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

LEOPOLDO ORDAZ, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

METLANG LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: BCV-20-102983

[Assigned for all purposes to the Hon. Thomas S.
Clark, Department 17]

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

Date: March 10, 2022
Time: 8:30 a.m.
Dept.: 17

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

2 PLEASE TAKE NOTICE THAT, on March 10, 2022 at 8:30 a.m. before the Honorable
3 Thomas S. Clark, judge presiding in Department 17 of the above-referenced Court located at 1415
4 Truxtun Ave., Bakersfield, CA 93301, Plaintiff Leopoldo Ordaz ("Plaintiff") will and hereby does
5 move the Court for an Order (1) preliminarily approving the class action settlement; (2)
6 provisionally certifying a settlement class; (3) appointing Larry W. Lee and Kwanporn "Mai"
7 Tulyathan of Diversity Law Group, P.C, and William L. Marder of Polaris Law Group as Class
8 Counsel and Plaintiff as the class representative; (4) approving Phoenix Settlement Administrators
9 ("Administrator") as the third-party claims administrator; (5) approving and directing distribution to
10 the Class of the Class Notice; and (6) setting a final fairness and approval hearing.

11 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
12 provides for court approval of the settlement of a purported class action and allows the Court to
13 preliminarily certify a class for settlement purposes.

14 The basis for this Motion, filed without any opposition from Defendant, is that the proposed
15 settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate
16 to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

17 This Motion will be based on the Memorandum of Points and Authorities included herein,
18 the Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement
19 Agreement") and the proposed Notice of Class Action Settlement attached thereto as Exhibit A, and
20 the supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, Leopoldo Ordaz,
21 and upon the oral arguments of counsel (should there be any) and on the complete records and file
22 herein.

23 DATED: January 31, 2022

DIVERSITY LAW GROUP, P.C.

24 By: 

25 Larry W. Lee
26 Mai Tulyathan
27 Attorneys for Plaintiff, the Class, and Aggrieved
28 Employees

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1 Agreement is fair, reasonable, and adequate and is in the best interests of the Class and Defendant
2 in light of all known facts and circumstances and the expenses and risks inherent in litigation.
3 (Lee Decl. at ¶ 10.)

4 **II. BACKGROUND OF THE SETTLEMENT**

5 **A. Investigative Background**

6 As explained above, the Parties engaged in informal discovery and Defendant produced all
7 of the relevant demographic and payroll data for the mediation which included the payroll data for
8 the entire class. (Lee Decl. at ¶ 13).

9 After all such investigation and discovery was completed, the Parties agreed to a
10 mediation of this case on October 8, 2021 before Steve Pearl, a highly experienced and highly
11 regarded mediator with extensive mediation experience in employment matters, in particular wage
12 and hour class actions. As a result of this mediation, this settlement was reached. (Lee Decl. at ¶
13 6).

14 **B. Summary of the Current Settlement**

15 The Stipulation provides for up to \$675,000.00 as the Class Settlement Amount.
16 (Settlement Agreement §§ VI(1.16), VI(2.1.1.)). The settlement payments to each Class Member
17 will depend on the number of weeks worked by each Settlement Class Member during the Class
18 Period. (*Id.* at §VI(1.17)). The reason for such allocation is so that the Class Members who
19 allegedly worked longer periods and, thus, experienced more violations, will be allocated greater
20 recovery.

21 Based upon Defendant's records, the estimated number of Class Members is 345 that
22 worked approximately 10,822 workweeks during the Class Period. (Settlement Agreement §§
23 VI(1.6), VI(1.16)). Class Members may opt-out of the Settlement if they so choose. According
24 to discovery performed, Plaintiff alleges that the potential maximum liability exposure for
25 Defendant was approximately \$1,064,950.00 for penalties under the Labor Code, plus associated
26 PAGA penalties of approximately \$1,082,200. (Lee Decl. at ¶ 15). Defendant maintains that these
27 figures were unrealistically high based on, among other factors, Defendant's good faith defenses
28

1 and that a Court would not impose the maximum amount of penalties that may otherwise be
2 available to the Class.

3 In agreeing to the Settlement, Plaintiff took into consideration the number of Class
4 Members and the corresponding number of applicable workweeks. This enabled Plaintiff to
5 calculate the potential penalties under the Labor Code and negotiate the settlement sum based on
6 a clear understanding of the maximum exposure in this case. Plaintiff also considered the other
7 potential defenses to both class certification and the merits of the case, Defendant's own
8 calculation of potential exposure in the case, and the independent views on all of these topics
9 expressed by the neutral mediator.

10 As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's
11 request for attorney's fees up to 35% of the total settlement sum, equal to \$236,250.00, plus up to
12 \$25,000.00 for reimbursement of actual litigation costs. (Settlement Agreement § VI(2.1.4)(a).).
13 Also as part of the Settlement Agreement, Defendant does not object to Named Plaintiff's request
14 for an enhancement of \$15,000.00 for the service award and for signing a general release and
15 waiver of Civil Code § 1542. (*Id.* at § VI(2.1.4)(b).). Additionally, the Settlement Agreement
16 calls for \$40,000.00 to be paid for PAGA penalties, 75% of which, or \$30,000.00 will be paid to
17 the California Labor and Workforce Development Agency ("LWDA"), as required by the PAGA,
18 and 25%, or \$10,000.00 will be allocated to the net settlement amount for distribution to class
19 members. (*Id.* at § VI(2.1.4)(d).). Finally, the Settlement Agreement also provides for the
20 payment of the Administrator for the administration of this current settlement. The quote
21 received from Phoenix Settlement Administrators for a capped fee of \$7,250.00 to administer the
22 settlement. (Lee Decl. at ¶9; Settlement Agreement § VI(2.1.4)(c).).

23 **C. The Settlement is Fair, Reasonable, and Adequate**

24 Based on their own respective independent investigations and evaluations, the Parties and
25 their respective counsel are of the opinion that settlement for the consideration and on the terms
26 set forth in their Settlement Agreement is fair, reasonable, and adequate and is in the best interests
27 of the Class and the Defendant in light of all known facts and circumstances and the expenses and
28 risks inherent in litigation. (Lee Decl. at ¶10).

1 Defendant denies any liability or wrongdoing of any kind associated with the claims
2 alleged by Plaintiff, and further denies that, for any purpose other than that of settling this lawsuit,
3 this action is appropriate for class and/or representative treatment, denies that Plaintiff or any
4 member of the Class suffered any injury or damage, and contends that a trial court would not
5 award the maximum amount of exposure under any of Plaintiff's theories of liability.

6 Based on this class size of approximately 345 Class Members and the \$675,000.00
7 recovery, Class Members will be entitled to recover, on average, up to approximately **\$1,018.84**
8 **each** after deductions for attorneys' fees, litigation costs, representative award, settlement
9 administration costs, and PAGA payment. The amount any particular class member will be
10 entitled to recover will be greater or lower than this average depending on the number of
11 workweeks he or she worked during the Class Period, with some entitled to receive more, and
12 others less. This is fair, as it directly allocates greater recovery to individual Class Members who
13 have allegedly suffered greater harm. Furthermore, Class Members may choose to exclude
14 themselves from this settlement and not participate in the settlement.

15 **III. LEGAL ANALYSIS**

16 **A. The Class at Issue**

17 The proposed settlement class is described above. The Parties have exchanged information
18 regarding the identity of the members of this proposed Class. Based on the review of such data,
19 there are approximately 345 individuals that comprise the Class. The Parties have further agreed
20 and stipulated that the Class be certified on a provisional, non-mandatory basis for the purposes of
21 this settlement only. (Lee Decl. at ¶ 17).

22 For purposes of this settlement, the Named Plaintiff is an adequate Class Representative,
23 as his claims are typical and common of the Class. Specifically, Named Plaintiff worked as a non-
24 exempt employee for Defendant during the specific Class Period identified herein. (*See*
25 Declaration of Leopoldo Ordaz ("Ordaz Decl.") at ¶ 2.) Moreover, the Named Plaintiff contends
26 that he was not provided proper and accurate itemized wage statements in violation of Labor
27 Code section 226(a). (Ordaz Decl. at ¶ 2).

28 ///

1 **B. Two-Step Approval Process**

2 Any settlement of class litigation must be reviewed and approved by the Court. This is
3 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
4 notice has been distributed to the class members for their comment or objections. The Manual for
5 Complex Litigation (Third) § 30.41 states:

6 Approval of class action settlements involves a two-step process. First, counsel
7 submits the proposed terms of settlement and the court makes a preliminary
8 fairness evaluation. If the preliminary evaluation of the proposed settlement does
9 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
10 unduly preferential treatment of class representatives or of segments of the class,
11 or excessive compensation for attorneys, and appears to fall within the range of
12 possible approval, the court should direct that notice ... be given to the class
13 members of a formal fairness hearing, at which arguments and evidence may be
14 presented in support of and in opposition to the settlement.

15 Thus, the preliminary approval by the trial court is simply a conditional finding that the
16 settlement appears to be within the range of acceptable settlements. As Professor Newberg
17 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
18 concerning a tentative settlement proposal may vary. The court may find that the settlement
19 proposal contains some merit, is within the range of reasonableness required for a settlement
20 offer, or is presumptively valid subject only to any objections that may be raised at a final
21 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
22 2002).

23 The procedures for the parties’ submission of a proposed settlement for preliminary
24 approval by the court also are discussed in 4 *Newberg on Class Actions*:

25 When the parties to an action reach a monetary settlement, they will usually
26 prepare and execute a joint stipulation of settlement, which is submitted to the
27 court for preliminary approval. The stipulation should set forth the central terms
28 of the agreement, including but not limited to, the amount of settlement, form of

1 payment, manner of determining the effective date of settlement and any recapture
2 clause.

3 *Id.* at § 11.24. Here, the Parties have reached such an agreement and have submitted to this Court
4 in connection with this Motion a copy of the Settlement Agreement fully setting forth the
5 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
6 agreement reached by the Parties, which include, among other things, the method for calculating
7 the Participating Class Members' Individual Settlement Payments.

8 **C. Procedures for Settlement Before Class Certification**

9 The parties also may, at the preliminary approval stage, request that the court
10 provisionally approve certification of the class – conditional upon final approval of the settlement.
11 “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
12 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240. Accord *Dunk v. Ford Motor*
13 *Co.* (1996) 48 Cal. App. 4th 1794, 1803 (although the settlement was reached before any
14 “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”). *See,*
15 *also, In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984)¹ (“many courts have
16 employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial
17 settlement proposals”).

18 The strength of the findings made by a judge at a preliminary hearing or
19 conference concerning a tentative settlement proposal. . . . may be set out in
20 conditional orders granting tentative approval to the various items submitted to the
21 court. Three basic rulings are often conditionally entered at this preliminary
22 hearing. These conditional rulings may approve a temporary settlement class, the
23 proposed settlement, and the class counsel's application for fees and expenses.
24 4 *Newberg on Class Actions*, at §11.26.

25 In addition to such terms as class identification, settlement amount and payment
26 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to

27 _____
28 ¹ In determining the fairness and reasonableness of a proposed settlement, California courts may look to
federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 which the Parties stipulate to the Court's provisional certification of the Class, but do so for the
2 purposes of this settlement only.

3 **D. The Settlement is Fair and Reasonable and Not the Result of Fraud or Collusion**

4 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
5 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
6 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
7 *re Chicken Antitrust Litig.*, 560 F.Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
8 judgment for that of the proponents, particularly where, as here, settlement has been reached with
9 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
10 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F.Supp.
11 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
12 *Antitrust Litig.*, 472 F.Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. &*
13 *Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

14 While the recommendations of counsel proposing the settlement are not conclusive, the
15 Court can properly take them into account, particularly where, as here, they have been involved in
16 significant discovery and negotiations for some period of time, including a full day of private
17 mediation, appear to be competent, have experience with this type of litigation, and have
18 exchanged substantial evidence from the opposing party. *See Newberg on Class Actions, supra*,
19 §11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd.*
20 *P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o long as the integrity of the arm's length
21 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
22 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
23 counsel, who are most closely acquainted with the facts of the underlying litigation”).

24 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and
25 hour class action litigation. Plaintiff's counsel has been approved as class counsel in a number of
26 wage and hour class actions. (Lee Decl. ¶ 23; Declaration of Mai Tulyathan (“Tulyathan Decl.”)
27 at ¶10; Declaration of William L. Marder (“Marder Decl.”) at ¶ 8). Moreover, Plaintiff's counsel
28 conducted an extensive investigation of the factual allegations involved in this case since the

1 inception, including engaging in informal discovery. (Lee Decl. ¶¶6, 12). Each side has apprised
2 the other of their respective factual contentions, legal theories and defenses, resulting in extensive
3 arms-length negotiations taking place among the Parties with the assistance of a skilled wage and
4 hour mediator. For purposes of mediation, Defendants provided detailed payroll data of the Class
5 for Plaintiff. (Lee Decl. ¶¶6, 14).

6 The settlement for each participating Class Member is fair, reasonable and adequate, given
7 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
8 litigation through trial and appeal. The settlement is the result of extensive arms-length
9 negotiations between counsel for the Parties, including having the assistance of a mediation
10 before a highly regarded mediator with significant experience in wage and hour class actions.

11 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the
12 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
13 involved in not prevailing on one or more of the causes of action or theories alleged in his
14 Complaint and in the possibility of non-certification. Defendant adamantly disputes the ability of
15 Plaintiff to certify a class and disputes liability and corresponding damages as well.

16 The settlement is a compromise for the alleged damages of absent Class Members for the
17 claims asserted in the Complaint. The settlement also compensates the Named Plaintiff for his
18 claims and provides him an additional incentive payment, thus taking into consideration the risks,
19 time, effort and expenses incurred by said Named Plaintiff in coming forward to provide
20 invaluable information, negotiate and litigate this matter on behalf of all Class Members.

21 Despite the asserted fairness of the settlement terms, any potential Class Member, upon
22 reviewing the Notice of Class Action Settlement may object to the terms of the settlement as set
23 forth in the Settlement Agreement or submit a request for exclusion (*i.e.*, opt out) from the
24 settlement. Moreover, potential Class Members, upon providing proper notice to the Parties and
25 the Court, may attend the final fairness and approval hearing for the purpose of objecting to one
26 or more of the settlement terms set forth in the Settlement Agreement.

27 ///

28 ///

1 **E. The LWDA Has Been Provided With Notice of this Settlement**

2 On January 31, 2022, Plaintiff caused the Settlement Agreement and this Motion for
3 Preliminary Approval to be uploaded to the LWDA's online filing portal. (Lee Decl. ¶24; Exhibit
4 B).

5 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
6 **PRELIMINARY APPROVAL**

7 Here, the proposed Settlement is fair, adequate, and reasonable. It will result in both
8 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
9 result of informed, extensive, and arms' length negotiations and an informal exchange of data
10 which allowed Plaintiff's counsel to perform a complete damage analysis. For the foregoing
11 reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
12 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,
13 and set a date for a final approval hearing.

14 In sum, Plaintiff respectfully requests this Court, as part of the preliminary approval
15 process, do the following:

- 16 1. Review and approve the Settlement Agreement;
- 17 2. Consider whether the proposed settlement preliminarily appears to be fair and
18 adequate, and whether the proposed class of settling plaintiffs preliminarily appears to meet the
19 applicable certification criteria;
- 20 3. Review and approve the proposed Class Notice;
- 21 4. Direct notice to be given to the Class, and set a hearing for final review of the
22 proposed Settlement;
- 23 5. Confirm Named Plaintiff as the Class Representative and confirm Larry W. Lee
24 and Kwanporn "Mai" Tulyathan of Diversity Law Group, P.C., and William L. Marder of Polaris
25 Law Group, P.C. as Class Counsel;
- 26 6. Approve Phoenix Settlement Administrators to serve as the Administrator to
27 handle the notice procedure; and
- 28 7. Set a final approval hearing date on a date after July 6, 2022.

Respectfully Submitted,

DATED: January 31, 2022

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved
Employees