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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

SINDE TORRES and CRISTINA GUERRERO, as individuals and on behalf of all others similarly situated, Plaintiffs, vs. FIDELITY NATIONAL MANAGEMENT SERVICES, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No.: 23CV416377 [Assigned to the Hon. Charles F. Adams, Department 7] **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: September 4, 2025 Time: 1:30 P.M. Dept.: 7 Action Filed: May 23, 2023 Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 4, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Charles F. Adams, judge presiding, in Department 7 of the above referenced Court located at 161 North First Street, San Jose, California 95113, Plaintiffs Sinde Torres and Cristina Guerrero ("Plaintiffs") will seek an Order:

1. granting final approval to the Joint Stipulation of Class Action and PAGA Settlement ("Agreement," "Stipulation," or "Settlement 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 an award of the Class Representative Service Award of $10,000.00 to each Plaintiff, pursuant to the terms of the Settlement Agreement;

4. approving Class Counsel's request for an award of attorneys' fees of one-third of the Gross Settlement Sum, or $758,333.33, and reimbursement of actual litigation costs of $12,312.87, pursuant to the terms of the Settlement Agreement;

5. approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of $25,950.00, pursuant to the terms of the Settlement Agreement;

6. approving Plaintiff's request for payment to the California Labor & Workforce Development Agency ("LWDA") of $170,625.00, pursuant to the Private Attorneys General Act and pursuant to the terms of the Settlement Agreement; and

7. entering final judgment as to all Class Members in this action.

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

This Motion will be based on the attached Memorandum of Points and Authorities and the supporting Declarations of Larry W. Lee, Max W. Gavron, Kwanporn "Mai" Tulyathan, William L. Marder, Plaintiff Sinde Torres, and Plaintiff Cristina Guerrero, and Mayra Gonzalez of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: August 12, 2025

DIVERSITY LAW GROUP, P.C.

By:______________________________
Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiffs and the Class

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I. INTRODUCTION

Plaintiffs Sinde Torres and Cristina Guerrero (together, "Plaintiffs") now seek the Court's final approval of the Joint Stipulation of Class Action and PAGA Settlement ("Agreement," "Stipulation," or "Settlement Agreement") with Defendant Fidelity National Management Services, LLC ("Defendant") (together with Plaintiffs, the "Parties"). The Agreement provides for a $2,275,000.00 **non-reversionary** fund to be created for the benefit of the Settlement Class,[1] from which attorneys' fees, litigation costs, service awards to the named Plaintiffs, payment to the California Labor and Workforce Development Agency ("LWDA"), payment of penalties to PAGA Aggrieved Employees,[2] and costs of settlement administration are to be paid. The entire Net Settlement Sum after these deductions will be paid to all Settlement Class Members who did not opt out of the settlement.

The history of this litigation was previously detailed in Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. The Court preliminary approved this settlement on March 10, 2025, directing distribution of the Notice of Class Action Settlement and scheduling the

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[1] As used herein, the Settlement Class consists of "all individuals who fall into either the Overtime Settlement Sub-Class and/or the Wage Statement Sub-Class." The Overtime Settlement Sub-Class consists of "all hourly-paid, non-exempt employees of Defendant in California who worked overtime and also signed an agreement wherein they received a signing or retention bonus, and also worked overtime during the period of their bonus during the period starting May 23, 2019, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60 of the settlement agreement;" and the Wage Statement Sub-Class consists of "all hourly-paid, non-exempt employees of Defendant in California who received overtime during the period starting on May 23, 2022, through August 1, 2023, unless such period is shortened by operation of Paragraph 61, below."

[2] The PAGA Aggrieved Employees are defined as "all individuals who fall into either the PAGA Overtime Settlement Group and/or the PAGA Wage Statement Settlement Group." The PAGA Overtime Settlement Group consists of "all hourly-paid, non-exempt employees of Defendant1 in California who worked overtime and also signed an agreement wherein they received a signing or retention bonus, and also worked overtime during the period of their bonus, during the period starting July 7, 2022, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60 of the settlement agreement;" and the PAGA Wage Statement Settlement Group consists of "all hourly-paid, nonexempt employees of Defendant in California who received overtime during the period starting on July 7, 2022, through August 1, 2023."

hearing for final approval of the settlement (the “Preliminary Approval Order”). On April 3, 2025, pursuant to stipulation of the Parties, the Court amended the timeline for distribution of the class notice. Gavron Decl. ¶ 5.

As directed by the Court, the Settlement Administrator selected by the Parties – Phoenix Settlement Administrators – distributed the Class Notice of Settlement to 2,961 Settlement Class Members. Declaration of Mayra Gonzalez (“Admin. Decl.”) ¶ 3. To date, **there have been fourteen (14) Requests for Exclusions and/or zero (0) Notices of Objection to the settlement submitted by any Settlement Class Members**. *Id.* ¶¶ 7-8. As such, there is a 99.53% participation rate. Thus, in light of the lack of objections and proportionally negligible number of opt-outs, an inference can be made that the Settlement Class supports the Court’s Preliminary Approval Order finding that the Agreement is fair and reasonable.

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

- The settlement provides a total settlement sum of $2,275,000.00, which is **non-reversionary**;
- The settlement is fair given that Participating Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money – on average, approximately $779.05 to each Overtime Settlement Sub-Class Member, with the estimated highest individual settlement payment for this group being $2,302.48, and the lowest being $15.35. *See* Admin. Decl. ¶ 14;
- For the Wage Statement Sub-Class Members, the highest Wage Statement Sub-Class Member payment is $543.02, the lowest Wage Statement Sub-Class Member payment to be paid is approximately $16.46, while the average Wage Statement Sub-Class Member payment to be paid is approximately $340.73. *See* Admin Decl. ¶ 15;
- Settlement Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of Individual Settlement Payment amounts

will be paid to Settlement Class Members on a *pro rata* basis, in proportion to the number of pay periods worked by each Settlement Class Member during the Class Period;

- Class Counsel conducted significant investigation in this case, including conducting informal discovery and significant exchanges of information regarding class data for the entire class and documents pertaining to Defendant's policies and procedures, sampling of time and pay data, and the issuance of wage statements necessary for Plaintiffs to fully evaluate this case;

- A highly regarded settlement administrator, Phoenix Settlement Administrators, was retained to administer the settlement for approximately $25,950.00 (*See* Admin. Decl. ¶ 18); and

- The State of California's LWDA and PAGA Aggrieved Employees will also be beneficiaries of this settlement, as the LWDA will receive $170,625.00 and PAGA Aggrieved Employees will receive $56,875.00 pursuant to the PAGA, should this settlement be granted final approval.

Accordingly, the Court should grant Final Approval consistent with the Preliminary 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. Specifically, the Preliminary Approval Order contemplated that the Notice of Class Action Settlement ("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. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Declaration of Mayra Gonzalez, notice was provided to Settlement Class Members, as required by the Preliminary Approval Order and subsequent order amending the timeline. On May 1, 2025, the Settlement Administrator received a Settlement Class Member mailing list from Defendant's counsel that included 2,961 Settlement Class

Members. Admin. Decl. ¶ 3. Prior to mailing the Class Notice, the Settlement Administrator conducted a National Change of Address ("NCOA") search to correct and/or update the Class List in case of any address changes. *Id.* ¶ 4. On May 12, 2025, the Settlement Administrator mailed the Class Notice to all Settlement Class Members on the mailing list via U.S. first class mail. *Id*. ¶ 5. From the date of mailing, zero (0) Class Notice packets were returned to the Settlement Administrator due to incorrect addresses. *Id.* ¶ 6. Further, the Class Notice provided Class Members with Class Counsel's and the Settlement Administrator's contact information and website, where they could further seek information regarding the settlement, ask questions, review pleadings in the case, and update their address.

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

Here, Settlement Class Members were provided with a mailing that explained the settlement and allowed Settlement Class Members to seek information, ask questions, and exclude themselves and/or object to the settlement, if so desired. As such, proper notice has been given to the Settlement Class. Thus, the Court may determine the fairness and adequacy of the settlement and enter its Order granting final approval, secure in the knowledge that all absent Settlement Class Members have been given the opportunity to participate fully in the settlement, exclusion, and the approval process.

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III. <u>THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL</u>

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

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

1. The Class is Ascertainable

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

Here, the Settlement Class includes "all hourly-paid, non-exempt employees of Defendant in California who worked overtime and also signed an agreement wherein they received a signing or retention bonus, and also worked overtime during the period of their bonus during the period starting May 23, 2019, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60 of the settlement agreement (the "Overtime Settlement Sub-Class") and "all hourly-paid, non-exempt employees of Defendant in California who received overtime during the period starting on May 23, 2022, through August 1, 2023, unless such period is shortened by operation of Paragraph 61, below" (the "Wage Statement Sub-Class") (together with the Overtime Settlement Sub-Class, the "Settlement Class"). The escalation clause was not triggered. Admin Decl. ¶¶ 11-12. There are 2,961 individuals that comprise the Settlement Class Members, fourteen of whom requested to be excluded. Admin. Decl. ¶¶ 3, 7. This is more than the minimum required to certify a class.

Within the context of manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at pp. 1274-75. Settlement Class Members have already been identified by Defendant and notice was provided to all of the above Settlement Class Members.

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2. There is a Community of Interest

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

a. There are Predominant Common Questions of Law and Fact

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

Plaintiffs alleged that Defendant, as a matter of its corporate policy, practice, or procedure, violated the California Labor Code by failing to pay overtime wages at the regular rate of pay and provide accurate itemized wage statements to its employees.

Defendant denies that liability could be established on a class-wide basis and contends instead that liability and damages would need to be conducted on a case-by-case basis. With respect to Plaintiffs' regular rate claims, Defendant argues that it had compliant policies and certification on these claims would be difficult. With respect to Plaintiffs' claims for deficient wage statements, it is Defendant's position that any issuance of deficient wage statements was not willful and that Plaintiffs' claims fail as a matter of law.

b. Plaintiffs' 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). Courts look to whether class members have similar injuries, "whether the action is based on conduct which is not unique to the named Plaintiff," and whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508

(9th Cir. 1992). The purpose of the typicality requirement "is to assure that the interest of the named representative aligns with the interests of the class." *Id.* at p. 508.

Plaintiffs were subjected to the same payroll policies as all other Settlement Class Members. In this regard, Plaintiff Sinde Torres was hired by Defendant as a non-exempt employee in or about September 2022. Declaration of Sinde Torres ("Torres Decl.") ¶ 2. Plaintiff Cristina Guerrero was also hired by Defendant as a non-exempt employee in or about September 2022. Declaration of Cristina Guerrero ("Guerrero Decl.") ¶ 2. Like other members of the Class, Plaintiffs alleged that Defendant did not pay Plaintiffs overtime wages based on the regular rate of pay during workweeks when non-discretionary pay and overtime wages were earned. Torres Decl. ¶ 4; Guerrero Decl. ¶ 4. As a result, the wage statements issued to Plaintiffs failed to identify the correct hourly rates of pay and gross and net wages earned and failed to identify the correct total hours worked when employees earned overtime. Torres Decl. ¶ 5; Guerrero Decl. ¶ 5. In other words, Plaintiffs were subjected to the same policies and practices as other Settlement Class Members. Accordingly, Plaintiffs' claims are aligned with the interests of the Settlement Class and typicality is satisfied.

c. Plaintiffs 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, Plaintiffs do not have any interests adverse to the Settlement Class, nor have any such issues been raised or presented. Torres Decl. ¶ 7; Guerrero Decl. ¶ 7. Plaintiffs have taken all necessary steps to represent the interests of the Settlement Class Members, including meeting and conferring with their counsel, providing information and documents to their counsel, and reviewing pleadings and the settlement agreement in this case. Torres Decl. ¶ 8; Guerrero Decl. ¶ 8. For such reasons, Plaintiffs have adequately represented the Settlement Class Members and will continue to do so.

B. Risks, Expenses, and Complexity of Further Litigation

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

As stated above, Defendant alleges that Plaintiffs would not be able to obtain class certification. Based on the foregoing, there were risks that Plaintiffs would not have obtained the total amount of damages and penalties alleged on behalf of the class, and a substantial number of complex issues that would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this Motion.

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

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement Agreement was the product of negotiations between highly able and experienced attorneys on both sides who possessed the relevant data and extensive legal research which they had carefully analyzed. Declaration of Max W. Gavron ("Gavron Decl.") ¶ 3. The Parties engaged in arm's-length negotiations during mediation with the Honorable Brian C. Walsh (Ret.). *Id*.

The results after mailing the Class Notice support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that **only fourteen (14) Settlement Class Members opted out and/or zero (0) Settlement Class Members submitted written objections to the settlement**. Admin. Decl. ¶¶ 7-8. The Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that so few Settlement Class Members submitted a Request for Exclusion and/or none submitted a Notice of Objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir.

1992).

D. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement

1. Standard of Review

On a motion for final approval of a class action settlement under California Code of Civil Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom*., *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the interests of the class are better served by the settlement than by further litigation." *See Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL"). 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 & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41 (4th ed. 2002); *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 p. 625. Accordingly, the court should give due regard to what is otherwise a "private consensual agreement" between the parties. *Id.*; *see also Church v. Consolidated Freightways, Inc*., 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig*., 720 F. Supp. 1379 (D. Ariz. 1989), *aff'd sub nom.; City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 ("The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement").

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 p. 626 ("reverse only upon a strong showing that the district court's decision was a clear abuse of discretion"); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

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

> 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.

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

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*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *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 after a full day of mediation with the Honorable Brian C. Walsh (Ret.). Gavron Decl. ¶ 3. Additionally, Class Counsel engaged in informal discovery prior to mediation, including reviewing necessary data pertaining to the number of putative class members and wage statements issued, as well as Plaintiffs' personnel files, employee handbook, copies of wage statements, sampling of time and pay data, written policies, and bonus contracts. *Id*. The exchange of information allowed Class Counsel to conduct a full analysis of exposure. *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. Gavron Decl. ¶¶ 8-14; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 7-9; Declaration of Kwanporn "Mai" Tulyathan ¶¶ 6-10; Declaration of William L. Marder ("Marder Decl.") ¶¶ 3-10.

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*., 55 F.3d 768, 806 (3d Cir. 1995) ("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*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp*., 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been potentially responsible for Defendant's costs. Torres Decl. ¶ 10; Guerrero Decl. ¶ 10. As such, should individual current or former employees of Defendant bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. 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 Defendant's 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 Settlement Class Members 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 Class Representatives.

The Settlement Agreement also affords Settlement Class Members prompt, fair relief while avoiding significant legal and factual battles that otherwise may have prevented Settlement Class Members 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 p. 625; *Girsh*, 521 F.2d at p. 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).

As noted above, continued litigation could have led to appeals on several issues. On the other hand, 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 p. 950 (footnote omitted); *see also 4 Newberg* at § 11.41. Here, this case could have involved years of further litigation, in addition to the two years that have already elapsed.

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. Lee Decl. ¶ 4; Gavron Decl. ¶ 4; Tulyathan Decl. ¶ 4; Marder Decl. ¶ 2. Similarly, counsel for Defendant is in favor of 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 p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.

IV. <u>THE PROPOSED PROCEDURE FOR UNCASHED SETLEMENT CHECKS SHOULD BE APPROVED</u>

As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement funds remain after 180 days of the mailing of the individual settlement checks, the Parties have agreed that all such uncashed settlement funds shall be sent to the designated *cy pres* recipient: Legal Aid at Work. Counsel do not have any conflicts of interest with the designated recipient. Lee Decl. ¶ 5; Gavron Decl. ¶ 7; Tulyathan Decl. ¶ 14; Marder Decl. ¶ 3.

V. <u>THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD SHOULD BE APPROVED</u>

Class Representatives Sinde Torres and Cristina Guerrero each request a service award of $10,000.00. Plaintiffs met with Class Counsel, had numerous discussions with Class Counsel, and provided substantive information regarding Defendant's policies and practices at issue in this case. Torres Decl. ¶ 6; Guerrero Decl. ¶ 6. Accordingly, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that they provided, Plaintiffs also took significant risks, both professionally and monetarily, in acting as Class Representatives, seeking benefits on behalf of the Settlement Class. Torres Decl. ¶ 7; Guerrero Decl. ¶ 7. Because the claims alleged by the Class Representatives involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant, had they not prevailed in this action. Torres Decl. ¶ 10; Guerrero Decl. ¶ 10. Despite this, however, Plaintiffs agreed to pursue this case on behalf of the Settlement Class.

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, the Class Representatives also faced significant risk in not being able to find suitable employment and/or retaliation from prospective employers as a result of filing this case against Defendant. Plaintiffs took these risks upon themselves to the benefit of the Settlement Class. Torres Decl. ¶ 7; Guerrero Decl. ¶ 7. Plaintiffs estimate they spent between 35-40 hours assisting their counsel in litigating this case. Torres Decl. ¶ 6; Guerrero Decl. ¶ 6. Settlement Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the Settlement Class, *i.e.*, an average award to Overtime Settlement Sub-Class Members of $779.05 and Wage Statement Sub-Class Members of $340.73, and Plaintiffs took substantial risks in helping to get this financial benefit to Settlement Class Members. As such, the service award payment should be awarded to Plaintiffs for their commitment, dedication, time spent, and risks taken for this litigation.

Courts have routinely granted approval of settlements containing such enhancements. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $ 55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*. No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (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 Gross Settlement Sum, or $758,333.33. 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.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). 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 v. Hughes Air West, Inc.*, *supra*, 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 in *Laffitte*. 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*, 1 Cal. 5th 480, 503 (2016) ("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 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic the market in legal services.").

Here, the fee award representing approximately one-third of the fund clearly falls within that range and is consistent with other rulings of other courts and comprehensive surveys of class action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. 2011) (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million"); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range sought here are consistent with market rates).

The results delivered by Class Counsel also support the requested percentage of the fund. Here, Plaintiffs and their counsel secured a $2,275,000.00 non-reversionary common fund settlement.

Finally, "the response of the class members to attorneys' fee notice, though not decisive, is relevant to the...reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the market" for fees is well supported. *Id*. at p. 1269. In this case, the Class Notice specifically notified Settlement Class Members that Class Counsel would be seeking up to one-third of the Gross Settlement Sum. To date, only fourteen (14) Settlement Class Members opted not to participate in the settlement and none objected to the settlement. This strong favorable response also supports the requested fees.

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

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

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of $2,275,000.00 has been created as the entire amount is to be paid without any reversions. For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a corporate Defendant.

As secondary support for the percentage of the fund method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at

p. 505; *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." *Id*. Thus, a lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at p. 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge").

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

With respect to Class Counsel's lodestar, to date, approximately 461.8 hours have been expended by Class Counsel in this matter, with another estimated 20 hours to be spent on postapproval matters, including dealing with the administrator and responding to class member inquires. Lee Decl. ¶ 10, Ex. A; Gavron Decl. ¶ 15, Ex. A; Tulyathan Decl. ¶ 11, Ex. A; Marder Decl. ¶ 15, Ex. A. Mr. Lee requests an hourly rate of $900.00 per hour. Lee Decl. ¶ 13. Mr. Gavron requests an hourly rate of $750.00 per hour. Gavron Decl. ¶ 16. Ms. Tulyathan requests an hourly rate of $650.00. Tulyathan Decl. ¶ 13. Mr. Marder requests an hourly rate of $900.00 per hour. Marder Decl. ¶ 14. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and 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 the area of employment and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. Lee Decl. ¶¶ 7-9; Gavron Decl. ¶¶ 12-14; Tulyathan Decl. ¶¶ 6-10; Marder Decl. ¶¶ 3-10. As such, based on the hours and applicable rate, the total lodestar to be expended by Class Counsel through finalizing this settlement will be approximately $381,285.00. Lee Decl. ¶ 10, Ex. A; Gavron Decl. ¶ 15, Ex. A; Tulyathan Decl. ¶ 11, Ex. A; Marder Decl. ¶ 15, Ex. A.

Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. *Serrano v. Priest*, 20 Cal. 3d at p. 48. 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*, 82 Cal. App. 4th at p. 49. 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).

It is also critical to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at p. 52 (the promptness of settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*, courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not punished, for achieving this goal in a timely fashion. *Id*.

Here based upon Class Counsel's lodestar of $381,285.00, Plaintiffs' request for a modest multiplier of approximately 1.98 is reasonable and fair, particularly based on the factors described above and that it is within the typical range of multipliers awarded by the court. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224 (2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp*., 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp*., 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's request for attorneys' fees in the amount of $758,333.33 is fair, reasonable, and adequate.

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of costs, in the amount of $12,312.87 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to $30,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel's declaration, the costs were all directly incurred in the prosecution of this action, including but not limited to, filing and service fees, postage fees, and costs associated with mediation. Gavron Decl. ¶ 21, Ex. B. As such, this requested costs should be approved as fair and reasonable.

VIII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown on the Declaration of Mayra Gonzalez the settlement administration fees expended in this matter amount to a total of $25,950.00, which is the amount that was agreed upon by the Parties. Admin. Decl. ¶ 17, Ex. B. For such reasons, it is requested that the Settlement Administration Costs be approved.

IX. NOTICE TO THE LWDA

Concurrently with this Motion, Plaintiffs provide notice to the LWDA. Gavron Decl. ¶ 22.

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. Plaintiffs request that the Court enter an order and resulting judgment finally approving the settlement.

DATED: August 12, 2025

DIVERSITY LAW GROUP, P.C.

By: ________________________

Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan

Attorneys for Plaintiffs and the Class

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On August 12, 2025, I served the following document(s) described as:

1. **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2. **DECLARATION OF KWANPORN "MAI" TULYATHAN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
3. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
4. **DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
5. **DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
6. **DECLARATION OF SINDE TORRES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
7. **DECLARATION OF MAYRA GONZALEZ WITH RESPECT TO NOTICE AND SETTLEMENT ADMINISTRATION**
8. **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT**

on the interested parties in this action as follows:

Angela J. Rafoth Emily Mertes Littler Mendelson, PC 101 Second Street, Suite 1000 San Francisco, California 94105	*Attorneys for Defendant Fidelity National Management Services, LLC* ARafoth@littler.com EMertes@littler.com

__X__ BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 12, 2025, at Los Angeles, California.

Erika Mejia