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8 Attorneys for CHRISTIAN BRINK and DAVID MAIER
9 on behalf of themselves and all others similarly situated,
10 and on behalf of the general public.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE

CHRISTIAN BRINK and DAVID
MAIER on behalf of themselves and all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

CENTRAL VALLEY AUTO
TRANSPORT, INC.; and DOES 1-100;

Defendants.

Case No. VCU274266

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: February 3, 2022

Time: 8:30 a.m.

Judge: Hon. David Mathias

Dept.: 1

Complaint Filed: June 6, 2018

Trial Date: None Set

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5 Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee*
6 *Objections and Class Counsel’s Response*, 17 *Rev. Litig.* 525, 546 (1998) 7

7 T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District*
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1 Plaintiffs Christian Brink and David Maier (“Plaintiffs”) hereby submit the following
2 Supplemental Brief in support of their Motion for Preliminary Approval of Class Action
3 Settlement, in order to address the Court’s points of inquiry in its Tentative Ruling.

4 **I. INTRODUCTION**

5 On January 20, 2022, the Court issued a tentative ruling on Plaintiffs’ Motion for
6 Preliminary Approval of Class Action Settlement and asked for supplemental briefing. The Court’s
7 tentative ruling asked the Parties to provide the following information and/or declarations: (1)
8 declarations from Plaintiffs as to the number of hours worked on the case and information as to
9 why the proposed service awards are reasonable considering any estimated distributions to other
10 employees; (2) Plaintiffs’ anticipated share of the settlement and justification for the award when
11 compared to the average amount to be paid to employees; (3) a declaration from Plaintiffs’ Counsel
12 that provides an estimate as to what the lodestar would be in this case, including information as to
13 the time spent on this action and the hourly rates of all counsel working on the case; (4) a
14 declaration which states the costs currently expended; (5) a declaration from Phoenix Settlement
15 Administrators establishing and supporting the estimated costs; and (6) declarations from Counsel
16 for the Parties confirming that they do not have any interest or conflict that would preclude the
17 appointment of The Boys and Girls Club of Tulare County as the *cy pres* recipient. As will be
18 addressed herein, the Parties have provided all of this information herein and in the declarations
19 filed herewith. As such, Plaintiffs respectfully request that the Court grant their Motion for
20 Preliminary Approval.

21 **II. DISCUSSION**

22 **a. The Class Representative Enhancement Payments are Reasonable**

23 The Court’s tentative ruling asks for Plaintiffs’ anticipated share of the settlement and
24 justification for the requested enhancement payments. The settlement agreement provides for
25 enhancement payments to each of the Class Representatives – Mr. Brink and Mr. Maier – in the
26 amount of \$10,000 each.

27 Plaintiff Brink worked for Defendant as a company driver from approximately July 2016
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1 until December 2017. It is estimated that Plaintiff Brink will receive approximately \$763.62, based
2 upon the fact that he worked approximately 78 weeks as a Company Driver Class Member.
3 Although this figure is just an estimate and may change once the Class Data is provided to the
4 Settlement Administrator, this amount is lower than the average settlement payment Company
5 Driver Class Members are projected to receive. Company Driver Class Members are projected to
6 receive an average payment of approximately \$990.47 with an estimated high payment of
7 \$3,485.24. The Settlement Administrator will determine each individual's estimated settlement
8 share prior to the mailing of the Class Notice. Plaintiff Brink can update the Court with his
9 estimated settlement share at final approval.

10 Plaintiff Maier worked for Defendant as an independent contractor from approximately
11 August 2016 through approximately October 2017. It is estimated that Plaintiff Maier will receive
12 approximately \$3,852.68 as an Independent Contractor Class Member, based upon the fact that he
13 worked approximately 68 weeks as an Independent Contractor Class Member. Although this figure
14 is just an estimate and may change once the Class Data is provided to the Settlement Administrator,
15 this amount is lower than the average settlement payment Independent Contractor Class Members
16 are projected to receive. Independent Contractor Class Members are projected to receive an
17 average payment of \$5,244.76 and an estimated high payment of \$22,121.84. Plaintiff Maier is
18 also a member of the Company Driver Class. Plaintiff Maier worked as a Company Driver Class
19 Member from the beginning of the Class Period until approximately June 2016. Plaintiff Maier's
20 projected payment as a Company Driver Class Member is approximately \$1,057.32, based upon
21 the fact that he worked approximately 108 weeks as a Company Driver Class Member. Even if
22 Plaintiff Maier's projected settlement payments are taken in combination, they would equal
23 \$4,909, which is lower than the average payment to Independent Contractor Class Members. The
24 Settlement Administrator will determine each individual's estimated settlement share prior to the
25 mailing of the Class Notice. Plaintiff Maier can update the Court with his estimated settlement
26 share at final approval.

27 Courts routinely approve service payments, or incentive awards, to compensate a named
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1 plaintiff for the services he or she provides and the risks he or she incurs during class litigation.
2 *See In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393; *see also Bell v.*
3 *Farmers Ins. Exch.* (2004) 11 Cal.App.4th 715, 725-26 (upholding services payments to class
4 representatives); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
5 399, 412 (upholding incentive awards to plaintiffs that, when added to their individual recoveries,
6 amounted to more than twice as much as the average payment to class members). Courts have
7 regularly and routinely granted approval of settlements containing such enhancements. *See, e.g.,*
8 *Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003).¹ In Class Counsel’s experience, the typical
9 enhancement award in wage and hour class action settlements ranges from \$5,000 to \$75,000.
10 Very commonly there is more than one class representative who receives an award in the above
11 range.

12 The requested enhancement is appropriate and reasonable. This payment is made, in part,
13 in exchange for Plaintiffs providing Defendant with a general release of their claims. This general
14 release is far greater than the release signed by Class Members. In addition, in support of their
15 enhancement requests, Plaintiffs have submitted declarations detailing the efforts they expended
16 on behalf of the class in order to advance this case to its successful conclusion. *See* Declarations
17 of Christian Brink and David Maier. There is no question that this case would not have reached
18 the same result but for Plaintiffs’ involvement and input at all stages of the litigation.

19 As representative for the absent class members, Plaintiffs risked a potential judgment taken
20 against them for attorneys’ fees and costs if this matter had not been successfully concluded. *See*
21 *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000) (losing party is liable for the prevailing
22 party’s costs); California Labor Code § 218.5 (prevailing party is entitled to attorneys’ fees).
23 Plaintiffs risked having a cost bill entered against them leaving them ultimately liable for

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25 ¹ *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp.
26 185 (S.D.N.Y. 1997) (“present or past employee whose present position or employment credentials
27 or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
28 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect
and help to bring rights to a group of employees who have been the victims of discrimination.”).

1 potentially hundreds of thousands of dollars in the unexpected possibility that Plaintiffs' counsel
2 did not meet their obligation to cover those costs.

3 Unfortunately, there have been several judgments entered against class representatives, e.g.
4 *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where
5 Defendant prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the
6 Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, 2007 U.S.
7 Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification case lost on summary
8 judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of
9 \$56,788.). The risk of payment of Defendant's costs, in itself alone, is a sufficient basis for an
10 award of the requested enhancement sum. Few individuals are willing to take this risk, and it is
11 clear that Plaintiffs here championed a cause on behalf of others with potentially huge monetary
12 risks.

13 Additionally, it is common knowledge that the modern-day work force is quite mobile,
14 with employees holding several jobs in a career during their lifetime. It is also true that prospective
15 employers in this computer, high-tech age "Google" and/or do extensive background checks and
16 have access to Court databases to see if applicants have ever filed a lawsuit or have ever been sued.
17 Here, Plaintiffs litigated against Defendant and obtained a substantial sum of money by their
18 courage to step forward to vindicate not only their own rights but also, those of the similarly
19 situated individuals, all of whom will now receive substantial payments due to the initiation of this
20 action. This matter took place in an industry where everyone knows everyone. Such conduct will
21 not be lost on a prospective employer who has to choose between an applicant who has never sued
22 an employer and one who has done so. The requested enhancement far from compensates Plaintiffs
23 for opportunities they may lose in the future because of the exercise of a Constitutional right to
24 petition the courts for redress of a grievance.

25 The enhancement request is modest for the work performed, risks undertaken for payment
26 of fees and costs if this case had not been successfully concluded, stigma on future employment
27 opportunities, and the benefits all members of the class as well as all current and future class
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1 members will enjoy as a result of Plaintiffs' efforts. Thus, the Court should preliminarily approve
2 the request.

3 **b. The Attorney Fees are Fair and Reasonable**

4 The Court's tentative ruling asked for an estimate as to the lodestar. At final approval,
5 Plaintiffs' Counsel will apply for an award of attorneys' fees in the amount of \$416,625 (which is
6 33 1/3% of the GSA). The Court's tentative ruling requested Plaintiffs' Counsel's provide their
7 approximate lodestar, supported by declaration. Plaintiffs' counsel has worked 593.1 hours to the
8 date of this filing and has calculated its current lodestar at \$380,405, which would presently require
9 a modest 1.1 multiplier. Mara Decl. ¶¶ 9-10, 12-13, 15-16, 18-20; Ex. 1 (Summary of Time and
10 Costs).

11 California courts have recognized an appropriate method for determining an award of
12 attorneys' fees is based on a percentage of the total value of benefits to Class Members by the
13 settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
14 (*Serrano III*) 34 ("when a number of persons are entitled in common to a specific fund, and an
15 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
16 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano*
17 *v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
18 benefit of all parties, the trial court acts within its equitable power to prevent the other parties'
19 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
20 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects
21 the results achieved for the putative class than the lodestar method and "establishes reasonable
22 expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages
23 early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*,
24 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in
25 common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
26 counsel for success and penalizes it for failure.'").

27 The purpose of the common fund/percentage approach is to "spread litigation costs
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1 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
2 burden alone.” *Vincent*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162,
3 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund
4 from which others derive benefits may require those passive beneficiaries to bear a fair share of
5 the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
6 105, 110, the California Supreme Court recognized that the common fund doctrine has been
7 applied “consistently in California when an action brought by one party creates a fund in which
8 other persons are entitled to share.” The reasons for applying the common fund doctrine include:
9 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
10 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
11 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
12 encouragement of the attorney for the successful litigant, who will be more willing to undertake
13 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
14 that he will be properly and directly compensated should his efforts be successful.” *Id.*

15 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that
16 using the percentage method has many advantages:

17 The recognized advantages of the percentage method - including relative ease of
18 calculation, alignment of incentives between counsel and the class, a better
19 approximation of market conditions in a contingency case, and the encouragement
20 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.

21 *Id.* at 503 (internal citation omitted).² Because there is a defined and traceable benefit to the Class,
22 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

23 **i. Requested Fee is Within the Range of Fees Approved in Comparable
24 Cases**

25 Several studies of class action fee awards have found that the median common fund fee

26 ² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
27 such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold
28 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . .
they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
reasonableness of a requested percentage fee”).

1 award is approximately one-third of the total settlement fund.³ The requested fee falls in the mid-
2 range of percentage class fee awards, which generally range from 20% to 50% of a common fund,
3 and it constitutes fair compensation for undertaking complex, risky, expensive, and time-
4 consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well
5 as the result achieved for the benefit of the Class. Numerous state and federal courts in California
6 routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts
7 have found that an award of 33% of the common fund represents the “benchmark” in California.⁴
8 In short, Plaintiffs’ Counsels’ fee request of \$416,625 (33 1/3% of the GSA) is in line with awards
9 in similar cases in California and nationwide and demonstrates that Plaintiff’s counsels’ fee request
10 is consistent with market rates and is reasonable.

11 **ii. A Lodestar Cross-Check with a Modest Multiplier Confirms the**
12 **Reasonableness of the Requested Fee**

13 Plaintiffs’ Counsels’ fee request is reasonable when calculated using the lodestar method.
14 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
15 spent on the case and the reasonable hourly compensation of the attorney. *Serrano III*, 20 Cal. 3d
16 at 48. The court then may enhance this lodestar figure by a “multiplier” to account for a range of
17 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
18 success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer*
19 *v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), [“[t]here is no...rule limiting the factors
20 that may justify an exercise of judicial discretion to [adjust the] lodestar”]. Courts “routinely
21 enhance[] the lodestar to reflect the risk of non-payment in common fund cases.” *Vizcaino v.*

22 ³*See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have
23 shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W.
24 Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class*
25 *Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, *Empirical*
26 *Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee*
27 *on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the
28 traditional range of approximately one-third of the total settlement”).

⁴*Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL
163293, *5 (“These percentages compare favorably with both California (33%) and federal (25%)
benchmarks.”); *Dennis v. Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL
6055326, at *7 (“This percentage compares favorably with both California (33%) and federal
(25%) benchmarks and the requested fee compares well with a lodestar cross-check as well.”).

1 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v. DaimlerChrysler Corp.* (2004)
2 34 Cal.4th 553, 579 (“One of the most common fee enhancers [...] is for contingency risk.”) Such
3 an enhancement “mirrors the established practice in the private legal market of rewarding
4 attorneys’ fees for taking the risk of nonpayment by paying them a premium over their normal
5 hourly rates for winning contingency cases.” *Vizcaino, supra*, 220 F.3d at 1051; *Ketchum*, 24
6 Cal.4th at 1132-33. A risk multiplier also serves to bring the financial incentives for enforcing
7 important rights “into line with incentives [attorneys] have to undertake claims for which they are
8 paid on a fee-for-service basis. *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to
9 enhance or reduce the lodestar, California courts take into account multiple factors, including: the
10 time and labor required; the skill requisite to perform the legal services properly; the preclusion of
11 other employment by the attorney due to the acceptance of the case; the contingent nature of the
12 fee; the amount involved and results obtained; the experience, reputation, and ability of the
13 attorney; and awards in similar cases. *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 822.

14 As of the date of filing, Plaintiffs’ Counsel has worked 593.1 hours on this case, and
15 calculated the base lodestar at \$380,405 at rates reflecting those currently earned in the
16 marketplace. Mara Decl. ¶¶ 9-10, 12-13, 15-16, 18-20; **Ex. 1**. This does not include anticipated
17 time spent on future communications with Class Members, the Settlement Administrator, and
18 Defendant’s counsel throughout the remainder of the settlement process; the briefing for Final
19 Approval; and attendance at the hearing thereon. All of the work and tasks performed by Plaintiffs’
20 Counsel were reasonable and necessary to the prosecution of this case. Mara Decl. ¶¶ 9-10, 12-13,
21 15-16, 18-20. Both California and federal courts recognize that attorneys should be compensated
22 for taking on such contingent risks and provided with financial incentives to enforce important
23 rights and protections like those at issue in this case. *See, e.g., Vizcaino, supra*, 290 F.3d at 1051;
24 *Ketchum*, 24 Cal.4th at 1132-33. Here, Plaintiffs’ Counsel bore the risk that, in spite of all of their
25 efforts and skill employed, there may be no recovery. Mara Decl. ¶ 21.

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1 **1. Class Counsel’s Hourly Rates are Reasonable**

2 Plaintiffs’ Counsels’ hourly rates are between \$300 and \$800 and are in line with rates
3 typically approved in wage and hour class action litigation and which rates have been approved by
4 Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San
5 Diego County Superior Courts.⁵ A reasonable hourly rate is the prevailing rate charged by
6 attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler*
7 (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider
8 factors such as skill and experience, the nature of the work performed, the relevant area of expertise
9 and the attorney’s customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal.
10 App. 4th 629, 632.

11 Plaintiffs’ Counsels’ skill and experience support their hourly rates. Their practice is
12 limited exclusively to litigation, focusing on the representation of employees in wage and hour and
13 consumer class action matters. Mara Decl. ¶¶ 1-8, 11, 14, 17. As prominent attorneys in the field
14 of wage and hour class action litigation, Plaintiffs’ Counsel continually monitors the prevailing
15 market rates charged by both defense and plaintiff law firms and set the billing rates of their
16 attorneys and paralegals to be consistent with the prevailing market rates in the private sector for
17 attorneys and staff of comparable skill, qualifications and experience. Other wage and hour
18 attorneys working as class counsel before California courts charge comparable if not higher rates.⁶
19 Therefore, as they are in line with those of the relevant community, Class Counsels’ hourly rates
20 are reasonable.

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24 ⁵ Mara Decl. ¶¶ 9-10, 12-13, 15-16, 18-20; **Ex. 2** Westlaw Court Express’s Legal Billing Report,
25 Volume 14, Number 3, California Region for December 2012; **Ex. 3**, 2014 Declaration of Richard
26 M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; **Ex. 4**, 2012 National Law
Journal Survey of Hourly Billing Rates for Partners and Associates.

27 ⁶ Mara Decl. ¶¶ 10, 13, 16, 19, **Ex. 2**, Westlaw Court Express’s Legal Billing Report, Volume 14,
28 Number 3, California Region for December 2012; **Ex. 3**, 2014 Declaration of Richard M. Pearl in
Hohnbaum v. Brinker Restaurant Corp. SDSC GIC834348; **Ex. 4**, 2012 National Law Journal
Survey of Hourly Billing Rates for Partners and Associates).

1 administrator's declaration; and drafting and revising the final approval of the settlement and fee
2 motion. All tasks and work performed (and still to be performed) were reasonable and necessary
3 to the prosecution of this case. The work performed was justified in light of the result achieved.
4 Mara Decl. ¶¶ 9-10, 12-13, 15-16, 18-20.

5 **c. The Actual Litigation Costs Incurred are Reasonable**

6 The Court's tentative ruling asked for the amount of costs currently expended. To date,
7 Plaintiff's counsel has incurred litigation costs totaling \$25,476.24. These costs were reasonable
8 and necessary to prosecute this case and the results achieved and are fair, and reasonable. Counsel
9 requests preliminary approval of an amount *not to exceed* \$50,000. At final approval, Counsel will
10 provide the Court with a final accounting which will certainly fall below \$50,000. Any amount not
11 awarded as costs will then become part of the Net Settlement Amount and be available for
12 distribution to Participating Class Members. Mara Decl. ¶ 22, **Ex. 1.**

13 **d. Phoenix Should be Appointed as the Settlement Administrator**

14 The Court's tentative ruling requested a declaration from the proposed Settlement
15 Administrator, demonstrating its qualifications, as well as providing its basis for its cost estimate.
16 The Settlement Agreement provides for administration costs *which will not exceed* \$50,000. This
17 amount provides a cap for Phoenix Settlement Administrator's ("Phoenix") costs to administer the
18 settlement. If the actual amount of administration costs is less than \$50,000, than the difference
19 shall become part of the Net Settlement Amount and be available for distribution to Participating
20 Class Members.

21 Phoenix has provided a declaration in support of its qualifications to act as settlement
22 administrator of this settlement and has attached the bid it has prepared, detailing its proposed fee
23 and expenses to administer the settlement. This bid currently estimates Phoenix's fee at \$10,250.
24 *See* Declaration of Jodey Lawrence. There are currently no expectations that this amount will
25 increase. Therefore, assuming Phoenix's fee remains \$10,250, the difference of \$39,750 will
26 become part of the Net Settlement Amount and be available for distribution to Participating Class
27 Members.

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e. The Boys and Girls Club of Tulare County is an Appropriate *Cy Pres* Beneficiary

The Court’s tentative ruling requested a declaration from the Parties’ Counsel which confirms that neither law firm nor the Parties have any interest in or conflict with The Boys and Girls Club of Tulare County that would preclude the appointment of The Boys and Girls Club of Tulare County as the *cy pres* beneficiary. As outlined in the declarations filed herewith, neither Party nor the law firms representing them have any interest in or conflict with The Boys and Girls Club of Tulare County. Mara Decl. ¶ 23, Brink Decl. ¶ 14, Maier Decl. ¶ 14; *see also* Declaration of Vanessa Chavez, Esq., Declaration of David Ertl.

III. CONCLUSION

Plaintiffs respectfully submit that the proposed settlement is in the best interests of the Class Members, as it is fair, adequate, and reasonable, and one which should ultimately be granted final approval. Under the applicable class criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the Class should be conditionally certified for settlement purposes only, and the Class Notices should be approved. Plaintiffs request that the Court set a final approval hearing, at which time Plaintiffs will ask the Court to finally approve the settlement.

Dated: January 26, 2022

MARA LAW FIRM, PC



David Mara, Esq.
Jill Verchi, Esq.
Representing Plaintiffs CHRISTIAN BRINK and DAVID MAIER on behalf of themselves and all others similarly situated, and on behalf of the general public