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and as a representative of aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LOS ANGELES

DIVYA K. PURSLEY, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SLING FLYING CLUB, LLC, a California
Limited Liability Company; and DOES 1
through 25,

Defendants.

Case No.: 23STCV27865
Assigned to Hon. Samantha P. Jessner
Department SSC-7

**NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Filed concurrently with Declarations of
Aaron Gundzik, Daniel Holzman,
Plaintiff Divya Pursley and Jarrod Salinas
of Phoenix Settlement Administrators;
[Proposed] Order]

Date: June 16, 2025

Time: 10:00 a.m.

Place: SSC-7

Complaint Filed: November 14, 2023

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

2 **PLEASE TAKE NOTICE** that on June 16, 2025, at 10:00 a.m. in Department 7 of
3 the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Divya Pursley will and, by this Notice of Motion and Motion, hereby does, move for an
5 Order as follows:

6 1. Granting final approval of a class action and Private Attorneys' General Act
7 ("PAGA") settlement in the gross amount of \$630,000

8 2. Approving a service and release payment in the amount of \$10,000 to
9 Representative Plaintiff Divya Pursley;

10 3. Approving of the payment of settlement administration costs of \$6,700 to the
11 third-party settlement administrator, Phoenix Class Action Settlement Administrators
12 ("Phoenix" or "Settlement Administrator");

13 4. Approving of a payment to the California Labor Workforce Development
14 Agency ("LWDA") in the amount of \$15,000, which is 75% of the \$20,000 amount
15 allocated to settle the PAGA claims, with the other 25% (\$5,000) being distributed to the
16 PAGA employees;

17 5. Approving the payment of attorneys' fees of \$210,000, which is one-third of
18 the gross settlement amount, and costs and expenses of \$14,248.17 to Class Counsel; and

19 6. Entering final judgment implementing the release of participating Class
20 Members' claims.

21 Plaintiff's motion is made pursuant to California Rule of Court 3.769 and is based on
22 this Notice of Motion and Motion, the Memorandum of Points and Authorities submitted
23 concurrently herewith, the [Proposed] Final Approval order and [Proposed] Judgment, the
24 Declaration of Class Counsel Aaron C. Gundzik, the Declaration of Class Counsel Daniel
25 Holzman, the Declaration of Representative Plaintiff Divya Pursley, the Declaration of
26 Jarrod Salinas, on behalf of the Settlement Administrator, Phoenix, the pleadings and other
27 papers filed in this action, and such further argument or evidence as may be considered at
28 the hearing on the motion.

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As this Motion will be unopposed, Plaintiff respectfully requests relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

DATED: May 21, 2025 GUNDZIK GUNDZIK HEEGER LLP

By: 
Rebecca Gundzik
Attorneys for Plaintiff Divya Pursley,
individually and on behalf of all others
similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 12, 2025, this Court granted preliminary approval of the wage and hour
4 class and Private Attorneys' General Act ("PAGA") settlement of six hundred thirty
5 thousand dollars (\$630,000) that is the subject of this Motion. In doing so, the Court
6 preliminarily concluded that the proposed settlement is fair and reasonable, preliminarily
7 appointed the named Plaintiff as the Class Representative, and preliminarily appointed
8 Aaron C. Gundzik and Rebecca G. Gundzik of Gundzik Gundzik Heeger LLP and Daniel
9 Holzman of Caskey and Holzman as Class Counsel. As ordered, notice of the proposed
10 settlement has been distributed to all 164 Class Members. Declaration of Jarrod Salinas
11 ("Salinas Decl."), ¶¶ 3-7. As of the date of this filing, no Class Members have opted out of
12 the proposed settlement and no one has objected to it. Salinas Decl., ¶¶ 9-10. The opt out
13 deadline was May 19, 2025.

14 As this Court is aware, this is a class action filed by Plaintiff Divya Pursley against
15 her former employer Defendant Sling Flying Club, LLC ("Defendant" or "Sling") on behalf
16 of 164 persons employed by Sling in California and classified as Flight Instructors who
17 worked for Sling during the Class Period.¹ The settlement that is the subject of Plaintiff's
18 motion resolves all of Plaintiff's class and PAGA claims. Generally, the terms of the parties'
19 settlement require Defendant to pay the sum of \$630,000. By this Motion, Plaintiff seeks
20 approval for the distribution of these funds to the Class Members, less a service and release
21 payment to the named Plaintiff, attorneys' fees and costs, a payment to the LWDA, a
22 payment to the aggrieved employees and settlement administration expenses. If this Motion
23 is granted in full, 164 Class Members will receive a settlement payment resulting in
24 individual gross payments to Class Members ranging between: \$2.20 and \$14,268.45, and
25 the average settlement payment will be \$2,250.32. Salinas Decl., ¶ 17.

26 _____
27 ¹ Upon receipt of the Class Data, the parties determined that the Class size is 164, not the
28 141 number that was reported to the Court in connection with Plaintiff's Motion for Preliminary Approval.

1 Nothing material concerning the proposed settlement has changed since the Court's
2 preliminary approval order. The Court should grant final approval.

3 **II. FACTUAL BACKGROUND**

4 **A. Plaintiff's Factual Allegations**

5 As discussed in Plaintiff's Motion for Preliminary Approval, based upon their
6 discovery and investigation, Plaintiff made the following contentions: Defendant Sling
7 Flying Club LLC, is a flight school, located in Torrance, California. Plaintiff Pursley worked
8 as a flight instructor for Sling. Gundzik Decl., ¶ 10; Declaration of Divya Pursley ("Pursley
9 Decl."), ¶ 2. While working, Plaintiff and Class Members contended that due to their work
10 obligations, they did not have sufficient time to take compliant meal and rest breaks.
11 Gundzik Decl., ¶ 11; Pursley Decl., ¶ 3. Plaintiff and Class Members also contended that
12 they were not paid for all hours that they were required to be at work but were paid only for
13 time spent teaching students. Gundzik Decl., ¶ 12; Pursley Decl., ¶ 3. Plaintiff and Class
14 Members further contended that they did not receive overtime premium pay when they were
15 required to work overtime hours. Gundzik Decl., ¶ 13; Pursley Decl., ¶ 3. Plaintiff and the
16 Class Members also contended that Defendant did not maintain time records at all for flight
17 instructors. Gundzik Decl., ¶ 14; Pursley Decl., ¶ 3. Plaintiff and Class Members contended
18 that they had to use their personal cell phones to communicate with their supervisors,
19 students and other employees, but that Defendant did not reimburse employees for these
20 expenses. Gundzik Decl., ¶ 15; Pursley Decl., ¶ 3. And Plaintiff contended that she and class
21 members were not provided with compliant wage statements or paid all wages owed to them
22 upon separation from Sling. Gundzik Decl., ¶ 16; Pursley Decl., ¶ 3.

23 Defendant disputes the merits of Plaintiff's claims, denies Plaintiff's factual
24 allegations and maintains that Plaintiff faces substantial risk with respect to certifying her
25 claims (for any purpose other than settlement), proving liability for any of the alleged Labor
26 Code violations or recovering any of the penalties sought in connection with her derivative
27 claims. Defendant contended, among other things, that Plaintiff and the Class Members were
28 paid all wages due to them. Moreover, Defendant argued that it met its meal and rest period

obligations. Furthermore, to the extent Plaintiff received wage statements that were allegedly inaccurate, Defendant asserted that Plaintiff suffered no actual damage or harm as a result.

B. Procedural History and Investigation and Discovery Prior to Settlement

Plaintiff's operative complaint alleges causes of action against Sling for: (1) failure to pay wages for all work performed; (2) failure to pay overtime; (3) failure to provide compliant meal and rest breaks; (4) inaccurate wage statements; (5) failure to reimburse necessary expenses; (6) unfair business practices; (7) failure to pay unpaid wages at separation; and (8) recovery of civil penalties pursuant to the Private Attorneys General Act, Cal. Lab. Code §§2698-2699.5 ("PAGA").

On July 18, 2024, Plaintiff Divya Pursley, Plaintiff's counsel, Defendant and Defendant's counsel attended a mediation session with well-respected mediator, Michael Loeb, Esq. Ms. Pursley participated in the mediation. Mr. Loeb has substantial experience presiding over and mediating wage and hour class actions and PAGA representative actions like this one. *Id.* The case settled after a full day of negotiation pursuant to a mediator's proposal. Gundzik Decl., ¶ 17.

In connection with Plaintiff's investigation and formal discovery, Plaintiff and Plaintiff's counsel extensively investigated Plaintiff's claims against Defendant. Gundzik Decl. ¶¶ 6-9. They have thoroughly investigated Plaintiff's claims, reviewed and analyzed records and information produced by Defendant, and worked to develop information on potential damages. *Id.* They engaged in informal discovery and exchanged additional information and documents for the mediation. Gundzik Decl., ¶ 7. Among other things, Plaintiff's counsel has obtained from Defendant, and then reviewed and analyzed policy documents and pay records for about 20% of the class's total pay periods, as well as other information concerning class member wages and work activities. Gundzik Decl., ¶ 6. Plaintiff's counsel also interviewed other class members. *Id.* In connection with the mediation, Defendant provided information on the number of Class Members and PAGA Aggrieved Employees, total Class Member workweeks, total PAGA Aggrieved Employee

1 pay periods and other data concerning the class. Gundzik Decl., ¶ 7. Plaintiff's counsel also
2 investigated and compiled publicly available information about Defendant and its business.
3 Gundzik Decl., ¶ 6. Based on this information, as well as information provided by the
4 Plaintiff, Plaintiff's counsel was able to assess Defendant's potential liability and prepare an
5 estimate of the damages incurred by the Class. Gundzik Decl., ¶ 8.

6 **C. Plaintiff's Counsel's Estimate of Potential Recovery**

7 The First Cause of Action is for failure to pay for work performed. This claim was
8 based on the contention that Defendant failed to pay flight instructors for all of the time that
9 they worked. Gundzik Decl., ¶ 22. Class Members were not paid by the hour. Instead, they
10 were paid for some, but not all, tasks performed during a workday. *Id.* For example, Class
11 Members were not paid for time that they waited between lessons or for the time between
12 their arrival at work and the beginning of their first paid lesson. *Id.* Defendant did not
13 provide a mechanism for Class Members to record their working hours and breaks. So, it
14 was difficult to precisely determine the amount of unpaid time. *Id.* Based on Class Member
15 interviews and other data, Plaintiff's counsel estimated that Class Members worked about
16 1.5 unpaid hours per shift, and that about 10% of these hours were overtime hours. *Id.* On
17 average, Class Members worked about 3.5 shifts per week. *Id.* Using these numbers,
18 Plaintiff's counsel estimated that the maximum value of this claim to be \$555,640. *Id.*
19 However, certifying this claim would be challenging because there is no data to support
20 these instances of unpaid time, and it is based solely on class member statements. *Id.*
21 Moreover, Defendant could successfully contend that there are manageability issues and
22 individualized issues as to whether and to what extent Class Members worked off the clock.
23 *Id.* Plaintiff's counsel therefore determined that the minimum value of this claim is \$0. *Id.*

24 The Second Cause of Action is for failure to pay for overtime work at overtime rates
25 of pay. This claim was based on Defendant's failure to pay Plaintiff and the other Class
26 Members overtime rates of pay for overtime hours. Gundzik Decl., ¶ 23. After reviewing
27 work logs, Plaintiff's counsel concluded that about 10% of the unpaid time represented
28 overtime. *Id.* Using this estimate and the other numbers discussed in the preceding

1 paragraph, Plaintiff's counsel estimated the maximum value of this claim to be \$123,475. *Id.*
2 However, for the reasons discussed above, this claim, too, would be challenging.
3 Accordingly, Plaintiff's counsel concluded that the minimum value of this claim is \$0. *Id.*

4 The Third Cause of Action is for failure to provide compliant meal and rest periods.
5 This claim was based on Defendant's failure to provide compliant meal and rest breaks as
6 well as its failure to pay Class Members meal and rest break premiums. Gundzik Decl., ¶ 24.
7 Defendant's records revealed that Class Members were often denied compliant breaks. *Id.*
8 Based on the records they reviewed, Plaintiff's counsel determined that the maximum value
9 of the meal break portion of this claim is \$203,049. *Id.* This is based on an estimated total of
10 27,439 shifts and a 37% violation rate. (27,439 shifts x 37% violation rate x \$20 regular rate
11 = \$203,049.) *Id.* Plaintiff's counsel estimated that the maximum value of the rest break
12 portion of this claim is about \$323,780. *Id.* This is based on an assumed violation rate of
13 59% (27,439 shifts x 59% violation rate x \$20 regular rate = \$323,780.) *Id.* However,
14 because of the lack of documentary evidence regarding rest break violations, and the
15 possibility that Defendant could successfully contend that the meal and rest break violations
16 were individualized incidents which did not support a class award, Plaintiff's counsel
17 concluded that the minimum value of this claim is \$0. *Id.*

18 The Fourth Cause of Action is for failure to provide compliant wage statements. The
19 statute of limitations on such a claim is one year. This claim is based on the fact that the
20 wage statements issued to Plaintiff and the Class are incorrect in that they did not include all
21 of the unpaid hours worked and do not reflect meal and rest break wage premiums that
22 should have been paid. Gundzik Decl., ¶ 25. The penalties for inaccurate wage statements
23 are \$50 per employee for the first violation and \$100 per employee per violation for all
24 subsequent violations. Penalties per employee are limited to \$4,000. Prior to mediation,
25 Defendant disclosed that a total of 103 employees worked a total of about 3,551 pay periods
26 during the PAGA Period. *Id.* Based upon the number of wage statements, Plaintiff's counsel
27 estimated that the maximum value of this claim is approximately \$349,950 ((3,551 pay
28

1 periods x \$100) – (103 employees x \$50) = \$349,950) and that that this claim has a
2 minimum value of \$0. *Id.*

3 The Fifth Cause of Action is for failure to reimburse employees for all necessary
4 expenditures. This claim was based upon Plaintiff’s contention that Class Members were
5 required to use their personal cell phones to communicate with their supervisors, students
6 and coworkers. Gundzik Decl., ¶ 26. Plaintiff’s counsel determined that the maximum value
7 of this claim is approximately \$84,175, which assumes a reimbursement rate of \$50 per
8 month and about 1,683 employee months worked during the class period. *Id.* Plaintiff’s
9 counsel estimated that the minimum value is \$0. *Id.*

10 The Seventh Cause of Action is for failure to pay separated employees all wages due
11 at the time of separation. This claim is based on Defendant’s alleged failure to pay Class
12 Members all wages due when they separated, as their final pay did not include amounts due
13 for meal or rest period premiums, non-productive time or for all of their overtime work.
14 Gundzik Decl., ¶ 27. There are about 73 Class Members who were separated during the
15 relevant statutory period. *Id.* At an average daily rate of \$140, Plaintiff’s counsel determined
16 that the maximum value of this claims is approximately \$306,600 and that the minimum
17 value is \$0. *Id.*

18 The Sixth Cause of Action is for violation of Business & Professions Code section
19 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
20 is available under the UCL for certain violations. This cause of action is derivative of the
21 other claims that have already been analyzed. Gundzik Decl., ¶ 28. Accordingly, the
22 damages available under this cause of action have already been analyzed or are duplicative
23 of the damages discussed.

24 The Eighth Cause of Action is for violations of the Private Attorneys General Act
25 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
26 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
27 ¶ 29. Based on recent PAGA decisions, Plaintiff’s counsel concluded that even if Plaintiff
28 was successful on this claim through trial, the Court may well have exercised its discretion

1 under PAGA and significantly reduced the penalties. *Id.*; Cal. Labor Code §2699(e)(2). In
2 addition, the settlement was primarily directed at recovering wages and unpaid premiums
3 owed to Class Members and the bulk of the settlement funds were intended to compensate
4 for these wages. *Id.* Based on these factors, Plaintiff’s counsel opined that the maximum
5 reasonable value of the PAGA claim is approximately \$350,000, and the minimum value is
6 nothing. *Id.* Plaintiff’s counsel therefore concluded that the \$20,000 that the parties allocated
7 to PAGA, 75% of which will be paid to the LWDA, is a reasonable settlement of that claim.
8 *Id.*

9 Based upon the foregoing, Plaintiff’s counsel determined that the class claims in this
10 case had a minimum value of \$0 and a maximum estimated value of about \$1.9 million, not
11 including the PAGA penalties. Gundzik Decl., ¶ 30. Based on a Class size of approximately
12 164, the reasonable estimate of the average net amount that Class Members could have
13 obtained if Plaintiff prevailed at trial on behalf of the entire Class, if the Class was certified,
14 would be a minimum of \$0 and a maximum of about \$11,585. *Id.* However, the maximum
15 amount is almost never recovered at trial and never in a settlement. *Id.* Settlements, by their
16 nature, must account for the weaknesses in a plaintiff’s case, which are discussed above. *Id.*
17 Indeed, because Defendant raised a colorable legal or factual defense to each of the claims
18 Plaintiff alleged, it is possible that, after trial, the Class would recover nothing. *Id.*
19 Defendant also is a relatively small company with limited finances, and Plaintiff and her
20 counsel were concerned that it would not be able to satisfy a judgment in excess of the
21 settlement amount and that if the litigation continued, it may not have been able to remain
22 a viable business (which would have meant that the Class Members would not receive any
23 amounts whatsoever). *Id.*

24 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.*, 72 Cal.
25 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
26 purposes to remediate present labor law violations, deter future ones, and to maximize
27 enforcement of state labor laws.” Gundzik Decl., ¶ 31. In the settlement, \$20,000 is
28 allocated to Plaintiff’s PAGA claim, which is approximately 3% of the Gross Settlement

1 Amount. *Id.* In conjunction with the class settlement, pursuant to which Class Members will
2 receive, on average, \$2,250.38, not including their PAGA payment, this settlement will
3 serve to remediate Defendant’s labor law violations. *Id.* Given that Defendant will be
4 paying \$630,000 as a result of the alleged violations, the Class and PAGA settlement is a
5 large disincentive for Defendant to engage in similar Labor Code violations in the future. *Id.*
6 And, because all Class Members will receive a notice of settlement with contact information
7 for Plaintiff’s counsel, those employees will know to contact them in the future if Defendant
8 attempts to engage in similar practices. *Id.* These factors—the payment of a large sum and
9 employee notice of violations and potential violations—serve to maximize enforcement of
10 state labor laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and
11 disproportionate allocation of civil penalties between different groups of employees. *Id.* All
12 aggrieved employees will receive an allocation of PAGA civil penalties based on the
13 number of qualifying pay periods that they worked for Defendant. *Id.*

14 **D. Summary of Settlement Negotiations**

15 On July 18, 2024, Plaintiff and her counsel, as well as Defendant and Defendant’s
16 counsel, attended a mediation session with Michael Loeb, Esq. Gundzik Decl., ¶ 17. The
17 case settled after a full day of negotiation pursuant to a mediator’s proposal. *Id.* The
18 settlement was negotiated at arms’ length and was in no sense collusive. *Id.*

19 Plaintiff’s counsel and their client concluded, after taking into account the sharply
20 disputed factual and legal issues involved in the lawsuit, the risks attending further
21 prosecution, and the substantial benefits to be received pursuant to the compromise and
22 settlement of the action, that the settlement is in the best interests of the Class and is fair and
23 reasonable. Gundzik Decl., ¶ 18. They also considered the possibility that the Class would
24 not be certified and factored in the additional delay in recovery for Class Members if the
25 settlement were rejected and the case went to trial. *Id.* And they considered Defendant’s
26 contention that it did not have sufficient assets to satisfy a larger judgment. *Id.*

27 //

28 //

1 **E. The Representative Plaintiff’s Involvement and Release**

2 Both before and after deciding to become the class representative and take on the
3 lawsuit, Plaintiff met with and engaged in lengthy conversations with Class Counsel about
4 all aspects of the case, her employment, her job and job duties for Sling. Declaration of
5 Divya Pursley (“Pursley Decl.”), ¶ 17. She was prompt and responsive and spoke with Class
6 Counsel’s office many times regarding the case, the mediation and the settlement. Pursley
7 Decl., ¶¶ 17-18. She identified relevant witnesses to Class Counsel and provided Class
8 Counsel with relevant documents. *Id.* She spoke with other employees regarding their
9 treatment while employed by Defendant and provided this information to Class Counsel. *Id.*
10 She was proactive and requested regular updates from Class Counsel and inquired as to how
11 class actions worked so she could understand the process. *Id.*

12 To assist Class Counsel, Plaintiff reviewed and collected all of her documents in
13 connection with her employment for Defendant. Pursley Decl., ¶¶ 17-18. She spent a great
14 deal of time assisting Class Counsel identifying witnesses and consulting with Class
15 Counsel in advance of the mediation. *Id.* Ms. Pursley missed a full day of work to attend and
16 participate in the mediation. *Id.* And she had several meetings with Class Counsel to discuss
17 the proposed settlement, the settlement agreement and the amended settlement agreement.
18 *Id.* In all, Plaintiff spent in excess of 80 hours on the lawsuit. *Id.*

19 Filing the lawsuit posed risks for Plaintiff. Pursley Decl., ¶ 15. She understood that if
20 the class action was unsuccessful, she could be responsible for Defendant’s litigation costs,
21 which could have been substantial. *Id.* She was concerned about the attention a publicly
22 filed lawsuit, and especially a class action, would attract, as her name would be associated
23 with a lawsuit that they had filed against her former employer. *Id.* She was aware that it is
24 possible and relatively easy to perform background checks of publicly filed documents on
25 the internet and was concerned that future prospective employers and others might find out
26 that she had sued Defendant, which could hurt her future job prospects. *Id.*

1 In addition, the settlement agreement required Plaintiff to sign a broad general
2 release which is broader than the release that will bind other Class Members and requires her
3 to waive Section 1542 of the California Civil Code. Gundzik Decl., ¶ 19, Ex. 1, ¶ 5.1.1.

4 **F. The Preliminarily Approved Settlement**

5 On March 12, 2025, the Court granted preliminary approval to the settlement of this
6 matter. See Gundzik Decl., ¶ 38, Ex. 2. The terms of the settlement are more specifically set
7 forth in the parties' Settlement Agreement. Gundzik Decl., ¶ 19, Ex. 1. The provisionally
8 certified settlement class is defined as "all persons employed by SLING in California and
9 classified as Flight Instructors who worked for SLING during the Class Period (November
10 14, 2019, through September 9, 2024). Gundzik Decl., ¶ 19, and Ex. 1, ¶¶ 1.5, 1.12. There
11 are 164 Class Members. Salinas Decl., ¶ 13.

12 The Settlement Agreement provides that Defendant agreed to pay a gross settlement
13 amount of \$630,000 ("Gross Settlement Amount"). Gundzik Decl., ¶ 19, Ex. 1, ¶ 1.24.
14 Within sixty (60) calendar days after the Effective Date (which is the date of entry of the
15 order of the Final Approval Order and the date that the Court's Order of Final Approval is
16 final), Defendant is required to deliver 50% of the Gross Settlement Amount to the
17 Settlement Administrator. Within 180 days after the first payment is due, Defendant is
18 required to deliver the other 50% of the Gross Settlement Amount to the Settlement
19 Administrator, together with the Employer's Withholding Share. Gundzik Decl., ¶ 19, Ex. 1,
20 ¶¶ 1.20, 4.3.

21 **G. Notice of Preliminary Settlement Provided to the Settlement Class and**
22 **the Claims Process**

23 Pursuant to the timetable established in the Settlement Agreement and previously
24 approved by this Court, Phoenix mailed the Notice of Proposed Class Action Settlement
25 ("Notice of Settlement") to 164 Class Members on April 4, 2025. Salinas Decl., ¶ 7. As a
26 result of this mailing, Phoenix has provided all of the Class Members with a notice of the
27 settlement which calculates the approximate value of their settlement payment and
28 information on how to opt out of and object to the proposed settlement. Salinas Decl., ¶¶ 6-

1 7.

- 2 ➤ On March 17, 2025, Phoenix received from Defendant complete information
3 including the names, last known addresses, applicable employment information
4 and Social Security numbers for 164 Class Members.

5 Salinas Decl., ¶ 3.

- 6 ➤ On April 3, 2024, Phoenix completed a National Change of Address (NCOA)
7 search for new addresses.

8 Salinas Decl., ¶ 6.

- 9 ➤ On April 4, 2025, the Notices of Settlement were mailed to the 164 Class
10 Members at the most recent addresses available to Phoenix. The notices provided
11 information about the action, the proposed settlement and instructions on how to
12 opt out, object, or obtain further information. The notices advised Class Members
13 that any objections or opt outs must be postmarked by May 19, 2025.

14 Salinas Decl., ¶ 7, and Ex. A thereto.

- 15 ➤ None of the notices were returned after the initial mailing.

16 Salinas Decl., ¶ 8, and Ex. A thereto.

- 17 ➤ Phoenix has not received any requests to opt out of the settlement and no
18 objections. Class Counsel has not received any opt-out requests or objections to
19 the proposed settlement. The opt out deadline was May 19, 2025.

20 Salinas Decl., ¶¶ 9-10; Gundzik Decl., ¶ 41.

21 **H. Proposed Distributions from Gross Settlement Amount**

22 Based upon the Settlement Agreement and this Court's preliminary approval order,
23 Plaintiff proposes that within ten (10) days of the receipt of the Gross Settlement Amount
24 from Defendant, the Gross Settlement Amount be disbursed as follows:

- 25 • Settlement administration costs, in the amount of \$6,700, to Phoenix;
26 • A service and release payment in the amount of \$10,000 to Plaintiff Divya
27 Pursley;
28

- 1 • An allocation of \$20,000 to Plaintiff’s PAGA claim (the “PAGA Amount”),
2 \$15,000 of which will be paid to the California Labor and Workforce
3 Development Agency, and the remaining \$5,000 of which will be distributed
4 to the Aggrieved Employees.
- 5 • Class Counsel’s attorneys’ fees, in the amount of \$210,000, which is one-
6 third of the gross settlement amount;
- 7 • Class counsel’s costs of \$14,248.17;
- 8 • The remainder of the gross settlement amount (the “Net Settlement
9 Amount”), in the amount of approximately \$369,051.83, will be distributed
10 to Class Members based on the formula contained in the Settlement
11 Agreement (which is based on the number of total compensation paid to them
12 during the period that they were employed by Defendant during the Class
13 Period).

14 Gundzik Decl., ¶ 19, Ex. 1, ¶ 3.2.4.

15 **I. Determination of Settlement Payments to Individual Class Members and**
16 **PAGA Employees**

17 The Settlement Agreement provides that all payments to Class Members shall be
18 made by the Settlement Administrator, based on the amount of total compensation paid to
19 each Class Member during the Class Period relative to the amount of total compensation
20 paid to all Class Members during the Class Period. Gundzik Decl., ¶ 19, and Ex. 1, ¶ 3.2.4.

21 ➤ Phoenix determined the total of all compensation paid to all the Settlement Class
22 Members during the Class Period. Each Class Member’s settlement payment was
23 determined by dividing the Net Settlement Amount by the total Class Period
24 Compensation paid to all Participating Class Members during the Class Period
25 and multiplying the result by each Participating Class Member’s Class Period
26 Compensation. The amount of the individual settlement payment was then
27 indicated on each Class Member’s Notice.

28 Salinas Decl., ¶ 16.

➤ Based on these calculations, Phoenix determined the estimated amount of the class settlement payment due to each Class Member. The approximate range of class settlement pay-outs is expected to be between \$2.20 and \$14,268.45, and the average settlement payment will be in the amount of approximately \$2,250.32.

Salinas Decl., ¶ 17.

The Settlement Agreement also provides that all payments to Aggrieved Employees shall be made by the Settlement Administrator, based on the number of Qualifying Pay Periods that each Aggrieved Employee worked during the PAGA Period. Those payments were calculated by:

dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$5,000 by the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period and multiplying the result by each Aggrieved Employee's PAGA Pay Periods.

Salinas Decl., ¶ 19.

➤ Based on these calculations, Phoenix determined the estimated amount of the PAGA settlement payment due to each Aggrieved Employee. The average PAGA settlement payment will be approximately \$36.23.

Salinas Decl., ¶ 20.

➤ The payments to Settlement Class Members will be characterized as twenty percent (20%) wages, to be reported on a W-2 form, and eighty percent (80%) penalties and interest. The amount of interest and penalties will be reported on IRS 1099 Forms.

Gundzik Decl., ¶ 19, Ex. 1, ¶ 3.2.4.1.

J. Proposed Release of Defendant by Class Members

If the Court gives final approval to the proposed settlement, the Settlement Agreement provides that the Court shall enter a final approval Order ("Final Approval Order") and a judgment implementing the release of the released claims as described in the

1 Settlement Agreement. Gundzik Decl., ¶ 19, Ex. 1, ¶ 5. As part of the Final Approval Order
2 and judgment, Class Members who do not opt out will be deemed to have released the
3 specific Released Claims. Gundzik Decl., ¶ 19, Ex. 1, ¶ 5. The release applicable to the
4 Class Members provides:

5 All Participating Class Members, on behalf of themselves and their respective former
6 and present representatives, agents, attorneys, heirs, administrators, successors and
7 assigns, release Released Parties from (i) all claims that were alleged, or reasonably
8 could have been alleged, based on the Class Period facts stated in the Operative
9 Complaint including, any and all claims involving any alleged (a) failure to pay
10 wages; (b) failure to pay minimum wages; (c) failure to provide meal and/or rest
11 breaks; (d) failure to provide legally compliant wage statements; (e) failure to
12 reimburse employees for necessary expenditures; (f) failure to pay all wages owed at
time of discharge. Except as set forth in Section 5.3 of this Agreement, Participating
Class Members do not release any other claims, including claims for vested benefits,
wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation or
claims based on facts occurring outside the Class Period.

13 Gundzik Decl., ¶ 19; Ex. 1, ¶ 5.2. This release does not include any claims that are outside
14 of the scope of the facts alleged in the operative pleadings and does not include the PAGA
15 Released Claims.

16 The release applicable to the Aggrieved Employees who are non-
17 participating Class Members provides:

18 All Non-Participating Class Members who are Aggrieved Employees are deemed
19 to release, on behalf of themselves and their respective former and present
20 representatives, agents, attorneys, heirs, administrators, successors and assigns, the
21 Released Parties from all claims for PAGA penalties that were alleged, or
reasonably could have been alleged, based on the PAGA Period facts stated in the
Operative Complaint and the PAGA Notice.

22 Gundzik Decl., ¶ 19, Ex. 1, ¶ 5.3.

23 The Settlement Agreement defines "Released Parties" as:

24 SLING and each of its former and present directors, officers, shareholders, owners,
25 members, attorneys, insurers, predecessors, successors, assigns, subsidiaries and
26 affiliates.

27 Gundzik Decl., ¶ 19; Ex. 1, ¶ 1.43. The Settlement Agreement does not constitute an
28 admission of the merits of any claim by Plaintiff or the Class or address any defense of

1 Defendant. Gundzik Decl., ¶ 19, Ex. 1, ¶ 12.1.

2 **III. THE COURT SHOULD GIVE FINAL APPROVAL TO THE SETTLEMENT**

3 The law favors settlement, particularly in class actions and other complex cases in
4 which substantial resources can be conserved by avoiding the time, cost and rigors of formal
5 litigation. *Potter v Pacific Coast Lumber Company*, 37 Cal.2d. 592, 602-603 (1951); *Class*
6 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). When faced with a motion for
7 final approval of a class action settlement under Code of Civil Procedure § 382, the
8 appropriate inquiry is whether the settlement is “fair, adequate, and reasonable.” See
9 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 244-245 (2001); *Dunk v. Ford Motor*
10 *Co.*, 48 Cal.App.4th 1794, 1801 (1996). If so, the settlement should be approved. *Id.* And, “a
11 presumption of fairness exists where: (1) the settlement is reached through arm's-length
12 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
13 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
14 objectors is small.” *Dunk v Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).

15 **A. Nothing Has Occurred in the Interim That Should Affect This Court's**
16 **Preliminary Findings**

17 Before granting preliminary approval of a class and PAGA action settlement, this
18 Court was required to find—and did find—that there is sufficient evidence that the proposed
19 settlement would be fair, reasonable, and adequate, and not a product of fraud, overreaching,
20 or collusion. See Gundzik Decl., ¶ 38, Ex. 2; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.
21 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
22 determine that the proposed settlement was fair, reasonable, and adequate, and thus
23 appropriate for preliminary approval, the Court was required to find that the following three
24 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
25 (2) counsel conducted sufficient investigation and discovery to allow themselves and the
26 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. See
27 also *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
28 (2000). In applying this determination for the purpose of granting final approval, as

1 discussed below, although not determinative, the Court may also consider the percentage of
2 objectors in determining whether a presumption of fairness exists. *Id.*

3 All of these considerations are satisfied here. The parties conducted significant
4 informal discovery and investigation and participated in a day-long mediation before
5 reaching the Settlement Agreement which is the subject of this motion. Gundzik Decl., ¶¶ 6-
6 34. Moreover, none of the 164 Class Members have opted out of the proposed settlement
7 (which is a 100% acceptance rate), and not one of the Class Members has objected to it.
8 Salinas Decl., ¶¶ 9-10.

9 **B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations**

10 There was no collusion between the parties in this case. After extensive informal
11 discovery and the exchange of information and voluminous pages of documents, the parties
12 engaged in mediation with a well-respected and highly knowledgeable wage and hour
13 mediator, Michael Loeb, Esq. Gundzik Decl., ¶¶ 6-17. The involvement of a neutral third-
14 party mediator is a factor that favors approval and evidences the presumptive fairness of the
15 arms-length negotiations. Indeed, the California Court of Appeal in *Kullar v. Foot Locker*
16 *Retail, Inc.* expressed that courts should give considerable weight to the competency and
17 integrity of counsel and the involvement of a neutral mediator in assuring themselves that a
18 settlement agreement represents an arms-length transaction entered without self-dealing or
19 other potential misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129
20 (2008).

21 **C. The Settlement is Supported by Substantial Investigative and Discovery**
22 **Efforts**

23 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
24 substantial investigation and discovery. This investigation included (1) preparing pleadings
25 and other documents filed with the Court, (2) extensively investigating Plaintiff's claims, (3)
26 engaging in informal discovery and reviewing and analyzing numerous handbooks, policies
27 and documents regarding Class Member reimbursements, including records and information
28 produced by Defendant, (4) reviewing and analyzing policies and pay records for the

1 proposed Class Members, including Plaintiff, as well as records for the PAGA Aggrieved
2 Employees, (5) investigating and compiling publicly-available information about Defendant
3 and its business, (6) negotiating extensively with Defendant regarding the mediation, its
4 scope, and the information to be exchanged in connection with the mediation, and (7)
5 working to develop information on potential damages. Gundzik Decl., ¶¶ 6-8, 21-31, 47-53,
6 and Ex. 3.

7 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
8 to assess potential liability and damages. These efforts resulted in the parties having a clear
9 view of the strengths and weaknesses of their respective cases and achieving a resolution on
10 favorable terms. Gundzik Decl., ¶¶ 6-8, 21-31.

11 **D. As Previously Found by this Court, Class Counsel is Experienced in**
12 **Similar Litigation**

13 The endorsement of qualified and well-informed counsel of the settlement as fair is
14 entitled to significant weight. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v.*
15 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion
16 for preliminary approval papers and the declarations supporting both that motion and the
17 instant motion, Class Counsel have represented, litigated, mediated and settled many other
18 employee class actions in wage and hour litigation and have knowledge of the strengths and
19 weaknesses of the claims against Defendant and the benefits of the proposed settlement
20 under the circumstances of the case. Gundzik Decl., ¶¶ 21-31. Class Counsel believes that
21 the settlement is fair, adequate, reasonable and in the best interests of the Class as a whole.
22 Gundzik Decl., ¶ 34.

23 **E. The Class Members' Positive Reaction to the Settlement Favors Final**
24 **Approval**

25 The reaction of the Class to proposed settlement has been extremely positive. None
26 of the 164 Class Members have opted out of the proposed settlement and none have objected
27 to it. Salinas Decl., ¶¶ 9-10.

1 Although a court may appropriately infer that a class action settlement is fair,
2 adequate, and reasonable even when a significant percentage of class members object to it
3 (*See Boyd v Betchel Corp.*, 485 F. Supp. 610, 624 (C. D. Cal 1976); *see also Reed v.*
4 *General Motors*, 703 F.2d 170, 174 (5th Cir. 1983)), the fact that none have objected to it
5 provides much stronger grounds for granting final approval. In this action, the Court should
6 construe this as a further indication of Class Members’ support for the settlement as being
7 fair, adequate, and reasonable.

8 **F. The Proposed Service and Release Payment to the Named Plaintiff is**
9 **Reasonable and Should be Approved**

10 The Settlement Agreement provides for a service and release payment in the amount
11 of \$10,000 to class representative Divya Pursley. The purpose of this payment is to provide
12 additional compensation to Plaintiff for the time and effort that she put into the litigation and
13 the settlement of this matter, as well as the risks she undertook by agreeing to sue her former
14 employer.

15 “In determining whether to make an incentive award, the court may consider (1) the
16 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
17 notoriety and personal difficulties encountered by the class representative; (3) the amount of
18 time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
19 personal benefit received by the class representative as a result of the litigation.” *Golba v.*
20 *Dick’s Sporting Goods, Inc.*, 238 Cal. App. 4th 1251, 1272 (2015). Additional factors to be
21 considered include “the actions the plaintiff has taken to protect the interests of the class, the
22 degree to which the class has benefitted from those actions, and the amount of time and
23 effort the plaintiff expended in pursuing the litigation.” *Clark v. American Residential*
24 *Services LLC*, 175 Cal. App. 4th 785, 804 (2009).

25 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
26 service and release payments to Plaintiff. She undertook significant risks in getting involved
27 in the lawsuit, knowing that it could impact her future employment. Pursley Decl., ¶ 15. She
28 understood that if the class action was unsuccessful, she could be responsible for

1 Defendant's litigation costs, which could have been substantial. *Id.* She was concerned by
2 the attention of a publicly filed lawsuit, and especially a class action, would attract, as her
3 name would be associated with a lawsuit that she had brought against an employer. She was
4 reasonably concerned about the notoriety that would attend her involvement, as she knew
5 that it is possible and relatively easy to perform background checks of publicly filed
6 documents on the internet and was concerned that it could hurt her future employment
7 prospects. *Id.*

8 Plaintiff spent a significant amount of time on the lawsuit. She had many telephone
9 and Zoom conferences with Class Counsel regarding the case and the mediation. Pursley
10 Decl., ¶¶ 17-18. She missed a full day of work in order to attend the mediation. Pursley
11 Decl., ¶ 20. She had conferences to discuss the proposed settlement with Class Counsel, and
12 to discuss the Settlement Agreement, amended Settlement Agreement and related motions.
13 *Id.*

14 To assist Class Counsel, Plaintiff reviewed and collected all of her documents in
15 connection with her employment for Defendant. Pursley Decl., ¶ 18. And she spent a great
16 deal of time assisting Class Counsel identifying witnesses, and consulting with Class
17 Counsel in advance of the mediation. *Id.* In all, Plaintiff spent in excess of 80 hours
18 on the lawsuit. *Id.*

19 Had she been unwilling to step up, none of the Class Members would have received
20 any amounts whatsoever. By agreeing to serve as the class representative, Ms. Pursley has
21 taken significant action to protect the interests of the Class, and the Class has significantly
22 benefitted from those actions. *Clark v. American Residential Services LLC*, 175 Cal. App.
23 4th at 804. Although she could have filed a claim with the Department of Labor and possibly
24 received more money, instead of acting in her own self-interest she got involved in this
25 lawsuit to protect the interests of the Class. And as a result of those efforts, 164 Class
26 Members will be receiving settlement payments in an average amount of \$2,250.38.

27 The additional payment proposed for the named Plaintiff is also intended to
28 compensate her for the broader release that Defendant has demanded of her. While all other

1 Class Members will only be releasing the Released Claims, the settlement agreement
2 required Ms. Pursley to sign a broad general release which is broader than the release that
3 will bind other Class Members and requires her to waive Section 1542 of the California
4 Civil Code. Gundzik Decl., ¶ 19, Ex. 1, ¶ 5.1.1.

5 Awarding larger amounts to class representatives is permissible and is often
6 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
7 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class
8 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
9 are “intended to compensate class representatives for work done on behalf of the class, to
10 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
11 to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
12 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

13 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West*
14 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
15 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action
16 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named
17 plaintiff there can be no class action, such compensation as may be necessary to induce him
18 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
19 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
20 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
21 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).

22 The additional payment to the named Plaintiff also takes into account the additional
23 risks that she incurred in acting on behalf of the Class. These risks included the potential of
24 a judgment against her if this case had been unsuccessful, as class representatives are
25 deemed the losing party that is liable for the prevailing party’s costs. *Earley v. Superior*
26 *Court*, 79 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial
27 benefit to the Class. Plaintiff also took the very real risk that this lawsuit would have a
28 negative impact on her future employment. Pursley Decl., ¶ 15; see, e.g., *Staton v. Boeing*,

1 327 F.3d 938, 977 (9th Cir 2003) (fear of workplace retaliation is one justification behind
2 reasonable class representative incentive payments).

3 Because Plaintiff has advanced California’s public policy goal of enforcing wage and
4 hour laws (*See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 340 (2004)), the
5 Court should approve of the proposed service and release payment to the Representative
6 Plaintiff.

7 **G. The Court Should Approve the Request for Class Counsel’s Fees**

8 Subject to Court approval, the settlement amount of \$630,000 includes Class
9 Counsel’s attorneys’ fees of \$210,000. Gundzik Decl., ¶¶ 19, 42, Ex. 1, ¶ 3.2.2. It is well-
10 settled that representative plaintiffs and class members are entitled to recover their
11 attorneys’ fees and costs in wage and hour class action disputes. California Labor Code
12 § 218.5; Cal. Code Civ. Proc. § 1021.5(a); *Earley v. Super. Ct.*, 79 Cal. App. 4th at 1420.

13 A fee award is justified when benefits are obtained for the class irrespective of
14 whether there is a final judgment in its favor, such as when those benefits are the result of a
15 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
16 (1983). “Courts recognize two methods for calculating attorney fees in civil class actions:
17 the lodestar/multiplier method and the percentage of recovery method.” *Wershba v. Apple*
18 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,
19 82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often
20 use a lodestar-multiplier method as a check against the reasonableness of a percentage fee
21 award. *See, e.g., Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977);
22 *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995);
23 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

24 **1. Class Counsel’s Requested Fee Award is Within California’s**
25 **Benchmark Awards and Thus Reasonable Under the Percentage of**
26 **The Benefit or Common Fund Method**

27 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California
28 Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class

1 actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the
2 class members, and the trial court in its equitable powers awards class counsel a fee out of
3 that fund, the court may determine the amount of a reasonable fee by choosing an
4 appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he
5 percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
6 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
7 avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache*
8 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Pursuant to the “percentage of the benefit”
9 doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other
10 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
11 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a
12 reasonable fee to compensate counsel for their efforts, irrespective of the method of
13 calculation. It is not an abuse of discretion to choose one method over another as long as the
14 method chosen is applied consistently using percentage figures that accurately reflect the
15 marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

16 Class Counsel’s request for one-third of the monetary fund recovered is California’s
17 standard benchmark and well within the range customarily approved by the California
18 courts in comparable class actions and other class actions, as well as the standard
19 contingency contracts negotiated by plaintiffs and their counsel. Historically, attorneys’ fee
20 awards in common fund cases in general range from 20% to 50% of the fund, depending on
21 the circumstances of the case. See *Newberg on Class Actions*, (3rd Ed.), 1992, §14.03
22 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
23 generally approved as reasonable in wage and hour class actions that result in recovery of a
24 common fund under \$10 million. See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
25 482, 491-492 (E.D. Ca. 2010) (citing to five recent wage and hour class actions where
26 federal district courts approved attorney fee awards ranging from 30 to 33%); *Singer v.*
27 *Becton Dickenson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca.
28 June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding

1 that award was similar to awards in three other wage and hour class action cases where fees
2 ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS
3 86270, 2007 WL 3492841 (E.D. Ca. Nov. 14, 2007); See *Martin v. Ameripride Servs.*, 2011
4 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011).

5 Plaintiff's request for one-third of the settlement sum for attorneys' fees is within
6 established rates for fee awards in class settlements pursuant to the common fund doctrine,
7 especially in light of the excellent results achieved in this case. See *In re Activision Sec.*
8 *Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC
9 Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored, Inc.*, USDC
10 Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics, L.L.C., et al.*,
11 USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*, USDC Eastern
12 District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern District,
13 Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District,
14 Case No. 1:00-cv-05695.

15 To determine whether a percentage is reasonable, a court should consider: (1) the
16 percentage that would likely be negotiated between parties in a similar case; (2) the
17 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the
18 award; and (5) whether there are any objections by class members. See *In re Ikon Office*
19 *Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond*
20 *Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) ("the absence of objections or
21 disapproval by class members to class counsel's fee request further supports finding the fee
22 request reasonable").

23 Plaintiff's request for one-third of the Gross Settlement Amount falls within the
24 30%-40% range noted by the above precedent. The quality of counsel and the average size
25 of settlement payments to Class Members (\$2,250.32) also support the fee request when
26 compared to other settlements courts have considered as good results. See *Schiller v.*
27 *David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class
28 Members will receive an average of approximately \$198.70, with the highest payment to a

1 Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good,
2 which is highlighted by the fact that there was no objection to the settlement amount or the
3 attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18
4 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class members are
5 provided with immediate monetary relief, with an average award of around several hundred
6 dollars and a minimum award of \$50").

7 Class Counsel seeks \$210,000, which is one-third of the \$630,000 Gross Settlement
8 Amount. This request is reasonable and justified considering the settlement secured for the
9 Class Members and the amount of work performed by Class Counsel. It is also consistent
10 with both the Settlement Agreement (See Gundzik Decl., ¶¶ 19, 42, Ex. 1, ¶ 3.2.2) and the
11 engagement agreement the named Plaintiff entered into with Class Counsel. In that
12 agreement, Plaintiff agreed that Class Counsel would be paid the greater of 1) one-third of
13 all amounts obtained or received in the lawsuit, or 2) the hours worked multiplied by the
14 hourly rates of the attorneys working on the case, plus any additional multiplier awarded by
15 the Court. Gundzik Decl., ¶ 63.

16 Thus, as per the Settlement Agreement, Plaintiff respectfully requests that this Court
17 award Class Counsel's requested attorneys' fees.

18 **2. Class Counsel's Requested Fees Are Reasonable Under the** 19 **Lodestar/Multiplier Method**

20 Under the lodestar/multiplier method of determining an attorneys' fee award, "the
21 lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
22 rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba v.*
23 *Apple Computer, Inc.*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank*, 232 Cal.App.3d
24 1344, 1347 (1991). "California case law permits fee awards in the absence of detailed time
25 sheets." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Sommers v. Erb*, 2
26 Cal.App.4th 1644, 1651 (1992). And "[m]ultipliers can range from 2 to 4 or even higher."
27 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Coalition for L.A. County*
28 *Planning etc. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (1977); accord, *In re*

1 *Lugo*, 164 Cal.App.4th 1522, 1546 (2008); *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d
2 1043, 1050 (9th Cir. 2002) (multiplier of 3.65); *Craft v. Cnty. of San Bernardino*, 624 F.
3 Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of 5.2); *See also Galeener v. Source*
4 *Refrigeration & HVAC, Inc.*, 2015 U.S. Dist. LEXIS 193096 (N.D. Cal. Aug. 21, 2015)
5 (multiplier of 2.67 approved in granting award of \$3,000,000 in attorneys' fees from a \$10
6 million common fund); *See also Lazarin v. Pro Unlimited, Inc.*, 2013 U.S. Dist. LEXIS
7 97213 (N.D. Cal. July 11, 2013, *28-29) (multiplier of 3.36 approved in granting attorneys'
8 fee award of \$312,500 where lodestar was \$92,824).

9 Here, Class Counsel has expended more time on this matter than the \$210,000 fee
10 award being requested. Gundzik Decl., ¶¶ 47-53, and Ex. 3 thereto. Class Counsel's total
11 lodestar is at least \$258,392.50. Gundzik Decl., ¶¶ 51-52, Ex. 3; Declaration of Daniel
12 Holzman ("Holzman Decl."), ¶ 9. Class Counsel has attached detailed timesheets and well
13 as a chart specifying the tasks performed on behalf of the Class. *Id.* Because the lodestar
14 exceeds the \$210,000 that Class Counsel is requesting, the Court need not consider any
15 multiplier. Instead, the Court need only determine if the \$210,000 award is reasonable
16 compensation for Class Counsel's efforts. Class Counsel's hourly rates of \$800 (Aaron
17 Gundzik and Rebecca Gundzik) and \$725 (Daniel Holzman) for this matter are reasonable
18 based upon their qualifications and experience. Gundzik Decl., ¶¶ 43-46; Holzman Decl., ¶¶
19 2-3.

20 Both Aaron Gundzik and Rebecca Gundzik have been practicing law in Southern
21 California for over 35 years and Mr. Holzman has been practicing for 30 years. Gundzik
22 Decl., ¶¶ 43-46; Holzman Decl., ¶ 2. Aaron Gundzik worked for many years at and was an
23 equity partner of the international law firm formerly known as LeBoeuf, Lamb, Greene &
24 MacRae, and has been involved in the litigation of complex cases throughout his career.
25 Gundzik Decl., ¶ 43. Rebecca Gundzik also worked at well-respected law firms and handled
26 complex litigation matters for many years. Gundzik Decl., ¶ 44. Aaron Gundzik has served
27 as Class Counsel on many wage and hour class action matters, and he and Rebecca Gundzik
28 tried and prevailed on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th

36 (2013), which helped establish the law regarding an employee’s right to be paid for all time under an employer’s control. Gundzik Decl., ¶¶ 43-44. Mr. Holzman also has significant experience with wage and hour class actions and labor and employment matters. Holzman Decl., ¶ 3.

Class Counsel’s rates for this case are within the range of prevailing market rates. Gundzik Decl., ¶¶ 59-62, and Ex. 4, National Association of Legal Fee Analysis, 2020 Class Action Hourly Rate Survey (hourly rates for attorneys in 16 largest U.S. legal markets for attorneys with 20 or more years in practice range from \$801-\$900 per hour.

a. Time and Effort

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours into prosecuting this case. Class Counsel had to conduct substantial investigation, interview Class Members, review and analyze numerous pages of time records and other documents, research many issues and review and analyze policies, independently analyze time records, as well as dedicate substantial time to analyze data and other documents related to Defendant’s compensation policies. Gundzik Decl., ¶¶ 6-9, 47-53, and Ex. 3 thereto. Those efforts, along with negotiating the settlement and obtaining preliminary and final approval, required a significant amount of time and labor. The total amount of attorney time expended through April 14, 2025, is 314.3 hours. Class Counsel’s base lodestar for these hours equates to attorneys’ fees of \$242,392.50. Gundzik Decl., ¶¶ 46-53, and Ex. 3 thereto; Holzman Decl., ¶ 9.

b. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the large amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources. Although this litigation did not conclusively preclude other employment, it did impact Plaintiff’s counsel’s ability to take on other class action cases. Plaintiff’s counsel are small law firms with few attorneys and staff. Gundzik Decl., ¶ 55.

1
2 **c. Continent Nature of the Agreement**

3 Class counsel agreed to work on this case on a contingency basis. If they had not
4 successfully resolved the case, they would not have earned any fees. Moreover, they would
5 not have recouped the substantial litigation expenses that they incurred. Gundzik Decl., ¶ 54.
6 The courts have recognized that higher attorneys' fees are justified in contingency matters
7 because of the contingent nature of their recovery. *See Ketchum v. Moses*, 24 Cal. 4th 1122,
8 1132 (2001). Class action contingency cases are inherently risky. Upon retention, class
9 counsel makes a commitment to litigate the case through trial. These types of cases can take
10 years, hundreds of hours of work and cost an enormous amount of money—risks which are
11 known upon retention. Class Counsel has had to front significant litigation expenses, as well
12 as office overhead expenses. Gundzik Decl., ¶ 54, and Ex. 3 thereto; Holzman Decl., ¶ 10,
13 Ex. A. The risks involved coupled with the contingency basis of this case further support
14 Class Counsel's request for attorneys' fees and costs.

15 In *Ketchum v. Moses*, *supra*, 24 Cal.4th at 1132, the court explained the economic
16 rationale for awarding higher fees in contingency cases as follows:

17 A contingent fee must be higher than a fee for the same legal services paid as they
18 are performed. The contingent fee compensates the lawyer not only for the legal
19 services he renders but also for the loan of those services. The implicit interest rate
20 on such a loan is higher because the risk of default (the loss of the case, which
21 cancels the debt of the client to the lawyer) is much higher than that of conventional
22 loans. (Citation omitted.) A lawyer who both bears the risk of not being paid and
23 provides legal services is not receiving the fair market value of his work if he is paid
24 only for the second of these functions. If he is paid no more, competent counsel will
25 be reluctant to accept fee award cases.

26 Class Counsel represented the Class Members in this matter and have borne the entire risk
27 and costs of litigation on a pure contingency basis. To date, Class Counsel have not received
28 any compensation and have expended significant litigation costs on behalf of the Class.

1
2 **d. Experience, Reputation, and Ability of Plaintiff's Counsel**

3 As set forth in the Declarations of Aaron Gundzik and Daniel Holzman, Class
4 Counsel's skill and experience in litigating wage and hour class actions, in state and federal
5 forums, contributed to the results obtained on behalf of the Class Members. All three
6 attorneys who were primarily responsible for the case have significant experience litigating
7 wage and hour class actions, and each have been practicing law for many years. Gundzik
8 Decl., ¶¶ 43-46; Holzman Decl., ¶ 2.

9 **e. Results Obtained On Behalf of the Class by Plaintiff's**
10 **Counsel**

11 An award of attorneys' fees should reflect the successful outcome of the case.
12 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*
13 *Comm'r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
14 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969, 2007 U.S. Dist. LEXIS 64916 (M.D. Ala.
15 2007). As already discussed herein and in the Motion for Preliminary Approval, this case
16 involves numerous and difficult issues requiring a highly technical analysis and largely
17 precluding a clear-cut outcome as to liability. There also were significant issues regarding
18 Defendant's ultimate liability and its ability to pay a larger amount, as Defendant
19 consistently denied that it had violated California's wage and hour laws and provided
20 financial documents regarding its financial condition. In fact, Defendant raised a colorable
21 legal or factual defense to each claim Plaintiff alleged. Gundzik Decl., ¶ 30.

22 Nevertheless, despite these obstacles, Class Counsel obtained significant financial
23 compensation for the Class Members. Defendant agreed to pay a gross settlement amount of
24 \$630,000 as well as the employer's portion of all payroll taxes. After payment of attorneys'
25 fees and costs, service and release payments and class administration costs, the remainder of
26 the Net Settlement Amount will be approximately \$369,051.83. Despite the complexity of
27 the case, Class Counsel have, through the investment of substantial effort, and the resources
28

1 of their law firms, been able to secure an outstanding settlement on behalf of the Class
2 Members.

3 **f. Reaction of Putative Class Members**

4 As already discussed herein, the reaction of the Class Members has been very
5 positive. Not one of the Class Members objected to Class Counsel's request for attorneys'
6 fees, which also provide compelling evidence that the request is fair, adequate and
7 reasonable. Salinas Decl., ¶ 10.

8 In sum, based on the six factors discussed above, Class Counsel's requested fees
9 should be awarded.

10 **H. Class Counsel's Requested Costs are Reasonable**

11 The settlement provides for repayment of Class Counsel's actual and reasonable
12 costs of litigation in an amount not to exceed \$25,000. Gundzik Decl., ¶ 19, Ex. 1, ¶ 3.2.2.
13 Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution
14 before trial. The total of out-of-pocket costs incurred and to be incurred by Class Counsel in
15 this litigation are \$14,248.17. Gundzik Decl., ¶¶ 52, 54, and Ex. 3; Holzman Decl., ¶ 10, and
16 Ex. A. Class counsel are therefore seeking reimbursement of their fees in the amount of
17 \$14,238.17.

18 **I. The Settlement Administrator's Requested Expenses are Reasonable**

19 Plaintiff retained a neutral third-party administrator, Phoenix, to administer the
20 notice and claims process. Phoenix's duties included and include, among other things: (a)
21 translating, printing and mailing the Notice of Settlement to all Class Members; (b) locating
22 updated addresses for class members; (c) receiving other communications about the
23 settlement; (d) preparing weekly reports notifying the parties of the number of class
24 members who filed objections or requests for exclusion; and (e) notifying the parties of the
25 number of class members who filed untimely or deficient requests for exclusion, and taking
26 steps to cure the deficiencies. Salinas Decl., ¶ 2. If final approval is granted, Phoenix will
27 receive and assume stewardship of the settlement funds, make final calculations of
28 individual settlement payments, mail checks to class members and aggrieved employees,

1 prepare and distribute tax documents and arrange for transfer of funds from any un-
2 negotiated settlement checks to the state as unclaimed property. Phoenix will be charging
3 \$6,700 to perform this work, which is the amount it estimated in connection with the Motion
4 for Preliminary Approval. Salinas Decl., ¶ 21, and Ex. C. Because this amount is reasonable
5 in light of the administrator's significant duties, it should be approved.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiff, on behalf of herself and the Class, respectfully
8 requests that the Court grant final approval of the settlement, award a service and release
9 payment to named Plaintiff Divya Pursley in the amount of \$10,000, approve of the
10 payment to the LWDA in the amount of \$15,000 and \$5,000 to the Aggrieved Employees,
11 award attorneys' fees in the amount of \$210,000 and Class Counsel's costs in the amount of
12 \$14,248.17, and award the Settlement Administrator its fees in the amount of \$6,700, all of
13 which will be paid from the Gross Settlement Amount.

14 DATED: May 21, 2025

GUNDZIK GUNDZIK HEEGER LLP

15
16 By: 
17 Rebecca Gundzik
18 Attorneys for Plaintiff Divya Pursley,
19 individually and on behalf of all others
20 similarly situated
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