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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

AMIN AHMED, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAREDX, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22-CIV-02294

(Assigned to the Hon. Marie S. Weiner, Dept. 2)

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

Date: September 12, 2023

Time: 2:00 p.m.

Dept.: 2

Complaint Filed: June 6, 2022

FAC Filed: December 27, 2022

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 12, 2023, at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Marie S. Winter, judge presiding, in Department 2 of the above referenced Court, located at 400 County Center, Redwood City, California 94063, Plaintiff Amin Ahmed (“Plaintiff”) will seek an Order:

(1) granting final approval of the Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Stipulation,” “Agreement,” or “Settlement Agreement”);

(2) approving and directing distribution to the Class Members of the Class Settlement Payments and distribution of the PAGA Penalties Payments pursuant to the terms of the Settlement Agreement;

(3) approving Plaintiff’s request for an award of the Class Representative Enhancement Award of \$5,000.00 to Plaintiff, pursuant to the terms of the Settlement Agreement;

(4) approving Class Counsel’s request for an award of the Attorneys’ Fees Award of one-third of the Maximum Settlement Amount, or \$23,333.00, and reimbursement of actual litigation costs of \$1,996.74, pursuant to the terms of the Settlement Agreement;

(5) approving Plaintiff’s request for the payment of Settlement Administration Costs to Phoenix Settlement Administrators in the amount of \$5,750.00, pursuant to the terms of the Settlement Agreement;

(6) approving Plaintiff’s request for payment to the California Labor and Workforce Development Agency (“LWDA”) of \$3,750.00, from the PAGA Allocation pursuant to the terms of the Settlement Agreement; and

(7) entering final judgment as to all Class Members in the Action who did not submit a timely Request for Exclusion, and as to all Class Members and the State of California with respect to the Released PAGA Claims, pursuant to the terms of the Settlement Agreement.

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. The basis for this unopposed Motion is

1 that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by
2 the Parties and preliminarily approved by the Court were adequate to ensure the opportunity for
3 Class Members to participate in, opt out of, or object to the settlement. In light of the
4 overwhelmingly positive response, as shown by the lack of any objections and opt-outs to the
5 settlement, there is no question that the settlement is fair, reasonable, and adequate, and thus
6 should be granted final approval.

7 This Motion will be based on the attached Memorandum of Points and Authorities, the
8 supporting Declarations of Larry W. Lee, Max W. Gavron, Kwanporn “Mai” Tulyathan, William
9 L. Marder, Plaintiff Amin Ahmed, and Yami Burns of Phoenix Settlement Administrators, and
10 upon the oral arguments of counsel (should there be any), and on the complete records and file
11 herein.

12
13 DATED: August 16, 2023

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Max W. Gavron

Kwanporn “Mai” Tulyathan

Attorneys for Plaintiff and the Class
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1 **I. INTRODUCTION**

2 Plaintiff Amin Ahmed (“Plaintiff”) now seeks the Court’s final approval of the
3 Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Stipulation,”
4 “Agreement,” or “Settlement Agreement”) entered into between Plaintiff and Defendant CareDx,
5 Inc. (“Defendant”). The Settlement Agreement provides for a settlement fund of Seventy
6 Thousand Dollars (\$70,000.00) (the “Maximum Settlement Amount”) to be created for the
7 benefit of the Class. From this Maximum Settlement Amount, attorneys’ fees, litigation costs, an
8 enhancement award to Plaintiff, PAGA penalties, and the costs of settlement administration are
9 to also be paid. The entire Net Settlement Amount after these deductions will be paid to all Class
10 Members who did not opt out of the Settlement.

11 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval
12 Motion, and thus is incorporated herein by reference from Plaintiff’s Preliminary Approval
13 Motion. Following the hearing of Plaintiff’s Preliminary Approval Motion on April 25, 2023, the
14 Court issued its Order After Hearing Granting Plaintiff’s Motion for Preliminary Approval of
15 Class Action and PAGA Settlement (“Preliminary Approval Order”), preliminarily approving
16 this settlement, directing distribution of the Class Notice, and scheduling the hearing for final
17 approval of the settlement.

18 As directed by the Court, the Settlement Administrator selected by the Parties – Phoenix
19 Settlement Administrators – distributed the Class Notice to 90 Class Members. *See* Declaration
20 of Yami Burns on Behalf of Phoenix Settlement Administrators (“Admin. Decl.”) ¶ 5. To date,
21 zero (0) Requests for Exclusion have been submitted to the Settlement Administrator. *Id.* ¶ 7. In
22 addition, zero (0) Notices of Objection have been filed by Class Members. *Id.* ¶ 5. As such, the
23 settlement has a 100% participation rate. *Id.* ¶ 10. In light of this positive response from Class
24 Members, an inference can be made that the Class supports the Court’s Preliminary Approval
25 Order finding that the Settlement Agreement is fair and reasonable. Declaration of Max W.
26 Gavron (“Gavron Decl.”) ¶ 8.

27 In addition to the results of the notice process, for the same reasons as set forth earlier in
28 Plaintiff’s Motion for Preliminary Approval, the following represents the basic points

supporting final approval of the settlement:

- The settlement provides a total settlement sum of \$70,000.00, which is **non-reversionary**;
- The settlement is fair given that participating Class Members will receive (after deductions for fees, costs, etc.) approximately \$321.24 per each participating Class Member with the highest being paid of \$516.15 and the lowest share of \$16.13 (Admin. Decl. ¶ 12);
- Class Members did not need to submit claim forms to participate in the settlement, but will automatically receive a check for their individual share of the settlement;
- The allocation reflects the payment of Class Settlement Payments to Class Members on a *pro rata* basis, based on the number of pay periods in which Class Members worked and were paid a shift differential during the Class Period;
- Plaintiff's counsel conducted significant investigation in this case, including conducting informal discovery and exchanges of information, including data pertaining to the number of allegedly deficient wage statements, which was necessary for Plaintiff to fully evaluate the case;
- A highly regarded settlement administrator, Phoenix Settlement Administrators, was retained to administer the settlement for costs of approximately \$5,750.00 (Admin. Decl. ¶ 15); and
- The State of California's LWDA will also be the beneficiary of this settlement, as it will receive \$3,750.00 pursuant to the PAGA Payment, should this settlement be granted final approval. Timely notice of the PAGA settlement was provided to the LWDA in accordance with PAGA, and no objections to the settlement by the LWDA were received by Plaintiff's counsel. Gavron Decl. ¶ 9.

Based on the foregoing, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. THE SETTLEMENT

A. Class Members Were Provided Proper Notice

The notice procedures required by the Preliminary Approval Order have been followed

1 and satisfy all due process rights of Class Members. Specifically, the Preliminary Approval
2 Order contemplated that the Notice of Class Action Settlement (“Class Notice”), as approved in
3 the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in
4 the Settlement Agreement. The Preliminary Approval Order contemplated, further, that
5 Phoenix Settlement Administrators would serve as the Settlement Administrator.

6 As clearly stated in the Declaration of Yami Burns on behalf of Phoenix Settlement
7 Administrators, notice was provided to Class Members pursuant to the Settlement Agreement
8 and the Preliminary Approval Order. On May 24, 2023, the Settlement Administrator received
9 the Class Information from Defendant that included 90 Class Members. Admin. Decl. ¶ 3. Prior
10 to mailing the Class Notice, the Settlement Administrator conducted a National Change of
11 Address (NCOA) search to correct and/or update the Class Information in case of any address
12 changes. *Id.* ¶ 4. On June 7, 2023, the Settlement Administrator mailed the Class Notice to all
13 Class Members via U.S. first class mail. *Id.* ¶ 5. From the date of the mailing, one (1) Class
14 Notice was returned to the Settlement Administrator due to an incorrect address. *Id.* ¶ 6. The
15 Settlement Administrator conducted skip tracing to identify an updated address for the Class
16 Notice and re-mailed the Class Notice via U.S. first class mail. *Id.* As of the date of this filing,
17 zero (0) Class Notices remain undeliverable. *Id.* ¶ 6. Further, the Class Notice provided Class
18 Members with Class Counsel’s and the Settlement Administrator’s contact information, where
19 they could seek further information regarding the settlement, ask questions, review pleadings in
20 the case, and update their address. Admin. Decl., Ex. A.

21 The provision of the notice to Class Members and administration of the notice process
22 as described above meets the requirements for the “best notice practicable” in this case as
23 necessary to protect the due process rights of Class Members. *See, e.g., Phillips Petroleum Co.*
24 *v. Shutts* (1985) 472 U.S. 797, 811-12 (provision of “best notice practicable” with description
25 of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle &*
26 *Jacquelin* (1974) 417 U.S. 156, 174-75 (individual notice must be sent to class members who
27 can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*
28 (1950) 339 U.S. 306, 314 (best practicable notice is that which 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 provided with a mailing that explained the settlement and allowed Class Members to seek information, ask questions, and exclude themselves and/or object to the settlement, if so desired. Admin. Decl. ¶ 7. As such, proper notice has been given to the Class Members. The Court, therefore, may proceed to determine the fairness and adequacy of the settlement, and order its approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and approval process.

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

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

Since the filing of this case, the Parties thoroughly investigated the facts relating to the claims alleged in the operative Complaint and have engaged in a thorough study of the legal principles applicable to the claims asserted against Defendant. Defendant provided data relating to the number of wage statements issued to the putative class members, as well as information pertaining to its wage statement practices. Thereafter, the Parties commenced informal settlement negotiations and were ultimately able to reach the current settlement. Gavron Decl. ¶ 2. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation.

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130, 133, a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff’s claims. As discussed herein, Plaintiff’s counsel has conducted extensive investigation

1 and, in light of the strength and weaknesses of Plaintiff's claims, Plaintiff's attorneys submit that
2 this settlement is fair pursuant to *Kullar*.

3 In the present case, Plaintiff's Labor Code § 226 claim arises from Plaintiff's allegations
4 that Defendant's wage statements failed to list the correct total hours worked whenever shift
5 differential wages were paid on wage statements provided to Class Members. Gavron Decl. ¶ 3.
6 Defendant provided data relating to the number of allegedly deficient wage statements issued to
7 putative class members, which allowed Plaintiff to conduct an exposure analysis for the class and
8 PAGA claims. *Id.* Thereafter, the Parties engaged in settlement discussions and ultimately
9 reached the current settlement. *Id.*

10 As explained in Plaintiff's preliminary approval motion, Plaintiff calculated maximum
11 exposure for Labor Code § 226 penalties to be \$178,500.00 and derivative PAGA penalties of
12 \$183,000.00 for a total of \$361,500.00. Based thereon, the \$70,000.00 settlement comprises
13 approximately 19% of the realistic exposure, which is consistent with settlements approved by
14 numerous courts. *Id.* ¶ 4; *see, e.g., In re Mego Fin. Corp. Secs. Litig.* (9th Cir. 2000) 213 F.3d
15 454, 459; *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. Mar. 20, 2015) No. 13-CV-02377-
16 JSC, 2015 WL 1289342, at *6; *Van Ba Ma v. Covidien Holding Inc.* (C.D. Cal. 2014) U.S. Dist.
17 Ct. Case No. 8:12-cv-02161.

18 The results after mailing of the Class Notice support confirmation of the Court's
19 preliminary approval of the settlement with final approval of the settlement, as evidenced by
20 the fact that zero (0) Class Members have opted out and zero (0) Class Members submitted any
21 written objections to the settlement. Admin. Decl. ¶¶ 7, 8. With the high rate of participation in
22 the settlement by Class Members (**100%**), the Court may appropriately infer that the settlement
23 is fair, adequate, and reasonable. *See Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d
24 1268, 1291; *Churchill Vill. LLC v. Gen. Elec.* (9th Cir. 2004) 361 F.3d 566, 577 (approving
25 settlement with 45 objections and 500 opt-outs from a 90,000-person class, representing 0.05%
26 and 0.56% of the class, respectively); *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716
27 F. Supp. 2d 848, 852 (where 16 of 329 class members opted out, court found that positive class
28 reaction "strongly supports settlement"). Here, the lack of any objections and opt-outs to this

1 current settlement indicates that Class Members themselves view the settlement as fair,
2 adequate, and reasonable.

3 **B. Under Well-Established Legal Principles, the Court Should Grant Final**
4 **Approval to the Settlement**

5 **1. Standard of Review**

6 On a motion for final approval of a class action settlement, a court’s inquiry is whether
7 the settlement is “fair, adequate and reasonable.” *See Officers for Justice v. Civil Serv. Comm’n*
8 (9th Cir. 1982) 668 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n* (1983)
9 459 U.S. 1217. A settlement is fair, adequate, and reasonable, and therefore merits final
10 approval, when “the interests of the class are better served by the settlement than by further
11 litigation.” *See Manual for Complex Litigation, Fourth* (Fed. Jud. Ctr., 4th ed. 2004) § 21.6 at
12 309 (“*Manual*”). The law favors settlement, particularly in class actions and other complex
13 cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of
14 formal litigation. *See Alba Conte & Herbert B. Newberg* (2008) 4 *Newberg on Class Actions* §
15 11.41; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v.*
16 *Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.

17 Although the Court possesses “broad discretion” in determining that a proposed class
18 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
19 reasoned judgment that the agreement is not the product of fraud or overreaching by, or
20 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
21 reasonable, and adequate to all concerned. *See Officers for Justice, supra*, 688 F.2d at p. 625.
22 Accordingly, the Court should give due regard to what is otherwise a “private consensual
23 agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.* (N.D.
24 Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989)
25 720 F. Supp. 1379, *aff’d sub nom.*, *City of Seattle*, 955 F.2d 1268; *Manual* § 21.6 at p. 309
26 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the
27 proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the
28 agreement.”).

1 A court's approval of a class action settlement will only be reversed for a clear abuse of
2 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also Officers*
3 *for Justice*, 688 F.2d at p. 626 ("reverse only upon a strong showing that the district court's
4 decision was a clear abuse of discretion"); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v.*
5 *Kassar* (9th Cir. 1993) 1993 WL 326453; *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151
6 F.3d 1234, 1238.

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

8 It cannot be overemphasized that neither the trial court in approving
9 the settlement nor this Court in reviewing that approval have the
10 right or duty to reach any ultimate conclusions on the issues of fact
11 and law which underlie the merits of the dispute. It is well settled
12 that in the judicial consideration of proposed settlements, "the [trial]
13 judge does not try out or attempt to decide the merits of the
14 controversy," [citation] and the appellate court "need not and should
15 not reach any dispositive conclusions on the admittedly unsettled
16 legal issue."

17 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.

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

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

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

26 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair*
27 *Franchising*, 85 Cal. App. 4th at p. 1146; *accord, Ellis v. Naval Air Rework Facility* (N.D. Cal.
28 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply*, 720 F Supp at p. 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness.
As previously noted in the Preliminary Approval Motion, this settlement was negotiated at arm's
length, after the data for the Class was produced and analyzed, and after substantial investigation
and discussions regarding Defendant's wage statement practices and potential liability. Gavron
Decl. ¶ 5.

Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 3-5; Gavron Decl. ¶¶ 14-20; Declaration of Kwanporn “Mai” Tulyathan (“Tulyathan Decl.”) ¶¶ 3-8; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-9.

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

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

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff may have been responsible for Defendant’s costs. Declaration of Amin Ahmed (“Ahmed Decl.”) ¶ 10. As such, should individual, current or former employees of Defendant wish to bring individual claims on the same cause of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by many of these current and former employees—thus, this lawsuit achieves a true benefit for the Class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant’s litigation costs.

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

The Settlement Agreement also affords the Class prompt, fair relief, while avoiding

1 significant legal and factual battles that otherwise may have prevented the Class from obtaining
2 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious
3 and can be successfully litigated, they are experienced and fully understand the inherent risks
4 and uncertainty involved with such matters as the resolution of class certification, the outcome
5 of a potential trial, and the outcome of any appeals that would inevitably follow should the
6 Class prevail at trial. Class Counsel has also assessed the same risks in connection with the
7 current settlement. Because the settlement provides immediate and substantial relief, without
8 the attendant risks and delay of continued litigation – not to mention the threat of litigation
9 costs – Class Counsel believe that the settlement warrants the Court's final approval.

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

12 Another factor considered by courts in approving a settlement is the complexity,
13 expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at p. 625; *Girsh*,
14 521 F.2d at p. 157. In applying this factor, the Court must weigh the benefits of the settlement
15 against the expense and delay involved in achieving an equivalent or more favorable result at
16 trial. *See Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-434.

17 As noted above, continued litigation could have led to appeals on a number of issues.
18 On the other hand, the settlement that was reached provides to all Class Members – regardless
19 of their means – fair relief in a prompt and efficient manner. Were the Court to deny final
20 approval, the Class Members would be left without a remedy as a practical matter and courts
21 across the State would have to address the issues presented here in a piecemeal, costly, and
22 time-consuming manner. The settlement in this case is therefore consistent with the “overriding
23 public interest in settling and quieting litigation” that is “particularly true in class action suits.”
24 *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg*
25 *§ 11.41.*

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

27 Class Counsel support the settlement as fair, reasonable, and adequate, and in the best
28 interest of the Class Members as a whole. Lee Decl. ¶ 2; Gavron Decl. ¶ 6; Tulyathan Decl. ¶ 2;

1 Marder Decl. ¶ 2. Similarly, Defendant’s counsel is also in favor of and recommends approval
2 of this settlement. The endorsement of qualified and well-informed counsel of a settlement as
3 fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval
4 determination. *See Officers for Justice*, 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485
5 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.

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

8 Prior to negotiating the settlement, Class Counsel engaged in significant investigation of
9 the claims at issue. The Parties engaged in informal discovery to obtain the class data to
10 determine the potential amount of penalties that Defendant possibly could be liable for if
11 Plaintiff prevailed at trial. Gavron Decl. ¶ 2. It was only after the production of such
12 information and data and analysis that the Parties engaged in settlement discussions which
13 ultimately led to this settlement. *Id.*

14 As detailed above, each of the factors counsel strongly in favor of final approval of the
15 settlement by this Court.

16 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARD**

17 Plaintiff has requested, and Defendant does not oppose, a Class Representative
18 Enhancement Award of Five Thousand Dollars (\$5,000.00), pursuant to the terms of the
19 Settlement Agreement. As shown in the supporting declaration, Plaintiff provided significant
20 assistance with the prosecution of this lawsuit, including discussing the case with Class
21 Counsel on multiple occasions, searching for and providing documents and information
22 regarding Defendant’s practices, and reviewing the various files and pleadings submitted in this
23 case. Ahmed Decl. ¶ 9. As part of his duties as Class Representative, Plaintiff provided
24 invaluable information, evidence, and documents that resulted in this settlement.

25 In addition to the invaluable service that he provided, Plaintiff also took a significant risk,
26 both professionally and monetarily, in acting as a Class Representative. Because the claims
27 alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have
28 possibly faced paying the costs of Defendant had Plaintiff not prevailed in this action. Ahmed

Decl. ¶ 10. Moreover, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff also faced significant risk in not being able to find suitable employment and/or faced retaliation from prospective employers, as all a result of filing this case against Defendant. *Id.* ¶ 11. Despite this, however, Plaintiff took these risks upon himself to the benefit of the Class.

Plaintiff assumed such risks and the whole Class benefited from this. In other words, Class Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the requested enhancement.

Finally, in the Settlement Agreement, Plaintiff also agreed to give a general release and waiver of the protections of Civil Code Section 1542, which other Class Members did not have to do. This is a more extensive release than that provided by the Class at large, also supporting the request for the enhancement.

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

Here, this litigation has resulted in a valuable benefit to the Class, and the Class Representative took on substantial risks and sacrifice in helping to get this financial benefit to the Class. As such, the enhancement should be awarded to the named Plaintiff for his

1 commitment, dedication, and risks taken for this litigation. Accordingly, the Court should find
2 that the Class Representative Enhancement Award is fair and reasonable.

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

4 Class Counsel seeks a fee award calculated at one-third of the Maximum Settlement
5 Amount, or \$23,333.00, for the successful prosecution and resolution of this action. California
6 state and federal courts have recognized that an appropriate method for determining award of
7 attorneys' fees is based on a percentage of the total value of benefits to Class Members by the
8 settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest*
9 (1977) 20 Cal. 3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478;
10 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769. The purpose of this equitable
11 doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally
12 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
13 *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.

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

25 Here, the fee award representing approximately one-third of the fund clearly falls within
26 that range and is consistent with other rulings of other courts and comprehensive surveys of class
27 action settlements and fee awards. *See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S.
28 Dist. LEXIS 61796, 23 (recognizing that "courts may award attorney's fees in the 30-40% range

1 in wage and hour class actions that result in recovery of a common fund under \$10 million”); *see*
2 *also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-*
3 *2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action
4 litigation nationwide conclude that fees in the range sought here are consistent with market
5 rates). The results delivered by Class Counsel also support the requested percentage of the fund.
6 Here, Plaintiff and his counsel secured a \$70,000.00 common fund settlement.

7 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
8 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala* (D.C.
9 Cir. 1993) 1 F.3d 1261, 1272. A positive response rate tends to suggest that the court’s
10 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
11 Notice specifically notified Class Members that Class Counsel would be seeking one-third of the
12 Maximum Settlement Amount as attorneys’ fees. To date, no Class Members have objected to
13 the settlement. This strong favorable response also supports the requested fees.

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

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

21 *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 470. For Class Counsel, the fees
22 here were wholly contingent in nature and the case presented far more risk than the usual
23 contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a
24 potentially drawn-out battle with a corporate defendant.

25 As secondary support for the percentage of the fund method, courts have discretion to
26 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
27 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the
28 trial court’s primary determination of the fee as a percentage of the common fund and thus does

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

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

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

28 With respect to Class Counsel’s lodestar, to date, approximately 50.8 hours have been

1 expended by Class Counsel in this matter. Gavron Decl. ¶ 10, Ex. A. Moreover, Class Counsel
2 expects to incur approximately 5 additional hours in finalizing this settlement, including
3 handling any post-approval matters and settlement issues that may arise. Gavron Decl. ¶ 11. Mr.
4 Gavron requests an hourly rate of \$600.00 per hour. Gavron Decl. ¶ 12. The courts are quite
5 liberal in the evidence required to prove an attorney's hours. Detailed time records are not
6 required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number
7 of hours worked on a particular case is sufficient evidence to support an award of attorney fees,
8 even in the absence of detailed time records." *Martino v. Denevi* (1986) 182 Cal. App. 3d 553,
9 559.

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

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

22 Class Counsel's skill and experience justify the requested rate. As shown in the
23 supporting declarations, Class Counsel have significant experience in the area of employment
24 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
25 employees in employment matters, particularly wage and hour cases. Lee Decl. ¶¶ 3-5; Gavron
26 Decl. ¶¶ 14-20; Tulyathan Decl. ¶¶ 3-8; Marder Decl. ¶¶ 3-9. As such, based on the hours and
27 applicable rate, the total lodestar to be expended by Class Counsel through finalizing this
28 settlement will be approximately \$33,480.00 based on 55.8 total hours, which includes 5

1 anticipated hours. Gavron Decl. ¶¶ 10-12.

2 Once the court establishes the lodestar amount, it may enhance the fee award by a
3 multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at p. 48. The
4 pertinent factors include the difficulty of the questions involved and the skill in presenting them,
5 the contingent nature of the fee award, the extent to which the litigation precluded other
6 employment, and the percentage-of-the-fund the attorney would have received on the fair
7 market. *Id.*, *Lealao*, 82 Cal. App. 4th at p. 49. However, this list is not exhaustive and the court
8 can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses* (2001)
9 24 Cal. 4th 1122, 1139.

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

15 Here, based upon Plaintiff’s counsel’s lodestar of \$33,480.00, Plaintiff’s request for a fee
16 award of \$23,333.00 is more than reasonable and fair. As the Court can see, the lodestar far
17 exceeds the requested fee amount, such that it would result in a negative multiplier of
18 approximately 0.7. Gavron Decl. ¶ 13. As such, the requested fee award in the amount of
19 \$23,333.00 is fair and reasonable, and should be awarded in its entirety.

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

22 The request for reimbursement of costs, in the amount of \$1,996.74 is fair and
23 reasonable. Pursuant to the terms of the Settlement Agreement, Plaintiff is allowed to seek
24 reimbursement of litigation costs up to a maximum of \$4,000.00. Class Counsel seeks \$1,996.74
25 in litigation related costs, which is less than the amount estimated in the Settlement Agreement.
26 Gavron Decl. ¶ 22, Ex. B. As such, the requested costs should be approved as fair and
27 reasonable.

28 //

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

3 Pursuant to the terms of the Settlement Agreement, the Settlement Administrator Costs
4 paid to Phoenix Settlement Administrators from the Maximum Settlement Amount were not to
5 exceed \$5,750.00. As shown in the Declaration of Kevin Lee, the Settlement Administration
6 Costs expended and sought by Phoenix Settlement Administrators in this matter amount to a total
7 of \$5,750.00. Admin. Decl. ¶ 15, Ex. B. Thus, Settlement Administration Costs in the amount of
8 \$5,750.00 are consistent with the Settlement Agreement and should be approved.

9 **VIII. NOTICE TO THE LWDA HAS BEEN PROVIDED**

10 On August 16, 2023, Plaintiff uploaded this Motion and Proposed Order to the LWDA's
11 website. Gavron Decl. ¶ 23, Ex. C.

12 **IX. UNCASHED FUNDS**

13 Funds represented by the Class Settlement Payments and PAGA Penalties Payments
14 returned as undeliverable and/or remaining un-cashed for more than 180 days after mailing will
15 be tendered to Legal Aid at Work, the designated *cy pres* recipient. Settlement Agreement ¶
16 3.10. Upon completion of administration of the settlement, the Settlement Administrator will
17 provide a written declaration under oath to certify the total amount that was paid to all Class
18 Members and distribution of the un-cashed funds were tendered to Legal Aid at Work. Class
19 counsel do not have any conflicts of interest with the proposed *cy pres* recipient. Lee Decl. ¶ 6;
20 Gavron Decl. ¶ 21; Tulyathan Decl. ¶ 9; Marder Decl. ¶ 10.

21 **X. CONCLUSION**

22 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
23 respectfully submits that the standards for final approval have been met, and the terms of the
24 Settlement Agreement are fair, adequate, and reasonable. Accordingly, Plaintiff respectfully
25 requests that the Court enter an Order and Judgment in the form proposed and submitted.
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27
28

1 DATED: August 16, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 

Larry W. Lee

4 Max W. Gavron

5 Kwanporn "Mai" Tulyathan

6 Attorneys for Plaintiff and the Class
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