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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA**

FAHEEM KHAN, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AMY’S KITCHEN, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: SCV-266127

(Assigned to the Hon. Arthur A. Wick,
Courtroom 17)

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

Date: March 10, 2021

Time: 3:00 p.m.

Dept.: 17

Complaint Filed: March 4, 2020

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

2 **PLEASE TAKE NOTICE** that on March 10, 2021, at 3:00 p.m., or as soon thereafter as
3 the matter may be heard before the Honorable Arthur A. Wick in Department 17 of the Superior
4 Court of the State of California, County of Sonoma, located at 3035 Cleveland Avenue, Santa
5 Rosa, California 95403, Plaintiff Faheem Khan (“Plaintiff”) will and hereby does move this
6 Court for an Order:

7 1. Granting final approval to the Joint Stipulation of Class Action Settlement
8 (“Stipulation” or “Settlement Agreement”) entered into by Plaintiff and Defendant Amy’s
9 Kitchen, Inc. (“Defendant”) in this action;

10 2. Approving distribution of the settlement funds to Class Members pursuant to the
11 terms of the Settlement Agreement;

12 3. Approving Plaintiff’s request for an award of the Class Representative
13 Enhancement Payment of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement
14 Agreement;

15 4. Approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class
16 Counsel for one-third of the Gross Settlement Amount of \$390,000.00, or \$130,000.00, and
17 reimbursement of actual litigation costs of \$8,915.23, pursuant to the terms of the Settlement
18 Agreement;

19 5. Approving Plaintiff’s request for payment of Settlement Administration Costs to
20 Phoenix Settlement Administrators in the amount of \$8,500.00, pursuant to the terms of the
21 Settlement Agreement;

22 6. Approving Plaintiff’s request for payment to the California Labor & Workforce
23 Development Agency (“LWDA”) for \$15,000.00, pursuant to the terms of the Settlement
24 Agreement; and

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

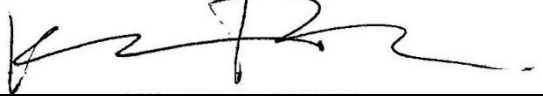
26 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
27 provides for court approval of the settlement of a purported class action and allows the Court to
28 grant final certification of a class for settlement purposes. In light of the overwhelmingly

1 positive response from Class Members, there is no question that the settlement is fair,
2 reasonable, and adequate, and thus should be granted final approval by the Court.

3 This Motion will be based on the attached Memorandum of Points and Authorities and
4 the supporting Declarations of Larry W. Lee, Mai Tulyathan, Plaintiff Faheem Khan, and
5 Elizabeth Kruckenberg of Phoenix Settlement Administrators, the oral arguments of counsel
6 (should there be any), and on the complete records and file herein.

7
8 DATED: February 16, 2021

DIVERSITY LAW GROUP, P.C.

9
10 By: 

11 Larry W. Lee
12 Mai Tulyathan
13 Attorneys for Plaintiff, the Class, and Aggrieved
14 Employees
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I. INTRODUCTION

Plaintiff Faheem Khan (“Plaintiff”) now seeks the Court’s final approval of the Joint Stipulation of Class Action Settlement (“Stipulation” or “Settlement Agreement”). In sum, the Settlement Agreement provides for a \$390,000.00 non-reversionary fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the Plaintiff, payment to the California Labor & Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. After these deductions are made, the entire net settlement fund will be paid to all Class Members who did not opt-out of the Settlement.

This history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. The Court preliminary approved this Class Action Settlement on November 9, 2020, directing distribution of the Notice of Class Action Settlement (“Class Notice”) and scheduling the hearing final approval of the settlement (the “Preliminary Approval Order”).

As directed by the Court, the Claims Administrator distributed the Class Notice to 503 Class Members. (Declaration of Elizabeth Kruckenberg (“Kruckenberg Decl.”) (on behalf of Phoenix Settlement Administrators) at ¶ 5.) The deadline for Class Members to submit requests for exclusion or submit any objections was February 11, 2021. (Kruckenberg Decl. at ¶¶ 8-9.) To date, the Claims Administrator received two (2) requests for exclusions, and zero (0) objections to the Settlement. (*Id.*) Based on this information provided by the Claims Administrator, there is an overwhelmingly positive and favorable response to the Settlement, as there is a **99.6% participation rate** with **zero objections** from the 503 Class Members. Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

In sum, as a result of the settlement administration process, the favorable response from Class Members, and the amount of class funds being paid out to the Class Members, the Court should confirm its preliminary approval. The lack of opposition from the Class supports the Court's initial finding that the Settlement is fair and reasonable.

In addition to the overwhelming positive results of the class notice process, the following

summary of the basic points outlined in this memorandum supports approval of this Settlement:

- The Settlement provides a total settlement sum of \$390,000.00 which is **non-reversionary**;
- Class Members did not need to submit claim forms to participate in the settlement, and will be paid automatically;
- The allocation reflects that payment of claims will be paid to all Class Members on a pro-rata basis, based on the number of wage statements each Class Member received during the Class Period with payment for differential wages, with an average payment of **\$434.30** per person (*See* Kruckenberg Decl. at ¶ 11);
- Plaintiff investigated the claims at issue, including exchanges of information by Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully evaluate this case;
- A highly regarded administrator, Phoenix Settlement Administrators, was retained for fees estimated payment not to exceed \$8,500.00; and
- The LWDA will also be a beneficiary of this Settlement as it will receive \$15,000.00, should this Settlement be granted final approval.

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

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Class Notice be sent to all Class Members by U.S. First-Class Mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Claims Administrator.

As clearly stated in the Kruckenberg Declaration, notice was provided to all Class Members as required by the Preliminary Approval Order. (Kruckenberg Decl. ¶ at 5.) On December 21, 2020, the Claims Administrator received a class data file from Defendant's

1 counsel that included the names and other information for 503 Class Members. (*Id.* at ¶ 3.) On
2 December 28, 2020, the Claims Administrator conducted a National Change of Address search
3 to update the addresses of Class Members and sent the Class Notice via U.S. First-Class Mail to
4 each Class Member. (*Id.* at ¶¶ 4-5.) After the initial mailing of the Class Notice, 13 Class
5 Notices were returned to the Claims Administrator. (*Id.* at ¶ 6.) Two Class Notices were
6 returned to the Claims Administrator with forwarding addresses affixed, and the Claims
7 Administrator re-mailed said Notices to the forwarded addresses that were provided. (*Id.* at ¶ 6.)
8 The Claims Administrator used skip-tracing to obtain updated addresses for the remaining 11
9 Class Members, and subsequently re-mailed said Notices to Class Members. (*Id.* at ¶ 6.) Of
10 these 13 Class Notices that were returned to the Claims Administrator, one was deemed
11 undeliverable since the Claims Administrator was unable to locate an updated address via skip
12 tracing. (*Id.* at ¶ 7.)

13 Additionally, the Class Notice was sent to all Class Members in both English and
14 Spanish. (Kruckenberg Decl. ¶ at 5.) The Class Notice also provided Class Members with Class
15 Counsel’s contact information so that Class Members could seek further information regarding
16 the Settlement, as well as the contact information for the Claims Administrator so that they may
17 post questions for the Claims Administrator and/or update their mailing address. Thus, the Class
18 Notice was effectively sent to Class Members pursuant to the requirements of the Preliminary
19 Approval Order.

20 The provision of sending the Class Notice to Class Members as described above meets
21 the requirements for the “best notice practicable” in this case as necessary to protect the due
22 process rights of class members. (*See, e.g., Phillips Petroleum Co. v. Shutts* (1985) 472 U.S.
23 797, 811-12 (provision of “best notice practicable” with description of the litigation and
24 explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417
25 U.S. 156, 174-75 (individual notice must be sent to class members who can be identified through
26 reasonable means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314
27 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
28 apprise interested parties of the pendency of the action and afford them an opportunity to present

1 their objections”).)

2 Here, Class Members were provided mailed notices regarding the Settlement that
3 described the litigation, explained the terms of the Settlement and Class Members’ rights,
4 allowed Class Members to seek further information and/or ask questions, and provided Class
5 Members with the opportunity to exclude themselves and/or object to the Settlement, if so
6 desired. As such, this constitutes proper notice to the Class Members. Accordingly, the Court
7 may proceed to determine the fairness and adequacy of the Settlement and enter its Order
8 granting final approval, secure in the knowledge that all absent Class Members have been given
9 the opportunity to participate fully in the claims, exclusion, and the approval process.

10 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE,**
11 **AND THUS THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

12 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

13 In order to proceed as a class, there are two requirements which must be met—
14 ascertainability and community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d. 695,
15 704.) Under California law, there are two basic requirements which must exist to sustain a class
16 action: “[t]he first is existence of an ascertainable class, and the second is a well-defined
17 community of interest in the questions of law and fact involved.” (*Vasquez v. Superior Court*
18 (1971) 4 Cal. 3d 800, 809.) “The community of interest requirement embodies three factors: (1)
19 predominant common questions of law or fact; (2) class representatives with claims or defenses
20 typical of the class; and (3) class representatives who can adequately represent the class.”
21 (*Richmond v. Dart Industries* (1981) 29 Cal. 3d. 462, 470.)

22 **1. The Class is Ascertainable.**

23 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382
24 is determined by examining “(1) class definition, (2) the size of the class, and (3) the means
25 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*,
26 (1987) 196 Cal. App. 3d 1263, 1271.)

27 Here, as approved by the Court at preliminary approval, the Class is defined as: “All
28 current and former non-exempt employees of Defendant in the State of California who were paid

1 shift differential wages at any time during the period of March 4, 2019, through April 12, 2020”
2 (the “Class”). There are 503 individuals that comprise of the Class. (Kruckenberg Decl. at ¶ 3.)
3 This is far more than the minimum required to certify a class. Within the context of
4 manageability, the issue is whether there exists sufficient means for identifying class members at
5 the remedial stage. (*Reyes, supra*, 196 Cal. App. 3d at pp. 1274-75.) Class Members have
6 already been identified by Defendant and Notice has been provided to all 503 Class Members.
7 Accordingly, the Class is ascertainable under Code of Civil Procedure § 382.

8 **2. There is a Community of Interest.**

9 The “community of interest” requirement embodies three separate factors: (1)
10 predominant common questions of law or fact; (2) class representatives whose claims are typical
11 of the class; and (3) class representatives who can adequately represent the class. (*Richmond,*
12 *supra*, 29 Cal. 3d at p. 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th 1225, 1234.)

13 **a. There are Predominant Common Questions of Law and Fact.**

14 “The ultimate question in every case of this type [class actions] is whether...the issues
15 which may be jointly tried, when compared with those requiring separate adjudication, are so
16 numerous and substantial that the maintenance of a class action would be advantageous to the
17 judicial process and to the litigants.” (*Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal. 4th
18 1096, 1104-05.)

19 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
20 violated the California Labor Code by failing to provide accurate itemized wage statements that
21 identified the applicable hourly rates of pay and hours worked for shift differential wages.
22 Defendant denies that liability could be established on a class-wide basis.

23 **b. Plaintiff’s Claims are Typical of the Class Claims.**

24 The purported class representative’s claim must be “typical” but not necessarily identical
25 to the claims of other class members; it is sufficient that the representative is similarly situated so
26 that he or she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983)
27 145 Cal. App. 3d 27, 45.) Courts look to whether class members have similar injuries, “whether
28 the action is based on conduct which is not unique to the named [p]laintiff,” and whether other

1 class members were injured by the same conduct. (*Hanon v. Dataproducts Corp.* (9th Cir. 1992)
2 976 F.2d 497, 508.) The purpose of the typicality requirement “is to assure that the interest of
3 the named representative aligns with the interests of the class.” (*Id.* at p. 508.)

4 Here, Plaintiff was subjected to the same wage statement policy and practice as other
5 Class Members. Plaintiff alleges that he, like all other Class Members, was not provided with
6 compliant wage statements under Labor Code § 226(a)(9). (Declaration of Faheem Khan (“Khan
7 Decl.”) at ¶ 3.) Specifically, Plaintiff alleges that he received wage statements that do not
8 identify the hourly rates of pay and hours worked for shift differential wages, whenever said
9 wages were paid to him. (*Id.*) Thus, Plaintiff’s claims are typical to those of Class Members.

10 **c. Plaintiff Adequately Represented the Class**

11 The class representative, through qualified counsel, must be capable of “vigorously and
12 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.
13 App. 3d 834, 846.)

14 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
15 been raised or presented. (*Id.* at ¶ 6.) Plaintiff has taken all necessary steps to represent the
16 interests of the Class, including providing information and documents to his counsel, and
17 reviewing the various pleadings and documents in this case. (*Id.* at ¶¶ 4, 7.) For such reasons,
18 Plaintiff has adequately represented the Class Members and will continue to do so.

19 **B. Defendant’s Allegations and Unlikelihood of Class Certification.**

20 Defendant asserts that individualized issues predominate in this case, including without
21 limitation, whether Defendant provided accurate wage statements in compliance with the law. In
22 any event, even assuming that a class could be certified, Defendant asserts that it has complied
23 with Labor Code § 226(a), contending that shift differential rates can be ascertained based on
24 information on the wage statement. Further, given that Defendant revised its wage statement
25 practices as of the pay period beginning April 13, 2020, Defendant also contends that Plaintiff
26 will not be able to prove that the violations were “knowing and intentional” or that the Class
27 suffered “injury” as required under Labor Code § 226(e).

28 Based thereon, Defendant continues to maintain that it is not liable for the allegations

made by the Plaintiff.

C. Risks, Expenses and Complexity of Further Litigation.

Plaintiff believes that a class can be certified. However, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in his operative complaint at trial, the possibility of non-certification, the possibility that the Court may award only a small percentage of PAGA penalties, and the potential for any appeals. These risks of class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal. 4th 1.

Defendant has maintained that there is no liability. As stated above, Defendant alleges that a class could not have been certified, or that it is liable under Labor Code § 226(a). There is always a risk that the Court will not grant certification of the class, wherein the class will not be entitled to any damages and/or penalties. Based on the foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of damages and/or penalties alleged. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this Motion.

D. The Negotiation and Terms of the Settlement, and the Reception of the Settlement by Class Members Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight several key facts. First, the Settlement was the product of negotiation between highly able and experienced attorneys on both sides who possessed the relevant data and conducted extensive legal research. (Declaration of Larry W. Lee ("Lee Decl.") at ¶ 3.) The Parties reviewed and analyzed necessary data pertaining to the class members and the number of wage statements, as well as Defendant's wage statement policies and practices. The Parties also participated in a full day of private mediation with Louis Marlin, Esq. (*Id.*) Thus, this Settlement is the result of arm's length negotiations, and should be granted final approval.

1 Second, the results after mailing of the Class Notice also fully support confirmation of
2 the Court’s preliminary approval of the settlement, as evidenced by the **99.6% participation**
3 **rate**. Only two of the Class Members submitted exclusions to the settlement and none of the
4 Class Members filed any objections to the Settlement. (Kruckenberg Decl. at ¶¶ 8-9.) In light of
5 overwhelmingly positive response to the Settlement, the Court may appropriately infer that the
6 settlement is fair, adequate, and reasonable, when among other reasons, no Class Members have
7 opted out or objected to it. (*See Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268,
8 1291 (reaction of class members to the settlement is a factor supporting approval of a class action
9 settlement).)

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

12 **1. Standard of Review.**

13 On a motion for final approval of a class action settlement under California Code of Civil
14 Procedure § 382 and California Rules of Court, Rule 3.769, a court’s inquiry at this juncture is
15 whether the settlement is “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv.*
16 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom., Byrd v. Civil Serv. Comm’n*
17 (1983) 459 U.S. 1217.) A settlement is fair, adequate, and reasonable, and therefore merits final
18 approval, when “the interests of the class are better served by the settlement than by further
19 litigation.” (*See Manual for Complex Litigation Fourth* (Fed. Judicial Center 2004), § 21.6 at p.
20 309 (“MCL”).) The law favors settlement, particularly in class actions and other complex cases,
21 where substantial resources can be conserved by avoiding the time, cost, and rigors of formal
22 litigation. (*See 4 Newberg on Class Actions* (2008) 4th § 11.41; *Class Plaintiffs v. City of Seattle*
23 (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d
24 943, 950.)

25 Although the Court possesses “broad discretion” in determining that a proposed class
26 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
27 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
28 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and

adequate to all concerned parties. (*See Officers for Justice, supra*, 688 F.2d at p. 625.) Accordingly, the Court should give due regard to what is otherwise a “private consensual agreement” between the parties. (*Id.*; *see also Church v. Consolidated Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379; *MCL* § 21.6 at p. 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement.”).)

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

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

It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.

2. The Settlement is Presumed to Be Fair.

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

[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal. App. 4th at p. 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at p. 1146; *accord, Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply, supra*, 720 F. Supp. at p. 1387.)

1 The Settlement here warrants approval and carries a presumption of fairness. As
2 previously noted in the Motion for Preliminary Approval, this Settlement was negotiated at arm's
3 length between the Parties and their counsel and was facilitated by an experienced and neutral
4 mediator, Louis Marlin, Esq. (Lee Decl. at ¶¶ 3-4.)

5 Second, Class Counsel engaged in extensive factual investigation before settling,
6 including an extensive review and analysis of class data and a review of Defendant's wage
7 statement and payroll policies and practices. (Lee Decl. at ¶ 3.) Further, Class Counsel is highly
8 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel
9 has significant experience in class actions and employment wage and hour matters. (Lee Decl. at
10 ¶¶ 8-9; Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶¶ 8-10.)

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

13 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
14 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
15 the risks inherent in continued litigation. (*See In re General Motors Corp.* (3d Cir. 1995) 55
16 F.3d 768, 806 ("present value of the damages plaintiffs would likely recover if successful,
17 appropriately discounted for the risk of not prevailing, should be compared with the amount of
18 the proposed settlement") (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d
19 153, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 616-17.)

20 If Plaintiff pursued this case without settlement and not prevail, Plaintiff would be
21 potentially responsible for Defendant's fees and costs. Likewise, were any individual current or
22 former employees of Defendant bring individual claims on the same causes of action, they would
23 each face the uncertainty of prevailing and the same possibility of becoming liable to pay fees
24 and costs to Defendant. Accordingly, such claims likely would not be brought by many of these
25 current and former employees who make up the Settlement Class. Thus, this lawsuit achieves a
26 true benefit for the Settlement Class that they might not otherwise get or seek as individuals.
27 Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of
28 the Class Members will be required to pay for Defendant's litigation fees and costs. Thus, the

1 risks undertaken by Class Counsel should be considered a significant factor by the Court in its
2 determination of final approval. The Settlement provides a fair recovery to Class Members and
3 eliminates the risk of costs to Class Members or the Class Representative.

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

14 **4. The Complexity, Expense, and Likely Duration of Continued** 15 **Litigation Against Defendant Favor Final Approval.**

16 Another factor considered by courts in approving a settlement is the complexity, expense,
17 and likely duration of the litigation. (*See Officers for Justice, supra*, 688 F.2d at p. 625; *Girsh,*
18 *supra*, 521 F.2d at p. 157.) In applying this factor, the Court must weigh the benefits of the
19 settlement against the expense and delay involved in achieving an equivalent or more favorable
20 result at trial. (*Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-34.)

21 Here, as noted above, continued litigation could potentially have led to appeals. On the
22 other hand, the Settlement that was reached provides all Class Members—regardless of their
23 means—with fair relief in a prompt and efficient manner. Were the Court to deny final approval,
24 the Class Members would be left without a remedy as a practical matter and courts across the
25 state would have to address the issues presented here in a piecemeal, costly, and time-consuming
26 manner. The Settlement is therefore consistent with the “overriding public interest in settling
27 and quieting litigation” that is “particularly true in class action suits.” (*See Van Bronkhorst*, 529
28 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at § 11.41.) Here, this case could have

1 potentially involved years of litigation, as seen in similar wage and hour cases.

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

3 Class Counsel supports the Settlement as fair, reasonable, and adequate, and in the best
4 interest of the Class Members as a whole. (Lee Decl. at ¶ 4; Tulyathan Decl. at ¶ 4.) Similarly,
5 counsel for Defendant is in favor of the Settlement. The endorsement of qualified and well-
6 informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight
7 by the Court in its final approval determination. (*See Officers for Justice*, 688 F.2d at p. 625;
8 *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.)

9 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD**
10 **BE APPROVED**

11 Class Representative Khan requests an enhancement of \$10,000.00 in accordance with
12 the terms of the Settlement Agreement. Plaintiff provided substantive information and
13 documents to Class Counsel regarding Defendant's policies and practices to help support the
14 class claims alleged in this case. (Khan Decl. at ¶ 4.) Plaintiff also provided declarations and
15 reviewed pleadings and documents in the case as well as the Settlement Agreement. (*Id.*)
16 Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in
17 this Settlement.

18 In addition to the invaluable services that he provided, Plaintiff took significant risks,
19 personally, professionally, and monetarily in acting as the Class Representative, seeking benefits
20 on behalf of the Class. (Khan Decl. at ¶¶ 9-11.) Because the claims alleged by Plaintiff involved
21 the payment of costs to the prevailing party, Plaintiff undertook the risk that he may be required
22 to pay Defendant's fees and costs, in the event that Defendant prevailed in this action. (*Id.* at ¶
23 9.) Significantly, given that future employers are much less likely to hire individuals who have
24 filed employment-related lawsuits, particularly cases of this nature, Plaintiff also faced
25 significant risk in not being able to find suitable prospective employment, as a result of filing of
26 this case against Defendant. (*Id.* at ¶ 10.)

27 Plaintiff took these risks upon himself for the benefit of the Class. Class Members did
28 not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not

1 prevail, nor did they have to face the potential for retaliation and not getting future employment
2 had they filed a lawsuit which is a public record. These are significant benefits that weigh in
3 favor of granting the requested enhancement. Moreover, this litigation has resulted in a
4 significantly valuable benefit to the Class, and Plaintiff took on substantial risks in helping Class
5 Members obtain this financial benefit. As such, the enhancement should be awarded to Plaintiff
6 for his commitment, dedication, and risks taken for this litigation.

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

8 Class Counsel seeks a fee award calculated as one-third (1/3) of the total value of the
9 Settlement Fund, or \$130,000.00, for the successful prosecution and resolution of this action.
10 Under California law, the award of attorneys' fees in common fund wage and hour class action
11 settlements should start with the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1
12 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding
13 that when class action litigation establishes a monetary fund for the benefit of the class members,
14 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court
15 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
16 created").) Under the percentage of the fund method, the Court's objective remains to "mimic
17 the market" in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363
18 (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level
19 that will approximate what the market will set....The judge, in other words, is trying to mimic
20 the market in legal services").)

21 An award of one-third of the fund in attorneys' fees "mimics the marketplace" as it is
22 "supported by the fact that typical contingency fee agreements provide that class counsel will
23 recover 33% if the case is resolved before trial and 40% if the case is tried." (*Fernandez v.*
24 *Victoria Secret Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. *16 n. 59 (citing
25 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
26 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11).) Indeed, "empirical studies
27 [that] show that...fee awards in class actions average around one-third of the recovery." (*Chavez*
28 *v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.)

1 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
2 percent of the fund. (*Laffitte*, 1 Cal. 5th at p. 506.) The award approved in *Laffitte* was supported
3 by a lodestar cross-check that employed a multiplier of 2.13. (*Id.* at p. 487.) The Court in
4 *Laffitte* explained that when cross-checking a percentage fee request against the lodestar method,
5 the Court should examine the imputed multiplier in the lodestar calculation and, only when the
6 multiplier is “extraordinarily high or low [should] the trial court [] consider whether the
7 percentage method should be adjusted so as to bring the imputed multiplier within a justifiable
8 range.” (*Id.* at p. 505.)

9 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
10 percent of the common fund is consistent with, and in the range of, awards in other class action
11 lawsuits.” (*Laffitte v. Robert Half Int’l* (2014) 231 Cal. App. 4th 860, 871.) Here, the fee award
12 representing one-third of the Settlement clearly falls within that range and is consistent with
13 other comprehensive surveys of class action settlements and fee awards. (*See* Fitzpatrick, *An*
14 *Empirical Study of Class Action Settlements and Their Fee Award* (2010) 7 J. Empirical Leg.
15 Stud. 811, 833 (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards
16 were between 25 percent and 35 percent, with almost no awards more than 35 percent”);
17 Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*
18 (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation
19 nationwide conclude that fees representing one-third of the total recovery is consistent with
20 market rates).)

21 Here, as set forth in their declarations, Plaintiff’s Counsel seeks one-third, or 33 1/3
22 percent, of the Settlement Amount in attorneys’ fees, equivalent to \$130,000.00, which is
23 reasonable for wage and hour class actions. (*Martin v. AmeriPride Servs., Inc.* (S.D. Cal. June 9,
24 2011) 2011 WL 231604, at *8 (“More particularly, courts may award attorneys’ fees in the 30–
25 40% range in wage and hour class actions that result in recovery of a common fund under \$10
26 million.”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 U.S. Dist. LEXIS
27 53416, 2010 WL 2196104, * 8 (approving attorney fee award and finding that award was similar
28 to awards in three other wage and hour class action cases where fees ranged from 30.3% to

40%); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.14, 2007) 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841.)

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the...reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically notified Class Members that Plaintiff’s Counsel would be seeking \$130,000.00 of the settlement fund as attorneys’ fees. To date, no Class Member has objected to the Settlement or the request for attorneys’ fees. This strong favorable response also supports the requested fees.

Accordingly, Class Counsel’s request for attorneys’ fees in the amount of \$130,000.00 is fair, reasonable, and adequate, and should be awarded in its entirety.

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

The request for reimbursement of costs, in the amount of \$8,915.23 is fair and reasonable. The costs are all actual, litigation-related costs, which have been detailed in the supporting declaration of Class Counsel. (Lee Decl. at ¶ 11, Ex. A.) The authority for the court to award this is the Parties’ Settlement Agreement and the California Labor Code. As such, this request should be approved.

VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE APPROVED

Plaintiff also requests that the Court approve \$8,500.00 in administration costs to the Claims Administrator, Phoenix Settlement Administrators. As detailed in the Declaration of Ms. Kruckenberg submitted herewith, Phoenix Settlement Administrators performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix Settlement Administrators calculated each Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant, prepared, formatted, translated, and distributed Class Notices to all 503 Class

Members and re-mailed any returned Class Notices, and have otherwise administered the Settlement. (Kruckenberg Decl. at ¶¶ 2, 6.) For such reasons, it is requested that the Claims Administrator's fees be approved.

VIII. CONCLUSION

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

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

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for an award of the class representative enhancement of \$10,000.00, pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff Counsel's request for an award to Class Counsel for \$130,000.00 in attorneys' fees and \$8,915.23 in actual costs, pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$8,500.00, pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiff's request for payment to the LWDA for \$15,000.00, pursuant to the terms of the Settlement Agreement; and
7. Entering final judgment as to all members of the Class in this action.

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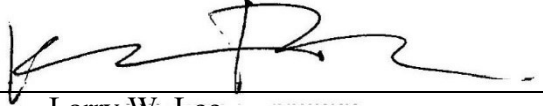
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1 DATED: February 16, 2021

DIVERSITY LAW GROUP, P.C.

2
3 By: 

Larry W. Lee

Mai Tulyathan

4 Attorneys for Plaintiff, the Class, and Aggrieved
5 Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On February 16, 2021, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
12 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
13 **AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 **3. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 18 **4. DECLARATION OF ELIZABETH KRUCKENBERG ON BEHALF OF CLAIMS**
19 **ADMINISTRATOR REGARDING NOTICE AND SETTLEMENT**
20 **ADMINISTRATION**
- 21 **5. DECLARATION OF FAHEEM KHAN IN SUPPORT OF PLAINTIFF'S**
22 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 23 **6. [PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT**
24 **AND JUDGMENT**

25 on the interested parties in this action as follows:

26 Mike Resch
27 Ashely Park
28 Amy's Kitchen, Inc.
1650 Corporate Circle, Ste. 200,
Petaluma, CA 94954
Attorneys for Defendant Amy's Kitchen, Inc.

X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website

1 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
2 the above-entitled case. The service transmission was reported as complete and a copy of the
3 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
in this office.

4 I declare under penalty of perjury under the laws of the State of California that the
5 above is true and correct. Executed on February 16, 2021, at Los Angeles, California.

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7 Erika Mejia
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