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

RYAN MIDDLEBROOKS, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

FLEETPRIDE, INC., an Alabama
corporation; and DOES 1 through 50,
inclusive,

Defendants

Case No. 23CV-0202247

(Assigned to the Hon. Stephen H. Baker, Dept. 3)

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

Date: March 24, 2025

Time: 8:30 A.M.

Dept.: 3

Action Filed: May 16, 2023

Trial Date: November 5, 2024

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

2 **PLEASE TAKE NOTICE** that on March 24, 2025, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Stephen H. Baker, in Department 3 of the above
4 referenced Court located at 1500 Court Street, Redding, California 96001, Plaintiff Ryan
5 Middlebrooks (“Plaintiff”) will seek an Order: (1) granting final approval of the Joint Stipulation
6 Re: Class Action and Representative Action Settlement (“Settlement,” “Agreement,” or
7 “Settlement Agreement”) in this matter; (2) approving distribution of the settlement funds to the
8 Participating Class Members pursuant to the terms of the Settlement Agreement; (3) approving
9 Plaintiff’s request for a service payment to Plaintiff of \$10,000.00 pursuant to the terms of the
10 Settlement Agreement; (4) approving Plaintiff’s request for an award of attorneys’ fees of
11 approximately thirty-five percent (35%) of the \$315,000.00 Gross Settlement Amount, or
12 \$110,250.00, and reimbursement of litigation costs of \$8,068.22 pursuant to the terms of the
13 Settlement Agreement; (5) approving the payment of PAGA penalties of \$30,000.00 (75% of
14 which will be the LWDA Payment (\$22,500.00) and the remaining 25% of which will be
15 distributed proportionally to the Aggrieved Employees (\$7,500.00)); (6) approving Plaintiff’s
16 request for payment of the Settlement Administration Costs to Phoenix Settlement
17 Administrators in the amount of \$8,500.00 pursuant to the terms of the Settlement Agreement;
18 and (7) entering final judgment as to all members of the Class in this action.

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
20 provides for court approval of the settlement of a purported class action and allows the Court to
21 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
22 response, as shown by the lack of objections and zero opt-outs to the settlement, there is no
23 question that the settlement is fair, reasonable, and adequate and thus should be granted final
24 approval.

25 This Motion will be based on the attached Memorandum of Points and Authorities and
26 the supporting Declarations of Larry W. Lee, Max W. Gavron, Kwanporn “Mai” Tulyathan,
27 William L. Marder, and Plaintiff Ryan Middlebrooks, and Lluvia Islas of Phoenix Settlement
28 Administrators, and upon the oral arguments of counsel (should there be any), and on the

complete records and file herein.

DATED: February 28, 2025

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By: 
Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
William L. Marder
Attorneys for Plaintiff and the Class

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1 **I. INTRODUCTION**

2 Plaintiff Ryan Middlebrooks (“Plaintiff”) now seeks the Court’s final approval of the
3 class and representative action settlement with Defendant FleetPride, Inc. (“Defendant”)
4 (together with Plaintiff, the “Parties”). The settlement provides for a \$315,000.00 **non-**
5 **reversionary** fund to be created for the benefit of the class, from which attorneys’ fees, litigation
6 costs, service payment to the Plaintiff, PAGA penalties, and costs of settlement administration
7 are to be paid. The net settlement amount after these deductions will be paid to all Settlement
8 Class Members who did not opt-out of the settlement.

9 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
10 Approval of Class Action Settlement. The Court preliminarily approved this settlement on
11 September 18, 2024, directing distribution of the Class Notice and scheduling the hearing for
12 final approval of settlement (the “Preliminary Approval Order”).

13 As directed by the Court, the Settlement Administrator distributed the Class Notice to
14 280 Settlement Class Members. Declaration of Lluvia Islas (“Admin. Decl.”) (on behalf of
15 Phoenix Settlement Administrators (“Phoenix”)) ¶¶ 3-6. To date, zero (0) requests for exclusion
16 have been received. *Id.* ¶ 7. No objections to the settlement were received. *Id.* ¶ 8. Finally, there
17 are no outstanding disputes. *Id.* ¶ 9. As such, there is a 100% participation rate. Thus, an
18 inference can be made that the Settlement Class supports the Court’s Preliminary Approval
19 Order finding that the Settlement Agreement is fair and reasonable and the Court should grant
20 final approval.

21 In sum, as a result of the settlement administration process, the lack of any objections,
22 zero opt-outs, and the amount of class funds being paid out to the Settlement Class, the Court
23 may confirm its preliminary approval as this process supports the Court’s initial finding that the
24 settlement is fair and reasonable. The fact that no objections were filed is instructive that
25 Settlement Class Members believe that the settlement was fair and reasonable.

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

- 1 ▪ The settlement provides a Gross Settlement Amount of \$315,000.00 which is
- 2 **non-reversionary**;
- 3 ▪ The settlement is fair given that Settlement Class Members will receive (*after*
- 4 *deductions for fees, costs, etc.*) a substantial amount of money (on average, each
- 5 Participating Class Member will receive approximately \$529.22, with the highest
- 6 being \$1,070.62, and the lowest being \$13.22) (*Id.* ¶ 11);
- 7 ▪ The PAGA Amount will also be distributed to the aggrieved employees who will
- 8 receive approximately \$26.79 on average, with the highest being \$54.19, and the
- 9 lowest being \$0.67.
- 10 ▪ Settlement Class Members did not need to submit claim forms to participate in the
- 11 settlement, but are being paid automatically;
- 12 ▪ The allocation reflects that payment of claims will be paid to all Participating
- 13 Class Members in proportion to the number of wage statements reflecting
- 14 payment of overtime and/or doubletime wages received by each Participating
- 15 Class Member during the Class Period;
- 16 ▪ Plaintiff conducted significant investigation in this case, including the exchange
- 17 of informal discovery and the production of putative class data necessary for
- 18 Plaintiff to fully evaluate this case;
- 19 ▪ A highly regarded administrator, Phoenix Settlement Administrators, was retained
- 20 for no more than \$8,500.00; and
- 21 ▪ The State of California’s Labor and Workforce Development Agency (“LWDA”) will also be the beneficiary of this settlement, as it will receive \$22,500.00
- 22 pursuant to the PAGA, should this settlement be granted final approval.

23
24 Accordingly, the Court should grant Final Approval consistent with the Preliminary
25 Approval Order.

26 **II. NOTICE OF THE SETTLEMENT**

27 The notice procedures required by the Preliminary Approval Order and subsequent order
28 approving the Second Amended Class Notice have been followed and satisfy all due process

1 rights of Class Members. The Preliminary Approval Order contemplated that the Notice of
2 Proposed Class Action Settlement and Date for Final Approval Hearing (the “Class Notice”), be
3 sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary
4 Approval Order contemplated, further, that Phoenix would serve as the Settlement
5 Administrator.

6 As clearly stated in the Declaration of Lluvia Islas notice was provided to Settlement
7 Class Members, as required by the Preliminary Approval Order. On October 18, 2024, the
8 Settlement Administrator received a Settlement Class mailing list from Defendant’s counsel that
9 included 280 Settlement Class Members. Admin. Decl. ¶ 3. On or about October 25, 2024, each
10 of the persons identified on the mailing list were sent the Class Notice via first class mail, after
11 conducting a search of the National Change of Address registry to obtain updated addresses. *Id.*
12 ¶¶ 4-5. None of the notices were returned to Phoenix. *Id.* ¶ 6. As of the date of this filing, zero
13 (0) Class Notices remain undeliverable. *Id.* Further, the Class Notice provided Settlement Class
14 Members with the Class Counsel’s contact information, where they could further seek
15 information regarding the settlement, leave questions for the Settlement Administrator, and
16 update their address.

17 The provision of sending the notice to class members as described above meets the
18 requirements for the “best notice practicable” in this case as necessary to protect the due process
19 rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
20 (provision of “best notice practicable” with description of the litigation and explanation of opt-
21 out rights satisfies due process). Here, the Settlement Class Members were provided with a
22 mailing regarding the settlement that explained the settlement and allowed Settlement Class
23 Members to seek information, ask questions, and object, if so desired. As such, proper notice has
24 been given to the Settlement Class. Thus, the Court may proceed to determine the fairness and
25 adequacy of the settlement and enter its Order granting final approval, secure in the knowledge
26 that all absent Settlement Class Members have been given the opportunity to participate fully in
27 the claims, exclusion, and the approval process.

28 //

1 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE**

2 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

3 In order to proceed as a class, there are two requirements which must be met—
4 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704
5 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). “The community of interest
6 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
7 representatives with claims or defenses typical of the class; and (3) class representatives who can
8 adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d 462, 470 (1981).

9 **1. The Class is Ascertainable**

10 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382
11 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
12 available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*,
13 196 Cal. App. 3d 1263, 1271 (1987). Here, the Settlement Class is defined as: “all persons who
14 were employed by FleetPride in California in an hourly non-exempt position and who were paid
15 overtime and/or doubletime wages at any time during the Class Period.” The Class Period is
16 defined as “the period from May 8, 2022 through September 15, 2023.” There are 280
17 individuals that comprise the Settlement Class. Admin. Decl. ¶ 3. This is far more than the
18 minimum required to certify a class. The Settlement Class is manageable because Defendant has
19 already identified the Settlement Class Members.

20 **2. There is a Community of Interest**

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

25 **a. There are Predominant Common Questions of Law and Fact**

26 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
27 violated the Labor Code by failing to provide accurate itemized wage statements. Defendant
28 denies that liability could be established on a class-wide basis due to, among other reasons,

changes in Defendant’s practices during the relevant time period and affirmative defenses applicable to some but not all of the putative class members. Defendant further contends that liability and damages would need to be conducted on a case-by-case basis.

b. Plaintiff’s Claims are Typical of the Class Claims

The purported class representative’s claim must be “typical” but not necessarily identical to the claims of other class members; it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983). Plaintiff worked for Defendant from about October 2022, until about April 2023, and Plaintiff maintains that he was subjected to the same payroll policies as his fellow Settlement Class Members. Declaration of Ryan Middlebrooks (“Middlebrooks Decl.”) ¶ 2.

c. Plaintiff Adequately Represented the Class

The class representative, through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834, 846 (1984). Here, Plaintiff maintains that he does not have any interests adverse to the Settlement Class, nor have any such issues been raised or presented. Middlebrooks Decl. ¶ 6. Plaintiff has taken all necessary steps to represent the interests of the Settlement Class, including providing information and documents to his counsel and reviewing pleadings in this case. *Id.* ¶ 7.

B. Defendant’s Allegations and Unlikelihood of Class Certification

Defendant asserts that it complied with the law and denies liability. Specifically, Defendant believes that all wage statements it issued to Plaintiff and other hourly, non-exempt employees in California during the relevant period complied with all requirements of Labor Code § 226, including correctly listing the hours worked (including overtime hours), the corresponding applicable rates of pay, and the total hours worked. Defendant further asserts that individualized issues predominate in this case and that class certification would not have been proper. Among other reasons, Defendant asserts that Plaintiff would be unable to represent the purported class population alleged in the FAC, given that 70% of them had executed Defendant’s Dispute Resolution Policy (“DRP”), which is a binding arbitration agreement that includes an

1 enforceable class action waiver, and therefore requires them to submit the claims at issue in this
2 action to individual, binding arbitration. Plaintiff believes that a class can be certified; however,
3 Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty
4 and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories
5 alleged in the operative Complaint, the possibility of non-certification, and potential for appeals.
6 These risks on class certification are compounded by the California Supreme Court's holding in
7 *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There was a risk that Plaintiff would not
8 have obtained the total amount of damages alleged, and a substantial number of complex issues
9 would have necessitated significant expenditure of time and expenses. Therefore, the risks,
10 expenses, and complexity of further litigation warrant granting of this Motion.

11 **C. The Settlement is Fair, Adequate, and Reasonable**

12 As explained previously, the Settlement Agreement was the product of negotiation
13 between highly able and experienced attorneys on both sides who participated at a full-day
14 mediation with neutral Phillip K. Cha, Esq., and who possessed the relevant data and extensive
15 legal research which they had carefully analyzed. Declaration of Max W. Gavron ("Gavron
16 Decl.") ¶ 2. The results after mailing of the Class Notice support confirmation of the Court's
17 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
18 fact that to date, zero (0) request for exclusion from and zero (0) objections to the settlement
19 were received. Admin. Decl. ¶¶ 7-8. The Court may appropriately infer that the class action
20 settlement is fair, adequate, and reasonable, given that no Settlement Class Member has
21 submitted an objection and there is a 100% participation rate. *See Class Plaintiffs v. City of*
22 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

23 **D. The Court Should Grant Final Approval of the Settlement**

24 **1. Standard of Review**

25 On a motion for final approval of a class action settlement under California Code of Civil
26 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
27 settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688
28 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217

(1983). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* Alba Conte and Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

Although the court possesses “broad discretion” in determining that a proposed class action settlement is fair, the court’s role must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. A court’s approval of a class action settlement will only be reversed for a clear abuse of discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*, 688 F.2d at 626. As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000):

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

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 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146. 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

1 negotiated at arm's length in a full-day mediation before neutral Phillip K. Cha, Esq. Gavron
2 Decl. ¶ 2. Second, Class Counsel engaged in extensive factual investigation before mediation,
3 including reviewing class data. *Id.* ¶ 2. Further, Class Counsel is highly experienced in this type
4 of litigation. As shown in the supporting declarations, Class Counsel has significant experience
5 in class actions and employment wage and hour matters. Gavron Decl. ¶¶ 6-11; Declaration of
6 Larry W. Lee ("Lee Decl.") ¶¶ 7-9; Declaration of Kwanporn "Mai" Tulyathan ("Tulyathan
7 Decl.") ¶¶ 5-10; Declaration of William L. Marder ("Marder Decl.") ¶¶ 3-10.

8 **3. Risks Inherent in Continued Litigation Favor Final Approval**

9 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
10 court also should weigh the immediacy and certainty of substantial settlement proceeds against
11 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
12 (3d Cir. 1995); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F.
13 Supp. 610, 616-17 (N.D. Cal. 1979). If Plaintiff pursued this case without settlement and failed
14 to prevail, Plaintiff would have been potentially responsible for Defendant's costs. As such,
15 should any individual bring individual claims against Defendant on the same causes of action,
16 they would each face the uncertainty of prevailing and the possibility of paying costs to
17 Defendant. Accordingly, such claims likely would not be brought—thus, this lawsuit achieves a
18 true benefit for the Settlement Class that they might not otherwise get or seek as individuals.
19 Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of
20 the Settlement Class Members will be required to pay for Defendant's litigation costs.

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

26 The Settlement Agreement also affords the Settlement Class prompt, fair relief, while
27 avoiding significant legal and factual battles that otherwise may have prevented the Settlement
28 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.

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

Another factor considered by courts in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In applying this factor, the court must weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971). Here, the settlement that was reached provides to all Settlement Class Members—regardless of their means—fair relief in a prompt and efficient manner. Were the Court to deny final approval, Settlement Class Members would be left without a remedy as a practical matter and courts across the State would have to address the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted); *see also 4 Newberg* § 11.41. Here, this case could have potentially involved years of litigation, as evidenced by similar wage and hour cases.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class as a whole. Gavron Decl. ¶ 5; Lee Decl. ¶ 5; Tulyathan Decl. ¶ 2; Marder Decl. ¶ 2. Similarly, counsel for Defendant do not oppose this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and

adequate is entitled to significant weight by the court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *Boyd*, 485 F. Supp. at 617; *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

IV. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT SHOULD BE APPROVED

Class Representative Ryan Middlebrooks requests an enhancement of \$10,000.00. Plaintiff met with Class Counsel and conferred on a number of occasions to discuss the case, including providing substantive documents and information regarding Defendant's practices. Middlebrooks Decl. ¶ 4. He estimates he spent between 40-50 hours assisting in the litigation of this case, as detailed in his declaration. *Id.* ¶ 5. For example, Plaintiff reviewed many of the court filings and provided invaluable information regarding Defendant's overtime policies, practices, and how those practices were applies to individuals like himself. *Id.* ¶ 5. Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that he provided, Plaintiff took significant risks, both professionally and monetarily, in acting as the Class Representative, seeking benefits on behalf of the Settlement Class. Middlebrooks Decl. ¶¶ 9-10. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action. *Id.* ¶ 8. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Settlement Class.

Plaintiff's anticipated recovery of approximately \$449.40 as a member of the class is slightly less than the average amount of \$529.22. *Compare* Admin Decl. ¶ 11 and ¶ 13. This further supports the requested enhancement award because it would not align with the benefit provided and work expended if the named plaintiff were to receive less than the average amount distributed to class member. This is especially so where Plaintiff has agreed to provide a general release—something not asked of the class members.

Also, given that future employers are much less likely to hire individuals who have filed

1 employment-related lawsuits, particularly cases of this nature, the Class Representative also
2 faced significant risk in not being able to find suitable employment, all as a result of filing of this
3 case against Defendant. Plaintiff took these risks upon himself to the benefit of the Settlement
4 Class. Settlement Class Members did not have to file individual lawsuits and bear the risks of
5 payment of costs if they did not prevail, nor did they have to face the potential for retaliation and
6 not getting future employment had they filed a lawsuit, which is a public record. These are
7 significant benefits that weigh in favor of granting the requested enhancement. Moreover, this
8 litigation has resulted in a significantly valuable benefit to the Settlement Class, and Plaintiff
9 took on substantial risks in helping to get this financial benefit to the Settlement Class. As such,
10 the enhancement should be awarded to Plaintiff for his commitment, dedication, and risks taken
11 for this litigation. Plaintiff also agreed to provide a more expansive release than other class
12 members by executing a general release. Middlebrooks Decl. ¶ 10.

13 Courts have routinely granted approval of settlements containing such enhancements. *See*
14 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
15 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
16 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
17 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
18 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
19 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative).

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

21 Class Counsel seeks a fee award calculated as approximately thirty-five percent (35%) of
22 the total value of the settlement for the successful prosecution and resolution of this action. The
23 California Supreme Court explained that the award of attorneys' fees in common fund wage and
24 hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half*
25 *Int'l*, 1 Cal. 5th 480, 503 (2016). Under the percentage of the fund method, the Court's objective
26 remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
27 363 (7th Cir. 1998). An award of approximately one-third of the fund in attorneys' fees mimics
28 the marketplace as it "is supported by the fact that typical contingency fee agreements provide

1 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is
2 tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July
3 21, 2008). Indeed, “empirical studies [that] show that...fee awards in class actions average
4 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

5 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
6 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. This was based on a lodestar amount that required
7 a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily
8 high or low [should] the trial court [] consider whether the percentage method should be adjusted
9 so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

10 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
11 percent of the common fund is consistent with, and in the range of, awards in other class action
12 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
13 representing thirty-five percent (35%) of the fund clearly falls within that range, and is consistent
14 with other comprehensive surveys of class action settlements and fee awards. *See, e.g.*
15 Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical
16 Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost
17 fee awards were between 25 percent and 35 percent, with almost no awards more than 35
18 percent”).

19 The results delivered by Class Counsel also support the requested percentage of the fund.
20 Here, Plaintiff and his counsel secured a \$315,000.00 non-reversionary common fund settlement.
21 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
22 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
23 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
24 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Class
25 Notice specifically notified Settlement Class Members that Class Counsel would be seeking
26 \$110,250.00 of the settlement fund as attorneys’ fees. To date, no Settlement Class Member has
27 objected to the settlement and there is a 100% participation rate. This strong favorable response
28 also supports the requested fees.

1 A lodestar “cross-check” further supports the fee request. The Supreme Court in *Laffitte*
2 stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or
3 low, the trial court should consider whether the percentage used should be adjusted so as to bring
4 the imputed multiplier within a justifiable range, but the court is not necessarily required to make
5 such an adjustment.” *Id.* Courts have defined reasonable multipliers on a lodestar cross-check to
6 “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255
7 (2001); *see also, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049 (9th Cir. 2002)
8 (affirming 3.65 multiplier in ~\$1 billion settlement); *In re Nat’l Collegiate Athletic Ass’n*
9 *Athletic Grant-in-Aid Cap Antitrust Litig.*, 768 F. App’x 651, 654 (9th Cir. 2019) (affirming 3.66
10 multiplier); *Steiner v. Am. Broad. Co.*, 248 F. App’x 780, 783 (9th Cir. 2007) (affirming
11 multiplier of 6.85); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009)
12 (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App.
13 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland*
14 *Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand); *Aboudi v. T-*
15 *Mobile USA, Inc.*, No. 12CV2169 BTM NLS, 2015 WL 4923602, at *7 (S.D. Cal. Aug. 18,
16 2015) (“Multipliers of 1 to 4 are commonly found to be appropriate in common fund cases.”).

17 With respect to Class Counsel’s lodestar, to date, approximately 150.2 hours have been
18 expended by Class Counsel in this matter. . Gavron Decl. ¶ 13, Ex. A; Lee Decl. ¶ 10, Ex. A;
19 Marder Decl. ¶ 15. Moreover, Class Counsel expects to incur approximately 10 additional hours
20 of attorney time in finalizing this settlement, responding to inquiries from Settlement Class
21 Members, and interacting with the administrator. Gavron Decl. ¶ 10. The courts are quite liberal
22 in the evidence required to prove an attorney’s hours. Detailed time records are not required. An
23 attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours
24 worked on a particular case is sufficient evidence to support an award of attorney fees, even in
25 the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

26 Reasonable hours include, in addition to time spent during litigation, the time spent
27 before the action is filed, including time spent interviewing the clients, investigating the facts and
28 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,

62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class Counsel requests that the court find that these hours were reasonable in this litigation.

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

Class Counsel's skill and experience justify the requested rate. As shown in the supporting declarations, Class Counsel have significant experience in employment and wage and hour class actions. Class Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. Gavron Decl. ¶¶ 6-11; Lee Decl. ¶¶ 7-9; Tulyathan Decl. ¶¶ 5-10; Marder Decl. ¶¶ 3-10. As such, based on the hours and respective applicable rates, the total lodestar to be expended by Class Counsel through finalizing this settlement will be \$123,540.00 Gavron Decl. ¶ 15; Lee Decl. ¶11; Marder Decl. ¶ 15.

Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier to make an appropriate fee award. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 49 (2000). However, this list is not exhaustive and the court can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

The multiplier should be enhanced by the contingent nature of counsel's fee recovery. The risks in taking on a class action case are enormous, not the least of which is time and effort. As explained previously, Defendant maintained that there were significant obstacles. Thus, the risk involved in this case was quite significant for Plaintiff and his counsel, and in the face of

1 such risks, the current settlement was still able to be obtained by Plaintiff's counsel.

2 Here based upon Plaintiff's counsel's lodestar of \$123,540.00 which includes an
3 estimated 10 hours of additional time finalizing the settlement, Plaintiff's requested fees result in
4 a negative multiplier of approximately 0.89 ($\$110,250.00$ (requested fees) $\div$ $\$123,540$ (lodestar
5 amount)). This demonstrates that the requested fees are reasonable and fair, particularly based on
6 the factors and cases described above. *See, e.g. In re Nat'l Collegiate Athletic Ass'n Athletic*
7 *Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x at 654 (affirming 3.66 multiplier).

8 **VI. THE COURT SHOULD APPROVE REIMBURSEMENT OF COSTS**

9 The request for reimbursement of costs, in the amount of \$8,068.22 is fair and
10 reasonable. The costs are all litigation-related costs, which have been detailed in the supporting
11 declarations of Class Counsel. Gavron Decl. ¶ 16, Ex. B. Significantly, the costs sought are
12 significantly less than the \$15,000.00 permitted by the Settlement Agreement, and the difference
13 of \$6,931.78 will be part of the funds distributed to Settlement Class Members.

14 **VII. THE SETTLEMENT ADMINISTRATOR'S COSTS SHOULD BE APPROVED**

15 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
16 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
17 funds. As shown in the Declaration of Lluvia Islas the settlement administration costs expended
18 in this matter amount to a total of \$8,500.00. Admin. Decl. ¶ 10. For such reasons, it is requested
19 that the Settlement Administrator's fees be approved.

20 **VIII. NOTICE TO THE LWDA AND PROCEDURE FOR UNCASHED CHECKS**

21 Plaintiff will provide notice of this Motion to the LWDA in conjunction with this filing.
22 Gavron Decl. ¶ 17, Ex. C. As referenced in the Motion for Preliminary Approval, to the extent
23 any uncashed settlement checks remain upon the expiration date, the Parties have agreed that all
24 such uncashed settlement funds shall be sent to the California State Controller's Unclaimed
25 Property Fund in the names of the respective individuals to whom the funds were issued.
26 Agreement ¶ 11.A. Pursuant to the Court's order on preliminary approval, any interest accrued
27 shall be distributed to the LWDA.

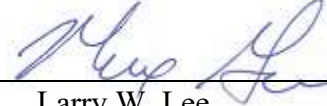
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1 **IX. CONCLUSION**

2 Plaintiff respectfully submits that the standards for final approval have been met, and the
3 terms of the Settlement Agreement are fair, adequate and reasonable.
4

5 DATED: February 28, 2025

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

7
8 By: 

Larry W. Lee
Max W. Gavron
Kwanporn “Mai” Tulyathan
William L. Marder
Attorneys for Plaintiff and the Class

1 **PROOF OF SERVICE**

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

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

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

10 On February 28, 2025, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
12 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
13 **AUTHORITIES IN SUPPORT**
14 **2. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
15 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
16 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
17 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
18 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
19 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
20 **5. DECLARATION OF KWANPORN "MAI" TULYATHAN IN SUPPORT OF**
21 **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION**
22 **SETTLEMENT**
23 **6. DECLARATION OF LLUVIA ISLAS OF PHOENIX SETTLEMENT**
24 **ADMINISTRATORS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF**
25 **CLASS ACTION SETTLEMENT**
26 **7. DECLARATION OF RYAN MIDDLEBROOKS IN SUPPORT OF PLAINTIFF'S**
27 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
28 **8. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION**
SETTLEMENT AND JUDGMENT

on the interested parties in this action as follows:

22 Sabrina A. Beldner
23 David Szwarcztein
24 Natalie M. Lagunas
25 Matthew D. Whitney
26 McGuire Woods LLP
27 1800 Century Park East, 8th Floor
28 Los Angeles, CA 90067-1501

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____X____ BY ELECTRONIC MAIL: by personally sending a true and correct copy of
the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
indicated above or on the attached mailing list. I certify that said electronic transmission was

1 completed and that all pages were received by the party(ies) identified herein or on the attached
2 mailing list.

3 I declare under penalty of perjury under the laws of the State of California that the above
4 is true and correct. Executed on February 28, 2025, at Los Angeles, California.

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6 _____
7 Erika Mejia
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