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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HERMIE EVANGELISTA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

LINDE INC.; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: 22STCV26341

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

Date: September 3, 2024

Time: 10:00 a.m.

Dept.: 7

Complaint Filed: August 15, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on a date September 3, 2024, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Lawrence P. Riff, judge presiding, in Department 7 of the above referenced Court located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Hermie Evangelista (“Plaintiff”) will seek an Order:

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

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

(3) Approving Plaintiff’s request for an award of attorneys’ fees in the amount of one-third of the Gross Settlement Amount (\$38,333.33) and reimbursement of actual litigation costs in the amount of \$11,302.56, pursuant to the terms of the Settlement Agreement;

(4) Approving Plaintiff’s request for payment of the Settlement Administration Costs to Phoenix Settlement Administrators in the amount of \$8,250.00 pursuant to the terms of the Settlement Agreement;

(5) Approving Plaintiff’s request for payment to the California Labor and Workforce Development Agency for \$7,500.00 pursuant to the PAGA and the terms of the Settlement Agreement; and

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

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendant Linde Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, and Phoenix Settlement

Administrators (Mayra J. Gonzalez), and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: August 9, 2024

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Kristen M. Agnew

Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	8
II. THE PAYMENTS TO THE SETTLEMENT CLASS MEMBERS AND AGGRIEVED EMPLOYEES.....	9
III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT	10
IV. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL	11
A. The Terms, Negotiation, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.....	11
B. Standard of Review.....	13
C. The Settlement is Presumed to Be Fair.....	14
D. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	15
E. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	16
F. The Settlement Effectuates PAGA’s Objectives.	17
G. The Opinion of Experienced Counsel Favors Final Approval	17
V. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED	18
VI. THE REQUESTED ENHANCEMENT PAYMENT SHOULD BE APPROVED....	18
VII. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED.....	19
VIII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS.....	23
IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED ...	24
X. NOTICE TO THE LWDA	24
XI. CONCLUSION	24

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 al. App. 4th 1135, 1146 (2000).	14
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 60 (2008)	22
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	22
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996)	14
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629, 632-33 (1998)	23
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 130, 133 (2008)	11, 12
<i>Laffitte</i> , 231 Cal. App. 4th at pp. 881-82 (2014)	22
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	20, 21
<i>Lealao v. Beneficial California, Inc.</i> , 82 Cal. App. 4th 19, 29-30 (2000)	22
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553, 559 (1986)	22
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal.App.5th 56, 77 (2021)	17
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084, 1095 (2000)	23
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	19
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 639 (1982)	23
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495, 512 (2009)	22
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 254 (2001)	19, 22

Federal Cases

<i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993)	14
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	19
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 616-17 (N.D. Cal. 1979)	15, 18
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	19
<i>Byrd v. Civil Serv. Comm'n</i> , 459 U.S. 1217 (1983)	13
<i>Chun-Hoon v. McKee Foods Corp.</i> , 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010)	13
<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993)	14
<i>Churchill Vill. LLC v. Gen. Elec.</i> , 361 F.3d 566, 577 (9th Cir. 2004)	13

1	<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448, 470 (2d Cir. 1974).....	21
2	<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268, 1276 (9th Cir. 1992)	13, 14
3	<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	19
4	<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974)	11
5	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980)	14, 18
6	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio	
7	1991)	19
8	<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	20
9	<i>Girsh v. Jepson</i> , 521 F.2d 153, 157 (3d Cir. 1975).....	15, 16
10	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
11	27, 2007)	19
12	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) .	19
13	<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995).....	15
14	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294, 306-307 (3d Cir. 2005).....	21
15	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....	14
16	<i>Kang v. Wells Fargo Bank, N.A.</i> , 2021 WL 5826230, at *15 (N.D.Cal., 2021).....	17
17	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998)	14, 18
18	<i>Martin v. AmeriPride Servs.</i> , 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).....	20
19	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314 (1950)	11
20	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54, 62 (1980).....	23
21	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016).....	17
22	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615, 625 (9th Cir. 1982)	13, 14, 16, 18
23	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	11
24	<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261, 1272 (D.C. Cir. 1993)	20
25	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9th Cir. 1976)	13, 17
26	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	19
27	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759, 769 (9th Cir. 1997)	19, 20
28	<i>Young v. Katz</i> , 447 F.2d 431, 433-34 (5th Cir. 1971).....	16

Statutes

Business and Professions Code section 17200 <i>et seq.</i>	8
California Code of Civil Procedure section 382	13
Labor Code section 226	8
Labor Code section 2698 <i>et seq.</i>	8
Labor Code section 2802	8

Other Authorities

Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.41 (4th ed. 2002).....	13, 17
Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> , 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010)	20
<i>Manual for Complex Litigation, Fourth</i> § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”)....	
.....	13, 14
<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> , 108 F.R.D. 237, 258 (1985).....	22

Rules

California Rule of Court 3.769	13
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action. Plaintiff Hermie Evangelista (the “Class Representative” or “Plaintiff”)
4 worked as a non-exempt employee for Defendant Linde Inc. (“Defendant”). As set forth in the
5 operative First Amended Class and Representative Action Complaint, Plaintiff alleges that
6 Defendant: (1) failed to provide accurate itemized wage statements, in violation of Labor Code
7 section 226; (2) failed to reimburse employees for all business expenses, in violation of Labor
8 Code section 2802; (3) engaged in unfair business practices, in violation of Business and
9 Professions Code section 17200 *et seq.*; and (4) violated PAGA, Labor Code section 2698 *et seq.*
10 As a result, Plaintiff contends that Class Members and Aggrieved Employees are entitled to
11 damages, penalties, attorneys’ fees, and costs. Defendant denies each, every, and all of the
12 allegations of the Complaint.

13 Prior to the settlement of this action, Plaintiff and Defendant (the “Parties”) engaged in
14 the exchange of informal discovery and a thorough study of the legal principles applicable to the
15 claims asserted against Defendant. With the assistance of an experienced mediator, Michael J.
16 Loeb, Esq., the Parties were ultimately able to reach the current settlement. The terms of the
17 settlement provide that Defendant shall pay the gross settlement amount of \$115,000.00 (“Gross
18 Settlement Amount”). On average, each Settlement Class Member will receive approximately
19 \$209.52, and each Aggrieved Employee will receive approximately \$7.23. Significantly, the
20 Gross Settlement Amount is non-reversionary, such that no monies will revert back to
21 Defendant.

22
23 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
24 risks and uncertainty of class certification and the merits of this case. Further, notice of the
25 settlement was provided to the class by Phoenix Settlement Administrators in the manner
26 approved by the Court. Not a single objection was received, and only one (1) request for
27 exclusion from the settlement was submitted. Thus, there is a 99.74 % participation rate.
28 Therefore, the Parties respectfully request that the Court grant this Motion for Final Approval of

Class Action Settlement.

II. THE PAYMENTS TO THE SETTLEMENT CLASS MEMBERS AND
AGGRIEVED EMPLOYEES

The Settlement requires Defendant to pay the gross amount of \$115,000.00 (“Gross Settlement Amount”). The entire Gross Settlement Amount is non-reversionary, such that no monies will revert back to Defendant. There are 388 Settlement Class Members. *See* Declaration of Mayra Gonzalez on behalf of Phoenix Settlement Administrators (“Phoenix”) (“Admin Decl.”) ¶ 11.

The Net Settlement Amount is estimated to be \$42,114.11. *See* Admin. Decl. ¶ 12. The Net Settlement Amount is based on the following:

Gross Settlement Amount	\$115,000.00
Less Class Counsel Fees	(\$38,333.33)
Less Class Counsel Costs	(\$11,302.56)
Less Enhancement Payment	(\$5,000.00)
Less PAGA Payment	(\$10,000.00)
<u>Less Settlement Administration Costs</u>	<u>(\$8,250.00)</u>
Payout Fund	\$42,114.11

See id.

Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount will be allocated to each Settlement Class Member on a “point basis” such that each month worked will be worth one “point” and each wage statement with sleeper miles will be worth two “points.” *See* SA at § C-8. A dollar value per “point” will be determined by dividing the Net Settlement Amount by the total “points” accumulated by the Settlement Class. *See id.* Each Settlement Class Member’s allocation will be determined by multiplying their total “points” by the dollar value per “point.” *See id.* There are 388 Settlement Class Members, with a collective total of 8,827 points at issue. *See* Admin Decl. ¶ 11. Each Point is valued at approximately \$4.77. *See id.* Based on estimated settlement calculations at this time, the estimated average payment to each

1 Settlement Class Member will be \$209.52, and the highest payment to a Settlement Class
2 Member is estimated to be \$1,455.17. *See id.*

3 The Settlement allocates \$10,000.00 of the Gross Settlement Amount toward penalties
4 under the Private Attorneys General Act (“PAGA Payment”), of which 75%, or \$7,500.00, shall
5 be paid to the Labor and Workforce Development Agency (“LWDA”), and 25%, or \$2,500.00
6 (“Aggrieved Employee Amount”), shall be paid to Aggrieved Employees who worked during the
7 PAGA Period. *See* SA § C-6. Aggrieved Employees will receive a proportionate share of the Net
8 PAGA Payment based on the number of pay periods worked during the PAGA Period. *See id.* at
9 § C-7. Based on the estimated calculations at this time, the average Individual PAGA Payment to
10 each Aggrieved Employee is estimated to be \$7.23 and the highest payment is estimated to be
11 \$12.41. *See* Admin. Decl. ¶ 14. All Class Members who are Aggrieved Employees will receive
12 an Individual PAGA Payment. *See* SA § C-18.

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

15 The notice procedures required by the Preliminary Approval Order have been followed
16 and satisfy all due process rights of Class Members. The Preliminary Approval Order
17 contemplated that the Notice Packet, as approved in the Preliminary Approval Order, be sent to
18 all Class Members by first class mail, as specified in the Settlement Agreement. The Preliminary
19 Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as
20 the Settlement Administrator.

21 As clearly stated in the Declaration of Declaration of Mayra Gonzalez, notice was
22 provided to Class Members. On May 15, 2024, the Settlement Administrator received the Class
23 List from Defendant’s Counsel, which contained employee names, last known mailing addresses,
24 Social Security numbers, number of points, and number of pay periods worked by during the
25 PAGA Period. *See* Admin. Decl. ¶ 3. The file included 389 individuals. *See id.* On June 6, 2024,
26 the Settlement Administrator mailed the Notice Packet to all 389 individuals on the mailing list
27 via U.S. first class mail. *See id.* at ¶ 5. From the date of mailing, eleven Notice Packets were
28

1 returned to the Settlement Administrator due to an incorrect address. *See id.* at ¶ 6. The
2 Settlement Administrator conducted a National Change of Address (“NCOA”) search to correct
3 and/or update the Class Member addresses and re-mailed the Notice Packets to the updated
4 addresses thereto. *See id.* As of the date of this filing, five Notice Packets remain undeliverable.
5 *See id.* at ¶ 7. Further, the Notice Packet provided Class Members with Class Counsel’s and the
6 Settlement Administrator’s contact information, where they could further seek information
7 regarding the settlement, ask questions, and update their address. *See id.* at ¶ 5, Ex. A.

8 The provision of sending the notice to class members as described above meets the
9 requirements for the “best notice practicable” in this case as necessary to protect the due process
10 rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
11 (provision of “best notice practicable” with description of the litigation and explanation of opt-
12 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974)
13 (individual notice must be sent to class members who can be identified through reasonable
14 means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best
15 practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise
16 interested parties of the pendency of the action and afford them an opportunity to present their
17 objections”). As such, proper notice has been given to the Class Members. Thus, the Court may
18 proceed to determine the fairness and adequacy of the Settlement and enter its Order granting
19 final approval, secure in the knowledge that all absent Class Members have been given the
20 opportunity to participate fully in the claims, exclusion, and the approval process.

21 **IV. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

22 **A. The Terms, Negotiation, and Reception of the Settlement by Class Members** 23 **All Strongly Support the Conclusion that the Settlement is Fair, Adequate,** 24 **and Reasonable** 25

26 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
27 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
28 conducted sufficient discovery, and the settlement is reasonable in light of the strengths of the

1 plaintiff's claims. As discussed in the Motion for Preliminary Approval, Class Counsel have
2 conducted extensive informal discovery and investigation and, in light of the strength and
3 weaknesses of Plaintiff's claims, Class Counsel submits that this settlement is fair pursuant to
4 *Kullar*.

5 Without reiterating the Parties' showing that the Settlement Agreement and the
6 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
7 Preliminary Approval, the Parties highlight the following facts. The Settlement Agreement was
8 the product of negotiation between highly able and experienced attorneys on both sides. *See*
9 Declaration of Kristen M. Agnew ("Agnew Decl.") ¶¶ 2-6; Declaration of Larry W. Lee ("Lee
10 Decl.") ¶¶ 2-6. In addition, the resolution of this case was reached with the assistance of an
11 experienced mediator and only after the production of data relevant to the potential value of the
12 class and PAGA claims. *See* Agnew Decl. ¶¶ 2-6. Defendant produced data regarding the
13 number of putative class members, the number of wage statements reflecting the payment of
14 "sleeper miles" issued to putative class members during the period of August 15, 2021 to March
15 26, 2023, and the number of months worked by putative class members during the period of
16 August 15, 2018 to March 26, 2023. *See id.* at ¶ 4. Defendant also produced a copy of its
17 reimbursement policies. *See id.* Using the data provided by Defendant, Class Counsel performed
18 a comprehensive damages analysis. *See id.* at ¶ 5. Class Counsel calculated a range of potential
19 damages and penalties, and estimated that Defendant's realistic liability exposure is
20 approximately \$902,600 for the class and PAGA claims. *See id.* at ¶ 6. Thus, in the present case,
21 Class Counsel estimates that the Gross Settlement Amount represents 12.74 % of the realistic
22 maximum damages and penalties at issue. *See id.*

23
24 The results after mailing of the Class Notice further support confirmation of the Court's
25 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
26 fact that *there is not a single Class Member who has objected to the current settlement and*
27 *only one Class Member submitted a request to opt-out.* *See* Admin. Decl. ¶¶ 8-10. The Court
28 may appropriately infer that the class action settlement is fair, adequate, and reasonable when,

1 among other reasons, few, or no class members object to it. *See Class Plaintiffs v. City of Seattle*,
2 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th
3 Cir. 2004) (approving settlement with 45 objections and 500 opt-outs from a 90,000-person
4 class, representing 0.05% and 0.56% of the class, respectively); *Chun-Hoon v. McKee Foods*
5 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class members opted out,
6 court found that positive class reaction “strongly supports settlement”). Here, the lack of any
7 objections and single opt-out to this current settlement is an indication that Class Members
8 themselves view the settlement as fair, adequate, and reasonable.

9 **B. Standard of Review**

10 On a motion for final approval of a class action settlement under California Code of Civil
11 Procedure section 382 and California Rule of Court 3.769, a court’s inquiry is whether the
12 settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688
13 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*; *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217
14 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
15 “the interests of the class are better served by the settlement than by further litigation.” *See*
16 *Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”).
17 The law favors settlement, particularly in class actions and other complex cases, where
18 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
19 *See* Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 11.41 (4th ed. 2002);
20 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*
21 *Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

22 Although the Court possesses “broad discretion” in determining that a proposed class
23 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
24 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
25 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
26 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court
27 should give due regard to what is otherwise a “private consensual agreement” between the
28

1 parties. *Id.*; see also *Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
2 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff'd*
3 *sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a
4 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
5 or imposing conditions on it. The judge cannot rewrite the agreement”).

6 A court’s approval of a class action settlement will only be reversed for a clear abuse of
7 discretion. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
8 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision
9 was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993
10 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
11 1998). As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

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

22 85 al. App. 4th 1135, 1146 (2000).

23 **C. The Settlement is Presumed to Be Fair**

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

26 [A] presumption of fairness exists where: (1) the settlement is
27 reached through arm’s-length bargaining; (2) investigation and
28 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.

1 The settlement in the case at bar warrants approval and carries a presumption of fairness.
2 As previously noted in the application for Preliminary Approval, this current settlement was
3 negotiated at arm's-length after a full day of mediation and subsequent negotiations with an
4 experienced wage-and-hour mediator, Michael Loeb. Agnew Decl. ¶ 2. Additionally, Class
5 Counsel engaged in informal discovery before mediation, including reviewing and analyzing the
6 production of class data, and information pertaining to Defendant's payroll policies and
7 practices. *See id.* at ¶¶ 2-6. The exchange of information allowed Class Counsel to conduct a full
8 analysis of exposure. *See id.* at ¶¶ 5, 6.

9 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
10 supporting declarations, Class Counsel possesses significant experience in class actions and
11 employment wage and hour matters. *See* Agnew Decl. ¶¶ 8-13; Lee Decl. ¶ 4-6.

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

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

21 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
22 been potentially responsible for Defendant's costs. As such, if other employees of Defendant
23 brought individual claims on the same causes of action, they would each face the uncertainty of
24 prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely
25 would not be brought by many of these individuals – thus, this lawsuit achieves a true benefit for
26 the Class that they might not otherwise get or seek as individuals. Here, given that a fair and
27 reasonable settlement has been reached, neither Plaintiff nor any Class Members will be required
28

1 to pay for Defendant's litigation costs.

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

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

16
17 **E. The Complexity, Expense, and Likely Duration of Continued Litigation**
18 **Against Defendant Favor Final Approval**

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

24 Continued litigation carried several risks, including the possibility of non-certification on
25 one or more of the theories alleged in the operative complaint. On the other hand, the settlement
26 that was reached provides to all Class Members – regardless of their means – fair relief in a
27 prompt and efficient manner. Were the Court to deny final approval, the Class Members would
28 be left without a remedy as a practical matter and courts across the State would have to address

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

6 **F. The Settlement Effectuates PAGA’s Objectives.**

7 The Court’s focus in evaluating the fairness of a PAGA settlement is not the amount that
8 aggrieved employees will ultimately receive as a result of a settlement. Instead, “a trial court
9 should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate *in*
10 *view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to*
11 *maximize enforcement of state labor laws.*” *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56,
12 77 (2021) (emphasis added); *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at
13 *15 (N.D.Cal., 2021) (evaluating a PAGA settlement under the standard of whether the
14 settlement terms “are fundamentally fair, reasonable, and adequate in view of PAGA’s public
15 policy goals”). Here, the Settlement vindicates the rights of Aggrieved Employees who have
16 experienced alleged violations of the Labor Code. Additionally, the six-figure Gross Settlement
17 Amount acts as a deterrent to Defendant and other California employers. *O’Connor v. Uber*
18 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016) (“If the settlement for the Rule
19 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair
20 compensation to the class members as employees and substantial monetary relief, a settlement
21 not only vindicates the rights of the class members as employees but may have a deterrent effect
22 upon the defendant employer and other employers, an objective of PAGA”).

24 **G. The Opinion of Experienced Counsel Favors Final Approval**

25 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
26 interest of the Class Members as a whole. *See Agnew Decl.* ¶ 2; *Lee Decl.* ¶¶ 2, 3. Similarly,
27 counsel for Defendant is in favor of this settlement. The endorsement of qualified and well-
28 informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight

1 by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*,
2 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242.

3 **V. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
4 **SHOULD BE APPROVED**

5 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
6 settlement funds remain after 180 days of the mailing of the Individual Settlement Payment
7 and/or Individual PAGA Payment checks, the Parties have agreed that all such uncashed
8 settlement funds shall be remitted to the State Controller’s Office — Unclaimed Property Fund,
9 to be held in the name of the Aggrieved Employees and/or Settlement Class Members who did
10 not cash their checks. *See* SA § C-24.

11 **VI. THE REQUESTED ENHANCEMENT PAYMENT SHOULD BE APPROVED**

12 Plaintiff requests an enhancement payment of \$5,000.00. Plaintiff provided invaluable
13 information, evidence, and documents that resulted in this settlement. He had numerous
14 discussions regarding the lawsuit with Class Counsel, searched for and provided substantive
15 documents and information regarding Defendant’s policies and practices at issue in this case, and
16 reviewed pleadings and other documents in this case. *See* Declaration of Hermie Evangelista in
17 Support of Plaintiff’s Motion for Preliminary Approval (“Evangelista Decl.”) ¶ 6.

18 In addition to the invaluable services that they provided, Plaintiff also took significant
19 risks, both professionally and monetarily, in acting as the class representative, seeking benefits
20 on behalf of the Class. *See* Evangelista Decl. ¶ 8. Because the claims alleged by Plaintiff
21 involved the payment of costs to the prevailing party, he could have possibly faced paying the
22 costs of Defendant, had he not prevailed in this action. Despite these risks, however, Plaintiff
23 agreed to pursue this case on behalf of the Class.

24 Also, given that future employers are much less likely to hire individuals who have filed
25 employment-related lawsuits, particularly cases of this nature, Plaintiff also faced significant risk
26 in not being able to find suitable employment and/or face retaliation from prospective employers
27 as a result of filing of this case against Defendant. He took these risks upon himself to the benefit
28

1 of the Class. *See* Evangelista Decl. ¶ 8. Class Members did not have to file individual lawsuits
2 and bear the risks of payment of costs if they did not prevail, nor did they have to face the
3 potential for retaliation and not getting future employment had they filed a lawsuit which is a
4 public record. These are significant benefits that weigh in favor of granting the requested
5 enhancement. As such, the Service Award should be awarded to Plaintiff for his commitment,
6 dedication, and risks taken for this litigation.

7 Courts have routinely granted approval of settlements containing such enhancements. *See*
8 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
9 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
10 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
11 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
12 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
13 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
14 *Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)
15 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142
16 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative in
17 ERISA case).
18

19 **VII. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

20 Class Counsel seeks a fee award calculated at approximately one-third of the Gross
21 Settlement Amount, or \$38,333.33, for the successful prosecution and resolution of this action.
22 California state and federal courts have recognized that an appropriate method for determining
23 award of attorneys' fees is based on a percentage of the total value of benefits to class members
24 by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano*
25 *v. Priest*, 20 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
26 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
27 equitable doctrine is to avoid unjust enrichment to the class and to "spread litigation costs
28 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire

1 burden alone.” *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at 769.

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

14 Here, the fee award representing approximately one-third of the Gross Settlement
15 Amount clearly falls within that range and is consistent with other rulings of other courts and
16 comprehensive surveys of class action settlements and fee awards. *See Martin v. AmeriPride*
17 *Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that “courts may
18 award attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery
19 of a common fund under \$10 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class*
20 *Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16
21 (2010) (independent studies of class action litigation nationwide conclude that fees in the range
22 sought here are consistent with market rates). The results delivered by Class Counsel also
23 support the requested percentage of the fund. Here, the Class Representatives and their counsel
24 secured a \$115,000.00 non-reversionary common fund settlement.

25 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
26 is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
27 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
28

1 “approximation of the market” for fees is well supported. *Id.* at 1269. In this case, the Notice
2 Packet specifically notified Class Members that Class Counsel would be seeking up to
3 \$38,333.33 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
4 strong favorable response also supports the requested fees.

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

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

14 495 F.2d 448, 470 (2d Cir. 1974). For Class Counsel, the fees here were wholly contingent in
15 nature and the case presented far more risk than the usual contingent fee case. Among the risks
16 was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a
17 corporate Defendant.

18 As secondary support for the percentage of the fund method, courts have discretion to
19 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
20 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the
21 trial court’s primary determination of the fee as a percentage of the common fund and thus does
22 not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at
23 505; *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar
24 cross-check does not trump the primary reliance on the percentage of common fund method”).

25 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
26 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
27 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
28 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,

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

10 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
11 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
12 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
13 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
14 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland*
15 *Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The
16 intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a
17 cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at pp. 881-82. The
18 intermediate court opinion was affirmed in full by the California Supreme Court in its new
19 decision guiding lower courts on assessing fees.

20
21 With respect to Class Counsel’s lodestar, to date, at least approximately 58.60 hours have
22 been expended by Class Counsel in this matter. *See* Agnew Decl. ¶ 14, Ex. A. Class Counsel
23 requests an hourly rate of \$800.00 per hour. *See id.* at ¶ 15. The courts are quite liberal in the
24 evidence required to prove an attorney’s hours. Detailed time records are not required. An
25 attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours
26 worked on a particular case is sufficient evidence to support an award of attorney fees, even in
27 the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

28 Reasonable hours include, in addition to time spent during litigation, the time spent

1 before the action is filed, including time spent interviewing the clients, investigating the facts and
2 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
3 62 (1980). Further, the fee award should include fees incurred to establish and defend the
4 attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class
5 Counsel requests that the court find that these hours were reasonable in this litigation. A
6 reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience
7 in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The
8 court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's
9 skill and experience, the nature of the work performed, the relevant area of expertise and the
10 attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629,
11 632-33 (1998).

12 Here, Class Counsel's skill and experience justify the requested rate. As shown in the
13 supporting declarations, Class Counsel have significant experience in the area of employment
14 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
15 employees in employment matters, particularly wage and hour cases. *See* Agnew Decl. ¶¶ 8-13;
16 Lee Decl. ¶¶ 4-6. As such, based on the hours and applicable rate, the total lodestar to be
17 expended by Class Counsel through finalizing this settlement will be approximately \$46,880.00,
18 which requires a negative multiplier (.817) and is more than the requested attorneys' fees. *See*
19 Agnew Decl. ¶ 14, Ex. A.

20 As such, the requested fee award is fair and reasonable, and should be awarded in its
21 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
22 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
23 Class Counsel's request for attorneys' fees in the amount of \$38,333.33 is fair, reasonable, and
24 adequate.
25

26 **VIII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
27 **OF COSTS**

28 The request for reimbursement of costs, in the amount of \$11,302.56 is fair and

1 reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up
2 to \$15,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth
3 in Class Counsel's declaration, the costs were all directly incurred in the prosecution of this
4 action, including but not limited to, filing fees, service of process costs, mediation fees, and other
5 litigation costs. *See* Agnew Decl. ¶ 16, Ex. B. As such, the requested costs should be approved as
6 fair and reasonable.

7 **IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED**

8 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
9 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
10 funds. As shown on the Declaration of Mayra Gonzalez the settlement administration costs
11 expended in this matter amount to a total of \$8,250.00, which is the amount that was agreed upon
12 by the Parties. Admin. Decl. ¶ 15, Ex. B. For such reasons, it is requested that the Settlement
13 Administrator's fees be approved.

14 **X. NOTICE TO THE LWDA**

15 On April 25, 2024, Class Counsel uploaded the Court's Order Granting Preliminary
16 Approval to the LWDA's website. *See* Agnew Decl. ¶ 17, Ex. C. Concurrent with the filing of
17 this Motion, Class Counsel provided notice to the LWDA. *See id.* at ¶ 18, Ex. D.

18 **XI. CONCLUSION**

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

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

- 24
- 25 1. Granting final approval of the Amended Joint Stipulation of Class and
26 Representative Action Settlement in this matter;
 - 27 2. Approving distribution of the settlement funds to Class Members pursuant to the
28 terms of the Settlement Agreement;

1 3. Approving Plaintiff's request for an award of attorneys' fees in the amount of
2 one-third of the Gross Settlement Amount (\$38,333.33) and reimbursement of actual litigation
3 costs in the amount of \$11,302.56, pursuant to the terms of the Settlement Agreement;

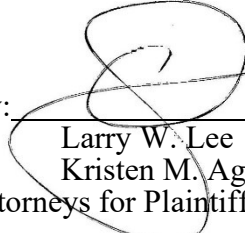
4 4. Approving Plaintiff's request for payment of the Settlement Administration Costs
5 to Phoenix Settlement Administrators in the amount of \$8,250.00 pursuant to the terms of the
6 Settlement Agreement;

7 5. Approving Plaintiff's request for payment to the California Labor and Workforce
8 Development Agency for \$7,500.00 pursuant to the PAGA and the terms of the Settlement
9 Agreement; and

10 6. Entering final Judgment in the form proposed and submitted as to all members of
11 the Class in this action.

12
13 DATED: August 9, 2024

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Kristen M. Agnew

Attorneys for Plaintiff and the Class
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