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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSE MEDINA, as an individual and on
behalf of all aggrieved employees,

Plaintiff,

v.

UNITED AIRLINES, INC, a Delaware
Corporation; and DOES 1 through 100,
inclusive,
Defendant.

Case No. BC624742

*Assigned to Hon. Rupert A. Byrdsong
in Department 28*

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

Date: October 4, 2023
Time: 8:30 a.m.
Dept.: 28

Reservation No. 283789547811

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

2 **PLEASE TAKE NOTICE** that on October 4, 2023 at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Rupert A. Byrdsong, judge presiding, in
4 Department 28 of the above referenced Court located at 111 N Hill St., Los Angeles, CA 90012,
5 Plaintiff JOSE MEDINA (“Plaintiff”) will seek an Order: (1) granting final approval of the
6 Stipulation of Class and Representative Action Settlement and Release (“Settlement Agreement” or
7 “Settlement”); (2) finally approving and directing distribution to the Gross Settlement Value; (3)
8 fully and finally approving the enhancement payment to the Class Representative, (4) fully and
9 finally approving the Settlement Administrator’s costs, and (5) fully and finally approving the
10 award of attorney’s fees and costs.

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

16 The basis for this Motion, filed without any opposition from Defendant United Airlines,
17 Inc. (“Defendant” or “United”), is that the proposed settlement is fair, adequate, and reasonable
18 and the procedures proposed by the Parties are adequate to ensure the opportunity of class
19 members to participate in, opt-out of, or object to the settlement.

20 This Motion will be based on the Memorandum of Points and Authorities included herein,
21 the [Proposed] Order Granting Final Approval of Class Settlement and Judgment, upon the class
22 papers previously filed with this Court, and the supporting Declarations of Larry W. Lee, Edward
23 W. Choi, Max Gavron, Paul Yi, William L. Marder, Plaintiff Jose Medina, and Kevin Lee, upon
24 the oral arguments of counsel (should there be any), and on the complete records and file herein.

25
26 DATED: September 11, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

27 By: 
28 Edward W. Choi
Attorneys for PLAINTIFF and the CLASS

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE SETTLEMENT	3
A.	Class Members Were Provided Proper Notice.....	3
III.	THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL.....	5
A.	The Terms of the Settlement, the Negotiation of the Settlement and the Reception of the Settlement By Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.....	5
B.	Under Well-Established Legal Principles, the Court Should Grant Final Approval to the Settlement	10
1.	Standard of Review	10
2.	The Settlement is Presumed To Be Fair.....	11
3.	Two-Way Costs and Other Risks Inherent In Continued Litigation Favor Final Approval.....	12
4.	The Complexity, Expense and Likely Duration of Continued Litigation Against Defendant Favor Final Approval.....	13
5.	The Opinion of Experienced Counsel Favors Final Approval.....	13
6.	Discovery and the Settlement Discussions Undertaken In This Action Favor Final Approval	14
IV.	THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED	14
V.	THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED	15
VI.	ATTORNEY FEE SPLIT	17
VII.	THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS	17
VIII.	THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED	17
IX.	NOTICE TO THE LWDA HAS BEEN PROVIDED	18
X.	UNCASHED FUNDS	18
I.	CONCLUSION.....	18

1 **TABLE OF AUTHORITIES**

2 **Statutes**

3 California Code of Civil Procedure §1300, *et. seq.* 22

4 Civil Code § 1542 18

5 Civil Code § 1781(f) 11

6 Federal Rules of Civil Procedure (“FRCP”) Rule 23(e) 5, 11

7 Labor Code § 1194..... 19

8 Labor Code § 203..... 7, 8

9 Labor Code § 2699(f)(2) 8

10 Labor Code § 2699(g) 19

11 **Other Authorities**

12

13 4 Newberg on Class Actions 4th § 11.41 (2008) 10, 13

14 **Federal Cases**

15 *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993)..... 11

16 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal.

17 Mar. 20, 2015)..... 9

18 *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)..... 8

19 *Boring v. Bed Bath & Beyond*, 2014 WL 2967474, at *1 (N.D. Cal. June 30, 2014)..... 4

20 *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979)..... 12, 14

21 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) 6

22 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)..... 15

23 *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983)..... 10

24 *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020)..... 7

25 *Chun–Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010)..... 10

26 *Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993) 10

27 *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir .2004)..... 9

28

1	<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268, 1291 (9th Cir. 1992).....	9, 11
2	<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7 th Cir. 1998).....	15
3	<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974).....	4
4	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980).....	11, 14
5	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio	
6	1991).....	15
6	<i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975).....	12, 13
7	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
7	27, 2007).....	15
8	<i>Greko v. Diesel U.S.A., Inc.</i> , No. 10–cv–02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26,	
8	2013).....	9
9	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990)....	15
10	<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995)	12
11	<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000).....	9
12	<i>In re Pacific Enterprises Securities Litig.</i> , 47 F.3d 373, 379 (9th Cir. 1995)	16
13	<i>In re Rite Aid Corp. Securities Litigation</i> , 396 F.3d 294, 300 (3d Cir. 2005)	16
14	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F.Supp. 1379 (D. Ariz. 1989).....	11
15	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998)	11, 14
16	<i>Lundell v. Dell, Inc.</i> , 2006 WL 3507938, at *1 (N.D. Cal. Dec. 5, 2006)	4
17	<i>Maria P. v. Riles</i> (1987) 43 Cal.3d 1281, 1290-91	16
18	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314 (1950)	4
19	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	4
20	<i>Rawlings v. Prudential-Bache Properties, Inc.</i> , 9 F.3d 513, 516 (6th Cir. 1993).....	16
21	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237, 258 (1985)	
22		17
23	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25, 34	16
24	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014).....	9
25	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995).....	15
26	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6	
26	(N.D. Cal. Nov. 21, 2012)	9
27		
28	<i>Westside Community for Independent Living, Inc. v. Obledo</i> (1983) 33 Cal.3d 348, 352-53	16
	<i>Young v. Katz</i> , 447 F.2d 431, 433-434 (5th Cir. 1971).....	13

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10
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State Cases

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal. App. 4th 1135, 1146 . 11

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504, 517 (2018)..... 8

Chavez v. Netflix, Inc., (2008) 162 Cal.App.4th 43, 66, fn. 11 16

Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801..... 11

Furry v. East Bay Publishing, LLC, 30 Cal. App. 5th 1072, 1085 (2018)..... 7

Kao v. Holiday, 12 Cal. App. 5th 947, 961-62 (2017) 7

Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 130, 133 (2008) 5, 6

Laffitte v. Robert Half Int’l, Inc., (2016) 1 Cal.5th 480, 506 16, 17

Lealao, 82 Cal. App. 4th 19, 29–30 17

Naranjo v. Spectrum Security Serv., 2023 Cal. App. Lexis 143 (Feb. 27, 2023) 7

Wershba, supra, 91 Cal.App.4th at 254 16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Medina (“Plaintiff” or “Medina”) and Defendant United Airlines, Inc.
4 (“Defendant” or “United”) (Plaintiff and Defendant are collectively referred to as the “Parties”) move for final approval of a global settlement of two lawsuits that have been heavily litigated for
5 over 7 years. As set forth in the preliminary approval motion, the proposed settlement resolves the
6 case pending before this Court, and a companion action pending in the United States District
7 Court for the Central District of California (referred to as “*Medina II*”). While the history of this
8 litigation was previously detailed in Plaintiff’s preliminary approval motion and is incorporated
9 herein, Plaintiff briefly recites some important points. This litigation involved significant motion
10 practice, including class certification, appellate proceedings, out-of-state depositions, extensive
11 written discovery, and litigation in state and federal court. In fact, Plaintiff had originally
12 completely lost this current action as a result of Defendant’s summary judgment motion, but after
13 significant briefing and argument, was able to completely overturn said loss on appeal and
14 ultimately achieve this current settlement.
15

16 After the Court granted Preliminary Approval, Defendant provided the Settlement
17 Administrator the class data. (Declaration of Kevin Lee on behalf of Settlement Administrator
18 (“Admin Decl.”) ¶4).

19 The Settlement Administrator in this matter distributed the Class Notice to 4,837 Class
20 Members. (Admin Decl. at ¶6.) There have been *zero* (0) objections filed to the Settlement and
21 only five (5) requests for exclusion from the settlement. (*Id.* at ¶¶9-10.) Thus, there is a 99.9%
22 participation rate with not a single objection. (*Id.* at ¶12). This favorable response by the Class
23 supports the Court’s Preliminary Approval Order finding that the Settlement was fair, adequate
24 and reasonable and the granting of the instant Motion.

25 The settlement provides for a settlement fund of Fourteen Million Dollars
26 (\$14,000,000.00) (“Gross Settlement Value” or “GSV”). (*See* Stipulation of Class and
27
28

1 Representative Action Settlement and Release (“Settlement Agreement” or “Settlement”)¹. The
2 GSV was agreed upon based on the assumption that there are approximately six hundred thousand
3 (600,000) pay periods during the Settling Class Period. (*Id.* at II.11.b.). The Settlement
4 contemplated that “[i]f the actual number of pay periods during the Settlement Class Period, based
5 on the spreadsheet discussed in Paragraph 18, exceeds this number by more than five percent
6 (5%), then the GSV shall be increased proportionately based on the number of pay periods over
7 six hundred and thirty thousand (630,000)”. (*Id.*).

8 The class data provided to the Settlement Administrator revealed that there are 654,048,
9 which is a 3.82% increase over the maximum pay periods contemplated in the Settlement. (*Id.* at
10 ¶13). In addition to that, during the notice process, Phoenix has received forty-six (46) disputes
11 from Class Members, all of which were forwarded to Defendant. (*Id.* at ¶11). Defendant has
12 failed to respond to requests for additional data to resolve the disputes to the forty-six (46) Settling
13 Class Members’ workweek disputes. (*Id.* at ¶14) Therefore, pursuant to paragraph 48 of the
14 Settlement Agreement, based on a lack of response from Defendant, all of the discrepancies
15 between United’s documentation and conflicting information provided by the Settling Class
16 members will be resolved in favor of the Settling Class Members. (*Id.*) Accordingly, based on the
17 class data provided by Defendant, opt outs received and as well as the additional disputes accepted
18 by Phoenix, the revised total pay period count would be six hundred fifty-five thousand seven
19 hundred twenty-six (655,726), which exceeds the specified pay period cap by twenty-five
20 thousand seven hundred twenty-six (25,726) pay periods, a 4.08% increase. (*Id.* at ¶14)
21 Accordingly, the Gross Settlement Value is to be increased to \$14,571,688.89. (*Id.*)

22 In sum, as a result of the notice process, and in light of the complete lack of any objections,
23 and only a 0.01% opt-out rate, the Court may confirm its preliminary approval order as this
24 process supports the Court’s initial finding that the Settlement is fair, adequate and reasonable.

25 In addition to the results of the notice process, for the same reasons as set forth earlier in
26 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent

27
28 ¹ The Settlement Agreement was filed on May 5, 2023 concurrently with Plaintiff’s Motion for Preliminary Approval.

the basic points of the Settlement:

- The Settlement now provides a GSV of \$14,571,688.89 for a class size of 4,832 Class Members;
- Attorneys' fees of \$4,857,229.63 (1/3 of the GSV);
- Reimbursement of costs of \$29,822.22²;
- Settlement Administration Costs of \$30,950.00;
- Payment to the LWDA in the amount of \$722,522.03 which represents 75% of the PAGA allocation of \$963,362.70; and
- Class Representative Enhancement in the amount of \$20,000.00.

Based on the above, the Net Settlement Amount will be \$8,670,264.34 with the estimated recovery by an average class member of \$1,794.34 with the highest settlement share to be \$2,961.82. (Admin Decl. ¶16)

Based on the foregoing, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. THE SETTLEMENT

A. Class Members Were Provided Proper Notice

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members.

The Preliminary Approval Order contemplated that the Class Notice, as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators ("Phoenix" and/or "Settlement Administrator") would serve as the Settlement Administrator.

As clearly stated in the Admin Decl., notice was provided to Class Members as required by the Preliminary Approval Order. The Settlement Administrator received a Class Member mailing list from Defendant that included 4,837 Class Members, and, on July 25, 2023, each of the

² The Settlement Agreement provides for reimbursement of costs of up to \$75,000.00.

1 persons identified on the mailing list was sent the Class Notice in English via first class mail.
2 (Admin Decl. at ¶6; Exh. A) As part of the settlement notice process, the Settlement
3 Administrator has re-mailed Class Notices to 39 Class Members using newly updated addresses.
4 (*Id.* at ¶7) As of the date of the filing of this Motion, 13 settlement notices remain undeliverable.
5 (*Id.* at ¶8)

6 The provision of the notice to Class Members and administration of the claims process as
7 described above meets the requirements for the “best notice practicable” in this case as necessary
8 to protect the due process rights of Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*,
9 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the
10 litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*,
11 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be
12 identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.
13 306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the
14 circumstances, to apprise interested parties of the pendency of the action and afford them an
15 opportunity to present their objections”).

16 Here, the Class Members were provided with a mailing regarding the settlement that
17 explained the settlement and allowed Class Members to seek information, ask questions, and seek
18 additional forms. As such, proper notice has been given to the Class Members. *Lundell v. Dell*,
19 *Inc.*, 2006 WL 3507938, at *1 (N.D. Cal. Dec. 5, 2006) (holding that notice sent via email and
20 first class mail constituted the “best practicable notice” and satisfied due process requirements);
21 *see also Boring v. Bed Bath & Beyond*, 2014 WL 2967474, at *1 (N.D. Cal. June 30, 2014)
22 (same).

23 The Court, therefore, may proceed to determine the fairness and adequacy of the
24 Settlement, and order its approval, secure in the knowledge that all absent Class Members have
25 been given the opportunity to participate fully in the claims, exclusion, and the approval process.

26 ///

27 ///

28 ///

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

3 **A. The Terms of the Settlement, the Negotiation of the Settlement and the**
4 **Reception of the Settlement By Class Members All Strongly Support the**
5 **Conclusion that the Settlement is Fair, Adequate, and Reasonable**

6 For over seven (7) years, the Parties heavily litigated this action in state and federal court
7 prior to arriving at this settlement. For example, in this State Court action, after significant
8 discovery, Defendant moved for summary judgment, which the Trial Court ultimately granted.
9 Despite this loss, Plaintiff appeal the entirety of the Trial Court's summary judgment ruling, and
10 after substantial briefing and oral argument, Plaintiff ultimately overturned the Trial Court's entire
11 ruling and was able to revive this action. Similarly, in the Federal Court action, after significant
12 discovery was conducted, Plaintiff moved and was granted class certification; Defendant then
13 petitioned for permission to appeal, pursuant to Federal Rule of Civil Procedure 23(f). Again,
14 Plaintiff fought yet another appeal and prevailed.

15 In total, the Parties engaged in several depositions (including out of state depositions),
16 exchanged extensive written discovery, and spent countless hours litigating the case. Prior to
17 agreeing to mediation, the Parties conducted additional, informal discovery, engaging in an
18 extensive meet and confer process, the production of documents and class payroll data. Thereafter,
19 the parties engaged in a full day mediation with well-respected mediator, Michael Loeb, Esq. on
20 July 21, 2022, which ultimately led to this settlement on January 5, 2023 only after continued
21 negotiations. (Declaration of Edward W. Choi ("Choi Decl.") at ¶15)

22 Based on their own independent investigations and evaluations, the Parties and their
23 respective counsel are of the opinion that settlement for the consideration and on the terms set
24 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
25 the Class and Defendants in light of all known facts and circumstances and the expenses and risks
26 inherent in litigation.

27 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
28 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has

1 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
2 plaintiff's claims. As discussed herein, Plaintiff's counsel has conducted extensive discovery and
3 investigation and, in light of the strength and weaknesses of Plaintiff's claims, Plaintiff's attorneys
4 submit that this settlement is fair pursuant to *Kullar*.

5 In the present case, Plaintiff premised the gross settlement of \$14,000,000.00 on
6 Defendant's representation that there were approximately 600,000 pay periods worked by the
7 Settlement Class Members during the Settling Class Period (Settlement Agreement ¶ II.9.b). As
8 explained above, because the number of pay periods increased, so too did the GSV.

9 Plaintiff alleged that Defendant failed to provide compliant meal periods. (Choi Decl. ¶17).
10 Plaintiff alleges that Defendant failed to provide duty-free meal periods because employees were
11 required to be on-call during their meal periods. (*Id.*). Plaintiff's expert calculated a total
12 exposure of \$244,057,736. (*Id.*). Discovery revealed that approximately 40% of the class
13 members were required to carry communication devices while approximately 60% of the class
14 members were not required to carry communication devices. (*Id.*). Further, the 60% of class
15 members that did not carry communication devices had regimented and scheduled meal breaks.
16 (*Id.*). Thus, applying a 60% reduction of the total exposure, the potential exposure is
17 approximately \$97,623,094.41. (*Id.*). The discount is warranted because "the employer is not
18 obligated to police meal breaks and ensure no work thereafter is performed." *Brinker Rest. Corp.*
19 *v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012). (*Id.*). Thus, Defendant could
20 have argued that it met its obligation under the Labor Code by providing the opportunity for an
21 uninterrupted meal break. (*Id.*).

22 Plaintiff also alleged that Defendant failed to provide compliant rest periods because the
23 employees had to remain on-call during their rest breaks. (Choi Decl. ¶18). Like meal periods,
24 only 40% of the class were required to carry communication devices while the other 60% of the
25 class were provided with regimented rest periods. (*Id.*). Further, based on the fact that rest breaks
26 do not need to be recorded, Defendant would have argued that there is no way to prevail on this
27 claim other than through an individualized inquiry. (*Id.*). Applying the same violation rate for
28 meal periods and 50% discount based on the difficulty of proving this claim, the total potential

1 exposure of unpaid rest break premium wages amounted to approximately \$49,241,537.01. (*Id.*).

2 In addition to the above, Plaintiff alleged derivative Labor Code §§ 203 and 226 penalties.
3 (Choi Decl. ¶19). Applying the same violation rate for meal periods, Plaintiff estimates that the
4 realistic exposure of Labor Code §203 penalties amount to \$10,722,577.88. (*Id.*). Similarly,
5 Plaintiff’s derivative Labor Code §226 penalties amount to \$7,346,571.62. (*Id.*).

6 Defendant contested the merits and denied it was liable at all. (Choi Decl. ¶20). Defendant
7 argued that Plaintiffs’ meal and rest break claims lacked merit, because whenever it was reported
8 to it that a class member missed a meal or rest break a meal or rest break premium was paid out.
9 (*Id.*) Thus, individualized issues would predominate and Plaintiff may not have been able to
10 prevail on his meal and rest break claims. (*Id.*) With respect to waiting time penalties, Defendant
11 contended that it would not be subject to Section 203 penalties, based on a good faith defense
12 since its policy was compliant. (*Id.*) With respect to wage statement liability, Defendant
13 contended that liability under Section 226(e) would be subject to additional defenses requiring
14 proof of injuries resulting from knowing and intentional violations. (*Id.*) Moreover, there is a split
15 in authority as to Section 226(e) penalties and a recent decision held that an employer’s good faith
16 litigation of its affirmative defenses may preclude a finding of knowing and intentional conduct to
17 support 226 penalties. *Naranjo v. Spectrum Security Serv.*, 2023 Cal. App. Lexis 143 (Feb. 27,
18 2023). While Plaintiffs disagree with *Naranjo* and believe that *Furry v. East Bay Publishing,*
19 *LLC*, 30 Cal. App. 5th 1072, 1085 (2018), and *Kao v. Holiday*, 12 Cal. App. 5th 947, 961-62
20 (2017), which hold that an employer’s good faith belief is not a defense, this Court could have
21 followed *Naranjo*. *Naranjo* also could have called into question the applicability of penalties
22 under Section 203, which would have further reduced the potential exposure, because it held that
23 the employer was not subject to penalties where it demonstrated it acted in good faith in asserting
24 its defense. *Id.*; see also *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020)
25 (holding that an employer’s failure to pay is not willful where there is uncertainty in the law or a
26 “good faith mistaken belief that wages are not owed”).

27 PAGA penalties are also subject to good faith defenses that Defendant could have raised.
28 (*Id.* ¶21). Moreover, PAGA penalties are discretionary and subject to reduction by this Court.

1 Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA
2 penalties where “...if, based on the facts and circumstances of the particular case, to do otherwise,
3 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, courts
4 have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks*
5 *Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed the trial court’s reduction
6 of PAGA penalties by 90 percent, citing the employer’s good faith attempt at complying with the
7 law. *See also Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no
8 subsequent penalty unless prior citation or court ruling). Defendant argued that based on their
9 compliant policies, that the Court would not be inclined to impose maximum PAGA penalties
10 based on their compliant policies and good faith attempt to pay out any premiums that were due to
11 class members. (*Id.*)

12 While the Parties disagree on the application of the law to the facts, each Party recognized
13 in negotiations that, if taken to trial, the other Party would at least have reasonable arguments,
14 such that the Gross Settlement Value to which the Parties ultimately agreed was reasonable. (Choi
15 Decl. ¶¶22-24).

16 Based on the above, the potential exposure for the class-wide Labor Code damages
17 amounted \$164,933,780.92. (*Id.* ¶22) Assuming 100% liability, the derivative PAGA penalties
18 amounted to \$221,122,736.50. (*Id.*) However, if the Court were to reduce the PAGA penalties by
19 90% similar to *Carrington*, the total potential Labor Code damages and PAGA penalties exposure
20 for the Labor Code and PAGA claims would amount to approximately \$187,046,054.57. (*Id.*)
21 Taking into account the defenses that were alleged, and assuming a straightforward 50% risk
22 factor, the realistic total exposure was estimated at \$93,523,027.28. (*Id.*) The Gross Settlement
23 Value of \$14,000,000 when compared to the adjusted exposure amounts to 14.97%. (*Id.*).

24 Numerous courts have held that gross settlements approximating between only 8 and 25%
25 of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
26 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16%
27 of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
28 amounting to only a fraction of the potential recovery does not per se render the settlement

1 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
2 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
3 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
4 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding
5 that class action settlement recovering between 8.5% and 25% of the defendant’s potential
6 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161
7 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which
8 obtained **only 9.1%** of projected damages, given the risks of continued litigation) *Villegas v. J.P.*
9 *Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov.
10 21, 2012) (holding that gross class action settlement of approximately 15% of the potential
11 recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10–cv–02576 NC, 2013 WL
12 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

13 Although Plaintiff and his counsel are confident that litigation of the claims would result in
14 a classwide judgment against Defendant, they recognize the inherent risks in litigation, including
15 the specific risks that class certification could be denied, liability could not be established at trial,
16 or the applicable law could change. (Choi Decl. ¶23). Thus, the settlement for each participating
17 Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, as well as the
18 potential for appeals and the costs of pursuing litigation. (*Id.* at ¶24).

19 The results after mailing of the Class Notice support confirmation of the Court’s
20 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
21 fact that ***there is not a single Class member who has objected to the current settlement.***

22 The Court may appropriately infer that the class action settlement is fair, adequate and
23 reasonable when, among other reasons, few, or no class members object to it. *See Class Plaintiffs*
24 *v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d
25 566, 577 (9th Cir .2004) (approving settlement with 45 objections and 500 opt-outs from a 90,000-
26 person class, representing .05% and .56% of the class, respectively); *Chun–Hoon v. McKee Foods*
27 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class members opted out,
28 court found that positive class reaction “strongly supports settlement”). Here, the lack of any

1 objections and opt-outs to this current settlement is an indication that Class Members themselves
2 view the settlement as fair, adequate and reasonable.

3 **B. Under Well-Established Legal Principles, the Court Should Grant Final**
4 **Approval to the Settlement**

5 **1. Standard of Review**

6 On a motion for final approval of a class action settlement under Civil Code § 1781(f) and
7 Federal Rules of Civil Procedure (“FRCP”) Rule 23(e), a court’s inquiry is whether the settlement
8 is “fair, adequate and reasonable.”³ *Officers for Justice v. Civil Serv. Comm’n*, 668 F.2d 615, 625
9 (9th Cir. 1982), cert. denied subnom., *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A
10 settlement is fair, adequate and reasonable, and therefore merits final approval, when “the interests
11 of the class are better served by the settlement than by further litigation.” See Manual for
12 Complex Litigation Fourth (Fed. Judicial Center 2004) (“Manual”), § 21.6 at 309.

13 The law favors settlement, particularly in class actions and other complex cases, where
14 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
15 See 4 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d
16 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

17 Although the Court possesses “broad discretion” in determining that a proposed class
18 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
19 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
20 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
21 adequate to all concerned. See *Officers for Justice*, *supra* 688 F.2d at 625. Accordingly, the Court
22 should give due regard to what is otherwise a “private consensual agreement” between the parties.
23 *Id.*; see also *Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re*
24 *Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*, *City*
25 *of Seattle*, 955 F.2d 1268; Manual § 21.6 at 309 (“The judicial role in reviewing a proposed
26 settlement is critical, but limited to approving the proposed settlement, disapproving it, or

27
28 ³Both Civil Code § 1781(f) and FRCP Rule 23 have been expressly authorized by the California Supreme Court for
use in all California class action litigation. See *Vasquez v. Superior Court* (1971) 4 Cal. 3rd 800, 820-821.

1 imposing conditions on it. The judge cannot rewrite the agreement.”)

2 A court’s approval of a class action settlement will only be reversed for a clear abuse of
3 discretion. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also Officers for*
4 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was
5 a clear abuse of discretion”); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL
6 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

7 As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp* cautioned: “[i]t
8 cannot be overemphasized that neither the trial court in approving the settlement nor this Court in
9 reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of
10 fact and law which underlie the merits of the dispute. It is well settled that in the judicial
11 consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the
12 merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any
13 dispositive conclusions on the admittedly unsettled legal issue.’” *7-Eleven Owners for Fair*
14 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.

15 2. The Settlement is Presumed To Be Fair

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

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

21 *Dunk v. Ford Motor Co* (1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair*
22 *Franchising*, 85 Cal. App. 4th at 1146; *accord, Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15,
23 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F Supp at 1387.

24 The settlement in the case at bar warrants approval and carries a presumption of fairness.
25 As previously noted in the application for Preliminary Approval, this current settlement was
26 negotiated at arms’ length at mediation, and only after extensive litigation, appeals, and discovery
27 which included an expert witness analyzing payroll data for the class. (Choi Decl. at ¶¶15-16).

28 Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in

1 the supporting declarations, Class Counsel has significant experience in class actions and
2 employment wage and hour matters. (Choi Decl. at ¶30; Declaration of Larry W. Lee (“Lee
3 Decl.”) at ¶¶5-6; Declaration of William L. Marder at ¶9-11).

4 **3. Two-Way Costs and Other Risks Inherent In Continued Litigation**
5 **Favor Final Approval**

6 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
7 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
8 inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir.
9 1995) (“present value of the damages plaintiffs would likely recover if successful, appropriately
10 discounted for the risk of not prevailing, should be compared with the amount of the proposed
11 settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 1 53, 157 (3d Cir. 1975); *Boyd*
12 *v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

13 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff may have
14 been responsible for Defendant’s costs. As such, should individual, current or former employees
15 of Defendant want to bring individual claims on the same causes of action, they would each face
16 the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such
17 claims likely would not be brought by many of these current and former employees—thus, this
18 lawsuit achieves a true benefit for the class that they might not otherwise get or seek as
19 individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff
20 nor any of the class members will be required to pay for Defendant’s litigation costs.

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

25 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding
26 significant legal and factual battles that otherwise may have prevented the Class from obtaining
27 any recovery at all. While Class Counsel believe the Class Members’ claims are meritorious and
28 can be successfully litigated, they are experienced and fully understand the inherent risks and

1 uncertainty involved with such matters as the resolution of class certification, the outcome of a
2 potential trial, and the outcome of any appeals that would inevitably follow should the Class
3 prevail at trial.

4 Class Counsel has also assessed the same risks in connection with the current settlement.
5 Because the settlement provides immediate and substantial relief, without the attendant risks and
6 delay of continued litigation – not to mention the threat of litigation costs – Class Counsel believe
7 that the settlement warrants the Court’s final approval.

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

10 Another factor considered by courts in approving a settlement is the complexity, expense,
11 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
12 157. In applying this factor, the Court must weigh the benefits of the settlement against the
13 expense and delay involved in achieving an equivalent or more favorable result at trial. *See Young*
14 *v. Katz*, 447 F.2d 431, 433-434 (5th Cir. 1971).

15 As noted above, continued litigation could have led to appeals on a number of issues, as
16 evidenced by the litigation history in this case which included appeals. On the other hand, the
17 settlement that was reached provides to all Class Members – regardless of their means – fair relief
18 in a prompt and efficient manner. Were the Court to deny final approval, the Class Members
19 would be left without a remedy as a practical matter and courts across the State would have to
20 address the issues presented here in a piecemeal, costly, and time-consuming manner. The
21 settlement in this case is therefore consistent with the “overriding public interest in settling and
22 quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst v. Safeco*
23 *Corp.*, 529 F.2d at 950 (footnote omitted); see also 4 Newberg at § 11.41.

24 **5. The Opinion of Experienced Counsel Favors Final Approval**

25 Class Counsel supports the settlement as fair, reasonable and adequate, and in the best
26 interest of the Class Members as a whole. (Choi Decl. at ¶¶15-24; Lee Decl. at ¶2; Declaration of
27 Paul M. Yi ¶2; Declaration of Max Gavron ¶2; Declaration of William L. Marder ¶4). Similarly,
28 counsel for Defendant is also in favor of this settlement.

1 The endorsement of qualified and well-informed counsel of a settlement as fair,
2 reasonable, and adequate is entitled to significant weight by the Court in its final approval
3 determination. See *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.Supp.
4 at 617; *Linney*, 151 F.3d at 1242.

5 **6. Discovery and the Settlement Discussions Undertaken In This Action**
6 **Favor Final Approval**

7 Prior to negotiating the settlement, Class Counsel engaged in significant discovery of the
8 claims at issue including taking multiple depositions, serving numerous sets of discovery and
9 utilizing an expert witness to ascertain and determine the potential amount of damages that
10 Defendant possibly could be liable for if Plaintiff prevailed at trial. (Choi Decl. at ¶¶15-16). It
11 was only after the foregoing work that the Parties engaged in mediation which ultimately led to
12 this settlement. (*Id.*).

13 As detailed above, each of the factors counsel strongly in favor of final approval of the
14 Settlement by this Court.

15 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
16 **APPROVED**

17 Plaintiff has requested, and Defendant does not oppose, an enhancement of Twenty
18 Thousand Dollars (\$20,000.00), pursuant to the terms of the Settlement Agreement. Plaintiff
19 requests that this Court approve such service payments in light of the efforts Plaintiff put into this
20 case, the absence of any objection to his service payment, and the excellent result achieved.

21 As shown in the supporting declaration, Plaintiff provided documents and information to
22 Class Counsel, prepared for and provided his deposition, reviewed the Settlement Agreement and
23 various declarations throughout the case. (Medina Decl. ¶6). Moreover, as part of his duties as the
24 representative, Plaintiff provided invaluable information, evidence, and documents that resulted in
25 this settlement. (Medina Decl. ¶5).

26 Given that future employers are much less likely to hire individuals who have filed suit
27 against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the
28 future from other potential employers. Plaintiff also faced the risk of being subjected to

1 Defendant's costs had Plaintiff lost this case. Plaintiff assumed these risks and the whole class
2 benefited from these risks taken by Plaintiff. Class members did not have to file individual
3 lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have
4 to face the potential for retaliation and not getting future employment had they filed a public
5 lawsuit. Plaintiff is also executing a waiver of all known and unknown claims, including any
6 rights under Civil Code § 1542, which was not required of class members.

7 Notably, courts have routinely granted approval of representative enhancements for far
8 greater amounts than the \$20,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
9 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
10 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
11 incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*,
12 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter.*
13 *Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)
14 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007
15 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in
16 FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)
17 (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiff
18 requests a modest enhancement of \$20,000.00, which is "presumptively reasonable" and
19 consistent with case law.

20 Here, this litigation has resulted in a significantly valuable benefit to the class, and the
21 Class Representative took on substantial risk and sacrifice in helping to get this financial benefit to
22 the class. As such, the enhancement should be awarded to the named Plaintiff for his
23 commitment, dedication, and risks taken for this litigation. Accordingly, the court should find that
24 the enhancement as fair and reasonable.

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

26 Plaintiffs and the Settlement Class members are entitled to recover their attorneys' fees and
27 costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified
28 where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v.*
Riles (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*

1 (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (finding that “when a number
2 of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
3 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may
4 be awarded attorney’s fees out of the fund.”).

5 California state and federal courts routinely award fee awards of one-third of the settlement
6 fund in class actions. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also Wershba*,
7 *supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific*
8 *Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award). Indeed, the
9 California Supreme Court approved the use of the “percentage of fund” method in California. *See*
10 *Laffitte v. Robert Half Int’l, Inc.*, (2016) 1 Cal.5th 480, 506 (“the percentage of fund method survives
11 in California class action cases...”). Specifically, the *Laffitte* Court held:

12 “We join the overwhelming majority of federal and state courts in holding that when class
13 action litigation establishes a monetary fund for the benefit of the class members, and the
14 trial court in its equitable powers awards class counsel a fee out of that fund, the court may
15 determine the amount of a reasonable fee by choosing an appropriate percentage of the
16 fund created. The recognized advantages of the percentage method—including relative ease
of calculation, alignment of incentives between counsel and the class, a better approximation
of market conditions in a contingency case, and the encouragement it provides counsel to seek
an early settlement and avoid unnecessarily prolonging the litigation—convince us the
percentage method is a valuable tool that should not be denied our trial courts.”

17 *Id.* at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d
18 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately reflects the
19 results achieved than the lodestar method and “establishes reasonable expectations on the part of
20 Plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids
21 protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005)
22 (“The percentage-of-recovery method is generally favored in common fund cases because it allows
23 courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for
24 failure.”).

25 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required; in
26 many cases, performing a cross-check “undermines” one of the primary reasons for using the
27 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
28 discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a

1 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108
2 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of the
3 Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar
4 approach set forth in this Report are now echoed by many authorities, who have been most vocal
5 about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already
6 overworked trial judge.”).

7 As such, the requested fee award is fair and reasonable, and should be awarded in its
8 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
9 ensure the successful litigation of this action on behalf of all Class Members. Accordingly, Class
10 Counsel’s request for attorneys’ fees for 1/3 of the GSV in the amount of \$4,857,229.63 is fair,
11 reasonable, and adequate.

12 **VI. ATTORNEY FEE SPLIT**

13 As set forth in the motion for preliminary approval, Plaintiff has authorized in writing that
14 the fees will be split as follows: 45% to the Diversity Law Group, P.C., 50% to the Law Offices
15 of Choi & Associates, P.C., and 5% to the Polaris Law Group. (Choi Decl. ¶32, Lee Decl. ¶7,
16 Marder Decl. ¶12, Medina Decl. ¶8).

17 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 18 **COSTS**

19 The request for reimbursement of costs, in the amount of \$29,882.22 is fair and reasonable.
20 Pursuant to the terms of the Settlement Agreement, Plaintiff is allowed to seek reimbursement of
21 litigation costs up to a maximum of \$75,000.00. To date, Class Counsel has expended \$29,882.22
22 in litigation related costs. (Choi Decl. ¶31, Ex. A; Lee Decl. ¶3, Ex. A). The authority for the
23 court to award this is the parties’ Settlement Agreement and Labor Code §§ 226 and 1194. As
24 such, this request should be approved.

25 **VIII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE** 26 **APPROVED**

27 The Parties chose Phoenix Settlement Administrators as the Settlement Administrator after
28 soliciting multiple bids from well-known class action settlement administrators. (Choi Decl. ¶25).

1 The competitive bidding process resulted in the lowest bid submitted by Phoenix Settlement
2 Administrator in the amount of \$30,950.00. (*Id.*). Thus, class administration fees in the amount
3 of \$30,950.00 should be approved.

4 **IX. NOTICE TO THE LWDA HAS BEEN PROVIDED**

5 On September 11, 2023, Plaintiff uploaded this Motion and Proposed Order to the
6 LWDA's website. (Choi Decl. at ¶34, Ex. B)

7 **X. UNCASHED FUNDS**

8 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
9 paid out. Funds represented by Class Member Payment checks returned as undeliverable and
10 Class Member Payment checks remaining un-cashed for more than 180 days after issuance will be
11 tendered to the Controller of the State of California as unclaimed wages under the name of the
12 Settling Class member pursuant to the escheat procedures set forth in the California Code of Civil
13 Procedure §1300, *et. seq.* (Settlement Agreement ¶X.43(f)).

14 Upon completion of administration of the Settlement, the Settlement Administrator will
15 provide a written declaration under oath to certify the total amount that was paid to all class
16 members and distribution of the un-cashed funds were tendered to the California State Controller.
17 (*Id.*)

18 **I. CONCLUSION**

19 For all the foregoing reasonable, and on the basis of the authorities cited herein, Plaintiff
20 respectfully submits that the standards for final approval have been met, and the terms of the
21 Settlement Agreement are fair, adequate and reasonable.

22 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form
23 proposed and submitted:

- 24 1. Granting final approval to the proposed Settlement Agreement;
- 25 2. Approving distribution of the settlement funds pursuant to the terms of the
26 Settlement Agreement;
- 27 3. Approving Plaintiff's request for award of the class representative enhancement
28 with payment pursuant to the terms of the Settlement Agreement;

- 1 4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs
2 with payment pursuant to the terms of the Settlement Agreement;
- 3 5. Approving Plaintiff's request for payment of the claims administration costs with
4 payment pursuant to the terms of the Settlement Agreement;
- 5 6. Entering judgment as to all members of the Settlement Class in this action; and
6 7. Setting a Compliance Hearing date in or after August 2024.
- 7

8 DATED: September 11, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

9
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11 By: 
12 Edward W. Choi
13 Attorneys for PLAINTIFF and the CLASS
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View a Reservation

Reservation

Reservation ID:
283789547811

Reservation Type:
Motion re: (Motion for Final Approval of Class and Representative Action Settlement)

Case Number:
BC624742

Case Title:
JOSE MEDINA VS UNITED AIRLINES INC

Filing Party:
Jose Medina (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 28

Date/Time:
October 4th 2023, 8:30AM

Status:
RESERVED

Number of Motions:
1

Motions

Motion re: (Motion for Final Approval of Class and Representative Action Settlement)

 Reschedule >

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Reservation History

Status Date	Status	Action
09/11/2023 1:42PM	Updated by the COURT Date: October 4th 2023, 8:30AM Location: Stanley Mosk Courthouse - Department 28 Motions: 1	
09/06/2023 2:41PM	Reserved by User Date: November 14th 2023, 8:30AM Location: Stanley Mosk Courthouse - Department 28 Motions: 1	\$ <u>View Receipt</u>

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