Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
ktulyathan@diversitylaw.com

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 ORANGE

OSCAR ROBLES, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

BALLY AMERICAS INC., a Delaware corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2024-01417922-CU-OE-CXC

(Assigned for all purposes to the Hon. William D. Claster, Dept. CX101)

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

Date: October 23, 2026
Time: 9:00 a.m.
Dept.: CX101

Action Filed: August 9, 2024
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 23, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable William D. Claster, judge presiding, in Department CX101 of the above referenced Court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Oscar Robles ("Plaintiff") will seek an Order:

(1) Granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and the Amendment to Joint Stipulation of Class Action and PAGA Settlement (together, the "Agreement" or "Settlement Agreement") in this matter;

(2) Approving the revised Gross Settlement Amount of $166,156.25 based on the Settlement Agreement's Escalator Clause;

(3) Approving distribution of the settlement payments to the Participating Class Members pursuant to the terms of the Settlement Agreement;

(4) Approving Plaintiff's request for an award of the Enhancement Award of $5,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

(5) Approving Plaintiff's request for an award of attorneys' fees of one-third of the revised Gross Settlement Amount, or $55,385.42, and reimbursement of actual litigation costs in the amount of $5,492.86, pursuant to the terms of the Settlement Agreement;

(6) 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;

(7) Approving Plaintiff's request for $20,000.00 for PAGA Penalties, of which $13,000.00 will be paid to the California Labor & Workforce Development Agency and of which $7,000.00 will be distributed to PAGA Settlement Members in accordance with Labor Code § 2698, *et seq.*, pursuant to the terms of the Settlement Agreement; and

(8) Entering final judgment as to all members of the Settlement Class 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 and requests for exclusion from the settlement, there is no question that the settlement is fair, reasonable, and adequate and thus should be granted final approval.

This Motion will be based on the attached Memorandum of Point and Authorities and the supporting Declarations of Larry W. Lee, Mai Tulyathan, Plaintiff Oscar Robles, and Taylor Mitzner of Phoenix Settlement Administrators, and upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: October 1, 2026

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By: _____

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved Employees

TABLE OF CONTENTS

Page

I. INTRODUCTION 9

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT 11

III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL 13

A. Strength of Plaintiff's Case and Likelihood of Certifying the Class 13

1. The Class is Ascertainable 13

2. There is a Community of Interest 14

a. There are Predominant Common Questions of Law and Fact 14

b. Plaintiff's Claims are Typical of the Class Claims 15

c. Plaintiff Adequately Represented the Class 15

B. Defendant's Allegations and Unlikelihood of Class Certification 16

C. Risks, Expenses, and Complexity of Further Litigation 16

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 16

E. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement 17

1. Standard of Review 17

2. The Settlement is Presumed to Be Fair 19

3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval 19

4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval 20

5. The Opinion of Experienced Counsel Favors Final Approval 21

IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARD SHOULD BE APPROVED 21
V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED 23
VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS 28
VII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED 29
VIII. NOTICE TO LWDA 29
IX. CONCLUSION 29

TABLE OF AUTHORITIES

Page(s)

State Cases

7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal. App. 4th 1135 (2000) .. 18, 19

Carter v. City of Los Angeles, 224 Cal. App. 4th 808 (2014) 17

Chavez v. Netflix, Inc., 162 Cal. App. 4th 43 (2008) 24, 26

City of Oakland v. Oakland Raiders, 203 Cal. App. 3d 78 (1988) 26

Classen v. Weller, 145 Cal. App. 3d 27 (1983) 15

Daar v. Yellow Cab Co., 67 Cal. 2d. 695 (1967) 13

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794 (1996) 17, 18, 19

Duran v. U.S. Bank Nat'l Ass'n, 59 Cal. 4th 1 (2014) 16

Flannery v. California Highway Patrol, 61 Cal. App. 4th 629 (1998) 27

Ketchum v. Moses, 24 Cal. 4th 1122 (2001) 27

Laffitte v. Robert Half Int'l, 1 Cal. 5th 480 (2016) 23, 24, 25, 26

Laffitte v. Robert Half Int'l, 231 Cal. App. 4th 860 (2014) 24, 26

Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19 (2000) 26, 27, 28

Lockheed Martin Corp. v. Superior Court, 29 Cal. 4th 1096 (2003) 14

Martino v. Denevi, 182 Cal. App. 3d 553 (1986) 27

PLCM Group, Inc. v. Drexler, 22 Cal. 4th 1084 (2000) 27

Reese v. Wal-Mart Stores, Inc., 73 Cal. App. 4th 1225 (1999) 14

Reyes v. San Diego County Board of Supervisors, 196 Cal. App. 3d 1263 (1987) 13, 14

Richmond v. Dart Industries, 29 Cal. 3d. 462 (1981) 13, 14

Serrano v. Priest, 20 Cal. 3d 25 (1977) 27

Serrano v. Unruh, 32 Cal. 3d 621 (1982) 27

Simons v. Horowitz, 151 Cal. App. 3d 834 (1984) 15

Sutter Health Uninsured Pricing Cases, 171 Cal. App. 4th 495 (2009) 26

Vasquez v. Superior Court, 4 Cal. 3d 800 (1971) 13

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224 (2001) 26

Federal Cases

Ackerman v. Kassar, 1993 WL 326453 (9th Cir. 1993) 18
Boyd v. Bechtel Corp., 485 F. Supp. 610 (N.D. Cal. 1979) 19, 21
Brotherton v. Cleveland, 141 F. Supp. 2d 907 (S.D. Ohio 2001) 23
Byrd v. Civil Serv. Comm'n, 459 U.S. 1217 (1983) 17
Church v. Consolidated Freightways, Inc., 1993 WL 149840 (N.D. Cal. 1993) 18
Churchill Village LLC v. Gen. Elec., 361 F.3d 566 (9th Cir. 2004) 17
City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974) 25
Class Plaintiffs v. City of Seattle, 955 F.2d 1268 (9th Cir. 1992) 17, 18
Cook v. Niedert, 142 F.3d 1004 (7th Cir. 1998) 23
Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) 12
Ellis v. Naval Air Rework Facility, 87 F.R.D. 15 (N.D. Cal. 1980) 19, 21
Enter. Energy Corp. v. Columbia Gas Transmission Corp., 137 F.R.D. 240 (S.D. Ohio 1991).. 23
Fernandez v. Victoria Secret Stores LLC, 2008 WL 8150856 (C.D. Cal. July 21, 2008) 23
Gaskill v. Gordon, 160 F.3d 361 (7th Cir. 1998) 23
Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975) 19, 21
Glass v. UBS Fin. Servs., No. C-06-4068, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 27, 2007) 23
Hanon v. Dataproducts Corp., 976 F.2d 497 (9th Cir. 1992) 15
In re Dun & Bradstreet Credit Servs. Customer Litig., 130 F.R.D. 366 (S.D. Ohio 1990) 23
In re General Motors Corp., 55 F.3d 768 (3d Cir. 1995) 19
In re Rite Aid Corp. Secs. Litig., 396 F.3d 294 (3d Cir. 2005) 25
In re Wash. Pub. Power Supply Sys. Sec. Litig., 720 F. Supp. 1379 (D. Ariz. 1989) 18, 19
Jasper v. C.R. England, Inc., 2:08-cv-05266 (C.D. Cal. Nov. 3, 2014) 17
Linney v. Cellular Alaska P'ship, 151 F.3d 1234 (9th Cir. 1998) 18, 21
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 12
New York Gaslight Club, Inc. v. Carey, 447 U.S. 54 (1980) 27
Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615 (9th Cir. 1982) 17, 18, 20, 21

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985) 12
Swedish Hospital v. Shalala, 1 F.3d 1261 (D.C. Cir. 1993) 24
Van Bronkhorst v. Safeco Corp., 529 F.2d 943 (9th Cir. 1976) 18, 21
Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294 (N.D. Cal. 1995)..... 22
Wren v. RGIS Inventory Specialists, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011)..... 17
Young v. Katz, 447 F.2d 431 (5th Cir. 1971) 21

Statutes

Code of Civil Procedure § 382..... 13, 14, 17

Other Authorities

4 Newberg on Class Actions § 11.41 (2008) 18, 21
Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 Wash U. L. Q. 653 (Fall 2003) 24
Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248 (2010)..... 24
Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811 (2010) 24
Manual for Complex Litigation, Fourth § 21.6 (Fed. Jud. Ctr., 4th 2004)..... 18
Report of the Third Circuit Task Force, Court Awarded Attorney Fees 108 F.R.D. 237 (1985). 26

Rules

California Rule of Court 3.769 17

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Oscar Robles ("Plaintiff") now seeks the Court's final approval of the Joint Stipulation of Class Action and PAGA Settlement and the Amendment to Joint Stipulation of Class Action and PAGA Settlement (together, the "Agreement" or "Settlement Agreement") with Defendant Bally Americas Inc. ("Defendant") (together with Plaintiff, the "Parties"). As preliminarily approved by the Court, the Settlement Agreement provides for a $162,500.00 **non-reversionary** fund to be created for the benefit of the Settlement Class, from which attorneys' fees, litigation costs, enhancement award to the Plaintiff, PAGA penalties (including payment to the California Labor & Workforce Development Agency ("LWDA")), and costs of settlement administration are to be paid. Due to an increase in the number of qualifying pay periods during the relevant time periods, and pursuant to the Agreement's Escalator Clause[1], the Settlement Administrator calculated a $3,656.25 increase in the Gross Settlement Amount over the initial $162,500.00 amount. Taking into account the Escalator Clause, this brings the Gross Settlement Amount to **$166,156.25**. The entire net settlement fund, after the above deductions, will be paid to all Class Members who did not opt-out of the settlement.

The history of this litigation was previously detailed in Plaintiff's Motion for Preliminary Approval of Class Action Settlement and subsequent supplemental briefings. The Court preliminarily approved this settlement on May 13, 2026, directing distribution of Class Notice and scheduling the hearing for final approval of settlement (the "Preliminary Approval Order").

---

[1] Defendant represented that there were 345 pay periods during which PAGA Settlement Members were paid non-discretionary remuneration and overtime wages during the same pay period, from July 26, 2023, to June 1, 2025. Settlement Agreement ¶ 45. Following the receipt of the class list from Defendant on July 24, 2026, the Settlement Administrator informed the Parties of the increase in the number of actual qualifying pay periods during the PAGA Period. As computed from the Class List, the final tally of said pay periods during the PAGA Period is 370. Declaration of Taylor Mitzner ("Admin. Decl.") ¶¶ 3, 11, 11.c. The Settlement Administrator calculated a 2.25% increase in pay periods above the allowed 5% increase, and thus calculated a resulting $3,656.25 increase in the Gross Settlement Amount. As a result of the Escalator Clause and increased qualifying pay periods, this brings the revised Gross Settlement Amount to $166,156.25. *Id.*

As directed by the Court, the Settlement Administrator distributed the Class Notice to 111 Class Members. Admin Decl. ¶ 5. The deadline for Settlement Class Members to submit a request for exclusion, file an objection, or submit a dispute is October 2, 2026. *Id*. ¶¶ 7-9. To date, **there have been no requests for exclusions and/or objections to the settlement submitted by any Settlement Class Member**. *Id*. ¶¶ 7-8. 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.* ¶ 9. As such, there is a **100% participation rate** by Settlement Class Members. Thus, an inference can be made that the Settlement Class supports the Court's Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

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

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

- The settlement provides a revised total settlement sum of **$166,156.25**, which is **non-reversionary**;
- The settlement is fair given that Class Members will receive on average, approximately $561.55 per person. The highest individual settlement payment to be paid is approximately $2,379.52. Each PAGA Settlement Member will receive, on average, approximately $100.00 per person, with the highest individual PAGA payment being $325.53. Admin Decl. ¶¶ 13-14;
- Class Members did **not** need to submit claim forms to participate in the settlement, but are being paid automatically;

- The allocation reflects that the individual settlement payments will be paid to all Participating Overtime Class members in proportion to the number of pay periods worked with payment for overtime and non-discretionary remuneration in the same pay period, and an equal distribution to all Participating Sick Pay Class members;
- Plaintiff conducted significant investigation in this case, including exchanges of information by Plaintiff and Defendant of putative class data and documents pertaining to Defendant's payroll policies, for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administration, was retained for $6,000.00; and
- The State of California's LWDA will also benefit from this settlement as it will receive $13,000.00 as part of the PAGA payment, should this settlement be granted final approval.

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

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Notice of Class Action Settlement (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. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement Administrator.

After the Settlement Administrator received the Class List from Defendant, the Parties were informed of the increase in the number of actual PAGA pay periods from the estimated 345 to 370 pay periods, which triggered the Settlement Agreement's Escalator Clause. Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 6. Specifically, the Settlement Administrator calculated a $3,656.25 increase in the Gross Settlement Amount as a result of the Escalator Clause. Admin. Decl. at ¶ 11.c; Tulyathan Decl. at ¶ 7. Taking this into account, this brings the

Gross Settlement Amount to $166,156.25. *Id*. The Settlement Administrator modified the Class Notice to reflect the revised Gross Settlement Amount, which includes revising the initial $162,500.00 amount to reflect the revised Gross Settlement Amount of $166,156.25, and the attorneys' fees from $54,166.66 to an amount not to exceed $55,385.42, to reflect one-third of the revised Gross Settlement Amount. Admin. Decl. Ex. A. No other substantive changes were made to the Class Notice. *Id*.

The Settlement Administrator completed the notice dissemination process as contemplated by the Settlement Agreement. As stated in the Declaration of Taylor Mitzner, notice was provided to all Class Members, as required by the Preliminary Approval Order. On July 24, 2026, the Settlement Administrator received a Class Member mailing list from Defendant's counsel that included 111 Class Members. Admin Decl. ¶ 3. On or about August 3, 2026, each of the persons identified on the mailing list was sent the Class Notice via first class mail. *Id.* ¶ 5. From the date of mailing, zero (0) Class Notices were returned. *See id.* ¶ 6. Zero (0) Class Notices are considered undeliverable. *Id.* Further, the Class Notice provided Class Members with the Class Counsel's contact information, information about how they could further seek information regarding the settlement, leave questions for the Settlement Administrator, and update their address. *Id*., Ex. A.

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

Here, the Class Members were provided with a mailing regarding the settlement that

explained the settlement and allowed Class Members to seek information, ask questions, seek additional forms, and object, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may proceed to 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

In order to proceed as a class, there are two requirements which must be met — ascertainability and community of interest. *See Daar v. Yellow Cab Co*., 67 Cal. 2d 695, 704 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971) (there are two basic requirements which must exist to sustain a class action: "[t]he first is existence of an ascertainable class, and the second is a well-defined community of interest in the questions of law and fact involved."). "The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Richmond v. Dart Industries,* 29 Cal. 3d. 462, 470 (1981).

1. The Class is Ascertainable

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

Here, the Settlement Class is defined to include "the Overtime Class and Sick Pay Class, collectively" (the "Settlement Class" or "Class Members"). The Overtime Class consists of all current and former non-exempt employees of Defendant in the State of California who earned non-discretionary remuneration (including incentives and commissions) and overtime during the same pay period from August 9, 2020, to November 1, 2025. The Sick Pay Class consists of all

former non-exempt employees of Defendant in the State of California who earned non-discretionary remuneration (including incentives and commissions) and were paid sick leave during the same pay period from August 9, 2021, to November 1, 2025. There are 111 individuals that comprise the Settlement Class. Admin Decl. ¶ 3. This is far more than the minimum required to certify a class. Within the context of manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members have already been identified by Defendant and notice was provided to Class Members. Accordingly, the Settlement Class is ascertainable under Code of Civil Procedure § 382.

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

a. There are Predominant Common Questions of Law and Fact

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

Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure, violated the Labor Code by failing to pay overtime wages at the regular rate of pay, failing to pay sick pay at the regular rate of pay, and failing to provide accurate itemized wage statements. Specifically, Plaintiff alleges that Defendant failed to factor non-discretionary remuneration, such as incentives and commissions, into the calculation of the regular rate for the purpose of paying overtime and sick pay wages. Additionally, as a result of the underpayment, Plaintiff contends that Defendant issued deficient wage statements, as said wage statements do not correctly identify all hourly rates of pay and gross and net wages earned. As a result, Plaintiff

alleges that he and class members are owed unpaid wages and penalties for said violations. Defendant denies that liability could be established on a class-wide basis, and contends that liability and damages would need to be conducted on a case-by-case basis.

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

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

Here, Plaintiff was subjected to the same policies and practices as other Settlement Class Members. Plaintiff worked for Defendant from about October 9, 2023, until about July 24, 2024 as a non-exempt employee. Declaration of Oscar Robles ("Robles Decl.") ¶ 2. Like his fellow Class Members, Plaintiff alleges he was not paid overtime and sick pay wages at the correct regular rate of pay and not provided with accurate itemized wage statements. Robles Decl. ¶ 3. 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*, 151 Cal. App. 3d 834, 846 (1984).

Here, Plaintiff does not have any interests adverse to the Settlement Class, nor have any such issues been raised or presented. Robles Decl. ¶ 6. Plaintiff has taken all necessary steps to represent the interests of the Settlement Class, including providing information and documents to his counsel and reviewing pleadings in this case. *Id.* ¶¶ 5, 7, 9. For such reasons, Plaintiff has adequately represented the Settlement Class and will continue to do so.

///

B. Defendant's Allegations and Unlikelihood of Class Certification

As detailed in the Motion for Preliminary Approval, Defendant asserts that it complied with the Labor Code and that there is no private right of action to sue for unpaid sick leave. Defendant also asserts that Plaintiff cannot establish that it "willfully" failed to pay wages to employees upon separation of employment and that wage statement violations were "knowing and intentional." Based thereon, Defendant continues to maintain that it is not liable for the allegations made by 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 the potential for appeals. These risks on class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014).

Defendant has maintained that there is no liability. As stated above, 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. There is a risk that even if the court does grant certification, Defendant could have brought a motion for summary judgment on the sick pay claim arguing that there is no private right of action. Based on the foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of damages alleged, and a substantial amount 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 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 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. Tulyathan Decl. ¶¶ 3-4; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 3-4.

Further, the results after mailing the Class Notice support confirmation of the Court's preliminary approval of the settlement with final approval of the settlement, as evidenced by the 100% participation rate. In other words, there were no objections or requests for exclusion submitted. Admin Decl. ¶¶ 7-8. In light of overwhelmingly positive response to the settlement, the Court may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that no Class Member has submitted an objection. *See, e.g., Jasper v. C.R. England, Inc.,* 2:08-cv-05266 (C.D. Cal. Nov. 3, 2014) (granting final approval where 2% of the class objected); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *11 (N.D. Cal. Apr. 1, 2011) (finding that "minimal number of objections" strongly supported settlement approval where 16 class members out of approximately 62,594 (0.02% of 1/5th of 1.0%) filed objections); *see also Carter v. City of Los Angeles,* 224 Cal. App. 4th 808, 820 (2014), *citing Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1802 (1996) (finding that settlement terms to be presumably fair when there is a low percentage of objectors.); *see also Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming order approving settlement with 45 objections out of 90,000 notices sent).).

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 § 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom*., *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when "the interests of the class are better served by the settlement than by further litigation." *See Manual*

for Complex Litigation, Fourth § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL"). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976).

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

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

As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000):

> "It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, 'the [trial] judge does not try out or attempt to decide the merits of the controversy,'

> [citation] and the appellate court 'need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue."

2. The Settlement is Presumed to Be Fair

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

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

Dunk, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 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 between the Parties and their counsel. Tulyathan Decl. ¶ 4.

Second, Class Counsel engaged in extensive factual investigation before settling, including conducting significant meet and confer discussions with opposing counsel to obtain data for the entire class and to discuss the merits of the claims on behalf of the Settlement Class. *Id.* ¶ 3. Further, Class Counsel are highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel have significant experience in class actions and employment wage and hour matters. Tulyathan Decl. ¶¶ 17-20; Lee Decl. ¶¶ 6-9.

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

To assess the fairness, adequacy, and reasonableness of a class action settlement, the court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *See also In re General Motors Corp*., 55 F.3d 768, 806 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement") (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp*., 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendant's costs. As such, should any individual bring individual claims against Defendant 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 — thus, this lawsuit achieves a true benefit for the Settlement Class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither 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 very substantial settlement for the Settlement Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members or the Class Representative.

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

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

Another factor considered by courts in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at

157. In applying this factor, the court must weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

As noted above, continued litigation could have led to appeals on a number of issues, including, but not limited to, the sick pay regular rate theory. 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* § 11.41. Here, this case would have likely involved years of litigation.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel support the settlement as fair, reasonable, and adequate, and in the best interest of the Class Members as a whole. Tulyathan Decl. ¶ 4; Lee Decl. ¶ 4. Similarly, counsel for Defendant are 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. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT AWARD SHOULD BE APPROVED

Class Representative Oscar Robles requests an enhancement award of $5,000.00, in accordance with the terms of the Agreement. Plaintiff met with Class Counsel on a number of occasions to discuss the case, including providing documents and information regarding Defendant's practices. Robles Decl. ¶¶ 5, 9. Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. Plaintiff estimates that he spent approximately 30 hours assisting in the prosecution of this matter and fulfilling his

responsibilities as Class Representative. *Id.* ¶ 9.

In addition to the invaluable services that he provided, Plaintiff took significant risks, both professionally and monetarily, in acting as the Class Representative, seeking benefits on behalf of the Settlement Class. *Id*. ¶¶ 8, 12. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action. Moreover, Plaintiff understood that an individual case would have been resolved much faster than a class action and involved much less financial risk than a class action. *Id*. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Settlement Class.

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, the Class Representative also faced significant risk in not being able to find suitable employment, all as a result of filing this case against Defendant. *Id*. ¶ 12. Plaintiff took these risks upon himself to the benefit of the Settlement Class. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit, which is a public record. These are significant benefits that weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the Settlement Class, and Plaintiff took on substantial risks in helping to get this financial benefit to the Settlement Class. As such, the enhancement payment should be awarded to Plaintiff for his commitment, dedication, and risks taken for this litigation.

Finally, as part of the settlement, Plaintiff also agreed to give a general release of his individual claims, something that other Settlement Class Members did not have to do. Robles Decl. ¶ 13. This is a significant factor to take into account that further warrants the award of the requested service amount.

Courts have routinely granted approval of settlements containing such enhancements. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374

(S.D. Ohio 1990) (two incentive awards of $ 55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*., No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 incentive award to class representative in ERISA case).

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated as approximately one-third (1/3) of the revised Gross Settlement Amount, or $55,385.42, for the successful prosecution and resolution of this action.

The California Supreme Court has explained the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) ("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").

An award of approximately one-third of the fund in attorneys' fees mimics the marketplace as it "is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and*

Non-Competitive Fees, 81 Wash U. L. Q. 653, 659 n. 11 (Fall 2003)). Indeed, "empirical studies [that] show that…fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc*., 162 Cal. App. 4th 43, 66 n. 11 (2008).

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

Moreover, in the *Laffitte* intermediate court decision, the court observed that "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing one-third of the fund clearly falls within that range, and is consistent with other comprehensive surveys of class action settlements and fee awards. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent"); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery are consistent with market rates). The results delivered by Class Counsel also support the requested percentage of the fund. Here, Plaintiff and his counsel secured a $166,156.25 non-reversionary common fund settlement.

Finally, "the response of the class members to attorneys' fee notice, though not decisive, is relevant to the…reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the market" for fees is well supported. *Id*. at p. 1269. In this case, the Class Notice specifically notified Class Members that Class Counsel would be seeking $54,166.66 of the settlement fund as attorneys' fees. Class Counsel now seek an adjusted amount of attorneys'

fees of $55,285.42, due to the increase in the number of Overtime PAGA pay periods and subsequent increase of the Gross Settlement Amount, as reported by the Settlement Administrator. *See* Admin Decl. ¶ 11.c. To date, no Class Member has objected to the settlement or requested to be excluded. This strong favorable response and 100% participation rate also supports the requested fees.

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

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

495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a common fund of $166,156.25 has been created as the entire amount is to be paid out without any reversions. For Class Counsel, the fees were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a defendant that has retained premier defense counsel.

Courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." *Id*. Thus, a lodestar cross-check is

aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge").

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

With respect to Class Counsel's lodestar and including 10 hours of anticipated time after final approval, approximately 237.1 hours will have been expended by Class Counsel in this matter. Tulyathan Decl. ¶ 23, Ex. A; Lee Decl. ¶ 11, Ex. A. Ms. Tulyathan requests an hourly rate of $750 per hour. Tulyathan Decl. ¶ 23. Mr. Lee requests an hourly rate of $1000 per hour. Lee Decl. ¶ 11. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v.*

Denevi, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class Counsel requests that the court find that these hours were reasonable in this litigation.

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

Class Counsel's skill and experience justify the requested rate. As shown in the supporting declarations, Class Counsel have significant experience in the area of employment and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. Tulyathan Decl. ¶¶ 17-20; Lee Decl. ¶¶ 8-9. As such, based on the hours and applicable rates, the total lodestar to be expended by Class Counsel through finalizing this settlement will be approximately $184,800.00. Tulyathan Decl. ¶ 23, Ex. A; Lee Decl. ¶ 11, Ex. A.

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

Lealao contains several factors justifying an enhancement based on the percentage-of-the-benefit, namely, no objections by class members, commendable conduct by counsel, and significant recoveries by class members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As in *Lealao*, the Settlement Class was notified of the settlement and attorneys' fee with no objections. The effort undertaken by counsel, as shown by their hours and the high amount of claims being paid out, shows commendable conduct.

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

The multiplier should be enhanced because of the contingent nature of counsel's fee recovery. The risks in taking on a class action case are enormous, not the least of which is time and effort. As this Court very well knows, not only do these cases require substantial work, but there exist significant risks.

Finally, based upon Plaintiff's counsel's lodestar of $184,800.00, Plaintiff's request for a fee award of $55,385.42 is more than reasonable and fair. As the Court can see, the lodestar significantly exceeds the requested fee amount, such that it would result in a ***negative*** multiplier. As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members.

For such reasons, Class Counsel's request for attorneys' fees in the amount of $55,385.42 is fair, reasonable, and adequate.

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

The request for reimbursement of costs, in the amount of $5,492.86 is fair and reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to $18,000.00 as reimbursement for litigation costs under the Settlement. As set forth in the

declaration, the costs were all directly incurred in the prosecution of the action and are all litigation related costs. Tulyathan Decl. ¶ 28, Ex. B. Significantly, the costs sought are less than the $18,000.00 permitted by the Settlement Agreement, such that the remaining amount will be distributed to Participating Class Members. As such, the requested costs should be approved as fair and reasonable.

VII. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown on the Declaration of Taylor Mitzner, the administration fees expended in this matter amount to a total of $6,000.00. Admin Decl. ¶ 16, Ex. B. For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. NOTICE TO LWDA

Plaintiff provided notice of this Motion to the LWDA in conjunction its filing. Tulyathan Decl. ¶ 29; Ex. C.

IX. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff respectfully submits that the standards for final approval have been met and the terms of the Settlement Agreement are 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 revised Gross Settlement Amount of $166,156.25 based on the Settlement Agreement's Escalator Clause;

3. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;

4. Approving Plaintiff's request for an award of an Enhancement Award of $5,000.00 to Plaintiff, with payment pursuant to the terms of the Settlement Agreement;

5. Approving Plaintiff's counsel's request for an award to Class Counsel for

$55,385.42 in attorneys' fees and $5,492.86 in costs, with payment pursuant to the terms of the Settlement Agreement;

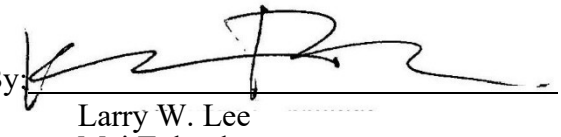
5. Approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of $6,000.00, with payment pursuant to the terms of the Settlement Agreement and subsequent Court order;

6. Approving Plaintiff's request for payment to the LWDA for $13,000.00 for PAGA penalties, with payment pursuant to the terms of the Settlement Agreement; and

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

DATED: October 1, 2026

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By: 

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved Employees