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

CHARLES HARRIS and YASEEN
ABDULRAHMAAN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

AMERICAN FREIGHT MANAGEMENT
COMPANY LLC, a Corporation, AMERICAN
FREIGHT MANAGEMENT CO., a
Corporation, and DOES 1 through 100,
inclusive,

Defendants.

Case No. 34-2022-00329805

[Assigned for All Purposes to the Honorable Lauri
Damrell in Department 22]

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

Date: August 30, 2024
Time: 9:00am
Dept.: 22

Complaint Filed: November 10, 2022

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

PLEASE TAKE NOTICE that on August 30, 2024, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 22, of the above-entitled court located at 720 9th Street, Sacramento, California 95814, Plaintiffs CHARLES HARRIS and YASEEN ABDULRAHMAAN (collectively “Plaintiffs”), will and hereby do seek an Order:

1. Granting final approval to the Class Action and Private Attorneys General Act (Labor Code § 2698, et seq.) Settlement Agreement (“Settlement Agreement” or “Agreement”) in this action;
2. Certifying the following Class for settlement purposes only;
3. Approving distribution of the settlement funds to Class Members pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiffs’ request for a service award of \$10,000.00 to each of the Class Representatives pursuant to the terms of the Settlement Agreement;
5. Approving Class Counsel’s request for an award of attorneys’ fees of 33 1/3% of the Gross Settlement Amount, or \$132,873.23, and reimbursement of litigation costs of \$13,107.61 pursuant to the terms of the Agreement;
6. Approving payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$13,750.00, pursuant to the terms of the Agreement;
7. approving PAGA payment \$40,000.00 (75% to be paid to the LWDA and 25% to the aggrieved employees), pursuant to the terms of the Agreement; and
8. entering final judgment as to the Class Members, the Aggrieved Employees, and the State of California (including the Labor and Workforce Development Agency) in this action.

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

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

3 This motion will be based on the attached Memorandum of Points and Authorities, the
4 supporting Declarations of Edward W. Choi, David J. Lee, Brandon M. Banks, and Lluvia Islas on
5 behalf of Phoenix Settlement Administrators and Plaintiffs Charles Harris and Yaseen Abdulrahmaan,
6 and upon the oral arguments of counsel (should there be any) and on the complete records and file
7 herein.

8
9 DATED: August 6, 2024

LAW OFFICES OF CHOI & ASSOCIATES

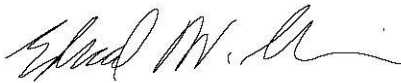
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11 By: 
12 Edward W. Choi
13 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs CHARLES HARRIS and YASEEN ABDULRAHMAAN (“Plaintiffs” or “Class
4 Representatives”) submit this Memorandum in support of the Motion for Final Approval of the Class
5 Action and Private Attorney General Act (Labor Code § 2698, et seq.) Settlement Agreement
6 (“Settlement Agreement”, “Settlement”, or “Agreement”).

7 The terms of the settlement provide that Defendant will pay a Gross Settlement Amount of
8 \$370,000. (Settlement Agreement ¶13). The Gross Settlement Amount was negotiated based on an
9 estimated 24,601 pay periods worked by Class Members during the Class Period. (*Id.* at ¶4.1). Should
10 the number of pay periods increase by more than 10% this will increase the gross settlement
11 proportionally for per each pay period over the 10% increase amount. For example, if the number of pay
12 periods increases 11% then the settlement amount will increase $[11-10] = 1\%$. *Id.* The final pay period
13 count is 28,964. Declaration of Lluvia Islas (“Admin Decl.”) ¶11. Thus, the Gross Settlement Amount
14 is \$398,61969. *Id.* The entire net settlement fund after these deductions will be paid to all Class
15 Members who did not opt-out of the settlement (“Class Members”).

16 The history of this litigation was previously detailed in Plaintiffs’ preliminary approval motion,
17 and thus is incorporated herein.

18 Per the Court’s April 12, 2024 Order granting Plaintiffs’ Motion for Preliminary Approval
19 (“Preliminary Approval Order”), the Settlement Administrator, Phoenix Settlement Administrators
20 (“Phoenix” and/or “Settlement Administrator”), distributed the Class Notice to all 1,105 Class Members.
21 (See Declaration of Lluvia Islas (“Admin Decl.”) at ¶5.) As of the date of this declaration, seventeen
22 (17) Notices remain undeliverable, because an updated address could not be obtained via skip trace. (*Id.*
23 at ¶7). There have been zero (0) objections filed to the Settlement and zero (0) requests for exclusion
24 from the Settlement. (*Id.* at ¶¶8-9). Thus, there is a 100% participation rate with not a single objection.
25 This favorable response by the Class supports the Court’s Preliminary Approval Order finding that the
26 Settlement was fair, adequate and reasonable, and further supports the granting of this instant Motion.
27
28

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

4 In addition to the results of the notice process, for the same reasons as set forth earlier in
5 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, the following represents the key
6 financial terms of the Settlement:

- 7 ▪ Gross Settlement Amount of \$398,619.69 for a class size of 1,105 and Class Members
8 will be entitled to recover, on average, \$161.89, with the highest award being
9 approximately \$759.68 each after deductions for fees, costs, representative award and
10 PAGA payment (Admin Decl. ¶ 13);
- 11 ▪ Class Counsel's attorneys' fees of \$132,873.23 and reimbursement of litigation costs of
12 \$13,107.61;
- 13 ▪ Class Representatives Enhancement of \$10,000.00 each;
- 14 ▪ Settlement Administration costs of \$13,750.00;
- 15 ▪ PAGA payment \$40,000.00 (75% to be paid to the LWDA and 25% to the aggrieved
16 employees), pursuant to the terms of the Agreement; and

17
18 Based on foregoing, the Court should grant Final Approval consistent with the Preliminary
19 Approval Order.

20 **II. THE SETTLEMENT**

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

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

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

28 As clearly stated in the Declaration of the Settlement Administrator, notice was provided to
Class Members as required by the Preliminary Approval Order. The Settlement Administrator received

1 a Class Member mailing list from Defendant that included 1,105 Class Members, and, on May 28 2024,
2 each of the persons identified on the mailing list was sent the Notice via first class mail. (Admin Decl.
3 at ¶¶3-5.) Twenty one (21) Notices were returned to PSA. (*Id.* ¶6). Phoenix attempted to locate a
4 current mailing address using idiCORE, one of the most comprehensive address databases available for
5 skip tracing and four (4) updated addresses were obtained and the Notice was promptly re-mailed to
6 those Class Members via first class mail. (*Id.*) Seventeen (17) Notices remain undeliverable, because
7 an updated address could not be obtained via skip trace. (*Id.* ¶7.)

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

17 Here, the Class Members were provided with a mailing regarding the settlement that explained
18 the settlement, right and process to opt-out or object, and allowed Class Members to seek information,
19 ask questions, and seek additional forms. As such, proper notice has been given to the Class Members.
20

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

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

26 **A. The Terms Of The Settlement, The Negotiation Of The Settlement And The**
27 **Reception Of The Settlement By Class Members All Strongly Support The**
28 **Conclusion That The Settlement Is Fair, Adequate And Reasonable**

Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation

process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The Agreement was the product of negotiation between highly able and experienced attorneys on both sides, possessed of the relevant data and extensive legal research which they had carefully analyzed. (Declaration of Edward Choi (“Choi Decl.”) at ¶¶ 2-3). In addition, the parties engaged in mediation with well-respected mediator, Todd A. Smith, Esq., on July 26, 2023, which ultimately led to this settlement. (*Id.* at ¶3).

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

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

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

1. Standard of Review

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

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

1 The law favors settlement, particularly in class actions and other complex cases, where
2 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4
3 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d 1268, 1276
4 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

15 A court’s approval of a class action settlement will only be reversed for a clear abuse of
16 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also Officers for*
17 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a
18 clear abuse of discretion”); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453
19 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

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

28 ///

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

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

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

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

10 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
11 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
12 arms' length, and with the assistance an experienced mediator. (Choi Decl. at ¶ 3). Class Counsel
13 engaged in sufficient discovery and in significant investigation before settling. (*Id.* at ¶2). Furthermore,
14 Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations,
15 Class Counsel has significant experience in class actions and employment wage and hour matters. (Choi
16 Decl. at ¶ 7; Declaration of David J. Lee ("Lee Decl.") ¶8, Brandon M. Banks ("Banks Decl") ¶6).

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

19 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court also
20 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
21 continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("present
22 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
23 of not prevailing, should be compared with the amount of the proposed settlement") (internal citations
24 omitted); *Girsh v. Jepson*, 521 F.2d 1 53, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,
25 616-17 (N.D. Cal. 1979).

26 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs could have been
27 responsible for Defendant's costs. As such, should individual, current or former employees of
28 Defendant want to bring individual claims on the same causes of action, they would each face the

1 uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims
2 likely would not be brought by many of these current and former employees—thus, this lawsuit achieves
3 a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a
4 fair and reasonable settlement has been reached, neither Plaintiffs, nor any of the class members will be
5 required to pay for Defendant’s litigation costs.

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

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

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

20
21 **4. The Complexity, Expense and Likely Duration of Continued Litigation**
22 **Against Defendant Favor Final Approval**

23 Another factor considered by courts in approving a settlement is the complexity, expense, and
24 likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In
25 applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
26 involved in achieving an equivalent or more favorable result at trial. *See Young v. Katz*, 447 F.2d 431,
27 433-434 (5th Cir. 1971).

28 As noted above, continued litigation could have led to appeals on a number of issues. On the
other hand, the settlement that was reached provides to all Class Members – regardless of their means –

1 fair relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members
2 would be left without a remedy as a practical matter and courts across the State would have to address
3 the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this
4 case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is
5 “particularly true in class action suits.” *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at 950 (footnote
6 omitted); *see also* 4 Newberg at § 11.41.

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

8 Class Counsel supports the settlement as fair, reasonable and adequate, and in the best interest of
9 the Class Members as a whole. (Choi Decl. at ¶ 5). Similarly, counsel for Defendant is also in favor of
10 this settlement.

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

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

16 Prior to negotiating the settlement, Class Counsel engaged in significant investigation on a
17 number of topics and categories. Plaintiffs and Defendant engaged in written discovery and an
18 extensive meet and confer process that resulted in Defendant producing all of the data necessary to allow
19 Plaintiffs to ascertain and determine the potential amount of damages that Defendant possibly could be
20 liable for if Plaintiffs prevailed at trial. (Choi Decl. at ¶2). Further, the Parties participated in a private
21 mediation before Todd Smith, a highly experienced and highly regarded mediator with extensive
22 mediation experience in employment matters, in particular wage and hour class actions. (*Id.* at ¶ 3).

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

25 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
26 **APPROVED**

27 Plaintiffs have requested, and Defendant does not oppose, an enhancement of Twenty Thousand
28 Dollars (\$20,000.00), pursuant to the terms of the Settlement Agreement. Plaintiffs request that this

1 Court approve such service payment in light of the efforts Plaintiffs put into this case, the absence of any
2 objection to his service payment, and the excellent result achieved.

3 As shown in the supporting declarations, the Class Representatives spent significant time with
4 Class Counsel on a number of occasions to discuss the case, including providing substantive information
5 regarding Defendant's practices, and providing documents related to his own claims and the claims of
6 the Class. As part of their duties as Class Representatives, Plaintiffs provided invaluable information,
7 evidence, and documents that resulted in this settlement. (Declaration of Charles Harris and Yaseen
8 Abdulrahmaan ("Harris Decl.") ¶6 and ("Abdulrahmaan Decl.") ¶6. Plaintiffs also provided a general
9 release, including a waiver of Civil Code § 1542, which was not required of class members. (*Id.* ¶ 7).

10 In addition to the invaluable services the Class Representative provided, they also took a
11 significant risk, both professionally and monetarily, in acting as the Class Representative. Because the
12 claims alleged by Plaintiffs involved the payment of costs to the prevailing party, Plaintiffs could have
13 possibly faced paying the costs of Defendant had Plaintiffs not prevailed in this action. Moreover, given
14 that future employers are much less likely to hire individuals who have filed suit against their prior
15 employer, particularly cases of this nature, Plaintiffs could face negative employment prospects in the
16 future. The Class Representative assumed such risks and the whole class benefited from this. Class
17 Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not
18 prevail, nor did they have to face the potential for retaliation and not getting future employment had they
19 filed a lawsuit which is a public record. These are significant benefits, even apart from the time the
20 Class Representatives had spent working on this case, that weigh in favor of granting the requested
21 enhancement.
22

23 Courts have routinely granted approval of settlements containing such enhancements. In *League*
24 *of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that the proposal
25 settlement properly granted the named plaintiffs individual relief. It is "not uncommon for Class
26 Members...to receive special relief in settlement... [The Plaintiff]...had been instrument in prosecuting
27 this lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi v. Western Elec. Co.*, 527 F. Supp. 18
28 (D. N. J. 1981), a named plaintiff in a Title VII class action was awarded individual relief of back-pay
and interest, reinstatement, punitive damages and counsel fees. Similarly, in *Women's Committee for*

1 *Equal Employment Opportunity v. NBC*, 76 F.R.D. 173 (SDNY 1977), the court approved as fair a
2 settlement that included awards to 16 named plaintiffs of virtually all the damages they sought.

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

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

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

18 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the Settlement
19 Agreement and this Motion. The proposed settlement provides substantial benefits to the Class and was
20 reached after adequate investigation and litigation by Class Counsel. Class Counsel and Plaintiffs
21 achieved a \$398,619.69 Gross Settlement Amount for the benefit of the Class to compensate the Class
22 for the claims alleged. There have been no objections filed against the Settlement or to Class Counsel's
23 request for attorneys' fees in the amount of \$132,873.23. As more fully detailed below, Class Counsel's
24 request for attorney's fees and reimbursement of costs, is fair, reasonable, and adequate. Accordingly,
25 final approval should be granted.

26 **A. An Award of Attorneys' Fees and Costs is Requested When A Common Fund Has** 27 **Been Created for the Benefit of the Class**

28 Class Counsel's application for an award of attorneys' fees in the amount of \$132,873.23 of the

1 \$398,619.69 settlement fund created on behalf of the Class is reasonable and fair. The requested fee
2 represents fair compensation for undertaking complex, risky, expensive, and time-consuming litigation
3 on a contingent basis.

4 Class Counsel seeks a fee award calculated as 33 1/3% of the total value of the Settlement for the
5 successful prosecution and resolution of this action.

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

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

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

26 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required; in many
27 cases, performing a cross-check “undermines” one of the primary reasons for using the percentage
28 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging

1 protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar cross-
2 check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258
3 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of the Third Circuit Task Force
4 with approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are
5 now echoed by many authorities, who have been most vocal about the manner in which it exacerbates
6 the problem of ‘cheap settlements’ and burdens already overworked trial judge.”).

7 Further, “the response of the class members to attorneys’ fee notice, though not decisive, is
8 relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
9 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
10 market” for fees is well supported. *Id.* at p. 1269. In this case, the class notice specifically notified class
11 members that Plaintiff’s Counsel would be seeking thirty-five percent (35%) of the settlement fund as
12 attorneys’ fees. To date, a single class member has not objected to the settlement. This strong favorable
13 response also supports the requested fees.

14 In addition, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
15 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*,
16 495 F. 2d 448, 470 (2d Cir. 1974). No one expects a lawyer whose compensation is contingent upon his
17 success to charge, when successful, as little as he would charge a client who had agreed to pay for his
18 services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it
19 just to make a fee depend solely on the reasonable amount of time expended.

20 The lodestar cross check also supports the award of the requested attorney’s fees in this matter.
21 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even higher.”
22 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Sutter Health Uninsured*
23 *Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an
24 antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-
25 check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier
26 without remand). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for
27
28

1 multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.²
2 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the
3 percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See*
4 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an
5 employment class action case and analyzing the multiplier awarded in over 30 cases).³

6 With respect to Plaintiff’s Counsel’s lodestar, 186.10 hours have been expended by Class
7 Counsel litigating this case. Choi Decl. ¶9, Ex. A; Lee Decl. ¶11, Ex. A; Banks Decl. ¶9, Ex. A.
8 Moreover, Plaintiff’s Counsel expects to incur approximately 20 hours of anticipated time spent to
9 attend the final approval hearing and secure final approval, as well as after approval to respond to
10 correspondence and phone calls from the administrator, defense counsel, and Class Members. Choi
11 Decl. ¶ 9; Lee Decl. ¶11; Banks Decl. ¶9.

12 The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time
13 records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the
14 number of hours worked on a particular case is sufficient evidence to support an award of attorney fees,
15 even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

16 Reasonable hours include, in addition to time spent during litigation, the time spent before the
17 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
18 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee
19 award should also include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v.*
20 *Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiffs’ Counsel seeks compensation involve
21 only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.
22

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

25 ³ Federal district courts applying California law have likewise routinely approved cross-check
26 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
27 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
28 Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL
496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

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

6 Here, Class Counsel's requested hourly rate ranges from \$450 per hour to \$900 per hour. Choi
7 Decl. ¶ 8; Lee Decl. ¶10; Banks Decl. ¶8. Plaintiffs' Counsel's skill and experience justify the requested
8 rates. As shown in the supporting declarations, Plaintiffs' Counsel has significant experience in the area
9 of employment and wage and hour class and representative actions. Plaintiffs' Counsel's practice
10 focuses on representing employees in employment matters, particularly wage and hour cases on a
11 contingency basis. Choi Decl. ¶ 7; Lee Decl. ¶¶7-8; Banks Decl. ¶6. As such, based on the hours and
12 applicable rate, the lodestar for Class Counsel through the finalization of this settlement will be
13 approximately \$151,050.00, based on 206.10 total hours. Choi Decl. ¶9, Ex. A; Lee Decl. ¶11, Ex. A;
14 Banks Decl. ¶9, Ex. A.

15 Based upon Plaintiffs' counsel's lodestar of \$151,050.00, the requested attorneys' fees result in a
16 **negative** multiplier. Plaintiff's counsel respectfully submit that said request is reasonable and fair, based
17 on the factors described above. Accordingly, the cross-check supports the fee requested.

18 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 19 **COSTS**

20 The request for reimbursement of costs, in the amount of \$13,107.61 is fair and reasonable.
21 Pursuant to the terms of the Settlement Agreement, Plaintiff are allowed to seek reimbursement of
22 litigation costs up to a maximum of \$20,000.00. To date, Class Counsel has expended a total of
23 \$13,107.61 in litigation related costs, which is less than the allocated amount. (Choi Decl. at ¶ 10; Ex.
24 B). As such, this request should be approved.

25 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE** 26 **APPROVED**

27 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
28 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As

1 shown on the Admin Decl., the class administration fees for the administration of the settlement in this
2 matter amounts to Thirteen Thousand Seven Hundred and Fifty Dollars (\$13,750.00). (Admin Decl. at
3 ¶15, Ex. B). For such reasons, it is requested that the Settlement Administrator's fees be approved.

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

5 Concurrently with the filing of this Motion, Plaintiffs uploaded this motion and proposed order
6 to the LWDA's website. (Choi Decl. ¶11; Ex. C).

7 **IX. CONCLUSION**

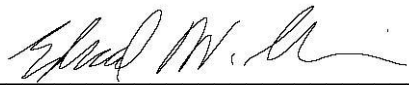
8 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs
9 respectfully submit that the standards for final approval have been met, and the terms of the Settlement
10 Agreement are fair, adequate and reasonable.

11 Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed
12 and submitted:

- 13 1. Granting final approval to the proposed Settlement Agreement;
- 14 2. Approving distribution of the settlement fund pursuant to the terms of the Settlement
- 15 Agreement;
- 16 3. Approving Plaintiff's request for award of the class representative enhancement with
- 17 payment pursuant to the terms of the Settlement Agreement;
- 18 4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs with
- 19 payment pursuant to the terms of the Settlement Agreement;
- 20 5. Approving Plaintiff's request for payment of the settlement administration costs with
- 21 payment pursuant to the terms of the Settlement Agreement;
- 22 6. Setting a Compliance Hearing approximately 10 months after the final approval; and
- 23 7. Entering final judgment as to all members of the Settlement Class in this action.

24
25
26 DATED: August 6, 2024

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

27
28 By: 
Edward W. Choi
Attorneys for Plaintiffs