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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

GILBERT PARAMO and ROSEMARIE
SANTOS, as individuals and on behalf of
all others similarly situated,

Plaintiffs,

vs.

WEEE LOGISTICS INC., a Delaware
corporation; WEEE! INC., a Delaware
corporation; WEEE! LOGISTICS LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0001129

(Assigned to the Honorable Jayne Lee, Dept.
10C)

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

Date: December 6, 2024

Time: 9:00 a.m.

Dept.: 10C

Complaint Filed: February 9, 2023

FAC Filed: August 1, 2023

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 6, 2024, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Jayne Lee, judge presiding, in Department 10C of the above referenced Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiffs Gilbert Paramo and Rosemarie Santos (together, “Plaintiffs”) will and hereby do move this Court for an Order:

1. Granting final approval to the Joint Stipulation of Class Action Settlement and the Stipulation to Amend Definitions of Settlement Class and PAGA Settlement Group (together, the “Settlement Agreement,” “Settlement,” or “Agreement”) in this action;

2. Approving distribution of the settlement funds to settlement class members, pursuant to the terms of the Settlement Agreement;

3. Approving Plaintiffs’ request for Service Awards of \$10,000.00 to each Class Representative, pursuant to the terms of the Settlement Agreement;

4. Approving the revised Gross Settlement Amount of \$2,544,812.50¹ based on the Settlement Agreement’s Escalator Clause;

5. Approving Class Counsel’s request for an award of attorneys’ fees of approximately one-third of the revised Gross Settlement Amount, or \$848,270.84, and reimbursement of actual litigation costs of \$19,544.82, pursuant to the terms of the Settlement Agreement;

6. Approving Plaintiffs’ request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$47,500.00, pursuant to the terms of the Settlement Agreement;

7. Approving Plaintiffs’ request for payment to the California Labor & Workforce Development Agency of \$112,500.00 pursuant to the Private Attorneys General Act and the terms of the Settlement Agreement;

¹ Because the Escalator Clause in the Settlement Agreement was triggered, the Gross Settlement Amount was increased from \$2,375,000.00 by an additional \$169,812.50. (Mitzner Decl. at ¶¶ 4-5.) This affects subsequent calculations under the Settlement.

1 8. Approving distribution of the PAGA Payment to PAGA Members, pursuant to the
2 terms of the Settlement Agreement; and

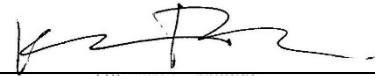
3 9. Entering final judgment as to all settlement class members in this action.

4 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which
5 provides for Court approval of the settlement of a purported class action and allows the Court to
6 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
7 response, as shown by the lack of objections to the settlement and only one opt-out, there is no
8 question that the settlement is fair, reasonable, and adequate and thus should be granted final
9 approval.

10 This motion will be based on the attached Memorandum of Points and Authorities, the
11 supporting Declarations of Larry W. Lee, Max W. Gavron, Mai Tulyathan, Plaintiff Gilbert
12 Paramo, Plaintiff Rosemarie Santos, and Taylor Mitzner of Phoenix Settlement Administrators,
13 upon the oral arguments of counsel (should there be any), and on the complete records and file
14 herein.

15
16 DATED: November 8, 2024

DIVERSITY LAW GROUP, P.C.

17
18 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiffs, the Class, and Aggrieved
Employees

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1 *Manual for Complex Litigation Fourth* (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 30918, 19

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1 **I. INTRODUCTION**

2 Plaintiffs Gilbert Paramo and Rosemarie Santos (collectively, “Plaintiffs”) now seek the
3 Court’s final approval of the Joint Stipulation of Class Action Settlement and the Stipulation to
4 Amend Definitions of Settlement Class and PAGA Settlement Group (together, “Settlement
5 Agreement,” “Settlement,” or “Agreement”) with Defendants Weee! Logistics LLC (formerly
6 known as Weee! Logistics, Inc.), Weee! Logistics Inc., Weee! Inc., and Staffing Agencies as
7 identified in Addendum A to the Settlement Agreement² (collectively, “Defendants”), as well as
8 final approval of the revised Gross Settlement Amount of \$2,544,812.50.

9 As preliminarily approved by the Court, the Settlement Agreement provides for a
10 \$2,375,000.00 **non-reversionary** fund to be created for the benefit of the Settlement Class³,
11 from which attorneys’ fees, litigation costs, service awards to the Plaintiffs, payment to the
12 California Labor and Workforce Development Agency (“LWDA”), and costs of settlement
13 administration are to be paid. Due to an increase in the number of workweeks worked during the
14 Class Period⁴, and pursuant to the Settlement Agreement’s Escalator Clause, the Settlement
15 Administrator calculated a \$169,812.50 increase in the Gross Settlement Amount over the initial
16 \$2,375,000.00 amount. Taking into account the Escalator Clause, this brings the Gross
17

18 ² The Staffing Agencies as identified in Addendum A to the Settlement Agreement include
19 Connect Staffing, Inc., MDRN Staffing Inc., Partners Personnel – Management Services, LLC,
20 and SkillSet Group LLC.

21 ³ Pursuant to the Court’s Second Amended Order Granting Plaintiffs’ Motion for Preliminary
22 Approval, the “Settlement Class” consists of all current and former non-exempt employees who
23 worked for Defendants in California, including all non-exempt employees who worked for
24 Defendants in California under a contract with one or more Staffing Agencies, during the period
25 of July 26, 2017, through September 30, 2022. The Settlement Class also includes a sub-class
entitled the “Waiting Time Penalty Sub-Class,” which consists of all Settlement Class Members
whose employment with Defendants ended at any time during the period of July 26, 2018,
through September 30, 2022.

26 ⁴ Following the receipt of the Class List from Defendants, the Settlement Administrator informed
27 the Parties of the increase in the number of actual workweeks worked during the Settlement
28 Period from the 165,000 workweek cap to 175,718 workweeks. Based on the actual number of
workweeks, the Settlement Administrator calculated a \$169,812.50 increase in the Gross
Settlement Amount. (Declaration of Taylor Mitzner (“Admin Decl.”) at ¶¶ 4-5.)

1 Settlement Amount to \$2,544,812.50. (Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶
2 8.) The entire Net Settlement Amount, after the above deductions, will be paid to all Class
3 Members who did not opt-out of the settlement (“Participating Class Members”). Further, the
4 Gross Settlement Amount includes a \$150,000.00 payment pursuant to the PAGA, of which 75%
5 will go to the LWDA, and 25% of which will be distributed to PAGA Members, and a
6 \$250,000.00 payment to Participating Waiting Time Penalty Sub-Class Members on a pro rata
7 basis.

8 The history of this litigation was previously detailed in Plaintiffs’ Preliminary Approval
9 Motion. This Court preliminarily approved this settlement on April 23, 2024. The Court entered
10 its Second Amended Order Granting Plaintiffs’ Motion for Preliminary Approval on May 21,
11 2024 (the “Preliminary Approval Order”), directing distribution of the Notice of Class Action
12 Settlement (“Class Notice”) and publication of the Publication Notice, and scheduling the
13 hearing for final approval of settlement.

14 As directed by the Court, the Settlement Administrator distributed the Class Notice to
15 5,050 Class Members, after running the Publication Notice in the various publications and
16 allowing Class Members to respond to the Publication Notice, as well as conducting skip tracing
17 for Class Members without mailing addresses and Social Security Numbers. (Admin. Decl. at ¶¶
18 3, 6-10.) To date, only one (1) Request for Exclusion has been received, and zero objections
19 have been filed. (*Id.* at ¶¶ 13-14.) Finally, there were no disputes submitted by Class Members
20 to the Settlement Administrator, and as such, there are no outstanding disputes from Class
21 Members. (*Id.* at ¶ 15.) As such, there is a **99.98%** settlement participation rate. (*Id.* at ¶16.)
22 Thus, an inference can be made that the Settlement Class supports the Court’s Preliminary
23 Approval Order finding that the Settlement Agreement is fair and reasonable.

24 In addition to the results of the notice and publication process, for the same reasons as set
25 forth earlier in Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, the
26 following represent the basic points supporting approval of the settlement:

- 27 ▪ The total settlement sum of \$2,544,812.50 is non-reversionary;
- 28 ▪ The settlement is fair given that Participating Settlement Class Members will

1 receive (*after deductions for attorneys' fees, costs, etc.*) a monetary share of the Net Settlement
2 Amount—on average, approximately \$239.55 to each Participating Settlement Class Member,
3 with the estimated highest individual settlement payment being \$3,391.32 (*See* Admin Decl. at ¶
4 19);

5 ▪ Settlement Class Members did not need to submit claim forms to participate in the
6 settlement;

7 ▪ The allocation reflects that payment of claims will be paid to all Settlement Class
8 Members in proportion to the number of applicable workweeks worked by each Settlement Class
9 Member during the Settlement Period;

10 ▪ The Settlement provides for a payment of \$250,000 to be allocated
11 proportionately among the Participating Waiting Time Penalty Sub-Class Members on a pro rata
12 basis⁵;

13 ▪ The Settlement also provides for a \$150,000.00 payment attributable to the
14 satisfaction of PAGA claims (the “PAGA Payment”), of which 75%, or \$112,500.00, will go to
15 the State of California’s LWDA as a beneficiary of this Settlement pursuant to the PAGA, and
16 25%, or \$37,500.00, will be distributed among PAGA Members⁶ on a pro rata basis;

17 ▪ Plaintiffs’ counsel conducted significant investigation in this case, including the
18 exchange of informal discovery and class data, time and payroll records, and Defendants’
19 relevant wage and hour policies; and

20 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained
21 to administer the settlement for approximately \$47,500.00 (Admin Decl. at ¶ 23).

22 Accordingly, the Court should grant Final Approval consistent with the Preliminary
23

24 ⁵ The amount of individual waiting time penalty payment to each participating Waiting Time
25 Penalty Sub-Class Member will be in addition to any individual settlement payment.

26 ⁶ Pursuant to the Court’s Second Amended Order Granting Plaintiffs’ Motion for Preliminary
27 Approval, the “PAGA Members” consist of all current and former non-exempt employees who
28 worked for Defendants in California, including all non-exempt employees who worked for
Defendants in California under a contract with one or more Staffing Agencies, during the time
period of June 21, 2020, through September 30, 2022.

Approval Order.

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order, have been followed and satisfy all due process rights of Settlement Class Members. The Preliminary Approval Order contemplated that the Class Notice, as approved in the Preliminary Approval Order, be sent to all Settlement Class Members by first class mail, as specified in the Settlement Agreement, and that the Publication Notice be published in the Los Angeles Daily News, The San Francisco Chronicle, The Press-Enterprise, World Journal, and La Opinion. Furthermore, the Preliminary Approval Order contemplated that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Declaration of Taylor Mitzner, notice was provided to Settlement Class Members, as required by the Preliminary Approval Order. On June 18 and 28, 2024, the Settlement Administrator received the Class Lists that included 11,177 individuals identified as Settlement Class Members. (Admin. Decl. at ¶ 3.) However, the Class List did not include mailing addresses or Social Security Numbers for 6,129 Class Members. (*Id.* at ¶ 8.) The Settlement Administrator attempted to skip trace to obtain an address for these individuals without result. (*Id.*) In addition, 2,648 Class Members with an address were missing a Social Security Number in the Class List. (*Id.*) In addition, on July 15, 2024, the Settlement Administrator also issued publications of the Publication Notice in the Los Angeles Daily News, The San Francisco Chronicle, The Press-Enterprise, World Journal, and La Opinion. (Admin. Decl. at ¶ 6.) Class Members had until September 23, 2024 to respond to the Publication Notice. (*Id.*) During the course of the publication period, two Class Members who did not have addresses in the Class List reached out to the Settlement Administrator to provide their addresses. (*Id.* at ¶ 10.) As a result, the Settlement Administrator mailed the Class Notice via first class mail to 5,050 Class Members. (*Id.* at ¶ 10.)

From the date of mailing, 62 Class Notices were returned due to an incorrect address. None were returned with forwarding addresses. (Admin Decl. at ¶ 11.) The Settlement Administrator subsequently conducted skip tracing to identify updated addresses for all of the

1 Class Notices that were returned. (*Id.*) As of the date of this filing, 62 Class Notices remain
2 undeliverable because an updated address could not be located despite skip tracing efforts by the
3 Settlement Administrator. (*Id.* at ¶ 12.)

4 Further, the Class Notice provided Settlement Class Members with Class Counsel's
5 contact information, where they could further seek information regarding the settlement, leave
6 questions for the Settlement Administrator, and update their address. (Admin Decl. Ex. B.) As
7 explained in Plaintiffs' Preliminary Approval papers, the Publication Notice also provided notice
8 of the settlement as an effort to ascertain contact information whose address information is not
9 known/cannot be ascertained by Defendants. The Publication Notice provided information about
10 the settlement, and provided a means for these individuals to verify their eligibility to participate
11 in the settlement and provide addresses. (Admin Decl. Ex. A.)

12 Plaintiffs provided the "best notice practicable" in this case as necessary to protect the
13 due process rights of class members. (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797,
14 811-12 (provision of "best notice practicable" with description of the litigation and explanation
15 of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-
16 75 (individual notice must be sent to class members who can be identified through reasonable
17 means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best
18 practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise
19 interested parties of the pendency of the action and afford them an opportunity to present their
20 objections").)

21 Here, Settlement Class Members were provided with a mailing regarding the settlement
22 that explained the settlement and allowed Settlement Class Members to seek information, ask
23 questions, and object, if so desired. Furthermore, Plaintiffs provided notice of the settlement
24 through various publications for a stipulated period of time to allow for individuals who may be
25 part of the Settlement Class whose addresses could not be ascertained to participate in the
26 settlement. As such, proper notice has been given to the Settlement Class. Thus, the Court may
27 determine the fairness and adequacy of the settlement and enter its Order granting final approval,
28 secure in the knowledge that all absent Settlement Class Members have been given the

1 opportunity to participate fully in the claims, exclusion, and the approval process.

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

4 **A. Strength of Plaintiffs' Case and Likelihood of Certifying the Class**

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

8 **1. The Class is Ascertainable**

9 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section
10 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
11 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*
12 (1987) 196 Cal. App. 3d 1263, 1271.)

13 Here, the Settlement Class is defined as: “All current and former non-exempt employees
14 who worked for Defendants in California, including all non-exempt employees who worked for
15 Defendants in California under a contract with one or more Staffing Agencies, during the period
16 of July 26, 2017, through September 30, 2022.” The Court also conditionally certified the
17 Waiting Time Penalty Sub-Class of “[a]ll Settlement Class Members whose employment with
18 Defendants ended at any time during the period of July 26, 2018, through September 30, 2022.”
(*See* Preliminary Approval Order.)

19 Settlement Class Members and Waiting Time Penalty Sub-Class Members have already
20 been identified by Defendants and notice has been provided to class members by the Settlement
21 Administrator.

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 typical
25 of the class; and (3) class representatives who can adequately represent the class. (*Richmond v.*
26 *Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.
27 App. 4th 1225, 1234.)

28 //

1 **a. 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* (2003) 29 Cal.
6 4th 1096, 1104-05.)

7 In this case, Plaintiffs allege that Defendants, as a matter of their corporate policy,
8 practice, or procedure, violated the Labor Code by their failure to pay all regular, minimum, and
9 overtime wages owed, timely pay wages at separation of employment, provide off-duty meal and
10 rest breaks and pay premium compensation for the missed meal and rest breaks, reimburse
11 business expenses, and provide accurate itemized wage statements and maintain accurate payroll
12 records. As these alleged violations are all based on uniform corporate policies, practices, and
13 procedures of Defendants, the claims can be jointly tried and thus the predominance requirement
14 is satisfied.

15 Defendants deny that liability could be established on a class-wide basis and contend
16 instead that liability and damages would need to be conducted on a case-by-case basis.

17 **b. Plaintiffs’ Claims are Typical of the Class Claims**

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

26 Plaintiffs were employed by Defendants and allege that they were subjected to the same
27 policies, practices, and procedures as all other Settlement Class Members. Specifically, like
28 other members of the Settlement Class, Plaintiffs were not paid all wages owed in connection

1 with off-the-clock work, including undergoing temperature checks that were conducted off-the-
2 clock. (Declaration of Gilbert Paramo (“Paramo Decl.”) at ¶ 3; Declaration of Rosemarie Santos
3 (“Santos Decl.”) ¶ 3.) Plaintiffs were also not compensated for various off-the-clock work tasks.
4 (Paramo Decl. at ¶ 3; Santos Decl. at ¶ 3.) In addition, Plaintiffs were not provided with proper
5 meal and rest breaks, and Plaintiffs were not properly paid meal and rest break premiums for the
6 noncompliant breaks. (Paramo Decl. at ¶ 4; Santos Decl. at ¶ 4.) Moreover, Plaintiffs were
7 required to use their personal cell phones for work purposes, including to download and use the
8 “WEEE” mobile application, but were not reimbursed for the costs of using their personal cell
9 phones. (Paramo Decl. at ¶ 5; Santos Decl. at ¶ 5.) Finally, Plaintiffs did not receive accurate
10 itemized wage statements from Defendants. (Paramo Decl. at ¶ 6; Santos Decl. at ¶ 6.) In sum,
11 Plaintiffs allege that they were subjected to the same policies and practices as other Settlement
12 Class Members. Thus, Plaintiffs’ claims are typical to those of Settlement Class Members.

13 **c. Plaintiffs Adequately Represented the Class**

14 The class representative, through qualified counsel, must be capable of “vigorously and
15 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151
16 Cal.App.3d 834, 846.)

17 Here, Plaintiffs do not have any interests adverse to the Settlement Class, nor have any
18 such issues been raised or presented. Plaintiffs have taken all necessary steps to represent the
19 interests of the Settlement Class, including discussing the case with counsel; searching for,
20 gathering, and providing information and documents to his counsel; and reviewing the various
21 documents and pleadings in this case, including the PAGA letter, complaint, Settlement
22 Agreement, and their declarations. (Paramo Decl. at ¶ 9; Santos Decl. at ¶ 9.) For such reasons,
23 Plaintiffs have adequately represented the Settlement Class Members and will continue to do so.

24 **B. Defendants’ Allegations and Unlikelihood of Class Certification**

25 Defendants have denied violations of any applicable laws and denied liability for the
26 claims asserted in the Action. Defendants contended that the time spent off-the-clock, including
27 undergoing any sort of temperature checks, was *de minimis* and did not require compensation
28 because employees were free to perform tasks of their own. Defendants asserted that the practice

1 was not uniform and that employees could—and did—clock in before performing the screenings.
2 Defendants also argued that they maintained legally compliant meal and rest period policies, and
3 that any violations were not the result of employer-driven policies, but employee choice. With
4 respect to the 2802 claim, Defendants argued that they maintained a facially compliant
5 reimbursement policy and did not require employees to use their personal cell phones. In
6 addition, Defendants maintained that the case was not suited for class certification, as employees
7 worked at various warehouses/work sites that were staffed by multiple staffing agencies and
8 governed by different policies and practices. Finally, Defendants have also indicated that certain
9 employees signed arbitration agreements that purported to waive class claims. Based thereon,
10 Defendants continue to maintain that they are not liable for the allegations made by the Plaintiffs.

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

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

18 Defendants allege that a class could not have been certified. There is always a risk that
19 the court will not grant certification of the class, wherein the class will not be entitled to any
20 damages. Based on the foregoing, there was a substantial risk that Plaintiffs would not have
21 obtained the total amount of damages alleged, and a substantial number of complex issues that
22 would have necessitated significant expenditure of time and expenses. Therefore, the risks,
23 expenses, and complexity of further litigation warrant granting of this Motion.

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

26 Without reiterating the Parties’ showing that the Settlement Agreement and the
27 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
28 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The

1 Settlement Agreement was the product of negotiation between highly able and experienced
2 attorneys on both sides who possessed the relevant data and extensive legal research which they
3 had carefully analyzed. (Tulyathan Decl. at ¶ 3.) The Parties engaged in arm's length
4 negotiations at mediation with a highly experienced mediator, Gig Kyriacou, Esq. (*Id.* at ¶ 4.)
5 The Parties also engaged in post-mediation negotiations through the assistance of the mediator.
6 (*Id.*)

7 The results after mailing of the Class Notice and the publication process of the settlement
8 support confirmation of the Court's preliminary approval of the settlement with final approval of
9 the settlement, as evidenced by the fact that only one class member opted out and zero class
10 members submitted any written objections to the settlement. (Admin. Decl. at ¶¶ 13-14.) With
11 the significantly high rate of participation in the settlement by class members (99.98%), the
12 Court may appropriately infer that the settlement is fair, adequate, and reasonable. (*See Class*
13 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291; *Churchill Vill. LLC v. Gen.*
14 *Elec.* (9th Cir. 2004) 361 F.3d 566, 577 (approving settlement with 45 objections and 500 opt-
15 outs from a 90,000-person class, representing 0.05% and 0.56% of the class, respectively); *Chun-*
16 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 852 (where 16 of 329 class
17 members opted out, court found that positive class reaction "strongly supports settlement").)
18 Here, the lack of any objections and only one opt-out to this current settlement indicates that
19 Class Members themselves view the settlement as fair, adequate, and reasonable.

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

22 **1. Standard of Review**

23 On a motion for final approval of a class action settlement under California Code of Civil
24 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
25 settlement is "fair, adequate and reasonable." (*Officers for Justice v. Civil Serv. Comm'n* (9th
26 Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n* (1983) 459 U.S.
27 1217.) A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
28 "the interests of the class are better served by the settlement than by further litigation." (*See*
Manual for Complex Litigation, Fourth § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL").)

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.
3 (*See* Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 11.41 (4th ed. 2002);
4 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco*
5 *Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

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

17 A court’s approval of a class action settlement will only be reversed for a clear abuse of
18 discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*,
19 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision was a
20 clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar* (9th Cir.
21 1993) 1993 WL 326453; *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

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

23 It cannot be overemphasized that neither the trial court in approving
24 the settlement nor this Court in reviewing that approval have the
25 right or duty to reach any ultimate conclusions on the issues of fact
26 and law which underlie the merits of the dispute. It is well settled
27 that in the judicial consideration of proposed settlements, ‘the [trial]
28 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.

(7-Eleven Owners for Fair Franchising v. Southland Corp (2000) 85 Cal.App.4th 1135, 1146.)

2. The Settlement is Presumed to Be Fair

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

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

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

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm's length. (Tulyathan Decl. at ¶¶ 3-5.) Additionally, Class Counsel engaged in extensive factual investigation before settling, including the exchange of informal discovery and necessary class data. (*Id.* at ¶ 3.) This includes the number of putative class members employed by Defendants and through staffing agencies, number for former employees allegedly owed waiting time penalties, number of workweeks and pay periods at issue, applicable rates of pay for class members, a sample of time and pay records of the class members, as well as information pertaining to Defendants' payroll policies and practices at issue. (*Id.*)

Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Tulyathan Decl. at ¶¶ 16-20; Declaration of Larry W. Lee ("Lee Decl.") at ¶¶ 7-8; Declaration of Max W. Gavron ("Gavron Decl.") at ¶¶ 5, 10-13.)

3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806 ("present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of

the proposed settlement”) (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.)

If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been potentially responsible for Defendants’ costs. (Paramo Decl. at ¶ 12; Santos Decl. at ¶ 12.) As such, should individual current or former employees of Defendants bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendants. Accordingly, such claims likely would not be brought by many of these current and former employees – thus, this lawsuit achieves a true benefit for the Settlement Class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs nor any of the Settlement Class Members will be required to pay for Defendants’ litigation costs.

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

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

//

1 **4. The Complexity, Expense, and Likely Duration of Continued**
2 **Litigation Against Defendants Favor Final Approval**

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

8 As noted above, continued litigation could have led to appeals on several issues. On the
9 other hand, the settlement that was reached provides to all Settlement Class Members –
10 regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny
11 final approval, Settlement Class Members would be left without a remedy as a practical matter
12 and courts across the State would have to address the issues presented here in a piecemeal,
13 costly, and time-consuming manner. The settlement in this case is therefore consistent with the
14 “overriding public interest in settling and quieting litigation” that is “particularly true in class
15 action suits.” (*See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at
16 § 11.41.) Here, this case would have likely involved years of litigation.

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

18 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
19 interest of the Class Members as a whole. (Lee Decl. at ¶ 4; Gavron Decl. at ¶ 4; Tulyathan
20 Decl. at ¶ 12.) Similarly, counsel for Defendants are in favor of this settlement. The
21 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
22 adequate is entitled to significant weight by the Court in its final approval determination. (*See*
23 *Officers for Justice*, 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F.Supp. at p. 617;
24 *Linney*, 151 F.3d at p. 1242.)

25 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
26 **SHOULD BE APPROVED**

27 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
28 settlement funds remain after 180 days, the Parties have agreed that the funds shall be distributed
29 to the *cy pres* recipient Legal Aid at Work. Class Counsel does not have any relationship of any
30 kind with Legal Aid at Work. (Lee Decl. at ¶ 9; Gavron Decl. at ¶ 14; Tulyathan Decl. at ¶ 10.)

1 **V. THE REQUESTED PLAINTIFFS' SERVICE AWARDS SHOULD BE**
2 **APPROVED**

3 Class Representatives and Plaintiffs Gilbert Paramo and Rosemarie Santos request a
4 service award of \$10,000.00 each. Plaintiffs provided significant assistance with the lawsuit,
5 including discussing the case with Class Counsel on multiple occasions, searching for and
6 providing documents and information regarding Defendants' practices at issue in the case,
7 reviewing the various files and pleadings submitted in this case, including the PAGA letters, the
8 complaint, settlement agreement, and their declarations, and remaining available during
9 mediation. (Paramo Decl. at ¶ 9; Santos Decl. at ¶ 9.) Accordingly, Plaintiffs provided
10 invaluable information, evidence, and documents that resulted in this settlement.

11 In addition to the invaluable services that they provided, Plaintiffs took significant risks,
12 both professionally and monetarily, in acting as Class Representatives, seeking benefits on behalf
13 of the Settlement Class. Because the claims alleged by the Class Representatives involved the
14 payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of
15 Defendants had they not prevailed in this action. (Paramo Decl. at ¶ 12; Santos Decl. at ¶ 12.)
16 Despite this, however, Plaintiffs agreed to pursue this case on behalf of the Settlement Class.
(Paramo Decl. at ¶ 8; Santos Decl. at ¶ 8.)

17 Also, given that future employers are much less likely to hire individuals who have filed
18 employment-related lawsuits, particularly cases of this nature, the Class Representatives also
19 faces significant risk in not being able to find suitable employment, all as a result of filing of this
20 case against Defendants. (Paramo Decl. at ¶ 13; Santos Decl. at ¶ 13.) Plaintiffs took these risks
21 upon themselves to the benefit of the Settlement Class. Settlement Class Members did not have
22 to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
23 they have to face the potential for retaliation and not getting future employment had they filed a
24 lawsuit which is a public record. These are significant benefits that weigh in favor of granting
25 the requested enhancement. Moreover, this litigation has resulted in a significantly valuable
26 benefit to the Settlement Class, and Plaintiffs took on substantial risks in helping to get this
27 financial benefit to the Settlement Class. As such, the enhancement should be awarded to
28 Plaintiffs for their commitment, dedication, and risks taken for this litigation.

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

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated at approximately one-third of the revised Gross Settlement Amount of \$2,544,812.50 for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("Serrano III"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, 557 F. 2d at p. 769.)

The California Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is proper under the percentage method. (See *Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class

1 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
2 choosing an appropriate percentage of the fund created”).) Under the percentage of the fund
3 method, the Court’s objective remains to “mimic the market” in fixing a reasonable fee. (*See*
4 *Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (“When a fee is set by a court rather than by
5 contract, the object is to set it at a level that will approximate what the market will set...The
6 judge, in other words, is trying to mimic the market in legal services”).) Both California state and
7 federal courts have embraced this doctrine. (*Serrano III*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at
8 p. 769.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110,
9 the California Supreme Court recognized that the common fund doctrine has been applied
10 “consistently in California when an action brought by one party creates a fund in which other
11 persons are entitled to share.” The reasons for applying the common fund doctrine include:
12 “fairness to the successful litigant, who might otherwise receive no benefit because his recovery
13 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
14 who are entitled to share in the fund and who should bear their share of the burden of its
15 recovery; encouragement of the attorney for the successful litigant who will be more willing to
16 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if
17 he is assured that he will be properly and directly compensated should his efforts be successful.”
18 (*Id.*)

19 Here, the fee award representing one-third of the fund clearly falls within that range and
20 is consistent with other rulings of other courts and comprehensive surveys of class action
21 settlements and fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. June 9, 2011)
22 (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour class
23 actions that result in recovery of a common fund under \$10 million”); *see also* Eisenberg &
24 Miller (2010) *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
25 Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation nationwide
26 conclude that fees in that range sought here are consistent with market rates).)

27 The results delivered by Class Counsel also support the requested percentage of the fund.
28 Here, Plaintiffs and their counsel secured a \$2,544,812.50 non-reversionary common fund

1 settlement and only one class member opted out.

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

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

9 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) Here, it is clear that a
10 settlement fund of \$2,544,812.50 has been created. For Class Counsel, the fees here were wholly
11 contingent in nature and the case presented far more risk than the usual contingent fee case.
12 Among the risks was the cost inherent in class action litigation, as well as a long battle with a
13 corporate Defendants who had retained a highly experienced defense firm. For such reasons,
14 Class Counsel's request for attorneys' fees in the amount of \$848,270.84 is fair, reasonable, and
15 adequate.

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

18 The request for reimbursement of costs, in the amount of \$19,544.82 is fair and
19 reasonable, especially in light of the fact that the Parties agreed that Plaintiffs' counsel may seek
20 up to \$25,000.00 as reimbursement for litigations costs under the Settlement Agreement. As set
21 forth in Plaintiffs' counsel's declaration, the costs were all directly incurred in the prosecution of
22 the action. (Tulyathan Decl. at ¶ 21, Ex. A.) As such, the requested costs should be approved as
fair and reasonable.

23 **VIII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED**

24 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
25 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
26 funds. As shown in the Declaration of Taylor Mitzner, the settlement administration fees
27 expended in this matter amount to a total of \$47,500.00, which is the amount that was agreed
28 upon by the Parties in the Settlement Agreement. (Admin. Decl. at ¶ 23.) For such reasons, it is

requested that the Settlement Administrator's fees be approved.

IX. NOTICE TO THE LWDA

On May 22, 2024, Plaintiffs uploaded the Second Amended Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement to the Labor and Workforce Development Agency's website. (Tulyathan Decl. at ¶ 22.) Concurrent with the filing of this Motion, Plaintiffs will provide notice to the Labor and Workforce Development Agency. (*Id.* at ¶ 23.)

X. CONCLUSION

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

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

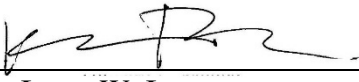
1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving the revised Gross Settlement Amount of \$2,544,812.50;
3. Approving distribution of the settlement funds to settlement class members, pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiffs' request for a service award of \$10,000.00 to Plaintiff Gilbert Paramo and a service award of \$10,000.00 to Plaintiff Rosemarie Santos, with payment pursuant to the terms of the Settlement Agreement;
4. Approving Class Counsel's request for an award to Class Counsel of \$848,270.84 in attorneys' fees and \$19,544.82 in costs with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiffs' request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$47,500.00 with payment pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiffs' request for payment to the LWDA of \$112,500.00 with payment pursuant to the terms of the Settlement Agreement;

1 7. Approving distribution of the PAGA Payment to PAGA Members pursuant to the
2 terms of the Settlement Agreement; and

3 8. Entering final judgment as to all members of the Settlement Class in this action.
4

5 DATED: November 8, 2024

DIVERSITY LAW GROUP, P.C.

6
7 By: 
8 Larry W. Lee
9 Max W. Gavron
10 Mai Tulyathan
11 Attorneys for Plaintiffs, the Class, and Aggrieved
12 Employees
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