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

LAMEISHA GEORGE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WESTWAYS STAFFING SERVICES,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: CIVSB2212594
[Consolidated with: CIVSB2217699]

[Assigned for all purposes to the Hon. Jessica
Morgan, Dept. S-26]

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

Date: May 29, 2024
Time: 8:30 a.m.
Dept: S-26

Complaint Filed: June 16, 2022
Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on May 29, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Jessica Morgan, judge presiding, in Department S-26 of
4 the above referenced Court, located at 247 W. Third Street, San Bernardino, California 92415,
5 Plaintiff Lameisha George (“Plaintiff”) will seek an Order: (1) granting final approval of the
6 Stipulation of Class Action and PAGA Settlement and Release (“Agreement” or “Settlement
7 Agreement”) in this action; (2) approving distribution of the settlement funds to the Class Members
8 pursuant to the terms of the Settlement Agreement; (3) approving Plaintiff’s request for an award of
9 the Class Representative Enhancement Award of \$10,000.00, pursuant to the terms of the
10 Settlement Agreement; (4) approving Class Counsel’s request for an award of attorneys’ fees of
11 one-third of the \$425,000.00 Maximum Settlement Amount, and reimbursement of litigation costs
12 of \$15,318.03, pursuant to the terms of the Settlement Agreement; (5) approving Plaintiff’s request
13 for payment of the Settlement Administration Costs to Phoenix Settlement Administrators in the
14 amount of \$16,000.00 pursuant to the terms of the Settlement Agreement; (6) approving Plaintiff’s
15 request for payment to the California Labor and Workforce Development Agency for \$30,000.00,
16 pursuant to the terms of the Settlement Agreement; and (7) entering final judgment as to all
17 members of the Class in this action.

18 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
19 provides for court approval of the settlement of a purported class action and allows the Court to
20 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
21 response, as shown by the lack of objections and five (5) opt-outs to the settlement, there is no
22 question that the settlement is fair, reasonable, and adequate and thus should be granted final
23 approval.

24 This Motion will be based on the attached Memorandum of Points and Authorities and the
25 supporting Declarations of Larry W. Lee, Max W. Gavron, Kwanporn “Mai” Tulyathan, William
26 Marder, Lameisha George, and Taylor Mitzner of Phoenix Settlement Administrators, upon the oral
27 arguments of counsel (should there be any), and on the complete records and file herein.

1 DATED: May 6, 2024

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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I. INTRODUCTION

On June 16, 2022, Plaintiff Lameisha George (“Plaintiff”) filed a class action complaint against Defendant Westways Staffing Services, Inc. (“Defendant”) alleging violation of Labor Code § 226. On August 18, 2022, Plaintiff filed a representative action complaint against Defendant alleging violation of Labor Code § 2698, *et seq.*, predicated on an underlying violation of Labor Code § 226. The class and representative actions were consolidated by the Court on or about January 17, 2023, and as such, the operative complaint in the action consists of claims for violation of Labor Code §§ 226 and 2698, *et seq.* (the “Complaint” or “operative Complaint”). On January 30, 2024, the Court granted preliminary approval of the proposed class action settlement (the “Preliminary Approval Order”). Having provided notice to the Class and having received a positive response with zero objections and only five requests for exclusion, Plaintiff now moves for final approval.

As detailed previously, the Complaint alleges (1) violation of Labor Code § 226; and (2) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). The Complaint alleged that Defendant failed to provide wage statements that identified accurate rates of pay. Plaintiff seeks to represent all other similarly situated individuals and aggrieved employees.

Plaintiff seeks the Court’s final approval of the Stipulation of Class Action and PAGA Settlement and Release (“Agreement” or “Settlement Agreement”). The Settlement Agreement provides for a \$425,000.00 fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the Class Representative, payment to the California Labor and Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. The entire net settlement fund after these deductions will be paid to all Class Members who did not opt-out of the settlement and no funds shall revert to Defendant.

As directed by the Court, the Settlement Administrator distributed the Class Notice to 1,741 Class Members. Declaration of Taylor Mitzner on Behalf of Settlement Administrator (“Admin. Decl.”) ¶ 3. To date, five (5) requests for exclusion have been received and zero (0) objections have been filed. Admin. Decl. ¶¶ 9, 10. As such, there is a 99.7% participation rate. Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the

Settlement Agreement is fair and reasonable.

In addition to the results of the notice process, for the same reasons as set forth earlier in Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following represent the basic points supporting approval of the Settlement:

- The settlement provides a total settlement sum of \$425,000.00;
- The settlement is fair given that Settlement Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money (on average, each Settlement Class Member will receive approximately \$116.37). *See* Admin. Decl. ¶ 14;
- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Class Members in proportion to the number of applicable pay periods each Class Member worked during the Class Period;
- Plaintiff conducted significant investigation in this case, including formal and informal discovery, and exchanges of information by Plaintiff and Defendant of class data necessary for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administrators, was retained for fees estimated to be \$16,000.00; and
- California's LWDA will also be the beneficiary of this settlement as it will receive \$30,000.00, should this settlement be granted final approval.

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

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order, have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Notice of Class Action Settlement ("Class Notice"), as approved in the Preliminary Approval

1 Order, be sent to all Class Members by first class mail, as specified in the settlement. Further, the
2 Preliminary Approval Order contemplated that Phoenix Settlement Administrators would serve as
3 the Settlement Administrator.

4 As clearly stated in the Declaration of Taylor Mitzner, notice was provided to Class
5 Members, as required by the Preliminary Approval Order. On February 8, 2024, the Settlement
6 Administrator received a Class Member mailing list from Defendant’s counsel that included 1,741
7 Class Members. Admin. Decl. ¶ 3. On February 9, 2024, the Settlement Administrator conducted a
8 National Change of address search to confirm the addresses were accurate. *Id.* ¶ 4. On February 22,
9 2024, each of the persons identified on the mailing list were sent the Class Notice via first class
10 mail. *Id.* ¶ 6. From the date of mailing, thirty-four (34) Class Notices were returned due to incorrect
11 addresses. Address traces were performed for the thirty-four (34) Class Notices. As of the date of
12 this filing, thirty-four (34) Class Notices are undeliverable because new addresses could not be
13 located by skip tracing. *Id.* ¶ 8. Five (5) Class Members requested to be excluded from the
14 settlement and no Class Members objected. *Id.* ¶¶ 9, 10. Further, the Class Notice provided Class
15 Members with Class Counsel’s contact information, where they could further seek information
16 regarding the class settlement, leave questions for the Settlement Administrator, and update their
17 address.

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

27 Here, the Class Members were provided with a mailing regarding the settlement that
28 explained the settlement and allowed Class Members to seek information, ask questions, and object,

1 if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may
2 proceed to determine the fairness and adequacy of the settlement and enter its Order granting final
3 approval, secure in the knowledge that all absent Class Members have been given the opportunity to
4 participate fully in the claims, exclusion, and approval process.

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

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

8 In order to proceed as a class, there are two requirements which must be met –
9 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704
10 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). “The community of interest
11 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
12 representatives with claims or defenses typical of the class; and (3) class representatives who can
13 adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d. 462, 470 (1981).

14 **1. The Class is Ascertainable**

15 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 “is
16 determined by examining (1) class definition, (2) the size of the class, and (3) the means available
17 for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App.
18 3d 1263, 1271 (1987). Here, the Class is comprised of “all non-exempt employees of Defendant
19 who worked for Defendant in California who were paid overtime wages at any time from
20 September 5, 2021, through August 5, 2022” (the “Class”). There are 1,741 individuals that
21 comprise the Class. Admin. Decl. ¶ 3. This is far more than the minimum required to certify a class.
22 Within the context of manageability, the issue is whether there exists sufficient means for
23 identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class
24 Members have already been identified by Defendant and notice was provided to all of the above
25 Class Members.

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

27 The “community of interest” requirement embodies three separate factors: (1) predominant
28 common questions of law or fact; (2) class representatives whose claims are typical of the class; and

(3) class representatives who can adequately represent the class. *Richmond*, 29 Cal. 3d at 470; *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

a. There are Predominant Common Questions of Law and Fact

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

Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by its failure to provide wage statements that identified accurate hourly rates of pay. Defendant denies that it violated the Labor Code, denies that it failed to show applicable rates of pay, denies liability and contends that Plaintiff cannot prove willfulness and thus that Defendant would not be subject to waiting time penalties.

b. Plaintiffs’ Claims are Typical of the Class Claims

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

Plaintiff was employed by Defendant and was subjected to the same payroll policies as all other Class Members. Specifically, like other members of the Class, Plaintiff received wage statements that Plaintiff contends did not include accurate hourly rates of pay. Plaintiff was subjected to the same policies and practices as other Class Members. Thus, Plaintiff’s claims are typical to those of Class Members.

//

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

2 The class representative, through qualified counsel, must be capable of “vigorously and
3 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
4 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such
5 issues been raised or presented. Plaintiff has taken all necessary steps to represent the interests of
6 the Class, including providing information and documents to her counsel and reviewing pleadings
7 in this case. Declaration of Lameisha George (“George Decl.”) ¶ 5. For such reasons, Plaintiff has
8 adequately represented the Class Members and will continue to do so.

9 **B. Defendant’s Allegations and Unlikelihood of Class Certification**

10 Defendant asserts that its wage statements comply with Labor Code § 226 and that the
11 overtime hourly rate may be ascertained by performing simple math. Defendant also asserts that it
12 revised the format of its wage statements, cutting off the potential liability period at issue. In any
13 event, even assuming that a class could be certified, Defendant asserts that it has complied with the
14 law. Based thereon, Defendant continues to maintain that it is not liable for the allegations made by
15 the Plaintiff.

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

17 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness
18 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
19 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
20 possibility of non-certification, and potential for appeals. These risks on class certification are
21 compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.
22 4th 1 (2014).

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

granting of this motion.

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

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement Agreement was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. Declaration of Max W. Gavron ("Gavron Decl.") ¶ 4.

The results after mailing of the Class Notice support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that to date, only five (5) requests for exclusion and zero objections to the settlement have been received. Admin. Decl. ¶¶ 9, 10. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that not a single Class Member has submitted an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

1. Standard of Review

On a motion for final approval of a class action settlement under California Code of Civil Procedure § 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the interests of the class are better served by the settlement than by further litigation." *See Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL"). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.

1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

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

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

It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘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 conclusions on the admittedly unsettled legal issue.

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

2. The Settlement is Presumed to Be Fair

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

[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are

sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.

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

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement resulted after several months of arm’s length negotiations following mediation, with the assistance of an experienced mediator. Gavron Decl. ¶ 5.

Second, Class Counsel engaged in extensive factual investigation before settling, including conducting discovery and reviewing class data. Gavron Decl. ¶ 4. Further, 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. Gavron Decl. ¶¶ 10-16; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 10-12; Declaration of Kwanporn “Mai” Tulyathan (“Tulyathan Decl.”) ¶¶ 4-9; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-12.

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.*, 55 F.3d 768, 806 (3d Cir. 1995) (“present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendant’s costs. As such, should individual current or former employees of Defendant bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by many of these 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 factor by the Court in its determination of final approval. Class Counsel obtained a substantial settlement for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by Class Members or the Class Representative.

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

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

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

As noted above, continued litigation could have led to appeals on a number of issues. On the other hand, the settlement that was reached provides to all Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, Class Members would be left without a remedy as a practical matter and courts across the State would

1 have to address the issues presented here in a piecemeal, costly, and time-consuming manner. The
2 settlement in this case is therefore consistent with the “overriding public interest in settling and
3 quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at
4 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case would have likely involved
5 continued litigation and possible appeals given the ever-evolving nature of wage and hour law.

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

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

13 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS** 14 **SHOULD BE APPROVED**

15 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
16 settlement funds remain after 180 days, the Parties have agreed that all funds shall escheat to the *cy*
17 *pres* recipient Legal Aid at Work. Class Counsel do not have any conflicts of interest with the
18 proposed *cy pres* recipient. Gavron Decl. ¶ 18; Marder Decl. ¶ 15; Tulyathan Decl. ¶ 12; Lee Decl.
19 ¶ 13.

20 **V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARD** 21 **SHOULD BE APPROVED**

22 Class Representative Lameisha George requests an enhancement of \$10,000.00. Plaintiff
23 regularly conferred with Class Counsel, including providing substantive information regarding
24 Defendant’s practices. George Decl. ¶5. Plaintiff regularly conferred with her attorneys to discuss
25 the status of the case, offer her input, and assist her attorneys in gathering evidence that supported
26 the class claims. *Id.* ¶ 5. For example, Plaintiff discussed Defendant’s policies and practices related
27 to the distribution of wage statements to employees to prepare documents necessary to the lawsuit.
28 *Id.* ¶ 5. Plaintiff also conferred with her attorneys regarding the proposed settlement. *Id.* ¶ 6.

1 Plaintiff was also deposed in this case. *Id.* ¶ 5. Plaintiff estimated that throughout this case she spent
2 a combined total of approximately 35-40 hours working with her attorneys to provide documents
3 and information that would support the successful resolution of the case. *Id.* ¶ 5. Accordingly,
4 Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

5 In addition to the invaluable services that she provided, Plaintiff took significant risks, both
6 professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the
7 Class. Because the claims alleged by the Class Representative involved the payment of costs to the
8 prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had she not
9 prevailed in this action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the
10 Class.

11 Also, given that future employers are much less likely to hire individuals who have filed
12 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
13 significant risk in not being able to find suitable employment, all as a result of filing of this case
14 against Defendant. Plaintiff took these risks upon herself to the benefit of the Class. Class Members
15 did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail,
16 nor did they have to face the potential for retaliation and not getting future employment had they
17 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of
18 granting the requested enhancement. Moreover, this litigation has resulted in a significantly
19 valuable benefit to the Class, and Plaintiff took on substantial risk in helping to get this financial
20 benefit to the Class. As such, the enhancement should be awarded to Plaintiff for her commitment,
21 dedication, and risk taken for this litigation.

22 Courts have routinely granted approval of settlements containing such enhancements. *See*
23 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
24 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
25 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000);
26 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
27 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-
28 52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No.

1 C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000
2 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th
3 Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

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

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

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

27 Here, the fee award representing one-third of the fund clearly falls within that range and is
28 consistent with other rulings of other courts and comprehensive surveys of class action settlements

1 and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, at *23 (S.D. Cal.
2 June 9, 2011) (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and
3 hour class actions that result in recovery of a common fund under \$10 million”); *see also* Eisenberg
4 & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
5 Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation
6 nationwide conclude that fees in the range sought here are consistent with market rates).

7 The results delivered by Class Counsel also support the requested percentage of the fund.
8 Here, Plaintiff and her counsel secured a \$425,000.00 settlement.

9 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
10 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
11 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
12 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
13 Notice specifically notified Class Members that Class Counsel would be seeking \$141,666.67 in
14 attorneys’ fees. To date, no Class Member has objected to the Settlement or requested attorneys’
15 fees. This strong favorable response also supports the requested fees.

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

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

23 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$425,000.00 has been
24 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented
25 far more risk than the usual contingent fee case. Among the risks was the cost inherent in class
26 action litigation, as well as a long battle with a corporate Defendant who had retained a highly
27 experienced defense firm. As such, the requested fee should be awarded.

28 As a secondary support for the percentage of the fund method, when fees are allocated by

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

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

Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix*, 162 Cal. App. 4th 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a

2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

With respect to Class Counsel's lodestar, to date, approximately 254 hours have been expended by Class Counsel in this matter. Lee Decl. ¶ 7; Gavron Decl. ¶ 7; Tulyathan Decl. ¶ 10; Marder Decl. ¶ 13. Moreover, Class Counsel expect to incur approximately 5 additional hours of attorney time in finalizing this settlement, including responding to Class Members and implementing the settlement with the Settlement Administrator. Lee Decl. ¶ 8. As detailed in their declarations, Class Counsel request rates ranging from \$600 to \$850, which is commensurate with each counsel's experience and mimics the market. Lee Decl. ¶ 9; Gavron Decl. ¶ 8; Tulyathan Decl. ¶ 11; Marder Decl. ¶ 14. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

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

Class Counsel's skill and experience justify the requested rate. As shown in the supporting declarations, Class Counsel have significant experience in the area of employment and wage and

1 hour class actions. Specifically, Class Counsel’s practice focuses on representing employees in
2 employment matters, particularly wage and hour cases. Lee Decl. ¶¶ 10-12; Gavron Decl. ¶¶ 10-16;
3 Tulyathan Decl. ¶¶ 4-9; Marder Decl. ¶¶ 3-12. As such, based on the hours and applicable rate,
4 including anticipated time, the total lodestar to be expended by Class Counsel through finalizing
5 this settlement will be approximately \$182,095.00. Lee Decl. ¶ 9; Gavron Decl. ¶ 8; Tulyathan
6 Decl. ¶ 11; Marder Decl. ¶ 14.

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

14 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-
15 benefit, namely, no objections by Class Members, commendable conduct by counsel, and
16 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*, 82
17 Cal. App. 4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorney’s fee
18 with no objections. The effort undertaken by counsel, as shown by their hours and the significantly
19 high number of claims being paid out, shows commendable conduct.

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

25 The multiplier should be enhanced by the contingent nature of counsel’s fee recovery. The
26 risks in taking on a class action case are enormous, not the least of which is time and effort. As
27 explained previously, Defendant maintained that there were significant obstacles to succeeding in
28 this lawsuit. Thus, the risk involved in this case was quite significant for Plaintiff and her counsel,

1 and in the face of such risks, the current settlement was achieved by Class Counsel.

2 Here based upon Class Counsel's lodestar of \$182,095.00, and the requested fees of
3 \$141,666.67, Plaintiff's request for a negative multiplier of 0.77 is reasonable and fair, particularly
4 based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224
5 (2001) (noting that courts using the lodestar method to calculate attorney fees awards in class
6 actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S.
7 Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a
8 multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*,
9 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a
10 multiplier of 2.52).

11 As such, the requested fee award is fair and reasonable, and should be awarded in its
12 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
13 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
14 Class Counsel's request for attorneys' fees in the amount of \$141,666.67 is fair, reasonable, and
15 adequate.

16 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
17 **COSTS**

18 The request for reimbursement of costs, in the amount of \$15,318.03 is fair and reasonable.
19 The costs are all litigation related costs. Gavron Decl. ¶ 17, Ex. B. The authority for the Court to
20 award this is the Parties' Settlement Agreement and Labor Code §§ 226 and 2699. As such, this
21 request should be approved.

22 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
23 **APPROVED**

24 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
25 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds.
26 As shown in the Declaration of Taylor Mitzner, the settlement administration fees expended in this
27 matter amount to a total of \$16,000.00, which is an amount that was agreed upon by the Parties.
28 Admin. Decl. ¶ 16. For such reasons, it is requested that the Settlement Administrator's fees be

1 approved.

2 **IX. NOTICE TO LWDA**

3 Concurrent with the filing of this Motion, Plaintiff provided notice to the LWDA. Gavron
4 Decl. ¶ 19.

5 **X. CONCLUSION**

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

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

- 11 1. Granting final approval to the proposed Settlement Agreement in this action;
 - 12 2. Approving distribution of the settlement funds to the Settlement Class Members
13 pursuant to the terms of the Settlement Agreement;
 - 14 3. Approving Plaintiff's request for an award of the Class Representative Enhancement
15 Award of \$10,000.00, with payment pursuant to the terms of the Settlement Agreement;
 - 16 4. Approving Class Counsel's request for an award to Class Counsel for \$141,666.67 in
17 attorneys' fees and \$15,318.03 in costs, with payment pursuant to the terms of the Settlement
18 Agreement;
 - 19 5. Approving Plaintiff's request for payment of the Settlement Administration Costs to
20 Phoenix Settlement Administrators in the amount of \$16,000.00, with payment pursuant to the
21 terms of the Settlement Agreement;
 - 22 6. Approving Plaintiff's request for payment to the LWDA of \$30,000.00 with
23 payment pursuant to the terms of the Settlement Agreement; and
 - 24 7. Entering final judgment as to all members of the Settlement Class in this action.
- 25
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27
28

1 DATED: May 6, 2024

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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