Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ANDREA ZUNIGA, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

COAST PROFESSIONAL, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-9784

[Assigned for all purposes to the Hon. George J. Abdallah, in Department 10A]

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

Date: September 3, 2025
Time: 9:00 a.m.
Dept.: 10A

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 3, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable George J. Abdallah, judge presiding, in Department 10A of the above referenced Court located at 180 E Weber Ave., 2nd Floor, Stockton, CA 95202, Plaintiff Andrea Zuniga ("Plaintiff") will seek an Order:

1. Granting final approval to the Class Action and PAGA Settlement Agreement (the "Settlement Agreement," "Settlement," or "Agreement") in this Action;
2. Approving distribution of the settlement funds to Class Members, pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for the Class Representative Service Payment in the amount of $7,500.00, pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff's request for an award of attorneys' fees of approximately one-third of the Gross Settlement Amount, or $92,750.00, and reimbursement of actual litigation costs of $11,157.68, 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 $6,000.00, pursuant to the terms of the Settlement Agreement; and
6. 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 lack of objections to the settlement and Requests for Exclusion, 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, the supporting Declarations of Larry W. Lee, Kristen M. Agnew, William L. Marder, Plaintiff Andrea Zuniga, and Connor Tevenan (on behalf of Phoenix), and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: August 11, 2025

DIVERSITY LAW GROUP, P.C.

By: */s/ Kristen M. Agnew*
Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

Rules

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff Andrea Zuniga ("Plaintiff") now seeks the Court's final approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Agreement") with Defendant Coast Professional, Inc. ("Defendant"). The Settlement Agreement provides for a $265,000.00 **non-reversionary** fund to be created for the benefit of the Class, from which attorneys' fees, litigation costs, service award to the Plaintiff, payment of PAGA Penalties, and costs of settlement administration are to be paid. The entire Net Settlement Amount, after the above deductions, will be paid to all Class Members who did not opt-out of the settlement ("Participating Class Members").

The history of this litigation was previously detailed in Plaintiff's Preliminary Approval Motion. This Court preliminarily approved this settlement on April 3, 2025, directing distribution of the Notice of Class Action Settlement ("Class Notice") and scheduling the hearing for final approval of settlement.

As directed by the Court, the Settlement Administrator distributed the Class Notice to 87 Class Members, after conducting skip tracing for Class Members without mailing addresses and Social Security Numbers. (Declaration of Connor Tevenan ["Admin. Decl."] at ¶ 5.) To date, zero (0) Request for Exclusion has been received, and zero objections have been filed. (*Id.* at ¶¶ 8, 9.) Finally, there were no disputes submitted by Class Members to the Settlement Administrator, and as such, there are no outstanding disputes from Class Members. (*Id.* at ¶ 10.) As such, there is a **100%** settlement participation rate. (*Id.* at ¶ 11.) Thus, an inference can be made that the Class supports the Court's Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

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

- The Gross Settlement Amount of $265,000.00 is non-reversionary;
- The settlement is fair given that P Class Members will receive (*after deductions*

for attorneys' fees, costs, etc.) a monetary share of the Net Settlement Amount—on average, approximately $1,409.11 to each Class Member, with the estimated highest individual settlement payment being $5,105.10 (*See* Admin Decl. at ¶ 14);

- Class Members did not need to submit claim forms to participate in the settlement;
- The allocation reflects that payment of claims will be paid to all Class Members in proportion to the number of number of Class Pay Periods[1] credited to the employee;
- The Settlement also provides for a $25,000.00 payment attributable to the satisfaction of PAGA claims (the "PAGA Penalties"), of which 75%, or $18,750.00, will go to the State of California's LWDA as a beneficiary of this Settlement pursuant to the PAGA, and 25%, or $6,250.00, will be distributed among Aggrieved Employees on a pro rata basis;
- Plaintiff's counsel conducted significant investigation in this case, including the exchange of informal discovery and class data, time and payroll records, and Defendant's' relevant wage and hour policies; and
- A highly regarded administrator, Phoenix Settlement Administrators, was retained to administer the settlement for approximately $6,000.00 (Admin Decl. at ¶ 17).

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

II. <u>CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT</u>

The notice procedures required by the Preliminary Approval Order, have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Class Notice, as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement Agreement. Furthermore, the

[1] The term "Class Pay Period" means "means any pay period during which a Class Member: (1) earned a non-discretionary incentive payment and overtime in the same monthly earning period, during the Class Period; (2) earned a non-discretionary incentive payment and a meal/rest period premium in the same monthly earning period, during the Class Period; and/or (3) received a wage statement reflecting the payment of overtime wages during the period of September 13, 2022 through the end of the Class Period." *See* SA § 1.12.

Preliminary Approval Order contemplated that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Declaration of Connor Tevenan, notice was provided to Class Members, as required by the Preliminary Approval Order. On April 25, 2025, the Settlement Administrator received the Class List that included 87 individuals identified as Class Members. (Admin. Decl. at ¶ 3.) The Settlement Administrator mailed the Class Notice via first class mail all 87 Class Members. (*Id*. at ¶ 5.) Prior to doing so, the Settlement Administrator conducted a National Change of Address ("NCOA") search in an attempt to update the class list of addresses as accurately as possible (*Id.* at ¶ 4.) Further, the Class Notice provided Class Members with Class Counsel's contact information, where they could further seek information regarding the settlement, leave questions for the Settlement Administrator, and update their address. (*Id.* at ¶ 5, Ex. *A*.)

Plaintiff provided the "best notice practicable" in this case as necessary to protect the due process rights of class members. *See*, *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12 (provision of "best notice practicable" with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75 (individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co*. (1950) 339 U.S. 306, 314 (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"). 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 Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

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

A. Strength of Plaintiff's 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. Plaintiff 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* (1987) 196 Cal. App. 3d 1263, 1271. Here, the Class is defined as (i) all current and former non-exempt hourly employees of Defendant in California who earned a non-discretionary incentive payment and were paid overtime wages in the same pay period, at any time during the Class Period[2] (the "Overtime Regular Rate Subclass"); (ii) all current and former nonexempt employees of Defendant in California who earned a non-discretionary incentive payment and were paid a meal or rest period premium in the same pay period, at any time during the Class Period (the "Meal/Rest Period Regular Rate Subclass"); and (iii) all current and former hourly non-exempt employees of Defendant in California who received payment of overtime wages, at any time from September 13, 2022 through the end of the Class Period (the "Wage Statement Subclass"). SA §§ 1.29, 1.41, 1.48. There 87 individuals that comprise the Class. (Admin. Decl. at ¶ 3.)

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, Inc.* (1981) 29 Cal. 3d 462, 470; *Reese v. Wal-Mart Stores, Inc*. (1999) 73 Cal. App. 4th 1225, 1234).

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

---

[2] The Agreement defines "Class Period" to mean the period from September 13, 2019 through December 20, 2024. SA § 1.13.

judicial process and to the litigants." *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1104-05.

In this case, Plaintiff allege that Defendant, as a matter of their corporate policy, practice, or procedure, violated the Labor Code by failing to pay overtime and meal/rest period premium compensation at the regular rate of pay, provide accurate itemized wage statements and pay all wages upon separation of employment. As these alleged violations are all based on uniform corporate policies, practices, and procedures of Defendant, the claims can be jointly tried and thus the predominance requirement is satisfied.

Defendant denies that liability could be established on a class-wide basis and contend instead 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* (1983) 145 Cal.App.3d 27, 45. 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*. (9th Cir. 1992) 976 F.2d 497, 508. 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 508.

Plaintiff was employed by Defendant and alleges that she was subjected to the same policies, practices, and procedures as all other Class Members. Specifically, like other members of the Class, Plaintiff was not paid overtime and meal/rest period premium compensation at the regular rate of pay. (Declaration of Andrea Zuniga ["Zuniga Decl."] at ¶¶ 3, 4.) Plaintiff did not receive accurate itemized wage statements from Defendant. (*Id.* at ¶ 5.) In sum, Plaintiff alleges that she was subjected to the same policies and practices as other Class Members. Thus, Plaintiff's claims are typical to those of Class Members.

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* (1984) 151 Cal.App.3d 834, 846.

Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class, including discussing the case with counsel; searching for, gathering, and providing information and documents to her counsel; and reviewing the various documents and pleadings in this case, including the PAGA Notice, complaint, Settlement Agreement, and her declarations. (Zuniga Decl. at ¶ 10.) For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

B. Defendant's Allegations and Unlikelihood of Class Certification

Defendant denied violations of any applicable laws and denied liability for the claims asserted in the Action. Defendant contends that any underpayment of overtime wages and meal or rest period premiums was unintentional and resulted in only a *de minimis* underpayment to Class Members. Defendant also argued that the meal/rest period claim is not amenable to class certification. As argued by Defendant, Plaintiff must first prove the predicate violation— that is that putative class members received an unlawful meal/rest period—before Defendant can be held liable for the alleged underpayment of the premium pay. According to Defendant, an adjudication of the underlying meal/rest period violations would require individualized assessments as to the circumstances of each missed, delayed or interrupted break. With respect to the wage statement and derivative waiting time penalties claim, Defendant argues that there is no evidence to suggest that the non-payment of overtime and/or meal/rest period premiums was intentional or willful. Based thereon, Defendant continued to maintain that they are not liable for the allegations made by the Plaintiff.

C. Risks, Expenses, and Complexity of Further Litigation

Plaintiff believes that a class can be certified. However, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff 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* (2014) 59 Cal. 4th 1. Defendant alleges that a class could not have been certified. There is always a risk that the court will not grant certification of the class, wherein the class will not be entitled to any damages. Based on the foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of damages alleged, 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.

D. The Terms, Negotiation, 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 up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement Agreement was the product of negotiation 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 Kristen M. Agnew ["Agnew Decl."] at ¶¶ 3-6; Declaration of Larry W. Lee ["Lee Decl."]at ¶¶ 2, 3.) The Parties engaged in arm's length negotiations at mediation with a highly experienced mediator, Brandon McKelvey (Agnew Decl. at ¶ 8.)

The results after mailing of the Class Notice and the publication process of the settlement support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that ***no Class Members have submitted a Request for Exclusion, an objection*** **or challenge to the number of Class Pay Periods and/or PAGA Pay Periods credited to the employee**. (Admin. Decl. at ¶¶ 8-10.) With the **100%** rate of participation in the settlement by Class Members, the Court may appropriately infer that the settlement is fair, adequate, and reasonable. *See Class Plaintiff v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291; *Churchill Vill. LLC v. Gen. Elec.* (9th Cir .2004) 361 F.3d 566, 577 (approving settlement with 45 objections and 500 opt-outs from a 90,000-person class, representing 0.05% and 0.56% of the class, respectively); *Chun-Hoon v. McKee Foods Corp*. (N.D. Cal. 2010) 716 F. Supp. 2d 848, 852 (where 16 of 329 class members opted out, court found that positive class reaction "strongly supports settlement"). Here, the lack of any objections and opt-outs to this current settlement indicates that Class Members themselves view the settlement as fair, adequate, and reasonable.

E. 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* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom*., *Byrd v. Civil Serv. Comm'n* (1983) 459 U.S. 1217). 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* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp*. (9th Cir. 1976) 529 F.2d 943, 950).

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. 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*. (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig*. (D. Ariz. 1989) 720 F.Supp. 1379, *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*. (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*, 688 F.2d at 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 1276; *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453; *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1238).

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.

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

2. The Settlement is Presumed to Be Fair

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

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

Dunk, 48 Cal.App.4th at 1802; *accord*, *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply*, 720 F.Supp. at 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. (Agnew Decl. at ¶¶ 3-8.) Additionally, Class Counsel engaged in extensive factual investigation before settling, including the exchange of informal discovery and necessary class data. (*Id*. at ¶ 3.) This includes (i) number of putative class members who earned non-discretionary incentives and overtime wages in the same workweek; (ii) number of putative class members who earned non-discretionary incentives and meal or rest period premiums in the same workweek; (iii) number of putative class members who received wage statements reflecting the payment of overtime wages; (iv) number of putative class members who terminated employment; (v) average hourly rate of putative class members; and (vi) the incentive plans applicable to putative class members. (*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. (Agnew Decl. at ¶¶ 11-17; Lee Decl. at ¶¶ 5-7; Declaration of William L. Marder ["Marder Decl."] at ¶¶ 4-10.)

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*. (3d Cir. 1995) 55 F.3d 768, 806 ("present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement") (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 1 53, 157; *Boyd v. Bechtel Corp*. (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendant's' costs. 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 Class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of the 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 the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members.

The Settlement Agreement also affords the Class prompt, fair relief while avoiding significant legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all. While Class Counsel believe the 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 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* (5th Cir. 1971) 447 F.2d 431, 433-34.

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 Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, 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* at § 11.41. Here, this case would have likely involved years of litigation.

//

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 Class Members as a whole. (Lee Decl. at ¶ 3; Agnew Decl. at ¶ 9.) 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 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

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

Class Members and Aggrieved Employees shall have 180 days to cash the settlement check. SA § 4.4.1. Uncashed checks (upon the expiration date) shall be distributed to the California State Controller's Unclaimed Property Fund in the name of the respective Class Member and/or Aggrieved Employee to whom the funds relate.

V. <u>THE REQUESTED PLAINTIFF'S SERVICE AWARDS SHOULD BE APPROVED</u>

Plaintiff Andrea Zuniga requests a Class Representative Service Payment in the amount of $7,500.00. Plaintiff provided significant assistance with the lawsuit, including discussing the case with Class Counsel on multiple occasions, searching for and providing documents and information regarding Defendant's practices at issue in the case, reviewing the various files and pleadings submitted in this case, including the PAGA Notice, the complaint, settlement agreement, and her declarations. (Zuniga Decl. at ¶ 10.) Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

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

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, Plaintiff also faces significant risk in not being able to find suitable employment, all as a result of filing of this case against Defendant. Plaintiff took these risks upon themselves to the benefit of the Class. (Zuniga Decl. at ¶ 7.) 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 Class, and Plaintiff took on substantial risks in helping to get this financial benefit to the Class. As such, the enhancement should be awarded to Plaintiff for her commitment, dedication, and risks taken for this litigation.

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

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated at approximately one-third of the Gross Settlement Amount of $92,750.00 for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("*Serrano III*"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1997) 557 F. 2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F. 2d at 769.

The California Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is proper under the percentage method. *See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class 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* (7th Cir. 1998) 160 F.3d 361, 363 ("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"). Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

Here, the fee award representing one-third of the Gross Settlement Amount 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.* (S.D. Cal. June 9, 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 (2010) *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation nationwide conclude that fees in that range sought here are consistent with market rates).

The results achieved by Class Counsel further support the requested percentage of the fund. Here, Plaintiff and her counsel secured a $265,000 non-reversionary common fund settlement, with no Class Members opting out.

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.

(2d Cir. 1974) 495 F.2d 448, 470. Here, for Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. (Lee Decl. ¶ 4; Marder Decl.¶ 3.) Among the risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant who had retained a highly experienced defense firm. For such reasons, Class Counsel's request for attorneys' fees in the amount of $92,750.00 is fair, reasonable, and adequate.

VII. <u>THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS</u>

The request for reimbursement of costs, in the amount of $11,157.68 is fair and reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may seek up to $25,000.00 as reimbursement for litigations costs under the Settlement Agreement. As set forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of the action. (Agnew Decl. at ¶ 10, Ex. A.) As such, the 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 in the Declaration of Connor Tevenan, the settlement administration fees expended in this matter amount to a total of $6,000.00, which is the amount that was agreed upon by the Parties in the Settlement Agreement. (Admin. Decl. at ¶ 17.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

IX. NOTICE TO THE LWDA

On April 4, 2025, Plaintiff uploaded the Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement to the Labor and Workforce Development Agency's website. (Agnew Decl. at ¶ 18.) Concurrent with the filing of this Motion, Plaintiff will provide notice to the Labor and Workforce Development Agency. (*Id*. at ¶ 19.)

X. CONCLUSION

For all the foregoing reasons, and in light of the authorities cited herein, Plaintiff respectfully submits that the standards for final approval are satisfied, and that the terms of the Settlement Agreement warrant approval as fair, adequate, and reasonable. Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form proposed and submitted:

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

2. Approving the Gross Settlement Amount of $265,000.00;

3. Approving distribution of the Net Settlement Amount to Participating Class members, pursuant to the terms of the Settlement Agreement;

3. Approving Plaintiff's request for a Class Representative Service Payment in the amount of $7,500.00, with payment pursuant to the terms of the Settlement Agreement;

4. Approving Class Counsel's request for an award of $92,750.00 in attorneys' fees and $11,157.68 in costs with payment 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 $6,000.00 with payment pursuant to the

terms of the Settlement Agreement;

6. Approving Plaintiff's request for payment of PAGA Penalties in the amount of $25,000.00 with payment pursuant to the terms of the Settlement Agreement; and

7. Entering final judgment as to all members of the Class in this action.

DATED: August 11, 2025

DIVERSITY LAW GROUP, P.C.

By: */s/ Kristen M. Agnew*
Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Class