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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

CURTIS WHITE on behalf of himself and
all similarly aggrieved employees,

Plaintiff,

v.

CORTECH WEST STAFFING, LLC;
THYSSENKRUPP MATERIALS NA, INC.;
THYSSENKRUPP SUPPLY CHAIN
SERVICES NA INC.; TESLA, INC. dba
TESLA MOTORS, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0000029

(Assigned to the Hon. Erin Guy Castillo, Dept.
10B)

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

Date: January 14, 2025

Time: 9:00 A.M.

Dept.: 10B

Action Filed: January 3, 2023

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on January 14, 2025, at 9:00 A.M., or as soon thereafter
3 as the matter may be heard, before the Honorable Erin Guy Castillo, judge presiding, in
4 Department 10B of the above referenced Court, located at 180 E. Weber Avenue, Stockton,
5 California 95202, Plaintiff Curtis White (“Plaintiff”) will seek an Order:

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

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

10 (3) approving Plaintiff’s request for a Service Award of \$5,000.00, pursuant to the
11 terms of the Settlement Agreement;

12 (4) approving Class Counsel’s request for an award of attorneys’ fees in the amount
13 of approximately one-third of the \$750,000.00 Gross Settlement Amount, or \$250,000.00, and
14 reimbursement of actual litigation costs in the amount of \$13,653.11 pursuant to the terms of
15 the Settlement Agreement;

16 (5) approving the \$100,000.00 PAGA Payment, with the sum of \$75,000.00 to be
17 paid to the California Labor and Workforce Development Agency (“LWDA”) and the
18 remaining sum of \$25,000.00 to be paid to PAGA Settlement Employees, pursuant to the
19 terms of the Settlement Agreement;

20 (6) approving Plaintiff’s request for payment of the Settlement Administration Costs
21 to Phoenix Settlement Administrators in the amount of \$15,000.00, pursuant to the terms of
22 the Settlement Agreement; and

23 (7) entering final judgment as to all members of the Participating Class and PAGA
24 Settlement Employees in this action.

25 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
26 provides for court approval of the settlement of a purported class action and allows the Court
27 to grant final certification of a class for settlement purposes. In light of the overwhelmingly
28 positive response, as shown by the lack of objections and minimal opt-outs to the settlement,

1 there is no question that the settlement is fair, reasonable, and adequate and thus should be
2 granted final approval.

3 This Motion will be based on the attached Memorandum of Points and Authorities and
4 the supporting Declarations of B. James Fitzpatrick, Laura L. Franklin, Larry W. Lee,
5 Christine S. Lee, and Kevin Lee of Phoenix Settlement Administrators, and upon the oral
6 arguments of counsel (should there be any) and on the complete records and file herein.

7
8 Dated: December 19, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

9
10 By: 
11 B. James Fitzpatrick
12 Larry W. Lee
13 Chistine S. Lee
14 Attorneys for Plaintiff
15 Curtis White on behalf of himself, the
16 Class, and all similarly aggrieved
17 employees
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1 **I. INTRODUCTION**

2 Plaintiff Curtis White (“Plaintiff”) seeks the Court’s final approval of the class and
3 representative PAGA action settlement with Defendants CorTech West Staffing, LLC,
4 thyssenkrupp Materials NA, Inc., thyssenkrupp Supply Chain Services NA, Inc., and Tesla,
5 Inc. (collectively, “Defendants”) (together with Plaintiff, the “Parties”). The settlement
6 provides for a \$750,000.00 **non-reversionary** fund to be created for the benefit of the Class,
7 from which attorneys’ fees, litigation costs, Service Award to the Plaintiff, Settlement
8 Administration Costs, and PAGA penalties are to be paid. After these deductions, the Net
9 Settlement Amount will be paid to all Class Members who did not opt-out of the settlement.

10 The history of this litigation was previously detailed in Plaintiff’s Motion for
11 Preliminary Approval of Class and Representative Action Settlement. The Court preliminarily
12 approved this Settlement on August 7, 2024, directing distribution of the Class Notice and
13 scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

14 As directed by the Court, the Settlement Administrator distributed the Class Notice to
15 1,309 Class Members. Declaration of Kevin Lee (“Admin Decl.”) ¶ 5. To date, three (3)
16 Requests for Exclusion have been received. *Id.* ¶ 8. Zero (0) Notices of Objection were
17 received. *Id.* ¶ 9. Thus, there is a 99.77% participation rate. *Id.* ¶ 11. This favorable response
18 by the Class supports the Court’s Preliminary Approval Order finding that the settlement was
19 fair, adequate, and reasonable and the granting of the instant Motion.

20 In addition to the results of the notice process, for the same reasons as set forth earlier
21 in Plaintiff’s Motion for Preliminary Approval of Class and Representative Action Settlement,
22 the following represent the basic points previously covered supporting approval of the
23 settlement:

- 24 ▪ The settlement provides a non-reversionary Gross Settlement Amount of
- 25 \$750,000.00 for a class size of 1,309 Class Members;
- 26 ▪ Participating Class Members will receive (*after deductions for fees, costs, etc.*) a
- 27 substantial amount of money (on average, each Participating Class Member will
- 28

1 receive approximately \$280.51)¹;

- 2 ▪ Class Members did not need to submit claim forms to participate in the
- 3 settlement, but are being paid automatically;
- 4 ▪ The allocation reflects that payment of claims will be paid to all Participating
- 5 Class Members in proportion to the number of workweeks each Participating
- 6 Class Member worked in a non-exempt position during the Class Period;
- 7 ▪ Plaintiff conducted significant investigation in this case, including conducting
- 8 informal discovery and review of class data necessary for Plaintiff to fully
- 9 evaluate this case;
- 10 ▪ In conjunction with this Motion, Plaintiff will upload a copy of this motion to
- 11 the LWDA's online portal; and
- 12 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was
- 13 retained for the sum of \$15,000.00.

14 With this additional information, Plaintiff respectfully requests the Court to grant Final
15 Approval consistent with the Preliminary Approval Order.

16 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
17 **SETTLEMENT**

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

23 As clearly stated in the Declaration of Kevin Lee, notice was provided to Class
24 Members, as required by the Preliminary Approval Order. On August 30, 2024, and
25 September 3, 2024, the Settlement Administrator received the Class Data from Defendants'

26
27 ¹ In addition, all PAGA Settlement Employees will receive an Individual PAGA Payment
28 based on the number of workweeks the employee worked in a non-exempt position during the
PAGA Period. There are 1,153 PAGA Settlement Employees. The average Individual PAGA
Payment to these individuals is \$21.68. *See* Admin Decl. ¶ 15.

1 Counsel that included 1,309 Class Members. Admin Decl. ¶ 3. On September 6, 2024, each of
2 the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 5.
3 From the date of mailing, 41 Class Notices were returned due to an incorrect address and 41
4 Class Notices were then re-mailed to an updated address after performing an address trace, as
5 none were returned with a forwarding address. *Id.* ¶ 6. As of the date of this filing, zero Class
6 Notices remain undeliverable. *Id.* ¶ 7. Further, the Class Notice provided Class Members with
7 the Class Counsel’s contact information, where they could further seek information regarding
8 the settlement, leave questions for the Settlement Administrator, and update their address.

9 The provision of sending the notice to class members as described above meets the
10 requirements for the “best notice practicable” in this case as necessary to protect the due
11 process rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12
12 (1985) (provision of “best notice practicable” with description of the litigation and
13 explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S.
14 156, 174-75 (1974) (individual notice must be sent to class members who can be identified
15 through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314
16 (1950) (best practicable notice is that which is “reasonably calculated, under all the
17 circumstances, to apprise interested parties of the pendency of the action and afford them an
18 opportunity to present their objections”). The Class Members were provided with a mailing
19 regarding the settlement that explained the settlement and allowed them to seek information,
20 ask questions, seek additional forms, and object, if so desired. As such, proper notice has been
21 given to the Class Members.

22 Thus, the Court may proceed to determine the fairness and adequacy of the settlement
23 and enter its Order granting final approval, secure in the knowledge that absent Class
24 Members have been given the opportunity to participate fully in the claims, exclusion, and the
25 approval process.

26 //

27 //

28 //

1 **III. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

2 **A. The Strength of the Case and Likelihood of Class Certification Support**
3 **Approval**

4 The Court already addressed the requirements for certifying a class for settlement
5 purposes in its Order granting preliminary approval. Plaintiff briefly addresses the
6 requirements again here.

7 **1. The Class is Ascertainable**

8 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure §
9 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the
10 means available for identifying the class members.” *Reyes v. San Diego County Board of*
11 *Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the Class is defined as: “all current
12 and former non-exempt employees of Defendant thyssenkrupp Supply Chain Services NA,
13 Inc. (“tk Supply”) who worked for tk Supply in California at any time during the Class Period
14 and all non-exempt employees of Defendant CorTech West Staffing, LLC (“CorTech”) assigned to work at Telsa’s Livermore and/or Lathrop, California Production facilities
15 managed by tk Supply at any time during the Class Period.” The Class Period is October 24,
16 2018, through January 28, 2024. There are 1,309 individuals that comprise the Class. Admin
17 Decl. ¶ 3. This is more than the minimum required to certify a class. Within the context of
18 manageability, the issue is whether there exists sufficient means for identifying class members
19 at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members have already been
20 identified by Defendants and notice was provided to all of the above Class Members.

21
22 **2. There is a Community of Interest**

23 The “community of interest” requirement embodies three separate factors: (1)
24 predominant common questions of law or fact; (2) class representatives whose claims are
25 typical of the class; and (3) class representatives who can adequately represent the class.
26 *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981); *Reese v. Wal-Mart Stores, Inc.*,
27 73 Cal. App. 4th 1225, 1234 (1999).

28 //

1 **3. There are Predominant Common Questions of Law and Fact**

2 “The ultimate question in every case of this type [class actions] is whether...the issues
3 which may be jointly tried, when compared with those requiring separate adjudication, are so
4 numerous and substantial that the maintenance of a class action would be advantageous to the
5 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th
6 1096, 1104-05 (2003).

7 Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or
8 procedure, violated the Labor Code by failing to provide proper meal and rest periods or
9 compensation in lieu thereof, failing to pay hourly and overtime wages, failing to provide
10 accurate itemized wage statements, failing to pay all wages upon separation of employment,
11 failing to reimburse work-related expenses, and for engaging in unfair business practices.
12 Defendants deny that liability could be established on a class-wide basis; deny all wrongdoing
13 and maintain, among other things, they have complied with federal and California law, including
14 wage-and-hour laws, in all respects; and contend that liability and damages, to the extent any
15 exists, would need to be conducted on a case-by-case basis.

16 **4. Plaintiff’s Claims are Typical of the Class Claims**

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

26 Plaintiff was employed by Defendants and alleges that he was subjected to the same
27 payroll policies as all other Class Members. Specifically, like other members of the Class,
28 Plaintiff alleges that he was not provided with off-duty meal and rest periods during his shifts

1 and was not provided premium compensation in lieu thereof. Plaintiff alleges that his meal
2 and rest periods were sometimes interrupted or cut short by managers without compensation.
3 Plaintiff also alleges that he was required to perform work and was not paid for his time. The
4 wages owed were not paid upon separation of employment. Further, Plaintiff alleges that he
5 was required to purchase mandatory safety uniforms and gear but was not reimbursed for the
6 costs. As a result of the above, Plaintiff received inaccurate wage statements. Plaintiff alleges
7 he was subjected to the same policies and practices as other Class Members. Thus, Plaintiff's
8 claims are typical to those of Class Members.

9 **5. Plaintiff Adequately Represented the Class**

10 The class representative, through qualified counsel, must be capable of "vigorously
11 and tenaciously" protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal.
12 App. 3d 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor
13 have any such issues been raised or presented. Plaintiff has taken all necessary steps to
14 represent the interests of the Class, including providing information and documents to his
15 counsel and reviewing pleadings in this case. For such reasons, Plaintiff has adequately
16 represented the Class Members and will continue to do so.

17 **B. Defendants' Allegations and Position on Class Certification Support** 18 **Approval**

19 Defendants argued that they maintained and enforced legally compliant policies,
20 including, but not limited to, uniform meal period and rest break policies that complied with
21 California law. Defendants deny that employees are required to perform off-the-clock work or
22 that any employees are owed a reimbursement for business expenses allegedly incurred, as the
23 employees are not required to purchase uniforms or safety gear for work purposes. Further,
24 Defendants argued that Plaintiff's claims are not suitable for class treatment because their
25 written policies prohibit off-the-clock work; their policies and practices complied with
26 California law; and individual questions predominate. Furthermore, Defendant argued that
27 even if Plaintiff could establish an underpayment of wages, Plaintiff cannot prove a willful
28 failure to pay wages at separation of employment. Moreover, Defendants assert that even

1 assuming that a class could have been certified, Plaintiff would be unable to establish a
2 “knowing and intentional” violation of Labor Code § 226. Based thereon, Defendants
3 continue to maintain that it is not liable for the allegations made by the Plaintiff.

4 **C. Risks, Expenses, and Complexity of Further Litigation Support Approval**

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

11 Defendants allege that a class could not have been certified. There is always a risk that
12 the court will not grant certification of the class, wherein the class will not be entitled to any
13 damages. Based on the foregoing, there was a substantial risk that Plaintiff would not have
14 obtained the total amount of damages alleged, and a substantial number of complex issues that
15 would have necessitated significant expenditure of time and expenses. Therefore, the risks,
16 expenses, and complexity of further litigation warrant granting of this motion.

17 **D. The Settlement Terms and Negotiation – as Well as the Class Member**
18 **Response – All Support the Conclusion that the Settlement is Fair,**
19 **Adequate, and Reasonable**

20 Without reiterating the Parties’ showing that the Settlement Agreement and the
21 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion
22 for Preliminary Approval of Class and Representative Action Settlement, the Parties highlight
23 the following facts: the Settlement Agreement was the product of negotiation between highly
24 able and experienced attorneys, on both sides, who possessed the relevant data and extensive
25 legal research and knowledge, which they had carefully analyzed. Declaration of Christine S.
26 Lee (“CL Decl.”) ¶ 2.

27 The results after mailing of the Class Notice support confirmation of the Court’s
28 preliminary approval of the settlement with final approval of the settlement, as evidenced by

1 the fact that to date, only three (3) Request for Exclusion and zero (0) Notices of Objection
2 have been received. Admin Decl. ¶¶ 8-9. The Court may appropriately infer that the class
3 action settlement is fair, adequate, and reasonable, given that not a single Class Member has
4 submitted an objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir.
5 1992).

6 **IV. WELL-ESTABLISHED LEGAL PRINCIPLES SUPPORT FINAL APPROVAL** 7 **OF THE SETTLEMENT**

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

20 Although the court possesses "broad discretion" in determining that a proposed class
21 action settlement is fair, the court's role must be limited to the extent necessary to reach a
22 reasoned judgment that the agreement is not the product of fraud or overreaching by, or
23 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
24 reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625.

25 Accordingly, the court should give due regard to what is otherwise a "private consensual
26 agreement" between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993
27 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
28 1379 (D. Ariz. 1989), *aff'd sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309

1 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the
2 proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite
3 the agreement”).

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

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

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

17 85 Cal. App. 4th 1135, 1146 (2000).

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

19 The court should begin its analysis with the presumption that the settlement is fair and
20 should be approved: “[A] presumption of fairness exists where: (1) the settlement is reached
21 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
22 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and
23 (4) the percentage of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802; *accord, Ellis v.*
24 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*,
25 720 F. Supp. at 1387.

26 The settlement in the case at bar warrants approval and carries a presumption of
27 fairness. As previously noted in the application for Preliminary Approval, this current
28 settlement was negotiated at arm’s length. CL Decl. ¶ 6.

1 Second, Class Counsel engaged in extensive factual investigation before settling,
2 including the exchange of informal discovery and reviewing class data. CL Decl. ¶ 2. Further,
3 Class Counsel is highly experienced in this type of litigation. As shown in the supporting
4 declarations, Class Counsel have significant experience in class actions and employment wage
5 and hour matters. CL Decl. ¶¶ 9-12; Declaration of B. James Fitzpatrick (“Fitzpatrick Decl.”)
6 ¶¶ 13-14; Declaration of Laura L. Franklin (“Franklin Decl.”) ¶¶ 4-5; Declaration of Larry W.
7 Lee (“LWL Decl.”) ¶¶ 5-7.

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

10 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
11 court also should weigh the immediacy and certainty of substantial settlement proceeds
12 against the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d
13 768, 806 (3d Cir. 1995) (“present value of the damages plaintiffs would likely recover if
14 successful, appropriately discounted for the risk of not prevailing, should be compared with
15 the amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d
16 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

17 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff may
18 have been responsible for Defendants’ costs. As such, should individual current or former
19 employees of Defendants want to bring individual claims on the same causes of action, they
20 would each face the uncertainty of prevailing and the possibility of paying costs to
21 Defendants. Accordingly, such claims likely would not be brought by many of these current
22 and former employees—thus, this lawsuit achieves a true benefit for the Class that they might
23 not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has
24 been reached, neither Plaintiff nor any of the Class Members will be required to pay for
25 Defendants’ litigation costs.

26 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding
27 significant legal and factual battles that otherwise may have prevented the Class from
28 obtaining any recovery at all. While Class Counsel believe the Class Members’ claims are

1 meritorious and can be successfully litigated, they are experienced and fully understand the
2 inherent risks and uncertainty involved with such matters as the resolution of class
3 certification, the outcome of a potential trial, and the outcome of any appeals that would
4 inevitably follow should the Class prevail at trial. CL Decl. ¶ 7.

5 Class Counsel have also assessed the same risks in connection with the current
6 settlement. Because the settlement provides immediate and substantial relief, without the
7 attendant risks and delay of continued litigation – not to mention the threat of litigation costs –
8 Class Counsel believe that the settlement warrants the Court’s final approval.

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

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

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

25 **D. The Opinion of Experienced Counsel Favors Final Approval**

26 Class Counsel support the settlement as fair, reasonable, and adequate, and in the best
27 interest of the Class Members as a whole. CL Decl. ¶ 7 Fitzpatrick Decl. ¶ 2; Franklin Decl. ¶
28 2; LWL Decl. ¶ 2. Similarly, counsel for Defendants are also in favor of this settlement. The

1 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
2 adequate is entitled to significant weight by the court in its final approval determination. *See*
3 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*,
4 151 F.3d at 1242.

5 **V. THE PROPOSED PAYMENTS AND PROCEDURES SHOULD BE APPROVED**

6 **A. The Proposed Procedure for Uncashed Checks Should Be Approved**

7 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
8 settlement funds remain after 180 days, the Parties have agreed that the funds (upon the
9 expiration date) would escheat to the designated *cy pres* recipient, Stockton Food Bank. None
10 of the settlement funds will revert to Defendants, and Class Counsel do not have any conflicts
11 of interest with the proposed recipient. CL Decl. ¶ 8; Fitzpatrick Decl. ¶ 17; Franklin Decl. ¶
12 7; LWL Decl. ¶ 8.

13 **B. The Requested Class Representative Service Award Should Be Approved**

14 Plaintiff requests a Service Award in the amount of \$5,000.00. Plaintiff met with Class
15 Counsel, including providing substantive information regarding Defendants' practices.
16 Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted
17 in this settlement.

18 In addition to the invaluable services that he provided, Plaintiff also took a significant
19 risk, both professionally and monetarily, in acting as Class Representative. Because the claims
20 alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have
21 possibly faced paying the costs of Defendants had he not prevailed in this action. Moreover,
22 Plaintiff understood that an individual case would have resolved much faster than a class
23 action and involved much less financial risk than a class action. Despite this, however,
24 Plaintiff agreed to pursue this case on behalf of the Class.

25 Also, given that future employers are much less likely to hire individuals who have
26 filed employment-related lawsuits, particularly cases of this nature, the Class Representative
27 also faces significant risk in not being able to find suitable employment, all as a result of filing
28 of this case against Defendants. Plaintiff took these risks upon himself to the benefit of the

1 Class. Class Members did not have to file individual lawsuits and bear the risks of payment of
2 costs if they did not prevail, nor did they have to face the potential for retaliation and not
3 getting future employment had they filed a lawsuit which is a public record. These are
4 significant benefits that weigh in favor of granting the requested enhancement. Moreover, this
5 litigation has resulted in a significantly valuable benefit to the Class, and Plaintiff took on
6 substantial risks in helping to get this financial benefit to the Class. As such, the enhancement
7 should be awarded to Plaintiff for his commitment, dedication, and risks taken for this
8 litigation.

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

20 **C. The Requested Attorneys' Fees Should Be Approved**

21 Class Counsel seek a fee award calculated at one-third (1/3) of the Gross Settlement
22 Amount for the successful prosecution and resolution of this action. Plaintiff and Class
23 Members are entitled to recover their attorneys' fees and costs for their wage claims. *See*
24 Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified where the legal action has
25 produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal. 3d
26 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.
27 3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (finding that "when a
28 number of persons are entitled in common to a specific fund, and an action brought by a

1 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
2 such plaintiff or plaintiffs may be awarded attorney's fees out of the fund.").

3 California state and federal courts have recognized that an appropriate method for
4 determining award of attorneys' fees is based on a percentage of the total value of benefits to
5 class members by the settlement. *Chavez v. Netflix, Inc.*, (2008) 162 Cal. App. 4th 43, 66, fn.
6 11; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20
7 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);
8 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
9 equitable doctrine is to avoid unjust enrichment to the class and to "spread litigation costs
10 proportionally among all the beneficiaries so that the active beneficiary does not bear the
11 entire burden alone." *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at 769.

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

25 Here, the fee award representing one-third the fund clearly falls within that range and
26 is consistent with other rulings of other courts and comprehensive surveys of class action
27 settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796,
28 23 (S.D. Cal. June 9, 2011) (recognizing that "courts may award attorney's fees in the 30-40%

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

6 The results delivered by Class Counsel also support the requested percentage of the
7 fund. Here, Plaintiff and his counsel secured a \$750,000.00 settlement and only three Class
8 Members chose to opt out and none chose to object.

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

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

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

23 495 F. 2d 448, 470 (2d Cir. 1974). Here, it is clear that a common fund of \$750,000.00 has
24 been created. For Class Counsel, the fees here were wholly contingent in nature and the case
25 presented more risk than the usual contingent fee case. Among the risks was the cost inherent
26 in class action litigation, as well as a long battle with corporate Defendants who retained
27 premier and highly experienced defense firms. For such reasons, Class Counsel’s request for
28 attorneys’ fees in the amount of \$250,000.00 (one-third of the \$750,000.00 Gross Settlement

Amount) is fair, reasonable, and adequate.

D. The Court Should Approve the Request for Reimbursement of Costs

The request for reimbursement of costs, in the amount of \$13,653.11 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$30,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel's declarations, the costs were all directly incurred in the prosecution of this action. Fitzpatrick Decl. ¶ 15, Ex. B; LWL Decl. ¶ 4, Ex. A. The authority for the Court to award this is the Parties' Settlement Agreement and Labor Code §§ 226 and 2699. As such, this request should be approved.

E. The Settlement Administrator's Fees and Costs Should Be Approved

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the Gross Settlement Amount. As shown on the Declaration of Kevin Lee, the settlement administration fees expended in this matter amount to a total of \$15,000.00, which is the amount that was agreed upon by the Parties. Admin Decl. ¶ 17, Ex B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VI. NOTICE TO THE LWDA & FINAL JUDGMENT

On December 19, 2024, Plaintiff uploaded the Order Granting Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement to the LWDA's website. CL Decl. ¶ 14. Concurrent with the filing of this Motion, Plaintiff will provide notice to the LWDA. *Id.*

VII. CONCLUSION

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

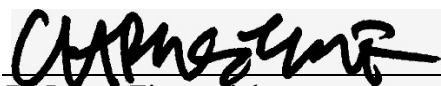
Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement Agreement in this action;

2. Approving the Gross Settlement Amount of \$750,000.00;
3. Approving distribution of the Net Settlement Amount to the Participating Class Members, with payment pursuant to the terms of the Settlement Agreement;
4. Approving the award of the Service Award in the amount \$5,000.00 to Plaintiff, with payment pursuant to the terms of the Settlement Agreement;
5. Approving the award of attorneys' fees in the amount of \$250,000.00 and actual litigation costs in the amount of \$13,653.11 to Class Counsel, with payment pursuant to the terms of the Settlement Agreement;
6. Approving the payment Settlement Administration Costs in the amount of \$15,000.00 to Phoenix Settlement Administrators, with payment pursuant to the terms of the Settlement Agreement;
7. Approving the \$100,000.00 PAGA Payment, with the sum of \$75,000.00 to be paid to the California Labor and Workforce Development Agency and the remaining sum of \$25,000.00 to be paid to PAGA Settlement Employees, pursuant to the terms of the Settlement Agreement; and
8. Entering final judgment as to all members of the Class in this action.

Dated: December 19, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: 
B. James Fitzpatrick
Larry W. Lee
Christine S. Lee
Attorneys for Plaintiff
Curtis White on behalf of himself and all
similarly aggrieved employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
8 Los Angeles, California 90071.

8 On December 19, 2024, I served the following document(s) described as:

- 9 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
10 **OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
13 **MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE**
14 **ACTION SETTLEMENT**
15 **3. DECLARATION OF CHRISTINE S. LEE IN SUPPORT OF PLAINTIFF'S**
16 **MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE**
17 **ACTION SETTLEMENT**
18 **4. DECLARATION OF LAURA L. FRANKLIN IN SUPPORT OF PLAINTIFF'S**
19 **MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE**
20 **ACTION SETTLEMENT**
21 **5. DECLARATION OF LAURA L. FRANKLIN IN SUPPORT OF PLAINTIFF'S**
22 **MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE**
23 **ACTION SETTLEMENT**
24 **6. DECLARATION OF KEVIN LEE REGARDING NOTICE AND SETTLEMENT**
25 **ADMINISTRATION**
26 **7. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS AND**
27 **REPRESENTATIVE ACTION SETTLEMENT; AND JUDGMENT**

21 on the interested parties in this action as follows:

22 Chad D. Greeson
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24 LITTLER MENDELSON, P.C.
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26 1255 Treat Blvd.
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5 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
6 the above-described document(s) to the party(ies) listed above or on the attached mailing list
7 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
8 indicated above or on the attached mailing list. I certify that said electronic transmission was
9 completed and that all pages were received by the party(ies) identified herein or on the attached
10 mailing list.

11 I declare under penalty of perjury under the laws of the State of California that the above
12 is true and correct. Executed on December 19, 2024, at Los Angeles, California.

13 
14 _____
15 Erika Mejia
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