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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ALAMEDA

16 TSCHERA ECHEVERRIA, individually and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 TRITON GLOBAL SERVICES, INC., a
21 California corporation; and DOES 1 through 50,
22 inclusive,

23 Defendants.

Case No. RG20068526

[Assigned for all purposes to the Hon. Evelio
Grillo, Dept. 21]

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

Date: December 15, 2023

Time: 9:00 a.m.

Dept.: 21

Reservation ID. 401585938742

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on December 15, 2023, at 9:00 a.m. before the Honorable Evelio Grillo, judge presiding in Department 21 of the above-referenced Court located at 1221 Oak Street, Oakland, CA 94612, Plaintiff Tschera Echeverria ("Plaintiff") will and hereby does move the Court for an Order

(1) granting final approval to the Stipulation of Class and Representative Action Settlement and Release ("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 \$7,500.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

(4) approving Class Counsel's request for an award of attorneys' fees to Class Counsel for one-third of the \$200,000.00 Gross Settlement Amount (\$66,666.67, with 10% held back until completion of administration, or \$6,666.67), and reimbursement of litigation costs of \$9,957.10, pursuant to the terms of the Settlement Agreement;

(5) approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators, the Settlement Administrator, in the amount of \$14,000.00 pursuant to the terms of the Settlement Agreement;

(6) approving Plaintiff's request for payment to the Labor Workforce Development Agency for \$15,000.00 pursuant to the terms of the Settlement Agreement; and

(7) entering final judgment as to all members of the Settlement Class in this action.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown by the lack of objections to the settlement and only two (2) opt-outs, there is no question that the settlement is fair, reasonable and adequate and thus should be granted final approval.

This Motion will be based on the attached Memorandum of Points and Authorities and

1 the supporting Declarations of William L. Marder, Dennis S. Hyun, Plaintiff, and Lluvia Islas of
2 Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any),
3 and on the complete records and file herein.
4

5 DATED: November 16, 2023

POLARIS LAW GROUP

6
7 By: 
8 William L. Marder
9 Attorneys for PLAINTIFF and the CLASS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On July 20, 2020, Plaintiff Tschera Echeverria (“Plaintiff”) filed a putative class and
4 representative action Complaint against Defendant Triton Global Services, Inc. (“Defendant”) (Plaintiff
5 and Defendant, collectively, the “Parties”) alleging the following causes of action: (1) failure to provide
6 accurate itemized wage statements in violation of Labor Code § 226(a); (2) failure to provide meal
7 periods in violation of Labor Code §§ 226.7 and 512; (3) failure to provide rest periods in violation of
8 Labor Code § 226.7; (4) failure to reimburse business expenses in violation of Labor Code § 2802; (5)
9 violation of the Unfair Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*; and
10 (6) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (the “PAGA”).

11 On July 9, 2021, the Parties engaged in a full-day mediation with neutral Steve Pearl, Esq., but
12 were unable to settle. Following continued arm’s length negotiations aided by Mr. Pearl over the span of
13 months, the Parties reached a settlement of this action in its entirety. In connection with claims
14 negotiated at mediation, the Parties agreed to file a First Amended Complaint (“FAC”) to include
15 allegations regarding Defendants’ alleged violations of Labor Code §§ 118.12, 204, 226, 233, 246, 432,
16 510, 558, 1174, 1194, 1197, 1197.1, 1198, and 1198.5, CCR Title 8, § 1050(5)(A), CCR Title 8, §
17 1050(4)(C), and Wage Order No. 4-2001(4) and (5).

18 On April 28, 2023, Plaintiff filed the FAC pursuant to this Court’s Order approving the Parties’
19 Stipulation granting Plaintiff leave to file the FAC.

20 As set forth in the Stipulation of Class and Representative Action Settlement and Release
21 (“Settlement Agreement”), the current settlement is being settled on behalf of the following Settlement
22 Class Members: “all current and former non-exempt hourly paid employees of Triton Global Services,
23 Inc. who were employed in California to perform security guard services at any time between April 6,
24 2016 through the date that the Court grants preliminary approval of this settlement and certifies the
25 class. Defendant represents there were 1,128 putative class members as of February 2023.” (Settlement
26 Agreement at pp. 6:28-7:4).

27 Plaintiff now seeks the Court’s final approval of the Settlement Agreement. The Settlement
28 Agreement provides for a \$200,000.00 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

1 and Workforce Development Agency (the “LWDA”), and costs of settlement administration are to be
2 paid. The entire net settlement fund after these deductions will be paid to all class members who did not
3 opt-out of the Settlement.

4 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion.
5 This Court preliminarily approved this Settlement on August 23, 2023, directing distribution of class
6 notice and scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

7 As directed by the Court, the Settlement Administrator distributed the Notice Packet to 1,365
8 Class Members. (Declaration of Lluvia Islas on behalf of Phoenix Settlement Administrators (“PSA”)
9 (“Islas Decl.”) ¶¶ 3-5.) To date, only 1 request for exclusion has been received, and there have been no
10 objections filed. (Islas Decl. ¶¶ 8-9.) As such, there is a 99.93% participation rate. Thus, this Court can
11 infer that the Class supports the Court’s Preliminary Approval Order finding that the Settlement
12 Agreement is fair and reasonable.

13 In addition to the results of the notice process, for the same reasons as set forth earlier in
14 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent the
15 basic points supporting approval of the Settlement:

- 16 ■ The Settlement provides a total settlement sum of \$200,000.00;
- 17 ■ The Settlement is fair given that Settlement Class Members will receive (*after deductions*
18 *for fees, costs, etc.*) a substantial amount of money (on average, each Settlement Class
19 Member will receive approximately \$60.03) (*See* Islas Decl. ¶ 12);
- 20 ■ Class Members did not need to submit claim forms to participate in the settlement, but
21 are being paid automatically;
- 22 ■ The allocation reflects that payment of claims will be paid to all Class Members in
23 proportion to the number of wage statements that included overtime and double-time
24 wages received by each Class Member;
- 25 ■ Plaintiff conducted significant investigation in this case, including formal and informal
26 discovery, and exchanges of information by Plaintiff and Defendant of class data for the
27 entire class necessary for Plaintiff to fully evaluate this case;
- 28 ■ A highly regarded administrator, Phoenix Settlement Administrators, was retained for

fees estimated to be \$14,000.00; and

- California’s LWDA will also be the 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 Notice of Proposed Class Action Settlement (the “Notice Packet”), as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Islas Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On August 28, 2023, the Settlement Administrator received a Class Member mailing list from Defendant’s counsel that included 1,365 Class Members. (Islas Decl. ¶ 3.) On September 12, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. (*Id.* ¶ 5.) A total of 38 Notice Packets were returned and the Settlement Administrator performed a skip trace which resulted in 27 updated addresses, to which the Notice Packets were promptly re-mailed via first class mail (*Id.* ¶¶ 6-7.)

To date, a total of 11 Notice Packets have been deemed undeliverable as no updated addresses were found via the skip trace (*Id.* ¶ 7.) Further, the Notice Packet provided Class Members with Class Counsel’s contact information, where they could further seek information regarding the class settlement, leave questions for the Settlement Administrator, and update their address.

The provision of sending the notice to class members as described above meets the requirements for the “best notice practicable” in this case as necessary to protect the due process rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class

members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

Here, the Class Members were provided with a mailing regarding the settlement that explained the settlement and allowed Class Members to seek information, ask questions, and object, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may proceed to determine the fairness and adequacy of the Settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

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

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

In order to proceed as a class, there are two requirements which must be met—ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). “The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d. 462, 470 (1981).

1. The Class is Ascertainable

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the class is defined as all current and former non-exempt hourly paid employees of Triton Global Services, Inc. who were employed in California to perform security guard services at any time between April 6, 2016 through the date that the Court grants preliminary approval of this settlement and certifies the class. There are 1,365 members that comprise of the Class. (Islas Decl. ¶ 3.) This is far more than the minimum required to certify a class. Within the context of

manageability, the issue is whether there exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members have already been identified by Defendant and notice was provided to the above Class Members.

2. There is a Community of Interest

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

a. There Are Predominant Common Questions of Law and Fact

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

Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by failing to provide off-duty meal and rest periods, pay all wages due, and provide accurate itemized wage statements. Defendant denies that liability could be established on a class-wide basis and contends instead that liability and damages would need to be conducted on a case-by-case basis. Nevertheless, it is well-settled that security guard cases are perfectly suited for class treatment. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 959-60 (9th Cir. 2013).

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

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

1 Here, like other members of the Class, Plaintiff worked as a non-exempt security guard and he
2 alleges that he was subject to the same practices as class members. (Declaration of Tschera Echeverria
3 (“Echeverria Decl.”) ¶ 2.) Plaintiff was subjected to the same policies and practices as other Class
4 Members. Thus, Plaintiff’s claims are typical to those of Class Members.

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

6 The class representative, through qualified counsel, must be capable of “vigorously and
7 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
8 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
9 been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the Class,
10 including providing information and documents to his counsel, and reviewing pleadings in this case.
11 (Echeverria Decl. ¶¶ 3-6.) For such reasons, Plaintiff has adequately represented the Class members and
12 will continue to do so.

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

14 Defendant asserts that individualized issues predominate in this case, including without
15 limitation, whether Defendant provided off-duty meal and rest periods, paid all wages owed, and
16 provided accurate wage statements. In any event, even assuming that a class could be certified,
17 Defendant asserts that it has complied with all laws and even if it did, that Defendant did not act
18 knowingly or intentionally. Based thereon, Defendant continues to maintain that it is not liable for the
19 allegations made by the Plaintiff.

20 **C. Risks, Expenses, and Complexity of Further Litigation**

21 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness of
22 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
23 prevailing on one or more of the causes of action or theories alleged in his First Amended Complaint,
24 the possibility of non-certification, and potential for appeals. These risks on class certification are
25 compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th
26 1 (2014).

27 Defendant has maintained that there is no liability. As stated above, Defendant alleges that a
28 class could not have been certified. There is always a risk that the court will not grant certification of the

1 class, wherein the class will not be entitled to any damages. Based on the foregoing, there was a
2 substantial risk that Plaintiff would not have obtained the total amount of damages alleged, and a
3 substantial amount of complex issues that would have necessitated significant expenditure of time and
4 expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this
5 Motion.

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

9 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
10 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
11 Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement
12 Agreement was the product of negotiation between highly able and experienced attorneys on both sides
13 who possessed the relevant data and extensive legal research which they had carefully analyzed. (Hyun
14 Decl. ¶¶ 7-9.)

15 The results after mailing of the Notice Packet support confirmation of the Court's preliminary
16 approval of the settlement with final approval of the settlement, as evidenced by the fact that to date,
17 only 1 request for exclusion and no objections to the settlement have been received. (Islas Decl. ¶¶ 8-9.)
18 In other words, there is a 99.93% participation rate. The Court may appropriately infer that the class
19 action settlement is fair, adequate and reasonable, given that not a single class member has submitted an
20 objection. *See Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

23 **1. Standard of Review**

24 On a motion for final approval of a class action settlement under California Code of Civil
25 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is
26 "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir.
27 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A settlement is fair,
28 adequate, and reasonable, and therefore merits final approval, when "the interests of the class are better
served by the settlement than by further litigation." *See Manual for Complex Litigation Fourth* (Fed.
Judicial Center 2004) ("MCL"), § 21.6 at 309. The law favors settlement, particularly in class actions

1 and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and
2 rigors of formal litigation. *See 4 Newberg on Class Actions*, 4th § 11.41 (2008); *Class Plaintiffs v. City*
3 *of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th
4 Cir. 1976).

5 Although the Court possesses “broad discretion” in determining that a proposed class action
6 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
7 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
8 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See*
9 *Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise
10 a “private consensual agreement” between the parties. *Id.*; *see also Church v. Consolidated Freightways,*
11 *Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp.
12 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; Manual § 21.6 at 309 (“The
13 judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed
14 settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

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

20 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:
21 “It cannot be overemphasized that neither the trial court in approving the settlement nor
22 this Court in reviewing that approval have the right or duty to reach any ultimate
23 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
24 well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge
25 does not try out or attempt to decide the merits of the controversy,’ [citation] and the
26 appellate court ‘need not and should not reach any dispositive conclusions on the
27 admittedly unsettled legal issue.’”

28 85 Cal. App. 4th 1135, 1146 (2000).

2. The Settlement is Presumed to Be Fair

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

[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-

length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.

Dunk, 48 Cal. App. 4th at 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm's length. (Hyun Decl. ¶¶ 7-9.)

Second, Class Counsel engaged in extensive factual investigation before settling, including reviewing class data. (Hyun Decl. ¶ 8.) Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Declaration of William L. Marder ("Marder Decl.") ¶¶ 8-14; Hyun Decl. ¶¶ 3-6.)

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

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

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been potentially responsible for Defendant's costs. (Echeverria Decl. ¶ 7.) As such, should individual current or former employees of Defendant bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by many of these current and former employees—thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant's litigation costs.

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

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

15 **4. The Complexity, Expense, and Likely Duration of Continued Litigation** 16 **Against Defendant Favor Final Approval**

17 Another factor considered by courts in approving a settlement is the complexity, expense, and
18 likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In
19 applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
20 involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-
21 34 (5th Cir. 1971).

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

by the Parties' litigation record.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of the Class Members as a whole. (Marder Decl. ¶¶ 2-5; Hyun Decl. ¶¶ 7-9.) Similarly, counsel for Defendant is in favor of this settlement. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242.

IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED

Any Settlement Payments remaining uncashed after 180 days will be remitted to Legal Aid at Work. (Settlement Agreement § 2.4(f)(1)). Plaintiff and his counsel do not have any type of relationship with Legal Aid at Work. (Hyun Decl. ¶ 11; Marder Decl. ¶ 16; Echeverria Decl. ¶ 8).

V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Plaintiff requests a total enhancement of \$7,500.00. Plaintiff met with Class Counsel, including providing substantive information regarding Defendant's practices. (Echeverria Decl. ¶ 6.) Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this Settlement.

In addition to the invaluable services that Plaintiff provided, Plaintiff assumed significant risks, both professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had she not prevailed in this action. (*Id.* ¶ 7.) Moreover, Plaintiff understood that an individual case would have resolved much faster than a class action and involved much less financial risk than a class action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class.

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, the Class Representative also faced significant risk in not being able to find suitable employment, all as a result of filing of this case against Defendant. Plaintiff took these risks upon himself to the benefit of the Class. (*Id.* ¶ 8.) Class Members

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

8 Courts have routinely granted approval of settlements containing such enhancements. *See Van*
9 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
10 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)
11 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141
12 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*
13 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each
14 class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52
15 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action);
16 *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class
17 representative in ERISA case).

18 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

19 Class Counsel seeks a fee award calculated at one-third of the total value of the Settlement for
20 the successful prosecution and resolution of this action. California state and federal courts have
21 recognized that an appropriate method for determining award of attorneys' fees is based on a percentage
22 of the total value of benefits to Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91
23 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v.*
24 *Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir.
25 1997). The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread
26 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
27 entire burden alone." *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F. 2d at 769.

1 Just recently, the California Supreme Court issued its ruling regarding the award of attorney's
2 fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in
3 common fund wage and hour class action settlements is proper under the percentage method. *See Laffitte*
4 *v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal
5 and state courts in holding that when class action litigation establishes a monetary fund for the benefit of
6 the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
7 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
8 fund created"). Under the percentage of the fund method, the Court's objective remains to "mimic the
9 market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner)
10 ("When a fee is set by a court rather than by contract, the object is to set it at a level that will
11 approximate what the market will set... The judge, in other words, is trying to mimic the market in legal
12 services.").

13 Here, the fee award representing one-third of the fund clearly falls within that range and is
14 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
15 fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011)
16 (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions
17 that result in recovery of a common fund under \$10 million"); *see also* Eisenberg & Miller, *Attorney*
18 *Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,
19 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range
20 sought here are consistent with market rates). The results delivered by Class Counsel also support the
21 requested percentage of the fund. Here, Plaintiff and his counsel secured a \$200,000.00 settlement.

22 Finally, "the response of the class members to attorneys' fee notice, though not decisive, is
23 relevant to the... reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
24 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the
25 market" for fees is well supported. *Id.* at p. 1269. In this case, the Notice Packet specifically notified
26 Class Members that Class Counsel would be seeking \$66,666.67 in attorneys' fees. To date, no Class
27 Member has objected to the Settlement. This strong favorable response also supports the requested fees.
28

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

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

8 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$200,000.00 has been
9 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
10 more risk than the usual contingent fee case. Among the risks was the cost inherent in class action
11 litigation, as well as a long battle with a corporate Defendant who had retained a premier and highly
12 experienced defense firm. As such, the requested fee should be awarded.

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

21 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-
22 check is extraordinarily high or low, the trial court should consider whether the percentage used should
23 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
24 necessarily required to make such an adjustment." *Id.* Thus, a lodestar cross-check is aimed at
25 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check
26 "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives
27 with the benefits delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial
28 courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force,*
Court Awarded Attorney Fees 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal.
App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval

1 and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by
2 many authorities, who have been most vocal about the manner in which it exacerbates the problem of
3 ‘cheap settlements’ and burdens already overworked trial judge”).

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

13 With respect to Class Counsel’s lodestar, to date, as of the date of this filing, approximately 220
14 hours have been expended by Class Counsel. (Hyun Decl. ¶ 12, Ex. A; Marder Decl. ¶ 17, Ex. A.)
15 Moreover, Class Counsel expects to incur approximately 20 additional hours of attorney time in
16 finalizing this settlement, including overseeing the administration and payments, filing post-judgment
17 pleadings, and appearing for any post-judgment hearings. Messrs. Marder and Hyun request hourly rates
18 of \$850 per hour. (Hyun Decl. ¶ 14; Marder Decl. ¶ 17.) The courts are quite liberal in the evidence
19 required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony
20 alone may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is
21 sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.”
22 *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

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

6 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
7 declarations, Class Counsel have significant experience in the area of employment and wage and hour
8 class actions. Specifically, Class Counsel's practice focuses on representing employees in employment
9 matters, particularly wage and hour cases. (Marder Decl. ¶¶ 8-14; Hyun Decl. ¶¶ 3-6.) As such, based on
10 the hours and applicable rate, the total lodestar to be expended by Class Counsel through finalizing this
11 settlement will be approximately \$204,000.00. (Marder Decl. ¶ 17, Ex. A; Hyun Decl. ¶¶ 12-14, Ex. A.)

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

19 Here based upon Plaintiff's counsel's lodestar of \$204,000, a negative multiplier of 1/3 is
20 necessary, which makes the fee request all the more reasonable. *Wershba v. Apple Computer, Inc.*, 91
21 Cal. App. 4th 224 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney
22 fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am.*
23 *Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund,
24 based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital*
25 *Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a
26 multiplier of 2.52).

27 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety.
28 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the

1 successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's
2 request for attorneys' fees in the amount of \$66,666.67 is fair, reasonable, and adequate.

3 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
4 **COSTS**

5 The request for reimbursement of costs, in the amount of \$9,957.10 is fair and reasonable. The
6 costs are all litigation related costs. (Marder Decl. ¶ 18, Exh. B; Hyun Decl. ¶ 15). The authority for the
7 Court to award this is the Parties' Settlement Agreement and Labor Code Sections 226, 1194, and 2699.
8 As such, this request should be approved.

9 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
10 **APPROVED**

11 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
12 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As
13 shown on the Declaration of Lluvia Islas, the class administration fees expended in this matter amount to
14 a total of \$14,000.00, which is an amount that was agreed upon by the Parties. (Islas Decl. ¶ 14, Ex. B.)
15 For such reasons, it is requested that the Settlement Administrator's fees be approved.

16 **IX. CONCLUSION**

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

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

- 22 1. Granting final approval to the proposed Settlement Agreement in this action;
- 23 2. Approving distribution of the settlement funds to the Class Members pursuant to the
24 terms of the Settlement Agreement;
- 25 3. Approving Plaintiff's request for an award of the class representative enhancement of
26 \$7,500.00, with payments pursuant to the terms of the Settlement Agreement;
- 27 4. Approving Class Counsel's request for an award to Class Counsel for \$66,666.67 (with
28 10% held in trust until completion of administration) in attorneys' fees and \$9,957.10 in costs with

1 payment pursuant to the terms of the Settlement Agreement;

2 5. Approving Plaintiff's request for payment of the settlement administration costs to
3 Phoenix Settlement Administrators Settlement Administrators in the amount of \$14,000.00 with
4 payment pursuant to the terms of the Settlement Agreement;

5 6. Approving Plaintiff's request for payment to the LWDA for \$15,000.00 with payment
6 pursuant to the terms of the Settlement Agreement; and

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

8
9 DATED: November 16, 2023

POLARIS LAW GROUP

10 By: William L. Marder
11 William L. Marder
12 Attorneys for PLAINTIFF and the CLASS
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