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9 Attorneys for Proposed Intervenors
10 Mack Ricks, Marlena Barr, and Christina Moore

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 SIMONE N. ROGERS, in a Representative
14 capacity only, and on behalf of other members
of the general public similarly situated,

15 Plaintiff,

16 vs.

17 CONAM MANAGEMENT
18 CORPORATION, a California corporation;
and DOES 1 through 10, inclusive,

19 Defendants.

Case No. 37-2020-00013563-CU-OE-CTL

Related to 37-2020-00001430-CU-OE-CTL

[Assigned to the Hon. Richard S. Whitney,
Dept. 68]

**DECLARATION OF MAJED DAKAK
IN SUPPORT OF PROPOSED
INTERVENORS' *EX PARTE*
APPLICATION FOR LEAVE TO
INTERVENE AND OBJECTION TO
APPROVAL OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date: June 1, 2021
Time: 9:00 a.m.
Dept.: C-68

1 I, Majed Dakak, hereby declare and state as follows:

2 1. I am an attorney at law duly admitted to practice before all courts in the State of
3 California and am a shareholder of the law firm of the Kesselman, Brantly Stockinger LLP, one of the
4 attorneys of record for Proposed Intervenor Mack Ricks, Marlana Barr, and Christina Moore
5 (collectively, “Proposed Intervenor”) in the above-entitled action.

6 2. I have personal knowledge of the matters set forth herein, and if called upon as a witness
7 to testify thereto, I could and would competently do so.

8 3. Attached hereto as **Exhibit A** is a true and correct copy of the Memorandum of
9 Understanding (“MOU”) regarding the Private Attorneys General Act (the “PAGA”) settlement
10 reached between Plaintiffs Simone Rogers (“Rogers”) and Esther Lisa Shelley (“Shelley”)
11 (collectively, “Plaintiffs,” or “Settling Plaintiffs”) and Defendant ConAm Management Corporation
12 (“Defendant”).

13 4. The *Rogers* action was never identified as a related action. Indeed, Proposed
14 Intervenor’s counsel were never aware of the existence of this current case until the night before the
15 second mediation on April 13, 2021. Immediately upon being informed of this case and the pending
16 settlement, Proposed Intervenor’s counsel met and conferred with Plaintiffs’ counsel, asking Mr. Yaeckel
17 to serve a copy of his motion for approval of settlement. While Mr. Yaeckel initially agreed to do so, he
18 later backtracked and refused to serve Proposed Intervenor with this Application, forcing Proposed
19 Intervenor to obtain the settlement from the LWDA. Accordingly, Proposed Intervenor then applied
20 for *ex parte* relief as soon as discovering that Mr. Yaeckel would be seeking *ex parte* approval of his
21 PAGA settlement in Department 75 on May 6, 2021. On May 6, 2021, the Honorable John S. Meyer
22 ordered that Settling Plaintiffs’ *Ex Parte* Application for Approval and Proposed Intervenor’s *Ex Parte*
23 Application to Intervene and Object be heard via noticed motion at 9:00 a.m. on July 16, 2021.
24 Attached as **Exhibits B and C** are true and correct copies of Judge Meyer’s Minute Order and Court
25 Reporter’s Transcript of Proceedings held on May 6, 2021. Counsel for Settling Plaintiffs and
26 Defendant did not inform us of Settling Plaintiffs’ Renewed *Ex Parte* Application to Approve PAGA
27 Settlement, nor did they serve us with the papers.

1 5. In email communications with Settling Plaintiffs' counsel, Mr. Yaeckel, he continues to
2 put his interests ahead of employees and the State of California by threatening counsel for Proposed
3 Intervenor to convert this PAGA settlement into a class action settlement to spite Proposed
4 Intervenor's counsel. Proposed Intervenor's counsel reached out to Mr. Yaeckel to obtain information
5 about the settlement to ensure that it is fair, adequate and reasonable. Moreover, Proposed Intervenor
6 filed the Notices of Related Cases and the *Ex Parte* Application to Deem Cases Related as required by
7 Local Rule 2.1.3.1. In response, Mr. Yaeckel said the following:

8 My intention all along was that we would allow you to retain the class claims so
9 long as you would allow us to seek approval of the PAGA settlement. I take your
10 recent actions as obviously intending to interfere with our scheduled PAGA
11 settlement approval hearing. I must note that you were aware of this hearing and
12 decided to take action before even bothering to review our proposed settlement
13 terms,. [sic] This is disappointing and shows your true motivation was never to
14 review our proposed settlement objectively.

15 It was my hope to stay out of each other's way. However, if you take action which
16 pits us as adversaries, I rescind any promises as to whether or not we will expand
17 our settlement to include class claims. I know defense counsel is already reaching
18 out to me to "talk."

19 This email was in response to Proposed Intervenor simply filing the Notices of Related Cases
20 and the *Ex Parte* Application to Deem Cases Related as required by Local Rules. Clearly, Mr. Yaeckel
21 is putting his interests ahead of the State of California and aggrieved employees by threatening
22 Proposed Intervenor's counsel. This email also shows that counsel for Defendant and Settling
23 Plaintiffs are "talking" regarding settlement terms for their own benefit, as opposed to the benefit of the
24 State of California and aggrieved employees. Attached hereto as **Exhibit D** is a true and correct copy
25 of this email string.

26 6. It should be noted that on June 6, 2018, Proposed Intervenor's counsel filed a Fair Labor
27 Standards Act (the "FLSA") collective action in the United States District Court for the Southern
28 District of California entitled *Cuevas v. ConAm Mgmt. Corp.*, U.S.D.C. S.D. Cal. Case No. 3:18-cv-
01189-GPC-JMA (the "*Cuevas* Action"), which was also against this Defendant and involved the same
counsel, Adam Koh-Sweeney. The *Cuevas* Action involved similar regular rate/overtime claims and
was heavily litigated, including numerous discovery disputes. The Honorable Gonzalo Curiel then

1 granted the plaintiff's motion for collective certification in *Cuevas v. ConAm Mgt. Corp.*, 2019 WL
2 5320544, at *1 (S.D. Cal. Oct. 21, 2019):

3 Plaintiff alleges that ConAm maintains a single policy that fails to
4 properly include non-discretionary bonuses in calculating overtime pay
5 and it pays portions of overtime payment late or not at all. Leasing
6 Professionals, Business Managers and Community Managers are all
7 subject to the Winner's Circle program. (Dkt. No. 54-1, Gillane Decl., Ex.
8 A.) Moreover, Community Managers and Business Managers are also
9 subject to other non-discretionary bonus programs. (Dkt. No. 57, Dadek
10 Decl., Ex. B (UNDER SEAL).) Because Plaintiff has plausibly
11 demonstrated that ConAm handles its payroll uniformly as to non-
12 discretionary bonuses, the lenient standard has been met.

13 *Id.* at *6.

14
15 7. The Parties in the *Cuevas* Action then settled the case achieving a 100% on the dollar for
16 collective action members. As Judge Curiel's Order states, Proposed Intervenor's counsel in the
17 *Cuevas* Action achieved this settlement, which also resulted in Defendant changing its payroll
18 practices:

19 In this case, the Settlement Agreement provides 100% relief before
20 employer-side taxes to the opt-ins and eliminates the inherent risk of
21 continued litigation, or in other words, nearly 100% post employer side
22 taxes in recovery for the collective action members.

23 ***

24 In addition, as a result of the lawsuit, Defendant has changed some of its
25 payroll practices in line with complaints made during the litigation that
26 has affected each member of the collective action settlement. (Dkt. No.
27 83-1, Dakak Decl. ¶ 16.) Thus, because opt-ins will receive nearly 100%
28 recovery and Defendant has adjusted its payroll process, the Court
concludes that this factor supports approval of the settlement.

Attached hereto as **Exhibit E** is a true and correct copy of Judge Curiel's Order Approving the
Settlement.

8. Given the Parties' litigation history, here, the Proposed Intervenor's and Defendant's
counsel agreed to mediate this matter with Michael Loeb, Esq., on February 16, 2021. In connection
with the mediation, Defendant's counsel did not mention the *Rogers* Action, nor did Defendant file a
Notice of Related Cases as required by Rule 3.300 of the California Rules of Court. Proposed
Intervenor's and Defendant did not settle at the February 16, 2021 mediation. Rather, Proposed

Intervenors and Defendant and their counsel adjourned and agreed to complete a second mediation on March 30, 2021, so that Defendant could purportedly conduct a further exposure analysis. Defendant's counsel, Mr. Koh-Sweeney, then represented that he needed more time to analyze the data for mediation and asked to reschedule to April 13, 2021. Thus, Proposed Intervenors and Defendant mediated on April 13, 2021. Defendant then for the first time at mediation raised the *Rogers* Action the night before the mediation on April 13, 2021, claiming that Defendant had already reached a settlement of the PAGA claims asserted in the *Rogers* Action and argued that the settlement would preclude any PAGA claims in this Action. Suffice it to say that this action did not settle at mediation. Proposed Intervenors' counsel then conducted a case search and found the *Rogers* Action and filed the Notices of Related Cases and this Application as required by Local Rule 2.1.3.1. On May 6, 2021, this Court granted Proposed Intervenors' *Ex Parte* Application, deemed the cases related and reassigned the *Rogers* Action to this Court.

9. Proposed Intervenors' application is timely because it is made at the earliest possible time after learning of the existence of this case and the proposed settlement, which Mr. Yaeckel first disclosed he was seeking approval of on May 4, 2021. Then, Settling Plaintiffs and Defendant did not provide notice of the May 12, 2021 *ex parte* hearing, nor serve Proposed Intervenors with their 2nd *ex parte* application, even though they knew that Proposed Intervenors would be opposing and objecting. As soon as Proposed Intervenors learned of Settling Plaintiffs' clandestine attempt, Proposed Intervenors then refiled their *Ex Parte* Application to Intervene and Object to preserve their rights.

10. On May 26, 2021, at approximately 8:53 a.m., Proposed Intervenors' counsel provided notice to counsel for Defendant, Adam Koh-Sweeney, and counsel for Settling Plaintiffs, Eric Yaeckel, of Sullivan Law Group, in the case *Simone Rogers v. Conam Management Corporation*, S.D. Superior Court Case No. 37-2020-00013563-CU-OE-CTL (the "*Rogers* Action"). Proposed Intervenors' counsel informed said counsel that Proposed Intervenors would be applying *ex parte* to intervene and object to the settlement in the *Rogers* Action to this Court, Department C-68, on June 1, 2021, at 9:00 a.m. As of the date of this filing, Proposed Intervenors' counsel has not received any response as to whether Defendant and Settling Plaintiffs will oppose this Application. Attached hereto as **Exhibit "F"** is a true and correct copy of our email correspondence.

1 I declare under penalty of perjury under the laws of the State of California and the United States
2 that the foregoing is true and correct.

3 Executed on May 27, 2021, at Manhattan Beach, California.

4
5 

6 _____
Majed Dakak

EXHIBIT A

Memorandum of Understanding

On March 5, 2021, the parties to the case entitled *Simone Rogers v. ConAm Management Corp.*, Case No. 37-2020-00013563-CU-OE-CTL (San Diego Sup. Ct.) (the "Action"), brought by Simone Rogers and Esther Lisa Shelley (collectively, "Plaintiffs") reached the following resolution which, subject to Court approval, is intended to be a full and final resolution of the Action:

1. The Gross Settlement Amount shall be six hundred thousand U.S. Dollars and no cents (\$600,000.00).
2. The Gross Settlement Amount shall be used to pay Plaintiffs' individual settlements (including a general release and § 1542 waiver of their individuals claims), a representative PAGA settlement of all claims alleged in the Action, administration costs, plaintiffs' attorneys' fees and costs, and the PAGA Payment. The PAGA Payment is the net amount remaining after deduction of the court-approved administration costs, and plaintiff's attorneys' fees and costs, and any and all other costs associated with the settlement.
3. The LWDA shall receive 75% of the PAGA Payment. The remaining 25% shall be allocated to the PAGA Settlement Employees on a pro-rata basis based on the number of pay periods they worked during the PAGA Period.
 - a. PAGA Settlement Employees consists of onsite non-exempt employees who worked in California during the PAGA Period.
 - b. PAGA Period means the time period from January 1, 2019, through the earlier of (i) the Date of Settlement Approval or (ii) May 3, 2021.
4. Plaintiffs' counsel will petition the Court for their attorney's fees and costs. Defendant will not oppose a fee request of up to one third (1/3) of the Gross Settlement Amount plus actual costs of litigation subject to proof in a declaration. Should the Court award a lesser sum for attorneys' fees and costs, the residual will be included in the PAGA Payment.
5. From the Gross Settlement Amount, the Settlement Administrator will pay to Plaintiff Rogers an individual payment in the amount of \$37,500, and to Plaintiff Shelley an individual payment in the amount of \$17,500, in exchange for each Plaintiff executing a general release of all and any claims (known or unknown) against Defendant, including a Civil Code §1542 waiver. Plaintiffs will also be eligible for the PAGA Penalties Payment as a member of the PAGA Settlement Employees. These individual releases shall all be subject to confidentiality provisions.
6. The parties will select a mutually agreeable Settlement Administrator.

7. Plaintiffs will release, and the State of California and all PAGA Settlement Employees will be deemed to release, all PAGA claims or causes of action for civil penalties, attorneys fees, and/or costs under PAGA alleged in the Action, or that could have been alleged in the Action, that are based on the alleged meal and rest break, minimum wage, overtime compensation, wage statement, unreimbursed business expenses, and final pay violations, and any resulting claim for penalties under PAGA alleged to have been violated in the Action through the PAGA Period.
8. Neither party nor their/its counsel will issue a press release concerning the settlement.
9. Plaintiffs' counsel will prepare and file an *ex parte* application for approval of the settlement agreement. Plaintiffs' counsel will notify the State of the settlement terms prior to applying to the Court for approval. Defendant's counsel will prepare a long form of settlement agreement consistent with this MOU within one week of the execution of the MOU.
10. The effective date of the release of the Released Claims shall be the date the Court approves this Settlement.
11. Defendants will fund the settlement by wiring the Gross Settlement Amount to the Settlement Administrator within ten (10) business days of the date the Court approves the settlement terms. The "Effective Date" shall occur once (1) the Court has approved the settlement terms, (2) the Court issues a Judgment in the action, and (3) the appeal period expires. Defendant and Plaintiffs agree that PAGA Settlement Employees do not have any appeal rights, and that the Plaintiffs waive any appeal rights they may have. The Settlement Administrator shall distribute the Gross Settlement Amount pursuant to the following timeline:
 - a. Monies shall not be distributed to the PAGA Settlement Employees or the State until after the Effective Date.
 - b. The monies pertaining to Plaintiff's counsel's fees and costs award, and the Plaintiffs' enhancements, shall be distributed to Plaintiff's counsel after Judgment has been entered. Plaintiff's counsel shall hold said funds in their trust account until the Effective Date. Should an appeal be filed prior to the Effective Date, Plaintiff's counsel shall transfer said funds back to the Settlement Administrator within ten (10) business days, after which the Settlement Administrator shall hold the entire Gross Settlement Amount until further jointly instructed by the parties (or the Court).
12. Defendant represents that its business is solvent, and Defendant is able to pay the Settlement Amount within the time frame set forth herein. Specifically, Defendant has reviewed its financial status in contemplation of this Settlement Agreement and Defendant has determined it is able to comply with the Settlement Installment Payment Plan. Defendant agrees that the failure to review its financial status before entering this Settlement Agreement shall be deemed an intentional

misrepresentation. Defendant further affirms that it has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.

13. Defendant represented at mediation that the number of pay periods then at issue were approximately thirty-seven thousand two hundred (37,200). If this representation turns out to be incorrect, as of the date of mediation, by more or less than ten percent Defendant shall increase or decrease the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent in pay periods, Defendant shall add an extra 1% to the Gross Settlement Amount, for a twenty percent increase in employees Defendant shall add an extra 10% to the Gross Settlement Amount).
14. In the event the parties are unable to agree on final terms in a settlement agreement, this MOU will be enforceable and admissible in Court pursuant to Code of Civil Procedure section 664.6.

Dated: _____

Plaintiff Simone Rogers

Dated: _____

Plaintiff Esther Lisa Shelley

Dated: 3/17/21



Name: Michael C. Cato, EVP & General Counsel
Defendant ConAm Management Corporation

Approved as to form:

Dated: _____

Eric Yaeckel
Counsel for Plaintiffs

Dated: 03/11/2021



Adam P. KohSweeney
Counsel for Defendant

misrepresentation. Defendant further affirms that it has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.

13. Defendant represented at mediation that the number of pay periods then at issue were approximately thirty-seven thousand two hundred (37,200). If this representation turns out to be incorrect, as of the date of mediation, by more or less than ten percent Defendant shall increase or decrease the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent in pay periods, Defendant shall add an extra 1% to the Gross Settlement Amount, for a twenty percent increase in employees Defendant shall add an extra 10% to the Gross Settlement Amount).
14. In the event the parties are unable to agree on final terms in a settlement agreement, this MOU will be enforceable and admissible in Court pursuant to Code of Civil Procedure section 664.6.

Dated: _____

Plaintiff Simone Rogers

Dated: _____

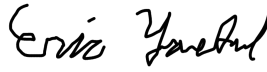
Plaintiff Esther Lisa Shelley

Dated: _____

Name: _____
Defendant ConAm Management
Corporation

Approved as to form:

Dated: 3/15/2021



Eric Yaeckel
Counsel for Plaintiffs

Dated: 03/11/2021



Adam P. KohSweeney
Counsel for Defendant

misrepresentation. Defendant further affirms that it has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.

13. Defendant represented at mediation that the number of pay periods then at issue were approximately thirty-seven thousand two hundred (37,200). If this representation turns out to be incorrect, as of the date of mediation, by more or less than ten percent Defendant shall increase or decrease the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent in pay periods, Defendant shall add an extra 1% to the Gross Settlement Amount, for a twenty percent increase in employees Defendant shall add an extra 10% to the Gross Settlement Amount).
14. In the event the parties are unable to agree on final terms in a settlement agreement, this MOU will be enforceable and admissible in Court pursuant to Code of Civil Procedure section 664.6.

Dated: 3/15/2021


Plaintiff Simone Rogers

Dated: _____

Plaintiff Esther Lisa Shelley

Dated: _____

Name: _____
Defendant Conam Management Corp.

Approved as to form:

Dated: _____

Eric Yaeckel
Counsel for Plaintiffs

Dated: _____

Adam P. KohSweeney
Counsel for Defendant

misrepresentation. Defendant further affirms that it has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.

13. Defendant represented at mediation that the number of pay periods then at issue were approximately thirty-seven thousand two hundred (37,200). If this representation turns out to be incorrect, as of the date of mediation, by more or less than ten percent Defendant shall increase or decrease the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent in pay periods, Defendant shall add an extra 1% to the Gross Settlement Amount, for a twenty percent increase in employees Defendant shall add an extra 10% to the Gross Settlement Amount).
14. In the event the parties are unable to agree on final terms in a settlement agreement, this MOU will be enforceable and admissible in Court pursuant to Code of Civil Procedure section 664.6.

Dated: _____

Plaintiff Simone Rogers

Dated: 3-15-2021



Plaintiff Esther Lisa Shelley

Dated: _____

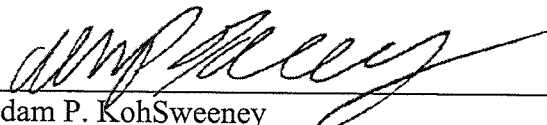
Name: _____
Defendant ConAm Management
Corporation

Approved as to form:

Dated: _____

Eric Yaeckel
Counsel for Plaintiffs

Dated: 03/11/2021



Adam P. KohSweeney
Counsel for Defendant

EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 05/06/2021

TIME: 10:00:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: John S. Meyer

CLERK: Blanca Delgado

REPORTER/ERM: Jamie Onuki

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2020-00013563-CU-OE-CTL** CASE INIT.DATE: 03/12/2020

CASE TITLE: **Rogers vs. Conam Management Corp [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Ex Parte

EVENT TYPE: Ex Parte

APPEARANCES

Eric K Yaeckel, counsel, present for Plaintiff(s) via remote audio conference.

Dennis S. Hyun and Majed Dakak, counsel, present for Potential Intervenor(s) via telephonic appearance.

THIS BEING THE TIME SET FOR HEARING ON 1.) PLAINTIFF'S EX PARTE APPLICATION RE: PAGA SETTLEMENT APPROVAL; 2.) PROPOSED INTERVENORS EX PARTE APPLICATION FOR LEAVE TO INTERVENE AND OBJECTION TO APPROVAL OF PAGA REPRESENTATIVE ACTION SETTLEMENT,

Today's proceedings are heard before the Hon. Judge John S. Meyer, covering in the absence of Hon. Judge Richard E.L. Strauss.

The Court, having read the moving papers, and having heard comments from counsel, instructs counsel to proceed via noticed motion for each remedy sought; motions set to date and time noted below, respectively.

The Motion Hearing (Civil) is scheduled for 07/16/2021 at 09:00AM before Judge Richard E. L. Strauss. (Plaintiff's Motion For Approval of PAGA Settlement)

The Motion Hearing (Civil) is scheduled for 07/16/2021 at 09:00AM before Judge Richard E. L. Strauss. (Proposed Interevenors' Motion For Leave To Intervene and Object To Approval Of PAGA Settlement)

IMPORTANT: Prior to your hearing date, please check the Court's website for the most current

instructions regarding how to appear for your hearing and access services that are available to answer your questions. <http://www.sdcourt.ca.gov/coronavirus>

Counsel waive notice.



Judge John S. Meyer

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 75

HON. JOHN S. MEYERS, JUDGE

SIMONE N. ROGERS, IN A
REPRESENTATIVE CAPACITY
ONLY, AND ON BEHALF OF THE
OTHER MEMBERS OF THE
GENERAL PUBLIC SIMILARLY
SITUATED,

PLAINTIFF,

VS.

CONAM MANAGEMENT
CORPORATION, A CALIFORNIA
CORPORATION; AND DOES 1
THROUGH 10, INCLUSIVE,

DEFENDANTS.

CASE NO:

37-2020-00013563-CU-OE-CTL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, MAY 6, 2021

APPEARANCES OF COUNSEL:

FOR PLAINTIFF: SULLIVAN & YAECKEL LAW GROUP, APC
BY: ERIC K. YAECKEL, ESQ.
2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

FOR PROPOSED INTERVENORS:

KESSELMAN BRANTLY STOCKINGER, LLP
BY: MAJED DAKAK, ESQ.
1230 ROSECRANS AVENUE, SUITE 400
MANHATTAN BEACH, CALIFORNIA 90266

HYUN LEGAL, APC
BY: DENNIS S. HYUN, ESQ.
515 SOUTH FIGUEROA STREETT, SUITE 1250
LOS ANGELES, CALIFORNIA 9007

REPORTED BY: JAMIE ONUKI, CSR NO. 13904
OFFICIAL REPORTER TEMPORE



PLATINUM REPORTERS & INTERPRETERS

Certified Shorthand Reporters

Post Office Box 6070 - San Pedro, California 90734-6070 - (310) 241-1450

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I N D E X
MAY 6, 2021

WITNESSES
(NONE.)



1 CASE NUMBER: 37-2020-00013563-CU-OE-CTL
2 CASE NAME: ROGERS VS. CONAM MANAGEMENT,
3 ET AL.
4 LOS ANGELES, CALIFORNIA MAY 6, 2021
5 DEPARTMENT 75 HON. JOHN S. MEYERS, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: JAMIE ONUKI, CSR NO. 13904
8 TIME: 10:47 A.M.
9

10 THE COURT: LET ME JUST HAVE APPEARANCES
11 AGAIN. WHO IS APPEARING?

12 MR. DEKAK: MAJED DEKAK ON BEHALF OF THE
13 INTERVENERS.

14 MR. HYUN: AND DENNIS HYUN ON BEHALF OF THE
15 PROPOSED INTERVENERS.

16 MR. YAECKEL: ERIC YAECKEL ON BEHALF OF THE
17 PLAINTIFF.

18 THE COURT: ALL RIGHT. IF THERE IS -- THINGS
19 GO ON AND ON HERE. THERE ARE TWO EX PARTES. THERE IS A
20 MOTION -- A REQUEST TO INTERVENE, AND THEN THERE IS AN
21 APPROVAL -- AN EX PARTE APPROVAL OF A PAGA SETTLEMENT.
22 ALSO, THE COURT'S UNDERSTANDING IS THAT THERE IS AN EX
23 PARTE REQUEST BY THE INTERVENERS TO CONSOLIDATE THE PAGA
24 CASE WITH A CLASS ACTION (UNINTELLIGIBLE), WHICH HAS A
25 LOW NUMBER. MY UNDERSTANDING IS THAT JUDGE WHITNEY HAS
26 TAKEN THAT UNDER SUBMISSION. IS THAT EVERYBODY'S
27 UNDERSTANDING?

28 MR. DEKAK: YES, YOUR HONOR.



1 MR. YAECKEL: YES, YOUR HONOR.

2 THE COURT: SO I DON'T KNOW WHAT IS GOING TO
3 HAPPEN THERE. I HAVE LOOKED AT THE PAPERS, AND I JUST
4 HAD A COUPLE OF QUESTIONS. THE LEAD PLAINTIFF IN THE
5 PAGA CASE REPRESENTING THE AGGRIEVED EMPLOYEES IS
6 GETTING SOME SORT OF AN ENHANCEMENT AWARD, AND THE
7 PAPERS SEEM TO SUGGEST TWO DIFFERENT AMOUNTS. IS THAT
8 CORRECT? THE INTERVENER SUGGESTED IT IS MUCH MORE THAN
9 \$5,000.

10 MR. YAECKEL: I THINK THE INTERVENERS ARE
11 INCORRECT, YOUR HONOR. THIS IS ERIC YAECKEL FOR THE
12 PLAINTIFF. THE INTERVENERS APPEAR TO HAVE GOTTEN HOLD
13 OF SOME OLDER MEMORANDUM OF UNDERSTANDING THAT WAS
14 SUPERCEDED. THE AGREEMENT THAT WE PRESENTED TO YOUR
15 HONOR IS EXACTLY WHAT WE ARE SEEKING FOR HER IN AN
16 ENHANCEMENT AT \$5,000.

17 MR. DEKAK: YOUR HONOR, MAY I SPEAK ON BEHALF
18 OF THE INTERVENERS, PLEASE? THIS IS MAJED DEKAK.

19 THE COURT: SURE.

20 MR. DEKAK: WE JUST GOT NOTICED -- WE WERE
21 JUST SERVED WITH THE EX PARTE PAPERS ON THE ROGERS
22 MATTER FOR THE SETTLEMENT APPROVAL. AND HAVING REVIEWED
23 THE DIFFERENCES IN THE SETTLEMENT TERMS, WE FIND
24 SOMETHING TO BE GLARING WE WOULD LIKE TO POINT OUT TO
25 THE COURT. SO IF YOU ADD UP -- THERE WAS AN MOU THAT
26 WAS FILED WITH LWDA, WHICH IS REQUIRED. AND THAT WAS
27 FILED MAYBE ABOUT A WEEK OR SO AGO, AND THAT WAS THE
28 MEMORANDUM OF UNDERSTANDING BETWEEN ROGERS AND CONAM,



1 THE DEFENDANT HERE.

2 YOU ADD UP THAT TOTAL, IT IS \$55,000 AS AN
3 ENHANCEMENT AWARD FOR THE REP. NOW, WE NOTICED THE
4 GLARING ISSUE. THE MOU, WHICH UNDER, I THINK, IS
5 PARAGRAPH 13, IS ENFORCEMENT EVEN IF THERE IS NO LONG
6 FORM AGREEMENT THAT WAS FILED LATER ON. IT REDUCED THE
7 GROSS SETTLEMENT AMOUNT FROM \$60,000 IN MOU TO \$550,000
8 IN THE FINAL AGREEMENT THAT WAS FILED IN THE EX PARTE
9 PAPERS BY ROGERS.

10 THAT DIFFERENCE ITSELF IS \$50,000, THE SAME
11 AMOUNT AS THE INITIAL ENHANCEMENT AWARD. THAT SEEMS TO
12 SUGGEST -- AND IT IS NOT WRITTEN IN THE EX PARTE PAPERS.
13 WHAT REALLY HAPPENED HERE IS IN ORDER TO GIVE A SIDE
14 PAYOUT TO THE INDIVIDUAL, THE PARTIES IN THE ROGERS
15 MATTER REDUCED BY \$50,000 THEIR PAGA SETTLEMENT AMOUNT
16 IN ORDER TO PAY OFF THE INDIVIDUALS ON A SIDE DEAL WHICH
17 WAS NEVER DISCLOSED TO THIS COURT. IF MR. ROGERS WANTED
18 TO CLARIFY THAT, THAT WOULD BE REALLY HELPFUL.

19 MR. YAECKEL: AND THAT IS NOT AT ALL WHAT
20 HAPPENED, YOUR HONOR. I MEAN, WHAT WE HAVE HERE IS A
21 PURELY PAGA DEAL. THE OTHER PLAINTIFFS ARE BASICALLY
22 THROWING WHATEVER THEY CAN AT IT TO OPPOSE IT. I THINK
23 IT IS REALLY JUST AN ATTORNEY'S FEES DRIVEN DISPUTE. WE
24 PRESENTED TO THE COURT THE EXACT PAGA DEAL WE ARE
25 SEEKING APPROVAL OF. THERE WAS A PRIOR MOU THAT
26 INVOLVED ANOTHER PARTY, MS. SHELLY (PHONETIC), WHO IS
27 NOT PART OF THIS LAWSUIT. SHE WAS GOING TO BE GETTING
28 MONEY.



1 THE PARTIES SINCE RESCINDED THAT MOU, HAVE
2 RENEGOTIATED TERMS OF THE DEAL. AND WE PRESENTED THE
3 COURT IN THE DELTA BDA (PHONETIC) WITH THE FINAL
4 AGREEMENT. I MEAN, WE ARE HAPPY TO BRIEF THIS MORE
5 FULLY, IF THAT IS WHAT IS NEEDED. BUT I MEAN, WE HAVE
6 PUT EXACTLY IN OUR PAPERS WHAT THE TERMS OF THE DEAL
7 ARE.

8 MR. DEKAK: YOUR HONOR, THEN WHAT WAS THE
9 REDUCTION FOR THE \$60,000 IN THE PAGA SETTLEMENT THAT
10 HAS NOT BEEN EXPLAINED. IT IS HARMING THE PAGA --

11 MR. YAECKEL: BUT THERE NEVER WAS A \$600,000
12 PAGA SETTLEMENT. AND THIS IS GETTING DANGEROUSLY INTO
13 THE MEDIATION TERRITORY. BUT THERE WAS ANOTHER PERSON
14 WE ARE REPRESENTING WITH OTHER CLAIMS THAT WAS PART OF
15 THAT MEDIATION. NOW HER CLAIMS, MS. SHELLY, ARE NOT
16 BEING SETTLED HERE AND ARE NOT BEFORE THE COURT. SO
17 THEY REALLY ARE JUST SEIZING ON TO SOME MOU THAT WAS
18 LATER RESCINDED AND COMPLETELY NEGOTIATED.

19 THE COURT: HOW MUCH IS ROGERS GETTING,
20 \$5,000?

21 MR. YAECKEL: YES. HE IS GETTING \$A5,000 AS
22 AN ENHANCEMENT ON THE PAGA --

23 THE COURT: FOR WHAT?

24 MR. YAECKEL: FOR BEING THE MAIN
25 REPRESENTATIVE.

26 THE COURT: IN A PAGA CASE? WELL, IN ANY
27 EVENT, I THINK UNDER ALL THE CIRCUMSTANCES, I AM NOT
28 GOING TO -- NOR WOULD JUDGE STRAUSS APPROVE THIS EX



1 PARTE. SO I AM GOING TO SET THIS FOR A NOTICED MOTION,
2 JULY 16TH AT 9:00 A.M. AND IT MIGHT ALL BE ACADEMIC
3 BECAUSE JUDGE WHITNEY MIGHT DECIDE TO CONSOLIDATE THESE
4 CASES IN HIS LOW NUMBER DEPARTMENT, AND THEN YOU CAN
5 FIGURE OUT THERE IN THAT DEPARTMENT WHAT IS GOING TO
6 HAPPEN. SO JULY 16TH AT 9 O'CLOCK IN THIS DEPARTMENT IN
7 FRONT OF JUDGE STRAUSS, UNLESS SOMETHING ELSE HAPPENS.

8 MR. DEKAK: YOUR HONOR, JUST A QUESTION FOR
9 THE JULY 16TH DATE YOU ARE GOING TO SET A HEARING.
10 WOULD YOU ALLOW US TO --

11 THE COURT: I HAVE ALREADY SET THE HEARING.

12 MR. DEKAK: NO, I UNDERSTAND. I APPRECIATE
13 THAT.

14 THE COURT: GO AHEAD.

15 MR. DEKAK: MY QUESTION IS A LITTLE BIT MORE
16 NUANCE.

17 THE COURT: WHO IS SPEAKING?

18 MR. DEKAK: SORRY. THIS IS MAJED DEKAK,
19 COUNSEL FOR THE PROPOSED INTERVENERS.

20 THE COURT: ALL RIGHT.

21 MR. DEKAK: MY QUESTION IS A LITTLE BIT MORE
22 NUANCE. FOR THE JULY 16TH HEARING, BECAUSE WE JUST GOT
23 SERVED WITH THE EX PARTE IN ROGERS, WHICH HAD THE FINAL
24 AGREEMENT, AND WE WOULD LIKE TO SHOW THE COURT ON THE
25 JULY 16TH HEARING, THE DISCREPANCIES BETWEEN THE
26 AGREEMENT AND THE MOU WHICH WE BELIEVE IS ENFORCEABLE.
27 WOULD YOU ALLOW US TO REFILE OUR MOTION IN ORDER TO
28 FULLY FLESH THIS OUT FOR THE JUDGE ON JULY 16TH?



1 THE COURT: WELL, WHEN YOU SAY REFILE YOUR
2 MOTION, YOU FILED AN EX PARTE REQUEST.

3 MR. DEKAK: THAT WOULD BE CORRECT, YOUR HONOR.

4 THE COURT: SO I DON'T KNOW THAT YOU WOULD
5 NEED TO REFILE THE MOTION. THE MOTION IS ALREADY SET.
6 I WOULD THINK YOU WOULD WANT TO FILE PAPERS IN SUPPORT
7 OF OBJECTING TO THE SETTLEMENT.

8 MR. DEKAK: OKAY. WE CAN GO AHEAD AND FILE
9 NEW PAPERS JUST ON THE OBJECTIONS TO THE SETTLEMENT IN
10 THE INTERVENTION.

11 THE COURT: ALL RIGHT. YEAH. THE MOTION --
12 THE EX PARTE REQUEST IS A MOTION TO INTERVENE AND THAT
13 MOTION -- NOTICED MOTION TO INTERVENE IS SET FOR
14 JULY 16TH AT 9:00 A.M. THE EX PARTE REQUEST IN THE
15 ROGERS MATTER TO APPROVE THE SETTLEMENT IS ALSO SET FOR
16 JULY 16TH AT 9:00 A.M. SO THERE IS A MOTION TO
17 INTERVENE AND A MOTION TO APPROVE THE PAGA SETTLEMENT.
18 AND THEN, OF COURSE, WE WILL SEE WHAT JUDGE WHITNEY
19 DOES. DOES EVERYBODY UNDERSTAND WHAT IS HAPPENING --
20 WHAT WILL HAPPEN?

21 MR. DEKAK: YES, YOUR HONOR. AND MY
22 UNDERSTANDING -- THIS IS MAJED DEKAK. MY
23 UNDERSTANDING --

24 THE COURT: IS NOTICE WAIVED?

25 MR. DEKAK: NOTICE WAIVED, YOUR HONOR. BUT
26 JUST TO CONFIRM MY UNDERSTANDING, WE ARE GOING TO GO
27 AHEAD AND FILE THE SUPPORTING PAPERS FOR THAT MOTION
28 THAT IS BEING SET ON JULY 16 AT 9:00 A.M.



1 THE COURT: SO THE MOTION TO INTERVENE AND THE
2 OBJECTION TO THE SETTLEMENT?

3 MR. DEKAK: THAT IS CORRECT, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. YAECKEL: AND OUR POSITION IS THERE IS NO
6 RIGHT TO OBJECT IN A PAGA SETTLEMENT, BUT WE WILL PAY
7 FOR THAT.

8 THE COURT: THERE IS NO WAY TO OBJECT?

9 MR. YAECKEL: THAT IS THE CASE LAW THAT WE
10 HAVE, BUT WE WILL LET THE COURT DECIDE THAT.

11 THE COURT: WELL, I GUESS THEY CAN TRY.
12 ANYTHING ELSE? IS NOTICE WAIVED?

13 MR. YAECKEL: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. DEKAK: YES, YOUR HONOR.

16 THE COURT: HAVE A GOOD DAY. STAY SAFE.
17 THANK YOU.

18 (PROCEEDING CONCLUDED AT 10:57 A.M.)
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State of California)
County of Los Angeles)

The undersigned Certified Shorthand Reporter CSR 13904, a court reporter in and for the State of California, does hereby certify:

That any witness(s) named in the foregoing proceeding was(were), before and/or during the commencement of proceeding, duly sworn or affirmed to testify the truth, the whole truth, and nothing but the truth;

That said proceeding was stenographically (or otherwise) reported by me and thereafter transcribed into typewriting under my direction.

The undersigned Certified Shorthand Reporter further certifies to be neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name May 14, 2021.



Certified Shorthand Reporter

EXHIBIT D

Dennis Hyun

From: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Sent: Tuesday, May 4, 2021 12:42 PM
To: Dennis Hyun
Cc: 'Majed Dakak'
Subject: RE: Rogers v. ConAm

Will it be your argument that our approval hearing (set for only 15 minutes later) with Judge Strauss should not go forward?

If so, yes we oppose and I stand by my earlier comments.

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Tuesday, May 4, 2021 12:26 PM
To: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

Hey Eric,

Not sure your combative tone is warranted. We're just complying with Local Rule 2.1.3.1, and Rule 3.300 of the California Rules of Court, which require us to file a notice of related upon learning of a potentially related case. Further, Local Rule 2.1.3.1 requires an ex parte application to be filed within 15 days of the notice of related case being filed. Per these rules, you and/or Conam were obligated to file the notices of related cases upon learning of our case, which was before your mediation. As neither Conam, nor your office filed notices of related, we had to do so upon learning of your case.

Please advise if you will oppose our application. Thank you.

From: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Sent: Tuesday, May 4, 2021 11:58 AM
To: Dennis Hyun <dhyun@hyunlegal.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

Dennis:

My intention all along was that we would allow you to retain the class claims so long as you would allow us to seek approval of the PAGA settlement. I take your recent actions as obviously intending to interfere with our scheduled PAGA settlement approval hearing. I must note that you were aware of this hearing and decided to take action before even bothering to review our proposed settlement terms,. This is disappointing and shows your true motivation was never to review our proposed settlement objectively.

It was my hope to stay out of each other's way. However, if you take action which pits us as adversaries, I rescind any promises as to whether or not we will expand our settlement to include class claims. I know defense counsel is already reaching out to me to "talk."

Thanks,

Eric

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Wednesday, April 28, 2021 3:54 PM
To: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

This email confirms that you are not converting your paga settlement into a class settlement. Should my understanding be incorrect, please let me know.

From: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Sent: Wednesday, April 28, 2021 3:37 PM
To: Dennis Hyun <dhyun@hyunlegal.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

I should be available for the next hour.

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Wednesday, April 28, 2021 3:20 PM
To: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

Hey Eric,
Majed and I have been on an arbitration hearing since 2 pm and it is going long. We will attempt to call at 3:30, but may be a little late. Thanks.

From: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Sent: Wednesday, April 28, 2021 9:05 AM
To: Hyunlegal <dhyun@hyunlegal.com>
Cc: Majed Dakak <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

That works. Let me know if you have a dial in, otherwise you can just call my office at 619-702-6760.

From: Hyunlegal <dhyun@hyunlegal.com>
Sent: Wednesday, April 28, 2021 8:49 AM
To: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: Majed Dakak <mdakak@kbslaw.com>
Subject: Re: Rogers v. ConAm

How about 3:30? Thx

On Apr 28, 2021, at 8:28 AM, Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com> wrote:

Hi Dennis: Are you guys able to speak around 12:30? Or at 3:00 pm or after.

Thanks,

Eric

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Wednesday, April 21, 2021 1:39 PM
To: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: RE: Rogers v. ConAm

Eric,
Please let us know what you want to do. And, per your offer to keep us informed, please let us know status on your case. Thanks.

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Monday, April 19, 2021 10:33 AM
To: 'Eric Yaeckel' <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>
Subject: FW: Rogers v. ConAm

See below. Might have went to spam. Let us know what time works for you today. Thx.

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Thursday, April 15, 2021 8:39 AM
To: 'Eric Yaeckel' <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>; 'Augie Porras' <aporras@kbslaw.com>
Subject: RE: Rogers v. ConAm

Hey Eric,
Thanks for getting back to us. Are you free Monday at 11 a.m.? If so, we can call you then. Thx.

From: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Sent: Wednesday, April 14, 2021 2:31 PM
To: Dennis Hyun <dhyun@hyunlegal.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>; 'Augie Porras' <aporras@kbslaw.com>
Subject: RE: Rogers v. ConAm

Dennis:

Happy to discuss this further with you.

I have a mediation tomorrow and deposition Friday. But Monday and Tuesday and wide open.

Hopefully we can all try to work something out.

Thanks,

Eric

Eric Yaeckel

Sullivan & Yaeckel Law Group, APC
2330 Third Ave.
San Diego, CA 92101
Phone: (619) 702-6760 Fax: (619) 702-6761
Email: Yaeckel@sullivanlawgroupapc.com
<https://sullivanlawsd.com/>

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Tuesday, April 13, 2021 5:59 PM
To: Eric Yaeckel <Yaeckel@sullivanlawgroupapc.com>
Cc: 'Majed Dakak' <mdakak@kbslaw.com>; 'Augie Porras' <aporras@kbslaw.com>
Subject: Rogers v. ConAm

Dear Counsel,

We have been successfully litigating against ConAm Management Corp. since 2018 for numerous employment law violations. The first case we filed was in 2018 entitled *Cuevas v. ConAm*, S.D. Cal. Case No. 3:18-cv-1189-GPC-LL. In that case, we certified an FLSA collective action on October 21, 2019. We then received court approval of a settlement that gave 100% recovery of all damages endured by collective members as calculated by our disclosed expert witness.

On January 9, 2020, we filed a California putative class action against ConAm entitled *Ricks v ConAm Management Corp.*, Case No. 37-2020-00001430-CU-OE- CTL. This case also alleges paga violations. We filed this second case, after obtaining damaging admissions from various PMK depositions that we took. We thus believe we have a very strong case against ConAm and have been developing this case for years now.

Adam Koh-Sweeney, counsel for ConAm, informed us that you settled a later filed paga case against ConAm between our first session of mediation with ConAm held on February 16, 2021, and our second session held on April 13, 2021. Given ConAm's complete change of its settlement position between the two mediations we strongly believe that Adam settled your case in order to undermine how much ConAm needs to pay out in order to resolve the paga case in our matter. As you can imagine this is very concerning.

Please be advised that we intend to file a motion to intervene in your action. Before we file our motion to intervene, we would like to jump on a call to discuss your settlement. Please let us know when you are free to discuss.

Thanks.
Dennis

Dennis S. Hyun, Esq.
<image001.jpg>
515 South Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555
Fax: (213) 488-6554
www.hyunlegal.com

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EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH CUEVAS, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

CONAM MANAGEMENT
CORPORATION, a California
corporation; and does 1 through 10,
inclusive,

Defendants.

Case No.: 18cv1189-GPC(LL)

**JUDGMENT AND ORDER
GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR
APPROVAL OF COLLECTIVE
ACTION SETTLEMENT**

[Dkt. No. 82.]

Before the Court is Plaintiff's unopposed motion for approval of the settlement under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b). (Dkt. No. 82.) A hearing was held on February 5, 2021. (Dkt. No. 85.) Based on the reasoning below, the Court GRANTS Plaintiff's unopposed motion for approval of the collective action settlement.

Background

On September 6, 2019, Plaintiff Elizabeth Cuevas ("Plaintiff") filed the operative first amended complaint ("FAC") on behalf of herself and other similarly situated

1 employees of Defendant ConAm Management Corporation (“Defendant” or “ConAm”)
2 alleging two causes of action for its failure to pay overtime pursuant to the Fair Labor
3 Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and failure to timely pay overtime
4 wages as required by 29 C.F.R. § 778.106. (Dkt. No. 48, FAC.) Specifically, Plaintiff
5 claims that Defendant failed to calculate non-discretionary bonuses into her regular rate
6 of pay in assessing overtime pay and failed to timely pay those overtime wages.

7 Plaintiff was employed by ConAm, a property management and real estate
8 investment company as a non-exempt leasing agent/professional at one of Defendant’s
9 properties located in Reno, Nevada. (*Id.* ¶ 1.) In her position as a Leasing Professional,
10 she, as well as other employees, received non-discretionary bonuses from the Lease and
11 Renewal Bonus Program, also referred to as the “Winner’s Circle” program. (*Id.* ¶ 11.)
12 Other non-exempt employees, such as Community Managers and Business Managers, are
13 also subject to other non-discretionary bonuses. (*Id.* ¶ 1.)

14 On October 21, 2019, the Court granted Plaintiff’s motion for conditional
15 certification of collective action for the following class and subclass,

16 All persons who are or have been employed by the Company in the United
17 States as non-exempt employees at any time from June 6, 2015, through the
18 present, who received overtime pay and non-discretionary incentive pay,
19 including without limitation, bonuses (the “Class”).

20 and

21 All persons who are or have been employed by the Company in the United
22 States as non-exempt employees at any time from June 6, 2015, through the
23 present, who received overtime pay and non-discretionary incentive pay
24 from the bonus program referred to as the “Winner’s Circle” bonus program
(the “Winner’s Circle Subclass”).

25 (Dkt. No. 59 at 16.) On November 4, 2019, the Court approved the notice and consent-
26 to-join forms. (Dkt. No. 67.) Three hundred and sixty-seven (367) individuals timely
27 opted-in. (Dkt. No. 83-1, Dakak Decl. ¶ 8.) Among them are eighty-eight (88)
28 individuals who had signed arbitration agreements. (*Id.*)

Plaintiff now moves for the Court to approve the Settlement Agreement in the gross settlement amount of \$310,000 (“Gross Settlement Value”). The \$310,000 payment will consist of 1) payment to the collective of \$25,152 (less any applicable employer-side payroll taxes); 2) \$105,421.33 for Collective Active Counsel’s attorneys’ fees; 3) \$169,676.67 for Collective Action Counsel’s¹ litigation costs; 4) \$5,000 to Plaintiff as an enhancement award; and 5) \$4,750 to Phoenix Settlement Administrators for the administration costs of this settlement. (Dkt. No. 82, Jt. Stip. at ¶¶ 10, 23, 24, 28(a)-(e).) The Net Settlement Amount is estimated to be \$25,152.00 before any applicable employer-side taxes, and after deducting for employer-side taxes the Net Settlement Amount is expected to be \$23,334.77. The members of the collective action will have 180 days to cash the check mailed to them and the checks will become null and void after 180 days from the date of initial mailing of the checks. (*Id.* ¶ 34.) Any amounts not cashed will be donated *cy pres* to Legal Aid to Work. (*Id.*)

Discussion

A. Legal Standard

The Fair Labor Standards Act of 1938 was enacted for the purpose of protecting all covered workers from “substandard wages and oppressive working hours.” *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981). “The FLSA establishes federal minimum-wage, maximum-hour, and overtime guarantees that cannot be modified by contract.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 69 (2013). Since an employee cannot waive claims under the FLSA, an FLSA claim “may not be settled without supervision of either the Secretary of Labor or a district court.” *Kerzich v. Cnty. of Tuolumne*, 335 F. Supp. 3d 1179, 1183 (E.D. Cal. 2018) (citing *Barrentine*, 450 U.S. at 740).

¹ Collective Action Counsel include Majed Dakak of Kesselman Brantly Stockinger LLP and Dennis Hyun of Hyun Legal, APC. (Dkt. No. 82, Jt. Stip. ¶ 16.)

1 In reviewing a FLSA settlement, a district court must determine whether the
 2 settlement represents a “fair and reasonable resolution of a bona fide dispute.” *Lynn's*
 3 *Food Stores, Inc. v. United States ex rel. U.S. Dept. of Labor, Emp't Standards Admin.,*
 4 *Wage & Hour Div.*, 679 F.2d 1350, 1355 (11th Cir. 1982). “A bona fide dispute exists
 5 when there are legitimate questions about ‘the existence and extent of Defendant's FLSA
 6 liability.’” *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D.
 7 Cal. 2016) (quoting *Ambrosino v. Home Depot. U.S.A., Inc.*, Civil No. 11cv1319
 8 L(MDD), 2014 WL 1671489, at *1 (S.D. Cal. Apr. 28, 2014)). There must be “some
 9 doubt . . . that the plaintiffs would succeed on the merits through litigation of their
 10 [FLSA] claims.” *Id.*

11 Once the district court determines that a bona fide dispute exists, it must then
 12 determine whether the settlement is fair and reasonable by looking to the totality of the
 13 circumstances and balancing such factors as: “(1) the plaintiff's range of possible
 14 recovery; (2) the stage of proceedings and amount of discovery completed; (3) the
 15 seriousness of the litigation risks faced by the parties; (4) the scope of any release
 16 provision in the settlement agreement; (5) the experience and views of counsel and the
 17 opinion of participating plaintiffs; and (6) the possibility of fraud or collusion.” *Id.* at
 18 1173 (collecting cases). “In considering these factors under a totality of the
 19 circumstances approach, a district court must ultimately be satisfied that the settlement's
 20 overall effect is to vindicate, rather than frustrate, the purposes of the FLSA.” *Id.*

21 **B. Fair and Reasonable Settlement**

22 **1. Bona Fide Dispute**

23 “A bona fide dispute exists when there are legitimate questions about the existence
 24 and extent of Defendant's FLSA liability.” *Kerzich v. Cnty. of Tuolumne*, 335 F. Supp.
 25 3d 1179, 1184 (E.D. Cal. 2018) (quoting *Selk*, 159 F. Supp. 3d at 1172). A court will not
 26 approve a settlement of an action in which there is certainty that the FLSA entitles
 27 plaintiffs to the compensation they seek, because to do so would shield employers from
 28 the full cost of complying with the statute. *Selk*, 159 F. Supp. 3d at 1172.

1 In this case, the parties contested the central question of whether Defendant
 2 correctly calculated the regular rate of pay and whether Defendant had the capability to
 3 pay bonus adjustments sooner than Defendant's existent systems allowed. (Dkt. No. 83-
 4 1, Dakak Decl. ¶ 10). On one hand, Plaintiff argued that Defendant did not include bonus
 5 payments in employees' regular rate of pay for purposes of calculating overtime and
 6 those wages were not timely paid. On the other hand, Defendant contended that it
 7 correctly calculated the regular rate of pay and that it timely paid the overtime
 8 adjustments, and in fact, overpaid the adjustments in most pay periods. (*Id.*) Defendant
 9 also would have argued that liquidated damages were not warranted, as Defendant paid
 10 overtime adjustments based on the bonuses at issue. (*Id.*) In addition, the parties
 11 disputed whether Defendant's formula for calculating the regular rate was lawful. (*Id.*)
 12 Furthermore, the parties contested whether individuals that signed arbitration agreements
 13 should be excluded from the opt-in collective. (*Id.* ¶ 9.) These disagreements
 14 demonstrate that Plaintiff was not certain to prevail. Therefore, the Court finds that this
 15 litigation reflects a bona fide dispute between the parties over potential liability under the
 16 FLSA.

17 **2. Fair and Reasonable**

18 **a Plaintiff's Range of Possible Recovery**

19 A court considers a plaintiff's range of potential recovery to ensure that the
 20 settlement amount is reasonable in relation to the true settlement value of the claims.
 21 *Selk*, 159 F. Supp. 3d at 1174 (citations omitted).

22 In this case, the Settlement Agreement provides 100% relief before employer-side
 23 taxes to the opt-ins and eliminates the inherent risk of continued litigation, or in other
 24 words, nearly 100% post employer side taxes in recovery for the collective action
 25 members. Dr. Chen Song, Plaintiff's damages expert, calculated the total unpaid bonus
 26 overtime compensation including interest from June 6, 2015 to June 19, 2020 to be
 27 \$15,899 and with liquidated damages the total recovery would be \$25,152. (Dkt. No. 83-
 28

1 1, Dakak Decl., Ex. B at 33.²) Thus, on a pretax basis, the Net Settlement Amount of
 2 \$25,152.00 is 100% of the maximum exposure (and slightly less than 100% of the total
 3 liability after accounting for employer-side taxes) for the 367-member collective.

4 Under the Settlement Agreement, each settlement collective member's recovery is
 5 based on the number of bonus adjustments paid to each member during that member's
 6 employment at ConAm. (Dkt. No. 82, Jt. Stip. ¶ 31.) This will result in an average net
 7 recovery of about \$89.00 (\$25,152 divided by 367) per opt-in before employer side taxes
 8 are deducted. (Dkt. No. 83 at 14.) In addition, as a result of the lawsuit, Defendant has
 9 changed some of its payroll practices in line with complaints made during the litigation
 10 that has affected each member of the collective action settlement. (Dkt. No. 83-1, Dakak
 11 Decl. ¶ 16.) Thus, because opt-ins will receive nearly 100% recovery and Defendant has
 12 adjusted its payroll process, the Court concludes that this factor supports approval of the
 13 settlement.

14 **b. Stage of Proceedings and Amount of Discovery Completed**

15 The Court next assesses the stage of proceedings and the amount of discovery
 16 completed to ensure the parties have an adequate appreciation of the merits of the case
 17 before reaching a settlement. *Selk*, 159 F. Supp. 3d at 1177 (citing *Ontiveros v. Zamora*,
 18 303 F.R.D. 356, 371 (E.D. Cal. 2014)).

19 Prior to settling the case, both parties were engaged in vigorous contested litigation
 20 concerning the scope of discovery, whether the FLSA class should be conditionally
 21 certified, whether individuals that signed arbitration agreements should be excluded from
 22 the opt-in collective, and the merits of the claims themselves. (Dkt. No. 83-1, Dakak
 23 Decl. ¶ 9; Dkt. No. 83-2, Hyun Decl. ¶ 8.) Specifically, Plaintiff's counsel conducted
 24 numerous depositions and retained two expert witnesses. (*Id.*) Further, the parties
 25 engaged in numerous meet and confer sessions in an attempt to resolve discrete discovery
 26

27
 28 ² Page numbers are based on the CM/ECF pagination.

disputes that occurred during the course of litigation, held multiple discovery conferences with Magistrate Judge Lopez, and briefed discovery disputes before Judge Lopez and before this Court. (*Id.*) The proposed Settlement was reached after two years of litigation, one full day of an unsuccessful mediation before Judge Layne Phillips, and another full day of a settlement conference before Magistrate Judge William Gallo, who issued a mediator's proposal, which the parties accepted. (Dkt. No. 83-1, Dakak Decl. ¶ 11; Dkt. No. 83-2, Hyun Decl. ¶ 7.) As such, the Court finds that the parties have engaged in meaningful discovery and this factor supports approval.

c. Seriousness of the Litigation Risks

Settlement is favored where “there is a significant risk that litigation might result in a lesser recover[y] for the class or no recovery at all.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 255 (N.D. Cal. 2015). If a settlement in an FLSA lawsuit reflects a reasonable compromise over issues that are actually in dispute, the “court may approve the settlement ‘in order to promote the policy of encouraging settlement of litigation.’” *Selk*, 159 F. Supp. 3d at 1173.

While Plaintiff believes her claims are meritorious, she acknowledges that Defendant had valid defenses, and in fact, Defendant asserted it overpaid overtime adjustments in most pay periods. (Dkt. No. 83-1, Dakak Decl. ¶ 10.) Moreover, there was also the additional disputed issue whether employees that signed arbitration agreements should be excluded from the opt-in collective. Therefore, the seriousness of the litigation risks weigh in favor of approval of the Settlement Agreement.

d. Scope of Release Provision in the Settlement Agreement

Courts review the scope of any release provision in a FLSA settlement to ensure that class members are not pressured into forfeiting claims, or waiving rights, unrelated to the litigation, and are especially skeptical of release provisions that require employees to forfeit claims that are designed to advance public values. *Selk*, 159 F. Supp. 3d at 1178 (citing *Luo v. Zynga, Inc.*, No. 13-cv-00186 NC, 2014 WL 457742 at *3 (N.D. Cal. Jan. 31, 2014)). The underlying concern is that an overly wide-reaching release of claims

1 may evince an attempt by an employer to use employee wages as a bargaining chip to
 2 extract valuable concessions from the employees. *Id.* A release in an FLSA settlement
 3 where members opt in in order to receive only unpaid wages and related damages should
 4 generally be limited to the specific claims at issue in the lawsuit. *Id.*

5 Here, the applicable release provision in the Settlement Agreement provides:

6 In exchange for the consideration, undertakings, and covenants undertaken
 7 by ConAm in the Agreement, including but not limited to the payment of the
 8 Member Payments, the Settlement Collective and each member thereof
 9 releases, discharges, and covenants not to sue ConAm and all of its
 10 respective past and present employees, directors, officers, attorneys,
 11 representative, insurers, agents, parents, subsidiaries, affiliates, related
 12 companies, predecessors, successors, lessees, and assigns, and any entity
 13 that could be jointly liable with any of these (individually and collectively
 14 “the ConAm Releasees”) with respect to and from any and all claims,
 15 demands, liens, agreements, contracts, covenants, actions, suits, causes of
 16 action, wages, obligations, debts, expenses, attorneys’ fees, damages,
 17 judgments, orders and liabilities of whatever kind or nature in law, equity or
 18 otherwise (collectively, “Released Claims”), whether now known or
 19 unknown, suspected or unsuspected, and whether or not concealed or
 20 hidden, which: **(i) are or at any time were alleged in the Cuevas Action,**
 21 **i.e., failure to pay overtime based on an alleged miscalculation of the**
 22 **regular rate of pay under 29 U.S.C. § 201, et seq., and failure to timely**
 23 **pay overtime wages in violation of 29 C.F.R. § 778.106;** (ii) pertain to
 24 fines, penalties, wages, premium wages, interest, restitution, liquidated
 25 damages, declaratory relief, and/or injunctive relief alleged due and owing
 26 by virtue of the claims released in subsections (i) and/or (ii), *supra*; and/or
 27 (iii) pertain to claims for attorneys’ fees and/or attorneys’ costs/expenses
 28 allegedly due and owing by virtue of the claims released in subsections (i)
 and (ii), *supra*; provided, however, that this Paragraph 36 shall not release
 any California state law claims currently set forth in *Ricks v. ConAm*
Management Corp., Case No. 37-2020-00001430-CU-OE-CTL (San Diego
 Superior Court) (the “Ricks Class Action”), though the Settling Parties agree
 that payments made to members of the Settlement Collective may be offset
 against any payments ordered or agreed to in the Ricks Class Action made to
 the same individual to avoid double counting. Moreover, the Parties
 understand and agree that this Paragraph 36 does not apply to any claims for
 alleged non-payment of minimum and/or overtime wages for working off
 the clock, including the above referred to offset. The definition of Released
 Claims is intended to be comprehensive in nature and to include all claims

1 and potential claims against the ConAm Releasees as set forth above to the
 2 maximum extent permitted at law. Nothing in this paragraph should be
 3 interpreted as a waiver of claims that cannot be waived as a matter of law.

4 (Dkt. No. 82, Jt. Stip. ¶ 36 (emphasis added and underling in original.) The release is
 5 narrow and limited to releasing the FLSA claims alleged in this action and specifically
 6 excludes any claims for alleged off-the-clock, unpaid minimum and overtime wages, any
 7 other claim not pled or alleged in the operative complaint, and explicitly excludes a
 8 pending class action filed in San Diego Superior Court. The Court concludes that the
 9 narrowly tailored release satisfies the concerns FLSA.

10 **e. Experience and Views of Counsel and Opinions of Participating**
 11 **Plaintiffs**

12 In determining whether a settlement is fair and reasonable, “[t]he opinions of
 13 counsel should be given considerable weight both because of counsel’s familiarity with
 14 th[e] litigation and previous experience with cases.” *Larsen v. Trader Joe’s Co.*, Case
 15 No. 11–cv–05188–WHO, 2014 WL 340453 1, *5 (N.D. Cal. Jul. 11, 2014).

16 Here, Collective Action Counsel and Plaintiff on behalf of the Settlement
 17 Collective believe that the terms are fair and reasonable. (Dkt. No. 82, Jt. Stip. ¶ 39.)
 18 Mr. Dakak and Mr. Hyun are both experienced attorneys with years of experience
 19 practicing in labor and employment law as well as complex litigation. (See Dkt. No. 83-
 20 1, Dakak Decl. ¶¶ 3, 4; Dkt. No. 83-2, Hyun Decl. ¶¶ 3-6.) The views of experienced
 21 counsel and Plaintiff weigh in favor of approval of the settlement.

22 **f. Possibility of Fraud or Collusion**

23 “The likelihood of fraud or collusion is low. . . [when] the Settlement was reached
 24 through arm's-length negotiations, facilitated by an impartial mediator.” *Slezak v. City of*
 25 *Palo Alto*, Case No. 16-CV-03224-LHK, 2017 WL 2688224, at *5 (N.D. Cal. June 22,
 26 2017) (citation omitted). Here, there is no indication of the possibility of fraud or
 27 collusion because settlement negotiations were presided over and facilitated by a
 28 magistrate judge of this court. There is nothing on the face of the record to suggest

plaintiff's counsel "allowed the pursuit of their own self-interests and that of certain class members to infect the negotiation." *In re Bluetooth Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). The Court concludes there is no indication of fraud or collusion.

In sum, having considered the relevant factors and the totality of the circumstances, the Court concludes that the Settlement Agreement is a fair and reasonable resolution of a bona fide dispute of the FLSA provisions, and GRANTS Plaintiff's unopposed motion for approval of collective action settlement.

C. Incentive Award

A district court has discretion to award an incentive payment to the named plaintiffs in a FLSA collective action to compensate them for work done on behalf of the class. *Selk*, 159 F. Supp. 3d at 1181. In reviewing whether an incentive award is appropriate, the court should consider, among other things, "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)). The awards "are particularly appropriate in wage-and-hour actions where plaintiffs undertake a significant 'reputational risk' by bringing suit against their former employers." *Bellinghausen*, 306 F.R.D. at 267 (citing *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)).

The Settlement provides a \$5,000 service award to Plaintiff in recognition of the time she spent, risks she incurred and the results she obtained on behalf of her fellow opt-ins. (Dkt. No. 82-1, Dakak Decl. ¶ 13.) She provided invaluable information and spent a significant amount of time prosecuting the action including attending numerous telephonic conferences with her counsel, attending a settlement conference, reviewing pleadings and answering questions related to discovery. (*Id.*) Her decision to file this action resulted in substantial benefits, nearly 100% of the potential recovery, on behalf of the class as well as changes to ConAm's payroll policies. The Court exercises its

discretion and GRANTS Plaintiff's request for an incentive payment of \$5,000 as reasonable and appropriate.

D. Attorney's Fees

Plaintiff's counsel seek attorneys' fees in the amount of \$105,421.33. Although the actual lodestar for both Plaintiff's counsel amount to \$557,780.00, they are only seeking \$105,421.33 which represents a negative multiplier of the actual total lodestar amount.

"Where a proposed settlement of FLSA claims includes the payment of attorney's fees, the court must also assess the reasonableness of the fee award." *Selk*, 159 F. Supp. 3d at 11870 (quoting *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 336 (S.D.N.Y. 2012)); *see also* 29 U.S.C. § 216(b) (providing that, in a FLSA action, the court "shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action"). At the fee-setting stage, the interests of the plaintiffs and their attorneys diverge and described as "adversarial"; therefore, the district court assumes a fiduciary role for the collective action plaintiffs. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010).

In a case involving a common fund, a district court has discretion to apply either the percentage of the fund method or the lodestar method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994). Once a method is selected, the Ninth Circuit encourages district courts to cross-check with the other method in order to guard against an unreasonable result. *In re Bluetooth*, 654 F.3d 944 ("Thus, even though the lodestar method may be a perfectly appropriate method of fee calculation, we have also encouraged courts to guard against an unreasonable result by cross-checking their calculations against a second method."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) ("Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the

percentage award”); *but see Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1126 (9th Cir. 2020) (citing *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 571 (9th Cir. 2019) (courts are not required to perform a “crosscheck” using the percentage method given difficulty in measuring dollar value of injunctive relief.)).

Collective Action Counsel justify their attorneys’ fee request under the lodestar method. Counsel explain that the actual total lodestar amount to \$557,780.00 (\$345,605.00 for Kesselman Brantly Stockinger and \$212,175.00 for Hyun Legal) which far exceeds the amount they seek of \$105,421.33. The lodestar is calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

1. Hourly Rates

Kesselman Brantly Stockinger seek an hourly rate of \$700 per hour for Dakak, a twelve-year barred attorney who has experience in labor and employment and complex litigation cases, \$600 per hour for two attorneys with over 10 years of experience, \$450 per hour for a sixth year associate, Ryan Davis, and \$200 per hour for paralegals. (Dkt. No. 83-1, Dakak Decl. ¶ 14.) Hyun Legal seeks an hourly rate of \$750 per hour for Dennis Hyun, a shareholder of Hyun Legal and an eighteen-year barred attorney who has been practicing employment law and wage and hour matters including class actions and individual actions. (Dkt. No. 83-2, Hyun Decl. ¶ 12.)

“[R]ate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *United Steelworkers of American v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). The “prevailing market rates in the relevant community” takes into consideration “the experience, skill, and reputation of the attorney.” *Dang v. Cross*, 422 F.3d 800, 813 (9th Cir. 2005). Fee applicants have the burden of producing evidence that their requested fees are “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir.2008) (internal quotation marks omitted). “[T]he

relevant community is the forum in which the district court sits.” *Id.* at 979 (Northern District of California was the relevant community). “Affidavits of the plaintiffs’ attorney[s] and other attorneys regarding prevailing fees in the community . . . are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

In support, both counsel rely on the hourly rates they were awarded in the Northern and Central Districts of California and in Santa Clara, Los Angeles and San Bernardino County Superior Courts. (Dkt. No. 83-2, Dakak Decl. ¶ 12; Dkt. No. 83-1, Hyun Decl. ¶ 14.) However, the relevant community to determine hourly rates is the Southern District of California. Therefore, counsel has not shown that their rates are prevailing in the relevant community.

Nonetheless, after the Court’s review of caselaw, Plaintiff’s counsel fees are in line with fees awarded in the Southern District of California. *See In re Easysaver Rewards Litig.*, No. 09-CV-02094-BAS-WVG, 2020 WL 2097616, at *13-16 (S.D. Cal. May 1, 2020) (finding that an hourly rate of \$850.00 and \$675.00 for partners, \$675.00 and \$390.00 for associates, \$315.00 and \$125.00 for staff, and a blended rate of \$668 per hour was reasonable in the district); *Lopez v. Mgmt. & Training Corp.*, No. 17CV1624 JM(RBM), 2020 WL 1911571, at *8-9 (S.D. Cal. Apr. 20, 2020) (finding that an hourly rate of \$900.00 and \$600.00 for partners, \$500.00 for an associate, and \$200.00 and \$175.00 for staff was reasonable in the district); *Vasquez v. Kraft Heinz Foods Co.*, No. 3:16-CV-2749-WQH-BLM, 2020 WL 1550234, at *7 (S.D. Cal. Apr. 1, 2020) (finding that rates from \$175.00 per hour for paralegals and \$325.00 per hour for a second-year associate to \$900.00 per hour for a forty-sixth-year partner were reasonable).

Accordingly, the Court concludes that the hourly rates sought by counsel are reasonable.

2. Reasonableness of Hours

Dakak states that his firm has incurred 593.60 hours on this case plus 10 additional hours to include attending the hearing on the approval and responding to any collective

1 action member inquiries. (Dkt. No. 83-1, Dakak Decl. ¶ 14; *id.*, Ex. C.) Hyun states he
 2 spent 282.90 hours of work. (Dkt. No. 83-2, Hyun Decl. ¶ 12; *id.*, Ex. A.³) Based on the
 3 Court’s review of the number of hours spent during two years of litigation, the Court
 4 finds the number of hours to be reasonable.

5 Plaintiff’s attorneys spent a total of 866.50 hours litigating the case for a total
 6 lodestar of \$557,780 (\$345,605 for Kesselman Brantly Stockinger and \$212,175.00 for
 7 Hyun Legal); however, Collective Action Counsel seeks only the amount of \$105,421.33,
 8 which is .19 of the total lodestar amount and represents a negative lodestar multiplier.
 9 (Dkt. No. 83 at 15-16.) The Court finds the fee award is reasonable based on the
 10 excellent results obtained, the experience and skill of counsel, and the risk of not
 11 prevailing.

12 As a cross check, the counsel’s fee request is also reasonable under the percentage
 13 of the fund. The fee award sought of \$105,421.33 amounts to 34% of the \$310,000 Gross
 14 Settlement Value and is within the percentage range that courts have allowed in the Ninth
 15 Circuit. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010)
 16 (“typical range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33 1/3 % of total
 17 settlement value”); *Hopkins v. Stryker Sales Corp.*, No. 11-2786, 2013 WL 2013 WL
 18 496358, at *1 (N.D. Cal. Feb. 6, 2013) (acknowledging same and awarding 30%); *In re*
 19 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) (“[a] review of recent
 20 reported cases discloses that nearly all common fund awards range around 30%”).

21 Moreover “[i]n awarding percentages of the class fund, courts frequently take into
 22 account the size of the fund.” *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113,
 23 1127 (C.D. Cal. 2008). It is established that 25% of the gross settlement amount is the
 24 benchmark for attorneys’ fees awarded under the percentage method, with 20 to 30% as
 25

26
 27 ³ The Court notes that Hyun Legal’s breakdown of hours spent does not include any dates which would
 28 have been helpful to the Court. (Dkt. No. 83-2, Hyun Decl., Ex. A.) However, because the description
 of work relates to tasks involved in this litigation and because the amount counsel seeks is a percentage
 of the total lodestar, the dates were not ultimately necessary for the Court’s review.

the usual range in common fund cases where the recovery is between \$50 and 200 million. *Vizcaino*, 290 F.3d at 1047, 1050 n.4. In cases where the common fund is under \$10 million, fees are often above 25%. *Craft*, 624 F. Supp. 2d at 1127 (citing *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 297-98 (N.D. Cal. 1995) (“[m]ost of the cases Class Counsel have cited in which high percentages such as 30–50 percent of the fund were awarded involved relatively smaller funds of less than \$10 million”). “Other case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in case in which the common fund is relatively small.” *Cicero v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at * 6 (C.D. Cal. July 27, 2010) (citing Rubenstein, Conte and Newberg, *NEWBERG ON CLASS ACTIONS* at § 14:6). Therefore, 34% of the common fund of \$310,000 is reasonable.

Because the Court finds the attorneys’ fee award is reasonable, the Court approves the attorneys’ fee award of \$105,421.33.

E. Costs

Costs may also be awarded as part of a FLSA settlement. *Selk*, 159 F. Supp. 3d at 1180-81. Plaintiff’s counsel seeks out-of-pocket costs in the amount of \$169,676.67 (\$90,431.07 for Kesselman Brantly Stockinger and \$79,245.60 for Hyun Legal). (Dkt. No. 83-1, Dakak Decl. ¶ 15; *id.*, Ex. D; Dkt. No. 83-2, Hyun Decl. ¶ 13; *id.*, Ex. B.⁴)

While the out-of-pocket costs are the largest figure in the Gross Settlement Value, they were necessary costs to prosecute the case which involved retaining two experts, attending mediation before Judge Layne Phillips, and another full day of a settlement conference before Magistrate Judge William Gallo and engaging in a number of discovery disputes before Magistrate Judge Lopez and this Court. (Dkt. Nos. 22, 23, 27,

⁴ The Court notes again that Hyun Legal’s breakdown of costs does not include the dates they were incurred. (Dkt. No. 83-2, Hyun Decl., Ex. B.) However, a review of Kesselman Brantly Stockinger’s breakdown of costs aided in the Court’s review of whether Hyun Legal’s costs were reasonable and not duplicative.

28, 41, 70.) Therefore, the Court approves Plaintiff's request for costs in the amount of \$169,676.67.

CONCLUSION

Accordingly, Plaintiff's unopposed motion for approval of the collective action settlement is GRANTED. Having considered the papers filed in support of the motion, and the law, the Court now enters this Order and FINDS:

I. APPROVAL OF SETTLEMENT

The Court has reviewed the terms of the Settlement, including the \$310,000 Gross Settlement Value, the plan of allocation, and the release of claims. The Court has also reviewed Plaintiff's moving papers and all supporting declarations. Based on review of those papers, and the Court's familiarity with this case, the Court finds and concludes that the Settlement is the result of arms-length negotiations between the Parties, conducted under the supervision of Magistrate Judge William Gallo, after Plaintiff's Counsel had adequately investigated Plaintiff and the Opt-Ins' claims and become familiar with their strengths and weaknesses. The assistance of Judge Gallo in the settlement process confirms that the Settlement is non-collusive.

The Court finds and determines that the payments to be made to the Opt-Ins as provided for in the Settlement are fair and reasonable. The proposed plan of allocation is rationally related to the relative strengths of the respective claims asserted and each collective action member's damages.

The Court also approves the cy pres payment to the nonprofit, Legal Aid at Work, for any checks uncashed after 180 days from distribution. The Settlement is not a concession or admission, and shall not be used or construed against Defendant as an admission or indication with respect to any claim of any fault or omission by Defendant.

II. APPROVAL OF THE NOTICE PROGRAM

Plaintiff has also submitted for this Court's approval a proposed Notice of Settlement (submitted as Exhibit A to the Declaration of Majed Dakak filed herewith).

1 The Notice is the best notice practicable under the circumstances. The Notice
 2 fairly, plainly, accurately, and reasonably informs Opt-Ins of: (1) appropriate information
 3 about the nature of this action, the identities of the Opt-Ins, the identity of Plaintiff's
 4 Counsel, and the essential terms of the Settlement, including the plan of allocation; (2)
 5 appropriate information about the amounts being allocated to Plaintiff as a Service
 6 Payment and to Plaintiff's Counsel's as attorneys' fees and costs; and (3) appropriate
 7 instructions as to how to obtain additional information regarding this action and the
 8 Settlement.

9 The proposed plan for distributing the Notice likewise is a reasonable method
 10 calculated to reach all individuals who would be bound by the Settlement. Under this
 11 plan, the Settlement Administrator will distribute the Notice and Settlement Share checks
 12 to all Opt-Ins by first-class mail to their last known addresses. There is no additional
 13 method of distribution that would be reasonably likely to notify Opt-Ins who may not
 14 receive notice pursuant to the proposed distribution plan.

15 Accordingly, the Court finds and concludes that the proposed plan for distributing
 16 the Notice will provide the best notice practicable and satisfies all legal and due process
 17 requirements.

18 **III. PLAINTIFF'S AND OPT-INS' RELEASE OF CLAIMS**

19 The Court has reviewed the release in paragraph XI (36) of the Settlement
 20 Agreement and finds it to be fair, reasonable, and enforceable under the FLSA and all
 21 other applicable law. Plaintiff and every Opt-In shall, pursuant to the Settlement, be
 22 bound by the release of claims as set forth in the Settlement, regardless of whether a
 23 Plaintiff or Opt-in cashes or deposits his or her settlement check.

24 **IV. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

25 Phoenix Settlement Administrators is hereby appointed Settlement Administrator
 26 to carry out the duties set forth in this Approval Order and the Settlement Agreement.
 27 Phoenix shall be paid \$4,750 for the administration of this settlement.

28 **V. SERVICE PAYMENT TO THE NAMED PLAINTIFF**

1 The Court approves the service payment to Named Plaintiff as set forth under the
 2 Settlement Agreement and finds \$5,000 fair and reasonable.

3 **VI. PLAINTIFF'S COUNSEL'S AWARD OF FEES AND COSTS**

4 The Court finds and determines that the payment of \$105,421.33 for collective
 5 counsel's attorneys' fees, \$169,676.67 for collective counsel's litigation costs, is fair and
 6 reasonable.

7 **VII. ENFORCEMENT OF OBLIGATIONS**

8 Nothing in this Settlement Approval Order will preclude any action to enforce the
 9 Parties' obligations under the Settlement or under this order, including the requirement
 10 that Defendant fund the Gross Settlement Value and provide the data to the Settlement
 11 Administrator in accordance with the terms of the Settlement Agreement.

12 **VIII. FINAL JUDGMENT**

13 By means of this Settlement Approval Order, this Court hereby enters final
 14 judgment in this action, as defined in Federal Rule of Procedure 58(a)(1). The Parties are
 15 hereby ordered to comply with the terms of the Settlement. This action is dismissed with
 16 prejudice, each side to bear its own costs and attorneys' fees except as provided by the
 17 Settlement Agreement and the Court's orders.

18 **IX. CONTINUING JURISDICTION**

19 Without affecting the finality of the Court's judgment in any way, the Court retains
 20 jurisdiction over this matter for purposes of resolving issues relating to interpretation,
 21 administration, implementation, effectuation and enforcement of the Settlement.

22 **X. SETTLEMENT APPROVAL**

23 Based on all of these findings and the applicable legal standards, the Court
 24 concludes that the proposed Settlement meets the criteria for settlement approval, and

25 ///

26 ///

27 ///

28 ///

1 Orders the Parties to distribute the payments required under the Settlement.

2 IT IS SO ORDERED.

3 Dated: February 9, 2021

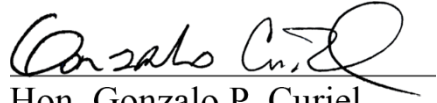
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5 Hon. Gonzalo P. Curiel
6 United States District Judge
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EXHIBIT F

Dennis Hyun

From: Dennis Hyun <dhyun@hyunlegal.com>
Sent: Wednesday, May 26, 2021 8:53 AM
To: 'Yaeckel@sullivanlawgroupapc.com'; 'akohsweeney@omm.com'
Cc: 'Majed Dakak'; 'Melinda Quiane'; 'Augie Porras'; 'kmacdonnell@omm.com'
Subject: Rogers v. Conam, Case No. 37-2020-00013563-CU-OE-CTL

Dear Counsel,

Please be advised that pursuant to Rule 3.1204 of the California Rules of Court, Plaintiffs Mack Ricks, Marlena Barr and Christina Moore (collectively, Plaintiffs”) in the matter entitled, Ricks v. Conam, S.D. Superior Court Case No. 37-2020-00001430-CU-OE- CTL, will be applying *ex parte* to intervene and object to the settlement reached in the case, Rogers v. Conam, S.D. Superior Court Case No. 37-2020-00013563-CU-OE-CTL. Our *ex parte* application and hearing is scheduled for 9:00 a.m. on June 1, 2021, in Department C-68, before Judge Whitney, in the San Diego County Superior Court. We will serve you all with our papers when they are filed.

Please advise whether you will oppose Plaintiffs’ Application. Thank you.

Dennis S. Hyun, Esq.



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