**  
20 **COSTS**

21 The request for reimbursement of costs in the amount of \$22,153.30 is fair and reasonable.  
22 The costs are all litigation-related costs, which have been detailed in the supporting declaration of  
23 Class Counsel. Rose Decl.; Gavron Decl. ¶ 18, Ex. B. The authority for the court to award this is  
24 the Parties' Settlement Agreement and the California Labor Code.

25 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**  
26 **APPROVED**

27 Plaintiffs also request that the Court approve administration costs to the Settlement  
28 Administrator, Phoenix Settlement Administrators, in the amount of \$12,750.00. As detailed in the

1 Declaration of Lluvia Islas submitted herewith, Phoenix performed duties in connection with this  
2 settlement that were integral in effectuating the settlement and the notice process. Among other  
3 things, Phoenix calculated each Class Member's individual settlement payment, updated addresses  
4 contained in the class data supplied by Defendant, formatted and distributed Class Notices to all  
5 933 Class Members, and otherwise administered the settlement. Admin. Decl. ¶¶ 4-5. For such  
6 reasons, it is requested that the Settlement Administrator's fees be approved.

7 **VIII. NOTICE TO THE LWDA**

8 In conjunction with this Motion, Plaintiffs provided notice to the LWDA. Gavron Decl. ¶  
9 20; Ex. C (LWDA Upload Confirmation).

10 **IX. CONCLUSION**

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

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

- 16 1. granting final approval to the proposed Settlement Agreement in this action;
  - 17 2. approving distribution of the settlement funds to the Class Members pursuant to the  
18 terms of the Settlement Agreement;
  - 19 3. approving Plaintiffs' request for an award of the class representative service award  
20 of \$10,000.00 to each Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
  - 21 4. approving Plaintiffs' Counsel's request for an award to Class Counsel for  
22 \$125,000.00 in attorneys' fees and \$22,153.30 in costs with payment pursuant to the terms of the  
23 Settlement Agreement;
  - 24 5. approving Plaintiffs' request for payment of the settlement administration costs to  
25 Phoenix Settlement Administrators in the amount of \$12,750.00 with payment pursuant to the  
26 terms of the Settlement Agreement; and
  - 27 7. entering final judgment as to all members of the Class in this action.
- 28

1 DATED: October 28, 2024

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3 

4 By: \_\_\_\_\_

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