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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SEAN MCBURNEY, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

EUROFINS AIR TOXICS, LLC, a limited
liability company; EUROFINS AIR
TOXICS, INC., a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2022-00321801

[Assigned for all purposes to the Hon. Lauri
Damrell in Department 22]

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

Date: May 3, 2024

Time: 9:00am

Dept.: 22

Complaint Filed: June 14, 2022

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TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 3, 2024, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 22, of the above-entitled court located at 720 9th Street, Sacramento, California 95814, Plaintiff SEAN MCBURNEY (“Plaintiff), will and hereby do seek an Order:

1. granting final approval to the Second Amended Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement Agreement” or “Agreement”) in this action;
2. certifying the following Class for settlement purposes only: all current and former employees employed by Defendant in California who were paid any wages during the Class Period (June 13, 2021 through April 30, 2023);
3. approving distribution of the settlement funds to Settlement Class Members pursuant to the terms of the Settlement Agreement;
4. approving Plaintiff’s request for a service award of \$10,000.00 to the Class Representative pursuant to the terms of the Settlement Agreement;
5. approving Class Counsel’s request for an award of attorneys’ fees of 35% of the Gross Settlement Amount, or \$91,000.00, and reimbursement of litigation costs of \$15,752.67 pursuant to the terms of the Agreement;
6. approving payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$8,000.00, pursuant to the terms of the Agreement;
7. approving PAGA payment \$15,000.00 (75% to be paid to the LWDA and 25% to the aggrieved employees), pursuant to the terms of the Agreement; and
8. entering final judgment as to the Class Members, the Aggrieved Employees, and the State of California (including the Labor and Workforce Development Agency) in this action.

This motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for Court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. The overwhelmingly positive Class response, as shown by the lack of objections to the settlement and the fact that only eleven Class Members opted out, supports that the settlement is fair, reasonable, and adequate, including in light of PAGA’s purposes to

1 remediate present labor law violations, deter future ones, and to maximize enforcement of state labor
2 laws—and should be granted final approval.

3 This motion will be based on the attached Memorandum of Points and Authorities, the
4 supporting Declarations of Edward W. Choi, Larry W. Lee, Dennis Hyun, Lluvia Islas on behalf of
5 Phoenix Settlement Administrators and Plaintiff Sean McBurney, and upon the oral arguments of
6 counsel (should there be any) and on the complete records and file herein.

7
8 DATED: April 5, 2024

DIVERSITY LAW GROUP, P.C.

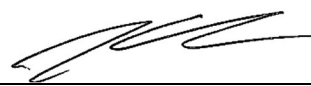
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10 By: 
11 Larry W. Lee
12 Attorneys for Plaintiff
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TABLE OF CONTENTS

	Page
I. INTRODUCTION	6
II. THE SETTLEMENT	7
A. Class Members Were Provided Proper Notice.	7
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL	8
A. The Terms Of The Settlement, The Negotiation Of The Settlement And The Reception Of The Settlement By Class Members All Strongly Support The Conclusion That The Settlement Is Fair, Adequate And Reasonable	8
B. Under Well-Established Legal Principles, the Court Should Grant Final Approval to the Settlement	9
1. Standard of Review.....	9
2. The Settlement Is Presumed To Be Fair	10
3. Two-Way Costs and Other Risks Inherent In Continued Litigation Favor Final Approval	11
4. The Complexity, Expense and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	12
5. The Opinion of Experienced Counsel Favors Final Approval	13
6. Discovery, Mediation, and the Settlement Discussions Undertaken In This Action Favor Final Approval.....	13
IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED	13
V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED	15
A. An Award of Attorneys' Fees and Costs is Requested When A Common Fund Has Been Created for the Benefit of the Class	15
VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS	19
VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED	19

VIII. PLAINTIFF HAVE PROVIDED NOTICE TO THE LWDA	20
IX. CONCLUSION	20

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	85 Cal. App. 4th 1135, 1146 (2000).....	11, 12
<i>Chavez v. Netflix, Inc.</i> ,	162 Cal.App.4th 43, 66, fn. 11 (2008).....	17
<i>City of Oakland v. Oakland Raiders</i> ,	203 Cal. App. 3d 78 (1988).....	18
<i>Dunk v. Ford Motor Co.</i>	48 Cal. App. 4th 1794, 1801 (1996)	11, 12
<i>Flannery v. California Highway Patrol</i> ,	61 Cal. App. 4th 629, 632-33 (1998)	20
<i>Laffitte v. Robert Half Int’l, Inc.</i> ,	1 Cal.5th 480, 506 (2016).....	17
<i>Laffitte</i> ,	231 Cal. App. 4th at 881-82 (2014).....	18
<i>Lealao v. Beneficial California, Inc.</i> ,	82 Cal. App. 4th 19, 29–30 (2000)	18
<i>Martino v. Denevi</i> ,	182 Cal. App. 3d 553, 559 (1986)	19
<i>PLCM Group, Inc. v. Drexler</i> ,	22 Cal. 4th 1084, 1095 (2000).....	19
<i>Serrano v. Unruh</i> ,	32 Cal. 3d 621, 639 (1982)	19
<i>Sutter Health Uninsured Pricing Cases</i> ,	171 Cal. App. 4th 495, 512 (2009)	18
<i>Vasquez v. Superior Court</i>	4 Cal. 3 rd 800, 820-821(1971)	10
<i>Wershba, supra</i> ,	91 Cal.App.4th at 254 (2001)	17

Statutes

Civil Code § 1781(f)	10
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Other Authorities

4 Newberg on Class Actions 4th § 11.41 (2008).....	11, 14
<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237, 258 (1985).....	18

Rules

Federal Rules of Civil Procedure (“FRCP”) Rule 23(e).....	10
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Federal Cases

<i>Ackerman v. Kassar</i> ,	1993 WL 326453 (9th Cir. 1993).....	11
<i>Boyd v. Bechtel Corp.</i> ,	485 F. Supp. 610, 616-17 (N.D. Cal. 1979).....	12, 14
<i>Byrd v. Civil Serv. Comm’n</i> ,	459 U.S. 1217 (1983).....	10

1	<i>Chemical Bank v. City of Seattle</i> , 955 F.2d 1268, 1276 (9 th Cir. 1992)	11
2	<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993)	11
3	<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268, 1291 (9 th Cir. 1992)	10
4	<i>Craft v. County of San Bernardino</i> , 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008).....	19
5	<i>Dyer v. Wells Fargo Bank, N.A.</i> , 303 F.R.D. 326, 334 (N.D. Cal. 2014).....	19
6	<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974)	9
7	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980)	12, 14
8	<i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975).....	12, 13
9	<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *5 (N.D. Cal. Feb. 6,	
10	2013)	19
11	<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995).....	12
12	<i>In re Pacific Enterprises Securities Litig.</i> , 47 F.3d 373, 379 (9 th Cir. 1995).....	17
13	<i>In re Rite Aid Corp. Securities Litigation</i> , 396 F.3d 294, 300 (3d Cir. 2005)	17
14	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F.Supp. 1379 (D. Ariz. 1989).....	11, 12
15	<i>Kyriazi v. Western Elec. Co.</i> , 527 F. Supp. 18 (D. N. J. 1981).....	15
16	<i>League of Martin v. City of Milwaukee</i> , 588 F. Supp. 1004 (E. D. Wis. 1984).....	15
17	<i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234, 1238 (9 th Cir. 1998)	11, 14
18	<i>Lo Re v. Chase Manhattan Corp.</i> , 1979 U. S. Dist. LEXIS 12210, 19 FEP Cas. (BNA) 1366 (SDNY	
19	1979)	16
20	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314 (1950)	9
21	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54, 62 (1980).....	19
22	<i>Officers for Justice v. Civil Serv. Comm'n</i> , 668 F.2d 615, 625 (9 th Cir. 1982)	10
23	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	9
24	<i>Rawlings v. Prudential-Bache Properties, Inc.</i> , 9 F.3d 513, 516 (6 th Cir. 1993)	17
25	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9 th Cir. 1976)	11
26	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d at 950	14
27	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043, 1051 (9 th Cir. 2002).....	19
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		19

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff and Class Representative Sean McBurney (“Plaintiff” or “Class Representative”)
4 submits this Memorandum in support of the Motion for Final Approval of the Second Amended Joint
5 Stipulation of Class Action Settlement and Release (“Settlement Agreement”, “Settlement”, or
6 “Agreement”).

7 The settlement entered into by and between Plaintiff and Defendant Eurofins Environment
8 Testing Northern California, LLC (formerly known as Eurofins Air Toxics, LLC)’s (“Defendant”)
9 (Plaintiff and Defendant are collectively referred to as “Parties”) provides for a settlement fund of Two
10 Hundred Sixty Thousand Dollars (\$260,000.00) (“Gross Settlement Amount”) to be created for the
11 benefit of the Class. From the Class Settlement Amount, attorney’s fees, litigation costs, enhancement
12 awards to Plaintiff, Private Attorneys General Act (“PAGA”) penalties, and the costs of settlement
13 administration are to be paid.

14 The history of this litigation was previously detailed in Plaintiff’s preliminary approval motion,
15 and thus is incorporated herein.

16 Per the Court’s January 29, 2024 Order granting Plaintiff’s Motion for Preliminary Approval
17 (“Preliminary Approval Order”), the Settlement Administrator, Phoenix Settlement Administrator
18 (“Phoenix” and/or “Settlement Administrator”), distributed the Class Notice to all 265 Class Members.
19 (*See* Declaration of Lluvia Islas (“Admin Decl.”) at ¶5.) As of the date of this declaration, three (3)
20 Notices remain undeliverable, because an updated address could not be obtained via skip trace. (*Id.* at
21 ¶7). There have been *zero* (0) objections filed to the Settlement and *zero* (0) requests for exclusion from
22 the Settlement. (*Id.* at ¶¶8-9). Thus, there is a 100% participation rate with not a single objection. This
23 favorable response by the Class supports the Court’s Preliminary Approval Order finding that the
24 Settlement was fair, adequate and reasonable, and further supports the granting of this instant Motion.

25 In sum, as a result of the notice process, and in light of the complete lack of any objections and
26 request for exclusions, the Court may confirm its preliminary approval as this process supports the
27 Court’s initial finding that the Settlement is fair, adequate and reasonable.
28

1 In addition to the results of the notice process, for the same reasons as set forth earlier in
2 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following represents the key
3 financial terms of the Settlement:

- 4 ▪ Gross Settlement Amount of \$260,000.00 for a class size of 265 and Class Members will
5 be entitled to recover, on average, \$453.76, with the highest award being approximately
6 \$823.19 each after deductions for fees, costs, representative award and PAGA payment
7 (Admin Decl. ¶ 13);
- 8 ▪ Class Counsel's attorneys' fees of \$91,000.00 and reimbursement of litigation costs of
9 \$15,752.67;
- 10 ▪ Class Representative Enhancement of \$10,000.00;
- 11 ▪ Settlement Administration costs of \$8,000.00;
- 12 ▪ PAGA payment \$15,000.00 (75% to be paid to the LWDA and 25% to the aggrieved
13 employees), pursuant to the terms of the Agreement; and

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

16 **II. THE SETTLEMENT**

17 **A. Class Members Were Provided Proper Notice.**

18 The notice procedures required by the Preliminary Approval Order have been followed and
19 satisfy all due process rights of Class Members.

20 The Preliminary Approval Order contemplated that the Notice of Class Action Settlement
21 ("Notice"), as approved in the Preliminary Approval Order, be sent to all Class Members by first class
22 mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further,
23 that Phoenix would serve as the Settlement Administrator.

24 As clearly stated in the Declaration of the Settlement Administrator, notice was provided to
25 Class Members as required by the Preliminary Approval Order. The Settlement Administrator received
26 a Class Member mailing list from Defendant that included 265 Class Members, and, on February 7,
27 2024, each of the persons identified on the mailing list was sent the Notice via first class mail. (Admin
28 Decl. at ¶¶3-5.) Eight (8) Notices were returned to PSA. (*Id.* ¶6). Phoenix attempted to locate a current

1 mailing address using idiCORE, one of the most comprehensive address databases available for skip
2 tracing and five (5) updated addresses were obtained and the Notice was promptly re-mailed to those
3 Class Members via first class mail. (*Id.*) Three (3) Notices remain undeliverable, because an updated
4 address could not be obtained via skip trace. (*Id.* ¶7.)

5 The provision of the notice to Class Members and administration of the settlement as described
6 above meets the requirements for the “best notice practicable” in this case as necessary to protect the
7 due process rights of Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12
8 (1985) (provision of “best notice practicable” with description of the litigation and explanation of opt-
9 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual
10 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
11 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is
12 “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the
13 action and afford them an opportunity to present their objections”).

14 Here, the Class Members were provided with a mailing regarding the settlement that explained
15 the settlement, right and process to opt-out or object, and allowed Class Members to seek information,
16 ask questions, and seek additional forms. As such, proper notice has been given to the Class Members.

17 The Court, therefore, may proceed to determine the fairness and adequacy of the Settlement, and
18 order its approval, secure in the knowledge that all absent Class Members have been given the
19 opportunity to participate fully in the exclusion, objection, and the approval process.

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

22 **A. The Terms Of The Settlement, The Negotiation Of The Settlement And The**
23 **Reception Of The Settlement By Class Members All Strongly Support The**
24 **Conclusion That The Settlement Is Fair, Adequate And Reasonable**

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

1 relevant data and extensive legal research which they had carefully analyzed. (Declaration of Edward
2 Choi (“Choi Decl.”) at ¶¶ 6-10). In addition, the resolution of this case was reached only after a full day
3 of mediation with well-respected mediator, Steve Serratore. (*Id.* at ¶ 7).

4 The results after mailing of the Class Notice support confirmation of the Court’s preliminary
5 approval of the settlement with final approval of the settlement, as evidenced by the fact that ***there is not***
6 ***a single Class member who has objected to the current settlement, nor requested exclusion.*** (Admin
7 Decl. at ¶¶ 8-9). As such, there is a 100% participation rate in the settlement.

8 The Court may appropriately infer that the class action settlement is fair, adequate and
9 reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v. City of*
10 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) The Court should further construe the lack of any
11 objection to this current settlement, as well as there were no opt-outs, as an indication that Class
12 Members themselves view the settlement as fair, adequate and reasonable.

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

15 **1. Standard of Review**

16 On a motion for final approval of a class action settlement under Civil Code § 1781(f) and
17 Federal Rules of Civil Procedure (“FRCP”) Rule 23(e), a court’s inquiry is whether the settlement is
18 “fair, adequate and reasonable.”¹ *Officers for Justice v. Civil Serv. Comm’n*, 668 F.2d 615, 625 (9th Cir.
19 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A settlement is fair,
20 adequate and reasonable, and therefore merits final approval, when “the interests of the class are better
21 served by the settlement than by further litigation.” *See Manual for Complex Litigation Fourth* (Fed.
22 Judicial Center 2004) (“Manual”), § 21.6 at 309.

23 The law favors settlement, particularly in class actions and other complex cases, where
24 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4
25
26

27 ¹ Both Civil Code § 1781(f) and FRCP Rule 23 have been expressly authorized by the California
28 Supreme Court for use in all California class action litigation. *See Vasquez v. Superior Court* (1971) 4
Cal. 3rd 800, 820-821.

1 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d 1268, 1276
2 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

13 A court’s approval of a class action settlement will only be reversed for a clear abuse of
14 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also Officers for*
15 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a
16 clear abuse of discretion”); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453
17 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

18 As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp* cautioned: “[i]t cannot
19 be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing
20 that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law
21 which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed
22 settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’
23 [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the
24 admittedly unsettled legal issue.’” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
25 Cal. App. 4th 1135, 1146.

26 **2. The Settlement Is Presumed To Be Fair**

27 The Court should begin its analysis with the presumption that the settlement is fair and should be
28 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 v. Ford Motor Co (1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146; *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 was negotiated at arms' length, and with the assistance an experienced mediator. (Choi Decl. at ¶ 7). Class Counsel engaged in sufficient discovery and in significant investigation before settling. (*Id.* at ¶¶ 6, 8). 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. (Choi Decl. at ¶ 12; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 6-8; Declaration of Dennis Hyun ("Hyun Decl.") at ¶¶ 3-6).

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 could have been responsible for Defendant's costs. As such, should individual, current or former employees of Defendant want to 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

1 a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a
2 fair and reasonable settlement has been reached, neither Plaintiff, nor any of the class members will be
3 required to pay for Defendant's litigation costs.

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

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

14 Class Counsel has also assessed the same risks in connection with the current settlement.
15 Because the settlement provides immediate and substantial relief, without the attendant risks and delay
16 of continued litigation – not to mention the threat of litigation fees and costs – Class Counsel believe
17 that the settlement warrants the Court's final approval.

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

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

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

the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at 950 (footnote omitted); *see also* 4 Newberg at § 11.41.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the settlement as fair, reasonable and adequate, and in the best interest of the Class Members as a whole. (Choi Decl. at ¶ 10). Similarly, counsel for Defendant is also in favor of this settlement.

The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

6. Discovery, Mediation, and the Settlement Discussions Undertaken In This Action Favor Final Approval

Prior to negotiating the settlement, Class Counsel engaged in significant investigation on a number of topics and categories. Plaintiff and Defendant engaged in written discovery and an extensive meet and confer process that resulted in Defendant producing all of the data necessary to allow Plaintiff to ascertain and determine the potential amount of damages that Defendant possibly could be liable for if Plaintiff prevailed at trial. (Choi Decl. at ¶¶ 6, 8). Further, the Parties participated in a private mediation before Steve Serratore, a highly experienced and highly regarded mediator with extensive mediation experience in employment matters, in particular wage and hour class actions. (*Id.* at ¶ 7).

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

IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Plaintiff has requested, and Defendant does not oppose, an enhancement of Ten Thousand Dollars (\$10,000.00), pursuant to the terms of the Settlement Agreement. Plaintiff requests that this Court approve such service payment in light of the efforts Plaintiff put into this case, the absence of any objection to his service payment, and the excellent result achieved.

1 As shown in the supporting declarations, the Class Representative spent significant time with
2 Class Counsel on a number of occasions to discuss the case, including providing substantive information
3 regarding Defendant’s practices, and providing documents related to his own claims and the claims of
4 the Class. As part of their duties as Class Representative, Plaintiff provided invaluable information,
5 evidence, and documents that resulted in this settlement. (Declaration of Sean McBurney (“McBurney
6 Decl.”) ¶¶ 5-6). Plaintiff also provided a general release, including a waiver of Civil Code § 1542,
7 which was not required of class members. (*Id.* ¶ 7).

8 In addition to the invaluable services the Class Representative provided, he also took a
9 significant risk, both professionally and monetarily, in acting as the Class Representative. Because the
10 claims alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have
11 possibly faced paying the costs of Defendant had Plaintiff not prevailed in this action. (*Id.* ¶ 8).
12 Moreover, given that future employers are much less likely to hire individuals who have filed suit
13 against their prior employer, particularly cases of this nature, Plaintiff could face negative employment
14 prospects in the future. (*Id.*) The Class Representative assumed such risks and the whole class
15 benefited from this. Class Members did not have to file individual lawsuits and bear the risks of
16 payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not
17 getting future employment had they filed a lawsuit which is a public record. These are significant
18 benefits, even apart from the time the Class Representatives had spent working on this case, that weigh
19 in favor of granting the requested enhancement.

20 Courts have routinely granted approval of settlements containing such enhancements. In *League*
21 *of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that the proposal
22 settlement properly granted the named plaintiffs individual relief. It is “not uncommon for Class
23 Members...to receive special relief in settlement... [The Plaintiff]...had been instrument in prosecuting
24 this lawsuit since the date it was filed.” *Id.* at 1024. In *Kyriazi v. Western Elec. Co.*, 527 F. Supp. 18
25 (D. N. J. 1981), a named plaintiff in a Title VII class action was awarded individual relief of back-pay
26 and interest, reinstatement, punitive damages and counsel fees. Similarly, in *Women’s Committee for*
27 *Equal Employment Opportunity v. NBC*, 76 F.R.D. 173 (SDNY 1977), the court approved as fair a
28 settlement that included awards to 16 named plaintiffs of virtually all the damages they sought.

1 In *Lo Re v. Chase Manhattan Corp.*, 1979 U. S. Dist. LEXIS 12210, 19 FEP Cas. (BNA) 1366
2 (SDNY 1979), the court approved a class representative payment of \$229,000 out of a \$1,579,000
3 settlement fund to the named plaintiff for his individual claims. One of the factors considered by the
4 court in determining that such payments were fair was the fact that none of the absent Class Members
5 objected to the enhancements. The court held that this fact showed that the Class Members were not
6 offended by these enhancements. *Id.* at 17. In the present case, there are no objections filed by any
7 individual to the requested amounts. As such, one can infer that none of the Class Members have any
8 disagreement with such individual enhancement. Furthermore, and as explained above, the Class
9 Representative took substantial risk in bringing the current benefits to the class.

10 Here, this litigation has resulted in a significantly valuable benefit to the class, and the Class
11 Representative took on substantial risk in helping to get this financial benefit to the class. As such, the
12 enhancement should be awarded to the named Plaintiff for his commitment, dedication, and risks taken
13 for this litigation. Accordingly, Plaintiff respectfully requests that the Court find the enhancement as
14 fair and reasonable.

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

16 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the Settlement
17 Agreement and this Motion. The proposed settlement provides substantial benefits to the Class and was
18 reached after adequate investigation and litigation by Class Counsel. Class Counsel and Plaintiff
19 achieved a \$260,000.00 Class Settlement Amount for the benefit of the Class to compensate the Class
20 for the claims alleged. There have been no objections filed against the Settlement or to Class Counsel's
21 request for attorneys' fees in the amount of \$91,000.00. As more fully detailed below, Class Counsel's
22 request for attorney's fees and reimbursement of costs, is fair, reasonable, and adequate. Accordingly,
23 final approval should be granted.

24 **A. An Award of Attorneys' Fees and Costs is Requested When A Common Fund Has** 25 **Been Created for the Benefit of the Class**

26 Class Counsel's application for an award of attorneys' fees in the amount of \$91,000.00 of the
27 \$260,000.00 settlement fund created on behalf of the Class is reasonable and fair. The requested fee
28 represents fair compensation for undertaking complex, risky, expensive, and time-consuming litigation

1 on a contingent basis.

2 Class Counsel seeks a fee award calculated as 35% of the total value of the Settlement for the
3 successful prosecution and resolution of this action.

4 California state and federal courts routinely award fee awards of one-third of the settlement fund
5 in class actions. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also Wershba, supra*,
6 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific Enterprises*
7 *Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award). Indeed, the California
8 Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert*
9 *Half Int’l, Inc.*, (2016) 1 Cal.5th 480, 506 (“the percentage of fund method survives in California class
10 action cases...”). Specifically, the *Laffitte* Court held:

11 “We join the overwhelming majority of federal and state courts in holding that when class
12 action litigation establishes a monetary fund for the benefit of the class members, and the
13 trial court in its equitable powers awards class counsel a fee out of that fund, the court may
14 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
15 created. The recognized advantages of the percentage method—including relative ease of
calculation, alignment of incentives between counsel and the class, a better approximation
of market conditions in a contingency case, and the encouragement it provides counsel to
seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the
percentage method is a valuable tool that should not be denied our trial courts.”

16 *Id.* at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513,
17 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately reflects the results
18 achieved than the lodestar method and “establishes reasonable expectations on the part of Plaintiffs’
19 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
20 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
21 percentage-of-recovery method is generally favored in common fund cases because it allows courts to
22 award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.”).

23 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required; in many
24 cases, performing a cross-check “undermines” one of the primary reasons for using the percentage
25 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging
26 protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar cross-
27 check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258
28

(1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (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.”).

Further, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the class notice specifically notified class members that Plaintiff’s Counsel would be seeking thirty-five percent (35%) of the settlement fund as attorneys’ fees. To date, a single class member has not objected to the settlement. This strong favorable response also supports the requested fees.

In addition, it is recognized that one of the primary factors justifying an enhanced attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974). No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

The lodestar cross check also supports the award of the requested attorney’s fees in this matter. Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also 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*, 162 Cal. App. 4th at 60 (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 881-82.² Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the

² The intermediate court opinion was affirmed in full by the California Supreme Court in its decision guiding lower courts on assessing fees.

percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in over 30 cases).³

With respect to Plaintiff’s Counsel’s lodestar, 235.9 hours have been expended by Class Counsel litigating this case. Choi Decl. ¶ 14; Lee Decl. ¶¶ 3-4; Hyun Decl. ¶¶ 8-10, Exh. A. Moreover, Plaintiff’s Counsel expects to incur approximately 20.0 hours of anticipated time spent to attend the final approval hearing and secure final approval, as well as after approval to respond to correspondence and phone calls from the administrator, defense counsel, and Class Members. Choi Decl. ¶ 14; Hyun Decl. ¶ 9.

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). The fee award should also include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiffs’ Counsel seeks compensation involve only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

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

³ Federal district courts applying California law have likewise routinely approved cross-check multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations). Other courts have found even higher multipliers to be reasonable by comparison to other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008) (approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

1 and experience, the nature of the work performed, the relevant area of expertise and the attorney's
2 customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

3 Here, Class Counsel's requested hourly rate is \$850 per hour. Choi Decl. ¶ 13; Lee Decl. ¶ 4;
4 Hyun Decl. ¶ 10. Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the
5 supporting declarations, Plaintiff's Counsel has significant experience in the area of employment and
6 wage and hour class and representative actions. Plaintiff's Counsel's practice focuses on representing
7 employees in employment matters, particularly wage and hour cases on a contingency basis. Choi Decl.
8 ¶12; Lee Decl. ¶¶ 6-8; Hyun Decl. ¶¶ 3-6. As such, based on the hours and applicable rate, the lodestar
9 for Class Counsel through the finalization of this settlement will be approximately \$217,515.00, based
10 on 255.9 total hours. Choi Decl. ¶ 14, Exh. A; Lee Decl. ¶ 4, Exh. A; Hyun Decl. ¶¶ 8-10, Exh. A.

11 Based upon Plaintiff's counsel's lodestar of \$217,515.00, the requested attorneys' fees result in a
12 **negative** multiplier. Plaintiff's counsel respectfully submit that said request is reasonable and fair, based
13 on the factors described above. Accordingly, the cross-check supports the fee requested.

14 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 15 **COSTS**

16 The request for reimbursement of costs, in the amount of \$15,752.67 is fair and reasonable.
17 Pursuant to the terms of the Settlement Agreement, Plaintiff are allowed to seek reimbursement of
18 litigation costs up to a maximum of \$30,000.00. To date, Class Counsel has expended a total of
19 \$15,752.67 in litigation related costs. (Choi Decl. at ¶ 15; Ex. B; Hyun Decl. ¶ 11; Lee Decl. at ¶ 5; Ex.
20 A). As such, this request should be approved.

21 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE** 22 **APPROVED**

23 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
24 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As
25 shown on the Admin Decl., the class administration fees for the administration of the settlement in this
26 matter amounts to Eight Thousand Dollars (\$8,000.00). (Admin Decl. at ¶ 15, Exh. B). For such
27 reasons, it is requested that the Settlement Administrator's fees be approved.

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1 **VIII. PLAINTIFF HAVE PROVIDED NOTICE TO THE LWDA**

2 Concurrently with the filing of this Motion, Plaintiff uploaded this motion and proposed order to
3 the LWDA's website. (Choi Decl. ¶16; Ex. C).

4 **IX. CONCLUSION**

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

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

- 10 1. Granting final approval to the proposed Settlement Agreement;
11 2. Approving distribution of the settlement funds pursuant to the terms of the Settlement
12 Agreement;
13 3. Approving Plaintiff's request for award of the class representative enhancement with
14 payment pursuant to the terms of the Settlement Agreement;
15 4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs with
16 payment pursuant to the terms of the Settlement Agreement;
17 5. Approving Plaintiff's request for payment of the settlement administration costs with
18 payment pursuant to the terms of the Settlement Agreement; and
19 6. Entering final judgment as to all members of the Settlement Class in this action
20

21 DATED: April 5, 2024

DIVERSITY LAW GROUP, P.C.

22 By:

23 
24 _____
25 Larry W. Lee
26 Attorneys for Plaintiff
27
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