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

SABRINA GILBERT, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

CENTRAL CALIFORNIA BAKING  
COMPANY, an Oregon Corporation; and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: VCU291467

[Assigned for all purposes to the Hon. John P.  
Bianco, Department 2]

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

Date: April 22, 2024

Time: 8:30 a.m.

Dept.: 2

Complaint Filed: April 26, 2022

FAC Filed: August 21, 2023

Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on April 22, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable John P. Bianco, judge presiding, in Department 2 of the above referenced Court, located at 221 S. Mooney Blvd., Visalia, California 93291, Plaintiff Sabrina Gilbert (“Plaintiff”) will seek an Order:

(1) granting final approval of the Joint Stipulation of Class and Representative Action Settlement (“Agreement” or “Settlement Agreement”) in this matter;

(2) approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;

(3) approving Plaintiff’s request for a Class Representative Enhancement Payment of \$10,000.00 to the Class Representative pursuant to the terms of the Settlement Agreement;

(4) approving Plaintiff’s request for an award of attorneys’ fees to Class Counsel for approximately one-third of the \$400,000.00 Gross Settlement Amount, or \$133,333.33, and reimbursement of litigation costs of \$8,782.74 pursuant to the terms of the Settlement Agreement;

(5) approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$10,000.00 pursuant to the terms of the Settlement Agreement; and

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

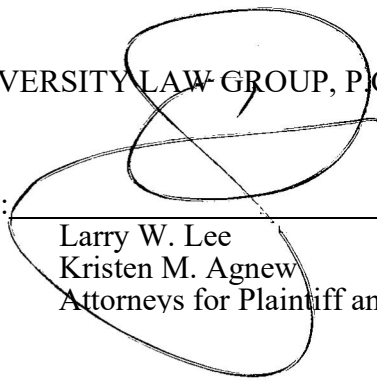
This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown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

This Motion will be based on the attached Memorandum of Point and Authorities and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, William L. Marder, Plaintiff Sabrina Gilbert, and Yami Burns of Phoenix Settlement Administrators, upon the oral arguments

1 of counsel (should there be any), and on the complete records and file herein.

2  
3  
4 DATED: March 28, 2024

DIVERSITY LAW GROUP, P.C.

5  
6 By:   
7 Larry W. Lee  
8 Kristen M. Agnew  
9 Attorneys for Plaintiff and the Class  
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act (“PAGA”)  
3 action. Plaintiff Sabrina Gilbert (“Class Representative” or “Plaintiff”) worked as a non-exempt  
4 employee for Defendant Central California Baking Company (“Defendant”). Plaintiff alleges that  
5 Defendant failed to provide accurate, itemized wage statements, in violation of Labor Code section  
6 226. Defendant denies each, every, and all of the allegations of the Complaint.

7 Prior to the settlement of this action, Plaintiff and Defendant (the “Parties”) engaged in the  
8 exchange of discovery and a thorough study of the legal principles applicable to the claims  
9 asserted against Defendant. Defendant produced the relevant payroll data for the Class. With the  
10 assistance of an experienced mediator, the Parties were ultimately able to reach the current  
11 settlement. The terms of the settlement provide that Defendant shall pay a Gross Settlement  
12 Amount of \$400,000.00. On average, each Settlement Class Members will receive approximately  
13 \$824.09. Significantly, the entire settlement amount is non-reversionary, such that no monies will  
14 revert back to Defendant.

15 The Parties believe that this amount is fair, adequate, and reasonable, especially given the  
16 risks and uncertainty of class certification and the merits of this case. Further, notice of the  
17 settlement was provided to the class by Phoenix Settlement Administrators in the manner approved  
18 by the Court. Not a single objection was received and zero (0) requests for exclusion from the  
19 Settlement were submitted. Thus, there is a 100% participation rate. Therefore, the Parties  
20 respectfully request that the Court grant this Final Approval of Class Action Settlement.

21 **II. THE PAYMENTS TO THE SETTLEMENT CLASS & AGGRIEVED EMPLOYEES**

22 The Settlement provides a Gross Settlement Amount of \$400,000.00. The entire Gross  
23 Settlement Amount is non-reversionary, such that no monies will revert back to Defendant. There  
24 are 265 Settlement Class Members. *See* Declaration of Yami Burns on behalf of Phoenix  
25 Settlement Administrators (“Admin Decl.”) ¶ 11.

26 The Net Settlement Amount is estimated to be \$218,383.93. *See* Admin. Decl. ¶ 12. The  
27 Net Settlement Amount is based on the following:

|                                |                     |
|--------------------------------|---------------------|
| <b>Gross Settlement Amount</b> | <b>\$400,000.00</b> |
|--------------------------------|---------------------|

|   |                                             |                     |
|---|---------------------------------------------|---------------------|
| 1 | Less Class Counsel Fees <sup>1</sup>        | (\$133,333.33)      |
| 2 | Less Class Counsel Costs                    | (\$8,782.74)        |
| 3 | Less Enhancement Payment <sup>2</sup>       | (\$10,000.00)       |
| 4 | Less PAGA Payment                           | (\$20,000.00)       |
| 5 | <u>Less Settlement Administration Costs</u> | <u>(\$9,500.00)</u> |
| 6 | <b>Net Settlement Amount</b>                | <b>\$218,383.93</b> |

7 Pursuant to the terms of the Settlement Agreement, Settlement Class Members will receive  
8 a proportionate share of the Net Settlement Amount, based on the total number of wage statements  
9 the employee received reflecting the payment of: (1) FLSA Overtime and shift differential pay; or  
10 (2) FLSA Overtime and variance pay; or (3) FLSA Overtime, variance, and shift differential pay;  
11 or (4) shift differential and variance pay; or (5) only FLSA overtime pay; or (6) only variance pay  
12 during the Class Period. *See* Settlement Agreement § C-9. There are 265 Settlement Class  
13 Members, with a total of 4,121 wage statements at issue. *See* Admin. Decl. ¶ 11. Based on  
14 estimated settlement calculations at this time, the estimated average payment to each Settlement  
15 Class Member will be \$824.09, and the highest payment to a Settlement Class Member is  
16 estimated to be \$2,437.68. *See id.* at ¶ 13.

17 Consistent with PAGA, seventy-five percent of the PAGA Payment will be paid to the  
18 LWDA and the remaining twenty-five percent , i.e., the sum of Five Thousand Dollars  
19 (\$5,000.00), will be distributed to Aggrieved Employees (“Aggrieved Employee Amount”).  
20 Aggrieved Employees will receive a proportionate share of the Aggrieved Employee Amount  
21 based on the total number of wage statements the employee received reflecting the payment of: (1)  
22 FLSA Overtime and shift differential pay; or (2) FLSA Overtime and variance pay; or (3) FLSA

---

24 <sup>1</sup> The Court preliminarily approved an award of attorneys’ fees in the amount of \$119,977.50,  
25 which is equal to 1.5 times the lodestar at the time of preliminary approval. The Court, however,  
26 advised that it “will permit a declaration providing actual expended additional hours between  
preliminary approval and final approval as to any increase in this approved fee amount.”

27 <sup>2</sup> The Court preliminarily approved a modified Enhancement Payment in the amount of \$5,000.  
28 For the reasons set forth in Section V and the accompanying Declaration of Plaintiff Sabrina  
Gilbert (“Gilbert Decl.”), Plaintiff respectfully requests that the Court reconsider the reduction and  
award the full \$10,000 Enhancement Payment.

Overtime, variance, and shift differential pay; or (4) shift differential and variance pay; or (5) only FLSA overtime pay; or (6) only variance pay during the PAGA Period. *See* Settlement Agreement § C-8. All Class Members who are Aggrieved Employees, including individuals who requested exclusion from the Settlement, will receive an Individual PAGA Payment. *See id.* at § C-18. Based on the estimated calculations at this time, the average Individual PAGA Payment to each Aggrieved Employee is estimated to be \$18.87 and the highest payment is estimated to be \$55.81. *See* Admin. Decl. ¶ 14.

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

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

As clearly stated in the Administrator’s Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On January 23, 2024, the Settlement Administrator received the Class List and Data from Defendant’s Counsel that included 265 Class Members. *See* Admin Decl. ¶ 3. On or about January 26, 2024, each of the persons identified on the mailing list were sent the Notice Packet via first class mail. *See id.* at ¶ 5. As part of the administration process, the Settlement Administrator has re-mailed Notice Packets to eleven (11) Class Members using newly updated addresses after performing a skip-trace using the U.S. Postal Service National Change of Address Database, one of the most comprehensive address databases available for skip tracing. *See id.* at ¶ 6. As of the date of this filing, two (2) Notice Packet remains undeliverable. *See id.* at ¶ 7. Further, the Notice Packet provided Class Members with Class Counsel’s contact information, where they could further seek information regarding the settlement, leave questions for the Settlement Administrator, and update their address. *See id.* at ¶ 5, Exhibit 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-out  
5 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 means);  
7 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice  
8 is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of  
9 the pendency of the action and afford them an opportunity to present their objections”). As such,  
10 the Court may proceed to determine the fairness and adequacy of the settlement and enter its Order  
11 granting final approval, secure in the knowledge that all absent Class Members have been given  
12 the opportunity to participate fully in the claims, exclusion, and the approval process.

13 **IV. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE,**  
14 **AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

15 **A. The Terms, Negotiation, and Reception of the Settlement by Class**  
16 **Members All Strongly Support the Conclusion that the Settlement is**  
17 **Fair, Adequate, 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 Plaintiff’s claims, Class Counsel submits that this settlement is fair pursuant to  
24 *Kullar*.

25 Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation  
26 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary  
27 Approval, the Parties highlight the following facts. The Settlement Agreement was the product of  
28 negotiation between highly able and experienced attorneys on both sides. *See* Declaration of  
Kristen M. Agnew (“Agnew Decl.”) ¶¶ 2-11; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-7;  
Declaration of William L. Marder (“Marder Decl.”) ¶¶ 4-11. In addition, the resolution of this case

1 was reached only after the production of data relevant to the potential value of the claims. *See*  
2 Agnew Decl. ¶¶ 3-4. Using the data provided by Defendant, Class Counsel was able to calculate a  
3 range of potential damages and penalties. *See id.* at ¶ 4. Class Counsel estimated that Defendant's  
4 maximum liability exposure is approximately \$1,995,000. *See id.* Thus, in the present case, the  
5 Gross Settlement Amount is approximately 20% of the maximum recovery of the class and  
6 representative PAGA claims.

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

20 **B. Under Well-Established Legal Principles, the Court Should Grant Final**  
21 **Approval of the Settlement**  
22 **1. Standard of Review**

23 On a motion for final approval of a class action settlement under California Code of Civil  
24 Procedure section 382 and California Rule of Court 3.769, a court's inquiry is whether the  
25 settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d  
26 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983).  
27 A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the  
28 interests of the class are better served by the settlement than by further litigation." *See Manual for*  
*Complex Litigation*, Fourth § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("*Manual*"). The law favors

1 settlement, particularly in class actions and other complex cases, where substantial resources can  
2 be conserved by avoiding the time, cost, and rigors of formal litigation. *See* Alba Conte & Herbert  
3 B. Newberg, *4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *Class Plaintiffs v. City of Seattle*,  
4 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.  
5 1976).

6 Although the Court possesses “broad discretion” in determining that a proposed class  
7 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a  
8 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion  
9 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and  
10 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should  
11 give due regard to what is otherwise a “private consensual agreement” between the parties. *Id.*; *see*  
12 *also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash.*  
13 *Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*, *Class*  
14 *Plaintiffs*, 955 F.2d 1268; *Manual* § 21.6 at 309 (“The judicial role in reviewing a proposed  
15 settlement is critical, but limited to approving the proposed settlement, disapproving it, or  
16 imposing conditions on it. The judge cannot rewrite the agreement”).

17 A court’s approval of a class action settlement will only be reversed for a clear abuse of  
18 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*,  
19 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a clear  
20 abuse of discretion”); *Class Plaintiffs*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453  
21 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). As the  
22 court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

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

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

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

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

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

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

10           The settlement in the case at bar warrants approval and carries a presumption of fairness.  
11 As previously noted in the Motion for Preliminary Approval, this current settlement was  
12 negotiated at arm’s length. *See* Agnew Decl. ¶¶ 2-5. Furthermore, Class Counsel is highly  
13 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has  
14 significant experience in class actions and employment wage and hour matters. *See id.* at ¶¶ 6-11;  
15 Lee Decl. ¶¶ 5-7; Marder Decl. ¶¶ 4-11.

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

18           To assess the fairness, adequacy and reasonableness of a class action settlement, the Court  
19 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks  
20 inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir.  
21 1995 (“present value of the damages plaintiffs would likely recover if successful, appropriately  
22 discounted for the risk of not prevailing, should be compared with the amount of the proposed  
23 settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd*  
24 *v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

25           If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have  
26 been potentially responsible for Defendant’s costs. As such, should any individual bring individual  
27 claims against Defendant on the same causes of action, they would each face the uncertainty of  
28 prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would

1 not be brought—thus, this lawsuit achieves a true benefit for the class that they might not  
2 otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been  
3 reached, neither Plaintiff, nor any of the Class Members will be required to pay for Defendant’s  
4 litigation costs.

5         The risks of this case were weighed by Class Counsel and should be considered a  
6 significant factor by the Court in its determination of final approval. Class Counsel obtained a very  
7 substantial settlement for the Class that resulted in a fair recovery which at the same time provides  
8 for finality and no risk of costs by the Class Members or the Class Representative. The Settlement  
9 Agreement also affords the Class prompt, fair relief, while avoiding significant legal and factual  
10 battles that otherwise may have prevented the Class from obtaining any recovery at all. While  
11 Class Counsel believe the Class Members’ claims are meritorious and can be successfully litigated,  
12 they are experienced and fully understand the inherent risks and uncertainty involved with such  
13 matters as the resolution of class certification, the outcome of a potential trial, and the outcome of  
14 any appeals that would inevitably follow should the Class prevail at trial. Class Counsel have also  
15 assessed the same risks in connection with the current settlement. Because the settlement provides  
16 immediate and substantial relief, without the attendant risks and delay of continued litigation—not  
17 to mention the threat of litigation fees and costs—Class Counsel believe that the settlement  
18 warrants the Court’s final approval.

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

21         Another factor considered by courts in approving a settlement is the complexity, expense,  
22 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at  
23 157. In applying this factor, the Court must weigh the benefits of the settlement against the  
24 expense and delay involved in achieving an equivalent or more favorable result at trial. *See Young*  
25 *v. Katz*, 447 F.2d 431, 433-434 (5th Cir. 1971).

26         As noted in the Motion for Preliminary Approval, continued litigation could have led to  
27 appeals on a number of issues. On the other hand, the settlement that was reached provides to all  
28 Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the

1 Court to deny final approval, the Class Members would be left without a remedy as a practical  
2 matter and courts across the State would have to address the issues presented here in a piecemeal,  
3 costly, and time-consuming manner. The settlement in this case is therefore consistent with the  
4 “overriding public interest in settling and quieting litigation” that is “particularly true in class  
5 action suits.” *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at 950 (footnote omitted); *see also* 4  
6 *Newberg* at § 11.41.

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

8 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best  
9 interest of the Class Members as a whole. *See* Agnew Decl. ¶ 5; Lee Decl. ¶ 2; Marder Decl. ¶ 2.  
10 Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and  
11 well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant  
12 weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625;  
13 *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242. As detailed above,  
14 each of the factors counsel strongly in favor of final approval of the Settlement by this Court.

#### 15 **V. THE REQUESTED ENHANCEMENT PAYMENT SHOULD BE APPROVED**

16 Plaintiff has requested, and Defendant does not oppose, an Enhancement Payment of Ten  
17 Thousand Dollars (\$10,000.00), pursuant to the terms of the Settlement Agreement. However, the  
18 Court preliminarily approved a modified Enhancement Payment in the amount of \$5,000. Plaintiff  
19 respectfully requests that the Court reconsider the reduction and award the full \$10,000  
20 Enhancement Payment.

21 As shown in Plaintiff’s supporting declaration, Plaintiff spent a significant amount of time:  
22 (i) engaging in telephonic and in-person discussions with Class Counsel regarding the case; (ii)  
23 searching for documents relating to her claims, including pay records, policy manuals, and emails;  
24 (iii) reviewing various files and pleadings in this case, including the PAGA Notice, the Complaint,  
25 the First Amended Complaint and her declarations; and (iv) reviewing the Settlement Agreement.  
26 *See* Gilbert Decl. ¶¶ 5-8. Plaintiff has also continuously been kept apprised of the status of this  
27 case. *See id.* at ¶ 6.

28 In addition to the invaluable service she provided, Plaintiff also took a significant risk, both

1 professionally and monetarily, in acting as the Class Representative. Because the claims alleged by  
2 Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have possibly faced  
3 paying the costs of Defendant had he not prevailed in this action. *See* Gilbert Decl. ¶ 4. Moreover,  
4 Plaintiff understood that an individual case would have resolved much faster than a class action  
5 and involved much less financial risk than a class action. *See id.* Despite this, however, Plaintiff  
6 agreed to pursue this case on behalf of the Class. *See id.*

7 Also, given that future employers are much less likely to hire individuals who have filed  
8 suit against their prior employer, particularly cases of this nature, Plaintiff could face negative  
9 employment prospects in the future. Plaintiff took such risks upon herself and the whole Class  
10 benefited from this. *See* Gilbert Decl. ¶ 4. Class Members did not have to file individual lawsuits  
11 and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the  
12 potential for retaliation and not getting future employment had they filed a lawsuit which is a  
13 public record. These are significant benefits, even apart from the time Plaintiff spent working on  
14 this case, that weigh in favor of granting the requested enhancement.

15 Finally, as part of the class settlement, Plaintiff also agreed to give a general release of her  
16 individual claims, something that the Class Members did not have to do. *See* Gilbert Decl. ¶ 8.  
17 Thus, Plaintiff has sacrificed her own individual rights for those of the Class Members. This is a  
18 significant factor to take into account that further warrants the award of the requested service  
19 amount.

20 Courts have routinely granted approval of settlements containing such enhancements. *See*  
21 *e.g., Herrera v. Federal Express Corporation*, 2020 WL 2951122 at \*7 (C.D. Cal. March 31,  
22 2020) (noting that case law supports enhancements of \$10,000); *Potter v. Big Text Trailer*  
23 *Manufacturing, Inc.*, 2020 WL 1942619 at \*10 (C.D. Cal. March 20, 2020) (awarding \$10,000  
24 enhancement where plaintiff spent 30-40 hours on the matter and entered into a general release);  
25 *Smith v. Experian Information Solutions, Inc.*, 2020 WL 6689209 at \*7 (C.D. Cal. Nov. 9, 2020);  
26 *Aikhan v. Goodrich Corporation*, 2020 WL 49191382 at \*9 (C.D. Cal. June 25, 2020); *Thomas v.*  
27 *Cognizant Technology Solutions U.S. Corporation*, 2013 WL 12371622 at \*9 (C.D. Cal. June 24,  
28 2013); *Djukich v. AutoNation, Inc.*, 2015 WL 13756099 at \*14 (C.D. Cal. Nov. 12, 2015). For such

1 reasons, the Class Representative respectfully requests that this Court approve the award of the  
2 Enhancement Payment.

3 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

4 Class Counsel's application for an award of attorneys' fees in an amount of one-third  
5 (33.33%) of the Gross Settlement Amount is fair and reasonable. Class Counsel has achieved an  
6 excellent settlement in this litigation, as set forth in the Settlement Agreement and this Motion.  
7 The proposed settlement provides substantial benefits to the Class and was reached after  
8 aggressive investigation and litigation by Class Counsel. Furthermore, there have been no  
9 objections filed against the Settlement or to Class Counsel's request for attorneys' fees in the  
10 amount of \$133,333.00. As more fully detailed below, Class Counsel's request for attorneys' fees  
11 is fair, reasonable, and adequate.

12 Class Counsel seeks a fee award calculated as approximately 33.33% of the Gross  
13 Settlement Amount for the successful prosecution and resolution of this action. Recently, the  
14 California Supreme Court issued a ruling regarding the award of attorney's fees in wage and hour  
15 class action settlements. Under California law, the award of attorneys' fees in common fund wage  
16 and hour class action settlements should start with the percentage method. *See Laffitte v. Robert*  
17 *Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state  
18 courts in holding that when class action litigation establishes a monetary fund for the benefit of the  
19 class members, and the trial court in its equitable powers awards class counsel a fee out of that  
20 fund, the court may determine the amount of a reasonable fee by choosing an appropriate  
21 percentage of the fund created."). Under the percentage of the fund method, the Court's objective  
22 remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,  
23 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is  
24 to set it at a level that will approximate what the market will set.... The judge, in other words, is  
25 trying to mimic the market in legal services.").

26 An award of 33.33% of the fund in attorneys' fees mimics the marketplace as it "is  
27 supported by the fact that typical contingency fee agreements provide that class counsel will  
28 recover 33.33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*

1 *Victoria Secret Stores LLC*, 2008 WL 8150856, \*16 n. 59 (C.D. Cal. July 21, 2008) (citing  
2 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*  
3 *Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11) (Fall 2003). Indeed, “empirical studies [that]  
4 show that...fee awards in class actions average around one-third of the recovery.” *Chavez v.*  
5 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

11 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3  
12 percent of the common fund is consistent with, and in the range of, awards in other class action  
13 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award  
14 representing 33.33% of the Gross Settlement Amount is consistent with other comprehensive  
15 surveys of class action settlements and fee awards. *See* Fitzpatrick, *An Empirical Study of Class*  
16 *Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444  
17 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35  
18 percent, with almost no awards more than 35 percent.”); Eisenberg & Miller, *Attorney Fees in*  
19 *Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,  
20 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees  
21 representing one-third of the total recovery is consistent with market rates).

22 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is  
23 relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d  
24 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s  
25 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class  
26 Notice specifically notified Class Members that Class Counsel would be seeking 33.33% of the  
27 Gross Settlement Amount as attorneys’ fees. To date, no Class Member has objected to the  
28 settlement. This strong favorable response also supports the requested fees.

1 In addition, it is recognized that one of the primary factors justifying an enhanced  
2 attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of*  
3 *Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974):

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

9 Here, it is clear that a common fund of \$400,000.00 has been created as the entire amount is to be  
10 paid out without any reversion. For Class Counsel, the fees here were wholly contingent in nature  
11 and the case presented far more risk than the usual contingent fee case. Among the risks was the  
12 cost inherent in class action litigation, as well as a potentially drawn-out battle with a defendant  
13 that has retained premier defense counsel.

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

22 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar  
23 cross-check is extraordinarily high or low, the trial court should consider whether the percentage  
24 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the  
25 court is not necessarily required to make such an adjustment." *Id.* (emphasis added). Thus, a  
26 lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required; in  
27 many cases, performing a cross-check "undermines" one of the primary reasons for using the  
28 percentage method: aligning counsel's incentives with the benefits delivered to the class and  
discouraging protracted litigation. *Id.* at 506 (finding trial courts "retain the discretion to forgo a

1 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108  
2 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29-30 (citing the recommendations of the  
3 Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar  
4 approach set forth in this Report are now echoed by many authorities, who have been most vocal  
5 about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already  
6 overworked trial judge.”).

7 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4  
8 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,  
9 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52  
10 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th  
11 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check). The intermediate court in  
12 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a  
13 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was affirmed  
14 in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

15 With respect to Class Counsel’s lodestar, to date, approximately 124.30 hours have been  
16 expended by Class Counsel in this matter. *See* Agnew Decl. ¶ 12, Exhibit A; Supplemental  
17 Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 4, Ex. C<sup>3</sup>; Lee Decl. ¶ 8, Exhibit A.  
18 Moreover, Class Counsel expects to incur approximately three additional hours of attorney time in  
19 finalizing this settlement. *See* Agnew Decl. ¶ 12. Ms. Agnew requests an hourly rate of \$700 and  
20 Mr. Lee requests an hourly rate of \$750. *See* Agnew Decl. ¶ 13; Rosenthal Decl. ¶ 5, Exhibit C;  
21 Lee Decl. ¶ 8. The courts are quite liberal in the evidence required to prove an attorney’s hours.  
22 Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of  
23 an attorney as to the number of hours worked on a particular case is sufficient evidence to support  
24 an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182  
25 Cal. App. 3d 553, 559 (1986).

26  
27 <sup>3</sup> The Supplemental Declaration of Nicholas Rosenthal in Support of Plaintiff’s Motion for  
28 Preliminary Approval of Class Action Settlement was filed with the Court on November 2, 2023.  
A true and correct copy of the declaration is attached as Exhibit C to the Agnew Declaration.

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

11 Here, Class Counsel's skill and experience justify the requested rate. As shown in the  
12 supporting declarations, Class Counsel have significant experience in the area of employment and  
13 wage and hour class actions. Specifically, Class Counsel's practice focuses on representing  
14 employees in employment matters, particularly wage and hour cases. *See* Agnew Decl. ¶¶ 6-11;  
15 Rosenthal Decl. ¶¶ 5, 6; Lee Decl. ¶¶ 5-7. As such, based on the hours and applicable rate, the total  
16 lodestar to be expended by Class Counsel through finalizing this settlement will be approximately  
17 \$89,570.

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

25 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-  
26 benefit, namely, no objections by Class Members, commendable conduct by counsel, and  
27 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*, 82  
28 Cal.App.4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorney's fee

1 with no objections. The extreme effort undertaken by counsel, as shown by their hours and the  
2 significantly high amount of claims being paid out, shows commendable conduct. It is also critical  
3 to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a  
4 percentage-of-the-fund. *Lealao*, 82 Cal.App.4th at 52 (the promptness of settlement “cannot be  
5 used to justify the refusal to apply a multiplier”). According to *Lealao*, courts placed “an  
6 extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for  
7 achieving this goal in a timely fashion. *Id.* The multiplier should be enhanced by the contingent  
8 nature of counsel’s fee recovery. The risks in taking on a class action case are enormous, not the  
9 least of which is time and effort. Not only was there significant risk taken upon by Class Counsel,  
10 but their ability to obtain the current settlement should be seen as quite commendable.

11 Here based upon Class Counsel’s lodestar of \$89,570, the requested fees result in a  
12 multiplier of 1.49 (\$133,333.00 (requested fees) ÷ \$89,570 (lodestar amount)). This demonstrates  
13 that the requested fees are reasonable and fair, particularly based on the factors described above.  
14 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct. App. 2001) (noting that courts using  
15 the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in  
16 the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov.  
17 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour  
18 class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp.3d 1200, 1210 (C.D. Cal.  
19 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

20 As such, the requested fee award is fair and reasonable, and should be awarded in its  
21 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to  
22 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,  
23 Class Counsel’s request for attorneys’ fees in the amount of \$133,333.00 is fair, reasonable, and  
24 adequate.

25 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**  
26 **COSTS**

27 The request for reimbursement of costs is fair and reasonable. Pursuant to the terms of the  
28 Settlement Agreement, Plaintiffs are allowed to seek reimbursement of litigation costs up to a

1 maximum of \$15,000.00. To date, Class Counsel have expended \$8,782.74 in litigation related  
2 costs. *See* Agnew Decl. ¶ 14, Exhibit B. The authority for the court to award this is the Parties'  
3 Settlement Agreement and Labor Code sections 226 and 2698 *et. seq.* As such, this request should  
4 be approved.

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

7 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement  
8 Administrator, Phoenix Settlement Administrators, are to be paid out of the Gross Settlement  
9 Amount. In total, the settlement administration costs total \$9,500.00. *See* Admin Decl. ¶ 15,  
10 Exhibit B. Thus, settlement administration fees in the amount of \$9,500.00, as agreed to in the  
11 Settlement Agreement, should be approved.

12 **IX. NOTICE HAS BEEN PROVIDED TO THE LWDA**

13 On March 18, 2024, Class Counsel uploaded the Court's Order Granting Preliminary  
14 Approval to the LWDA's website. *See* Agnew Decl. ¶ 16. The LWDA has not responded or  
15 objected to this settlement. On March 28, 2024, Class Counsel uploaded this Motion and Proposed  
16 Order to the LWDA's website. *Id.* at ¶ 17.

17 **X. CONCLUSION**

18 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff  
19 respectfully submits that the standards for final approval have been met, and the terms of the  
20 Settlement Agreement are fair, adequate and reasonable. Accordingly, Plaintiff respectfully  
21 requests that the Court enter an Order in the form proposed and submitted:

- 22 1. Granting final approval to the proposed Settlement Agreement;
- 23 2. Approving distribution of the Gross Settlement Amount pursuant to the terms of the  
24 Settlement Agreement;
- 25 3. Approving the Class Representatives' request for an Enhancement Payment with  
26 payment pursuant to the terms of the Settlement Agreement;
- 27 4. Approving the Class Representatives' request for an award of the Class Counsel's  
28 fees and litigation costs with payment pursuant to the terms of the Settlement Agreement;

1           5.       Approving the Class Representatives' request for payment of the settlement  
2 administration costs with payment pursuant to the terms of the Settlement Agreement;

3           6.       Entering judgment as to all members of the Settlement Class in this action; and  
4 Setting a Compliance Hearing date.

5 DATED: March 28, 2024

DIVERSITY LAW GROUP P.C.

6  
7 By: \_\_\_\_\_

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class  
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