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

Date: August 5, 2022

Time: 8:30 A.M.

Dept.: 17

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

2 **PLEASE TAKE NOTICE** that on August 5, 2022, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Thomas S. Clark, judge presiding, in
4 Department 17 of the above referenced Court located at 1415 Truxtun Avenue, Bakersfield,
5 California 93301, Plaintiff Leopoldo Ordaz (“Plaintiff”) will seek an Order:

6 1. Granting final approval to the Joint Stipulation of Class Action Settlement and
7 Release (“Stipulation” or “Settlement Agreement”) in this action;

8 2. Approving distribution of the settlement funds to the Class Members pursuant to
9 the terms of the Stipulation;

10 3. Approving Plaintiff’s request for an award of the enhancement payment of
11 \$15,000.00 to Plaintiff pursuant to the terms of the Stipulation;

12 4. Approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class
13 Counsel for approximately 35% of the \$675,00.00 settlement amount, or \$236,250.00, and
14 reimbursement of litigation costs of \$9,829.16, pursuant to the terms of the Stipulation;

15 5. Approving Plaintiff’s request for payment of the settlement administration costs
16 to Phoenix Settlement Administrators in the amount of \$7,250.00, pursuant to the terms of the
17 Stipulation; and

18 6. Entering final judgment as to all members of the Participating Settlement Class
19 in this action.

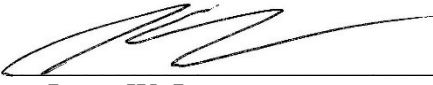
20 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
21 provides for court approval of the settlement of a purported class action and allows the Court
22 to grant final certification of a class for settlement purposes. In light of the overwhelmingly
23 positive response,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

26 This Motion will be based on the attached Memorandum of Points and Authorities and
27 the supporting Declarations of Larry W. Lee, William L. Marder, Leopoldo Ordaz., and Taylor
28 Mitzner of Phoenix Settlement Administrators, upon the oral arguments of counsel (should

1 there be any), and on the complete records and file herein.

2
3 DATED: July 13, 2022

DIVERSITY LAW GROUP, P.C.

4
5 By: 

6 Larry W. Lee

7 Kwanporn "Mai" Tulyathan

8 Attorneys for Plaintiff, the Class, and Aggrieved
9 Employees
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Leopoldo Ordaz (“Plaintiff”) now seeks the Court’s final approval of the Joint Stipulation of Class Action Settlement and Release (“Stipulation” or “Settlement Agreement”). The Stipulation provides for a \$675,000.00 **non-reversionary** fund to be created for the benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the Plaintiff, and costs of settlement administration to the Claims Administrator are to be paid. After these deductions are made, the entire Net Class Settlement Fund will be paid to all Class Members who did not opt-out of the settlement.

The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This Court preliminarily approved this settlement on March 21, 2022, directing distribution of the Notice of Class Action Settlement (the “Notice”) (the “Preliminary Approval Order”).

As directed by the Court, the Claims Administrator selected by the Parties—Phoenix Settlement Administrator—distributed the Notice to 351 Class Members. Declaration of Taylor Mitzner (“Mitzner Decl.”) ¶ 5. To date, **there has only been one (1) request for exclusion and no objections to the settlement submitted by any Class Members.** *Id.* ¶¶ 9-10. As such, there is a 99.72% participation rate by Class Members. In light of the lack of objections and opt-outs, an inference can be made that the Class supports the Court’s Preliminary Approval Order finding that the Stipulation is fair and reasonable.

In addition to the results of the Notice process, for the same reasons as set forth earlier in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent the basic points previously covered that support approval of the settlement:

- The Stipulation provides a total settlement sum of \$675,000.00 which is **non-reversionary**;
- The Stipulation is fair given that Class Members will receive (*after deductions for fees, costs, etc.*), an average of approximately \$1,047.63, with the estimated highest individual settlement payment being \$2,806.63, and the estimated lowest individual settlement

1 payment being \$31.18 (*see* Mitzner Decl. ¶ 14);

- 2 • Class Members did **not** need to submit claim forms to participate in the
- 3 settlement, but are being paid automatically;
- 4 • The allocation reflects that payment of individual settlement amounts will be
- 5 paid to all participating Class Members on a pro-rata basis, based on the number of workweeks
- 6 each Class Member worked during the Class Period;
- 7 • Plaintiff's counsel conducted significant investigation of the claims at issue,
- 8 including conducting informal discovery and significant exchanges of information regarding
- 9 class data for the entire class, sampling of time and payroll records. Plaintiff's counsel then
- 10 conducted an exposure analysis, which allowed Plaintiff's counsel to fully evaluate this case;
- 11 and
- 12 • A highly regarded administrator, Phoenix Settlement Administrators, was
- 13 retained to administer the settlement for \$7,250.00 (*see* Mitzner Decl. ¶ 16, Ex. B).

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

16 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**

17 **SETTLEMENT**

18 The notice procedures required by the Preliminary Approval Order have been followed
19 and satisfy all due process rights of Class Members. Specifically, the Preliminary Approval
20 Order contemplated that the Notice of Class Action Settlement (the "Notice"), as approved in
21 the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified
22 in the Settlement. The Preliminary Approval Order further designated that Phoenix Settlement
23 Administrators would serve as the Claims Administrator.

24 As clearly stated in the Mitzner Declaration, notice was provided to Class Members as
25 required by the Preliminary Approval Order. On March 30, 2022, the Claims Administrator
26 received the Class List from Defendant's counsel that included 351 Class Members. Mitzner
27 Decl. ¶ 3. Prior to mailing the Class Notice, the Claims Administrator conducted a National
28 Change of Address (NCOA) search to correct and/or update the class list in case of any address

1 changes. *Id.* ¶ 4. On April 11, 2022, the Claims Administrator mailed the Notice to all Class
2 Members on the Class List via U.S. first class mail. *Id.* ¶ 5, Ex. A. From the date of mailing,
3 nine (9) Notice packets were returned to the Claims Administrator without forwarding
4 addresses. *Id.* ¶ 6. The Claims Administrator subsequently conducted skip tracing to identify
5 updated addresses for the returned Notice packets, and was able to locate updated addresses for
6 all nine (9) Class Members. *Id.* The Claims Administrator subsequently re-mailed them via
7 U.S. first class mail. *Id.* As of the date of this filing, zero (0) Notices remain undeliverable. *Id.*
8 ¶ 7. Further, the Notice provided Class Members with Plaintiff’s counsel’s and the Settlement
9 Administrator’s contact information, with whom they could obtain information regarding the
10 settlement and/or update their address.

11 The provision of sending the Notice to Class Members as described above meets the
12 requirements for the “best notice practicable” in this case as necessary to protect the due
13 process rights of class members. *See, e.g., Phillips Petroleum Co. v. Shutts* (1985) 472 U.S.
14 797, 811-12 (provision of “best notice practicable” with description of the litigation and
15 explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417
16 U.S. 156, 174-75 (individual notice must be sent to class members who can be identified
17 through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S.
18 306, 314 (best practicable notice is that which is “reasonably calculated, under all the
19 circumstances, to apprise interested parties of the pendency of the action and afford them an
20 opportunity to present their objections”).

21 Here, the Class Members were sent a mailing regarding the settlement that satisfies due
22 process rights. The mailing described the litigation and settlement, provided an explanation of
23 the terms of the settlement, explained Class Members’ rights, allowed Class Members to seek
24 additional information with Class Counsel and/or the Claims Administrator, and explained
25 ways for Class Members to exclude themselves and/or object to the settlement, if so desired.
26 As such, proper notice has been given to the Class Members. Thus, the Court may determine
27 the fairness and adequacy of the settlement and enter its Order granting final approval, secure
28 in the knowledge that all absent Class Members have been given the opportunity to participate

1 fully in the settlement, exclusion, and the approval process.

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

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

5 In order to proceed as a class, there are two requirements which must be met—
6 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, (1967) 67 Cal. 2d.
7 695, 704. Under California law, there are two basic requirements which must exist to sustain a
8 class action: “[t]he first is existence of an ascertainable class, and the second is a well-defined
9 community of interest in the questions of law and fact involved.” *Vasquez v. Superior Court*
10 (1971) 4 Cal. 3d 800, 809. “The community of interest requirement embodies three factors: (1)
11 predominant common questions of law or fact; (2) class representatives with claims or
12 defenses typical of the class; and (3) class representatives who can adequately represent the
13 class.” *Richmond v. Dart Industries* (1981) 29 Cal. 3d. 462, 470.

14 **1. The Class is Ascertainable**

15 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382
16 is determined by examining “(1) class definition, (2) the size of the class, and (3) the means
17 available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*
18 (1987) 196 Cal. App. 3d 1263, 1271.

19 Here, the Class is defined as: all current and former employees of Defendant in the
20 State of California who were paid wages at any time from June 27, 2019 through February 11,
21 2021. There are 350 individuals that comprise the Class. Mitzner Decl. ¶ 12. This is far more
22 than the minimum required to certify a class.

23 Within the context of manageability, the issue is whether there exists sufficient means
24 for identifying class members at the remedial stage. *Reyes, supra*, 196 Cal. App. 3d at pp.
25 1274-75. Class Members have already been identified by Defendant and notice was provided
26 to all of the above Class Members.

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

28 The “community of interest” requirement embodies three separate factors: (1)

1 predominant common questions of law or fact; (2) class representatives whose claims are
2 typical of the class; and (3) class representatives who can adequately represent the class.
3 *Richmond, supra*, 29 Cal. 3d at p. 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th
4 1225, 1234.

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

6 “The ultimate question in every case of this type [class actions] is whether...the issues
7 which may be jointly tried, when compared with those requiring separate adjudication, are so
8 numerous and substantial that the maintenance of a class action would be advantageous to the
9 judicial process and to the litigants.” *Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal. 4th
10 1096, 1104-05.

11 Plaintiff alleges that Defendants failed to provide complete and accurate itemized wage
12 statements in violation of Labor Code section 226(a). Defendant denies any liability or
13 wrongdoing of any kind associated with the claims alleged by Plaintiff, and further denies that,
14 for any purpose other than that of settling this lawsuit, this action is inappropriate for class
15 and/or representative treatment, denies that Plaintiff or any member of the Class suffered any
16 injury or damage, and contends that a trial court would not award the maximum amount of
17 exposure under any of Plaintiff’s theories of liability.

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

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

28 Here, Plaintiff was subjected to the same policies and practices as all other Class

1 Members. In this regard, Plaintiff was employed by Defendants as a non-exempt employee
2 during the specific Class Period identified herein. Declaration of Leopoldo Ordaz (“Ordaz
3 Decl.”) ¶ 2. Like other Class Members, Plaintiff was not provided proper and accurate
4 itemized wage statements in violation of Labor Code section 226(a). Ordaz Decl. ¶ 3.

5 In other words, Plaintiff was subjected to the same policies and practices as other Class
6 Members. Accordingly, Plaintiff’s claims align with the interests of the Class and typicality is
7 satisfied.

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

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

12 Here, Plaintiff does not have any interests adverse to the Class, nor have any such
13 issues been raised or presented. Ordaz Decl. ¶ 5. Plaintiff has taken all necessary steps to
14 represent the interests of the Class, and has carried out the duties as a class representative,
15 including without limitation, including discussing the case with his counsel, providing
16 information and documents to his counsel, and reviewing pleadings and documents in this
17 case. *Id.* ¶ 6. For such reasons, Plaintiff has adequately represented the Class Members and
18 will continue to do so.

19 **B. Risks, Expenses, and Complexity of Further Litigation**

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

26 As stated above, Defendants contend that none of Plaintiff’s class claims could have
27 been certified, and that any liability for the claims would need to be determined on a case-by-
28 case basis. Based on the foregoing, there was a substantial risk that Plaintiff would not have

1 obtained the total amount of damages and/or penalties alleged, and a substantial amount of
2 complex issues that would have necessitated significant expenditure of time and expenses.
3 Therefore, the risks, expenses, and complexity of further litigation warrant granting of this
4 Motion.

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

8 Without reiterating the Parties' showing that the Stipulation and the negotiation process
9 that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
10 Approval of Class Action Settlement, the Parties highlight several key facts. First, the
11 settlement was the product of negotiation between highly able and experienced attorneys on
12 both sides who possessed the relevant data and extensive legal research which they had
13 carefully analyzed. Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 3-5. The Parties then
14 engaged in arm's length negotiations at mediation with a highly experienced and well-
15 respected mediator, Steve Pearl, Esq. *Id.* ¶ 3.

16 The results after mailing of the Notice also support confirmation of the Court's
17 preliminary approval of the settlement with final approval of the settlement, as evidenced by
18 the fact that **only one (1) request for exclusion and no objections to the settlement were**
19 **submitted**. Mitzner Decl. ¶¶ 9-10. In light of overwhelmingly positive response to the
20 settlement, the Court may appropriately infer that the Settlement is fair, adequate, and
21 reasonable, given that only a single class member submitted request for exclusion and no
22 objection(s) were submitted. *See Chemical Bank v. City of Seattle* (9th Cir. 1992) 955 F.2d
23 1268, 1291 (reaction of class members to the settlement is a factor supporting approval of a
24 class action settlement).

25 **D. Under Well-Established Legal Principles, the Court Should Grant Final**
26 **Approval of the Settlement**

27 **1. Standard of Review**

28 On a motion for final approval of a class action settlement under California Code of
Civil Procedure § 382 and California Rules of Court, Rule 3.769, a court's inquiry at this
juncture is whether the settlement is "fair, adequate and reasonable." *Officers for Justice v.*

1 *Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil*
2 *Serv. Comm’n* (1983) 459 U.S. 1217. A settlement is fair, adequate, and reasonable, and
3 therefore merits final approval, when “the interests of the class are better served by the
4 settlement than by further litigation.” *See Manual for Complex Litigation, Fourth* (Fed. Jud.
5 Ctr, 4th ed. 2004) § 21.6 at p. 309 (“MCL”). The law favors settlement, particularly in class
6 actions and other complex cases, where substantial resources can be conserved by avoiding the
7 time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg*
8 *on Class Actions* (2008) § 11.41; *Chemical Bank v. City of Seattle* (9th Cir. 1992) 955 F.2d
9 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.

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

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

27 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*
28 (2000) 85 Cal. App. 4th 1135, 1146:

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

6 2. The Settlement is Presumed to Be Fair

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

9 [A] presumption of fairness exists where: (1) the settlement is reached
10 through arm’s-length bargaining; (2) investigation and discovery are
11 sufficient to allow counsel and the court to act intelligently; (3) counsel is
12 experienced in similar litigation; and (4) the percentage of objectors is
13 small.

14 *Dunk*, 48 Cal. App. 4th at p. 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at
15 p. 1146; *accord*, *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re*
16 *Wash. Pub Power Supply*, *supra*, 720 F. Supp. at p. 1387.

17 The settlement here warrants approval and carries a presumption of fairness. As
18 previously noted in the Motion for Preliminary Approval, this settlement was negotiated at
19 arm’s length after a full-day of mediation with an experienced wage-and-hour mediator, Steve
20 Pearl, Esq. Lee Decl. ¶ 3. Additionally, Class Counsel engaged in informal discovery before
21 mediation, including reviewing the production of class data, sample time and payroll records,
22 and information pertaining to Defendant’s policies and procedures. Lee Decl. ¶ 4. The
23 exchange of informal discovery allowed Class Counsel to conduct a full analysis of exposure.
24 *Id.*

25 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
26 supporting declarations, Class Counsel has significant experience in class actions and
27 employment wage and hour matters. Declaration of William L. Marder (“Marder Decl.”) ¶¶ 4-
28 8; Lee Decl. ¶¶ 9-11.

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

3 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
4 Court also should weigh the immediacy and certainty of substantial settlement proceeds
5 against the risks inherent in continued litigation. *See In re General Motors Corp.* (3d Cir.
6 1995) 55 F.3d 768, 806 (“present value of the damages plaintiffs would likely recover if
7 successful, appropriately discounted for the risk of not prevailing, should be compared with the
8 amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson* (3d Cir.
9 1975) 521 F.2d 1 53, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 616-17.

10 If Plaintiff pursued this case without settlement and not prevailed, Plaintiff would be
11 potentially responsible for Defendants’ fees and costs. Ordaz Decl. ¶ 8. As such, should
12 individual current or former employees of Defendant bring individual claims on the same
13 causes of action, they would each face the uncertainty of prevailing and the possibility of
14 paying costs to Defendants. Accordingly, such claims likely would not be brought by many of
15 these current and former employees—thus, this lawsuit achieves a true benefit for the class that
16 they might not otherwise get or seek as individuals. Here, given that a fair and reasonable
17 settlement has been reached, neither Plaintiff nor any of the Class Members will be required to
18 pay for Defendants’ litigation costs.

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

23 The Settlement Agreement also affords the Class prompt, fair relief while avoiding
24 significant legal and factual battles that otherwise may have prevented the Class from
25 obtaining any recovery at all. While Class Counsel believe the Class Members’ claims are
26 meritorious and can be successfully litigated, they are experienced and fully understand the
27 inherent risks and uncertainty involved with such matters as the resolution of class
28 certification, the outcome of a potential trial, and the outcome of any appeals that would
 inevitably follow should the Class prevail at trial. Class Counsel have also assessed the same

1 risks in connection with the current settlement. Because the settlement provides immediate and
2 substantial relief, without the attendant risks and delay of continued litigation—not to mention
3 the threat of litigation fees and costs—Class Counsel believe that the settlement warrants the
4 Court’s final approval.

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

7 Another factor considered by courts in approving a settlement is the complexity,
8 expense, and likely duration of the litigation. *See Officers for Justice, supra*, 688 F.2d at p.
9 625; *Girsh, supra*, 521 F.2d at p. 157. In applying this factor, the Court must weigh the
10 benefits of the settlement against the expense and delay involved in achieving an equivalent or
11 more favorable result at trial. *Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-34.

12 As noted above, continued litigation could potentially have led to appeals on a number
13 of issues. On the other hand, the settlement that was reached provides all Class Members—
14 regardless of their means—with fair relief in a prompt and efficient manner. Were the Court to
15 deny final approval, the Class Members would be left without a remedy as a practical matter
16 and courts across the state would have to address the issues presented here in a piecemeal,
17 costly, and time-consuming manner. The settlement here is therefore consistent with the
18 “overriding public interest in settling and quieting litigation” that is “particularly true in class
19 action suits.” *See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at
20 § 11.41. Here, this case could have potentially involved years of litigation, as evidenced by the
21 Parties’ litigation record and history in similar wage and hour cases.

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

23 Class Counsel supports the Settlement as fair, reasonable, and adequate, and in the best
24 interest of the Class Members as a whole. Lee Decl. ¶ 2; Marder Decl. ¶ 2. Similarly, counsel
25 for Defendants are in favor of the Settlement. The endorsement of qualified and well-informed
26 counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the
27 Court in its final approval determination. *See Officers for Justice*, 688 F.2d at p. 625; *Ellis*, 87
28 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.

1 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD**
2 **BE APPROVED**

3 Class Representative Leopoldo Ordaz requests an enhancement of \$15,000.00 in
4 accordance with the terms of the Stipulation. Plaintiff numerous discussions with Class
5 Counsel to discuss the case at various stages of the lawsuit, from inception to settlement, and
6 provided substantive information regarding Defendants' policies and practices at issue in this
7 case. Ordaz Decl. ¶ 4. Plaintiff also gathered documents pertaining to the lawsuit, and
8 reviewed pleadings and documents in this case, including the complaint, the PAGA letter, his
9 personnel file and pay stubs, policy documents, declarations, and the Settlement Agreement.
10 *Id.* Accordingly, Plaintiff provided invaluable information, evidence, and documents that
11 resulted in this settlement.

12 In addition to the invaluable services that he provided, Plaintiff took significant risks,
13 both professionally and monetarily, in acting as the Class Representative, seeking benefits on
14 behalf of the Class. Ordaz Decl. ¶¶ 5-10. Because the claims alleged by Plaintiff involved the
15 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
16 Defendants, had he not prevailed in this action. *Id.* ¶ 8. Despite this, however, Plaintiff agreed
17 to pursue this case on behalf of the Class.

18 Also, given that future employers are much less likely to hire individuals who have
19 filed employment-related lawsuits, particularly cases of this nature, the Class Representative
20 also faced significant risk in not being able to find suitable employment and/or face retaliation
21 from prospective employers, all as a result of filing of this case against Defendants. Plaintiff
22 took these risks upon himself to the benefit of the Class. *Id.* ¶ 9. Class Members did not have to
23 file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
24 they have to face the potential for retaliation and not getting future employment had they filed
25 a lawsuit which is a public record. These are significant benefits that weigh in favor of
26 granting the requested enhancement. Moreover, this litigation has resulted in a valuable benefit
27 to the Class, *i.e.*, an average award to Class Members in the amount of \$1,047.63, and Plaintiff
28 took on substantial risks in helping to get this financial benefit to the Class. As such, the

enhancement should be awarded to Plaintiff for his commitment, dedication, and risks taken for this litigation.

Finally, Plaintiff provided a general release and waiver of the protections of Civil Code § 1542, which other Class Members did not have to do. Stipulation ¶ VI(2.1.4(b)). This is a more extensive release than that provided by the Class at large, also supporting the request for the enhancement.

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated at approximately 35% of the total value of the settlement amount, or \$236,250.00, for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc., supra*, 557 F.2d at p. 769.

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

1 approximate what the market will set....The judge, in other words, is trying to mimic the
2 market in legal services.”).

3 Here, the fee award representing 35% of the fund clearly falls within that range and is
4 consistent with other rulings of other courts and comprehensive surveys of class action
5 settlements and fee awards. *See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S. Dist.
6 LEXIS 61796, 23 (recognizing that “courts may award attorney’s fees in the 30-40% range in
7 wage and hour class actions that result in recovery of a common fund under \$10 million”); *see*
8 *also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study:*
9 *1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class
10 action litigation nationwide conclude that fees in the range sought here are consistent with
11 market rates).

12 The results delivered by Class Counsel also support the requested percentage of the
13 fund. Here, Plaintiff and his counsel secured a \$675,000.00 non-reversionary common fund
14 settlement.

15 Finally, “the response of the class members to attorneys’ fee notice, though not
16 decisive, is relevant to the...reasonable determination” regarding fees. *Swedish Hospital v.*
17 *Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1272. A positive response rate tends to suggest that the
18 court’s “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case,
19 the Notice specifically notified Class Members that Class Counsel would be seeking up to
20 \$236,250.00 in attorneys’ fees. To date, no Class Member has objected to the settlement. This
21 strong favorable response also supports the requested fees.

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

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

28 *City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470. Here, it is clear that a

1 settlement fund of \$675,000.00 has been created as the entire amount is to be paid out without
2 any reversions. For Class Counsel, the fees here were wholly contingent in nature and the case
3 presented far more risk than the usual contingent fee case. Among the risks was the cost
4 inherent in class action litigation, as well as a potentially drawn-out battle with a corporate
5 Defendant.

6 As such, the requested fee award is fair and reasonable, and should be awarded in its
7 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
8 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
9 Class Counsel's request for attorneys' fees in the amount of \$236,250.00 is fair, reasonable,
10 and adequate.

11 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT** 12 **OF COSTS**

13 The request for reimbursement of costs, in the amount of \$9,829.16 is fair and
14 reasonable, especially in light of the fact that the Parties agreed that Plaintiff's counsel may
15 seek up to \$25,000.00 as reimbursement for litigation costs under the Stipulation. *See*
16 Stipulation ¶ VI(2.1.4)(a).). As set forth in Plaintiff's counsel's declaration, the costs were all
17 directly incurred in the prosecution of this action, including without limitation, filing and
18 service fees, court fees, postage fees, and mediation fees. Lee Decl. ¶ 12, Ex. A.) The
19 authority for the court to award this is the Parties' Settlement Agreement and the California
20 Labor Code. As such, the requested costs should be approved as fair and reasonable.

21 **VII. THE CLAIMS ADMINISTRATOR'S FEES AND COSTS SHOULD BE** 22 **APPROVED**

23 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Claims
24 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
25 funds. As shown in the Declaration of Taylor Mitzner, the settlement administration fees
26 expended in this matter amount to a total of \$7,250.00, which is less than the amount that was
27 agreed upon by the Parties. Mitzner Decl. ¶ 16, Ex. B. For such reasons, it is requested that the
28 Settlement Administrator's fees be approved.

1 **VIII. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
2 **SHOULD BE APPROVED**

3 To the extent any uncashed settlement funds remain after 180 days of the mailing of the
4 individual settlement checks, the Parties have agreed that all uncashed settlement funds shall
5 be distributed to the *cy pres* recipient, Legal Aid at Work (“LAAW”). Lee Decl. ¶ 8. Class
6 Counsel and Plaintiff do not have any relationship of any kind with LAAW. Lee Decl. ¶ 9;
7 Marder Decl. ¶ 3; Ordaz Decl. ¶ 12.

8 Plaintiff’s counsel proposed LAAW as the *cy pres* beneficiary for uncashed settlement
9 funds in compliance with Code of Civil Procedure § 384, which provides, in part, that the
10 unpaid residue of settlement funds shall be directed to “nonprofit organizations or foundations
11 to support projects that will benefit the class or similarly situated persons, or that promote the
12 law consistent with the objectives and purposes of the underlying cause of action, to child
13 advocacy programs, or to nonprofit organizations providing civil legal services to the
14 indigent.” (Code of Civ. Proc. § 384, subd. (b).) LAAW is a non-profit legal services
15 organization that provides legal services and policy advocacy with a focus on protecting
16 workplace rights, for and on behalf of California low-income individuals and/or low-wage
17 earners. (See Settlement Agreement at ¶ VI(2.1.8)) As such, this fully complies with the
18 objectives of Code of Civil Procedure § 384.

19 **IX. PLAINTIFF HAS PROVIDED NOTICE TO THE LWDA**

20 On March 30, 2022, Plaintiff uploaded the Amended Order Granting Motion for
21 Preliminary Approval of Class Action Settlement to the LWDA’s website. Lee Decl. ¶ 13; Ex.
22 B. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and proposed order
23 to the LWDA’s website. *Id.* at ¶ 14.

24 **X. CONCLUSION**

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

28 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form

proposed and submitted:

1. Granting final approval to the proposed Stipulation in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Stipulation;
3. Approving Plaintiff's request for a service award of \$15,000.00 to Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff's Counsel's request for an award to Class Counsel for \$236,250.00 in attorneys' fees and \$9,829.16 in costs, with payment pursuant to the terms of the Stipulation;
5. Approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$7,250.00, with payment pursuant to the terms of the Stipulation; and
6. Entering final judgment as to all members of the Class in this action.

DATED: July 13, 2022

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Kwanporn "Mai" Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
Employees