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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

JOE BETANCUR, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

PRIDE CONVEYANCE SYSTEMS, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CU-21-00022

[Assigned to the Hon. Jose “Omar”
Rodriguez, Dept. 1]

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

Date: April 28, 2025
Time: 8:30 a.m.
Dept.: 1

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

2 **PLEASE TAKE NOTICE** that, on April 28, 2025, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard before the Hon. Jose “Omar” Rodriguez, Judge presiding in Department 1 of the
4 above-referenced Court located at 450 Fourth St., Hollister, CA 95023, Plaintiff Joe Betancur
5 (“Plaintiff”) will and hereby does move the Court for an Order: (1) granting final approval to the Joint
6 Stipulation of Class Action Settlement and Release of Claims (“Settlement Agreement”) in this
7 matter; (2) approving distribution of the settlement funds to the class members pursuant to the terms of
8 the Settlement Agreement; (3) approving Plaintiff’s request for an enhancement award of \$15,000.00;
9 (4) approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class Counsel for 35% of
10 the \$600,000.00 Gross Settlement Amount, or \$210,000.00, and reimbursement of litigation costs of
11 \$15,803.56 pursuant to the terms of the Settlement Agreement; (5) approving Plaintiff’s request for
12 payment of the settlement administration costs to Xpand Legal in the amount of \$8,500.00 pursuant to
13 the terms of the Settlement Agreement; (6) approving Plaintiff’s request for payment to the Labor
14 Workforce Development Agency (the “LWDA”) for \$45,000.00 pursuant to the terms of the
15 Settlement Agreement; and (7) entering final judgment as to all members of the Settlement Class in
16 this action.

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

22 This Motion will be based on the attached Memorandum of Point and Authorities and the
23 supporting Declarations of Larry W. Lee, Dennis S. Hyun, and Jonathan Paul of Xpand Legal, and
24 upon the oral arguments of counsel (should there be any), and on the complete records and file herein.
25
26
27
28

1 DATED: April 2, 2025

DIVERSITY LAW GROUP, P.C.

2
3 By: 

Larry W. Lee

4 Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	8
II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT	9
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL	11
A. Strength of Plaintiff’ Case and Likelihood of Certifying the Class.....	11
1. The Class is Ascertainable.....	11
2. There is a Community of Interest.....	11
a. There Are Predominant Common Questions of Law and Fact	12
b. Plaintiff’s Claims Are Typical of the Class Claims.....	12
c. Plaintiff Adequately Represented the Class	13
B. Defendants’ Allegations and Unlikelihood of Class Certification	13
C. Risks, Expenses, and Complexity of Further Litigation	13
D. The Terms of the Settlement, the Negotiation of the Settlement, and the Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable	14
E. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement.....	14
1. Standard of Review	14
2. The Settlement is Presumed to Be Fair.....	15
3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	16
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendants Favor Final Approval.....	17
5. The Opinion of Experienced Counsel Favors Final Approval	18
IV. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED.....	18
V. PLAINTIFF’S ENHANCEMENT AWARD SHOULD BE APPROVED	20
VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS	21

VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE APPROVED	21
VIII. CONCLUSION	21

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1146 (2000)	15, 16
<i>Brinker v. Superior Court</i> , 50 Cal. 4th 1004, 1023 (2012)	12
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27, 45 (1983)	12
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d. 695, 704 (1967)	11
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996)	15, 16
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014)	13
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (Aug. 11, 2016)	18
<i>Lockheed Martin Corp. v. Superior Court</i> , 29 Cal. 4th 1096, 1104-05 (2003)	12
<i>Reese v. Wal-Mart Stores, Inc.</i> , 73 Cal. App. 4th 1225, 1234 (1999)	11
<i>Reyes v. San Diego County Board of Supervisors</i> , 196 Cal. App. 3d 1263, 1271 (1987)	11
<i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462, 470 (1981)	11
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	18
<i>Shiferaw v. Sunrise Senior Living Mgmt., Inc.</i> , 2014 WL 12585796, at *8 (C.D. Cal. June 11, 2014)	12
<i>Simons v. Horowitz</i> , 151 Cal.App.3d 834, 846 (1984)	13
<i>Vasquez v. Superior Court</i> , 4 Cal.3d 800, 809 (1971)	11
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	18

Federal Cases

<i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993)	15
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	18
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 616-17 (N.D. Cal. 1979)	16, 18
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	21
<i>Byrd v. Civil Serv. Comm'n</i> , 459 U.S. 1217 (1983)	14
<i>Chemical Bank v. City of Seattle</i> , 955 F.2d 1268, 1276 (9th Cir. 1992)	14, 15
<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993)	15
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974)	19
<i>Class Plaintiff v. City of Seattle</i> , 955 F.2d 1268, 1291 (9th Cir. 1992)	14
<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	21
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974)	10
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980)	16, 18
<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)	21
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	18
<i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975)	16, 17
<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)	21
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497, 508 (9th Cir. 1992)	12

1	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990)	21
2	<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995)	16
3	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....	15, 16
4	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998)	15, 18
5	<i>Martin v. AmeriPride Servs.</i> , 2011 U.S. Dist. LEXIS 61796 (S.D. Cal. June 9, 2011).....	19
6	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314 (1950)	10
7	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615, 625 (9th Cir. 1982)	14, 15, 17, 18
8	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	10
9	<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261 (D.C. Cir. 1993)	19
10	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9th Cir. 1976)	14, 17
11	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	20
12	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	18
13	<i>Young v. Katz</i> , 447 F.2d 431, 433-34 (5th Cir. 1971).....	17

Statutes

Code of Civil Procedure § 382.....	11, 14
------------------------------------	--------

Other Authorities

<i>4 Newberg on Class Actions</i> , 4th § 11.41 (2008)	14, 17
Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> , 7 J. of Empirical Leg. Stud. 248 (2010)	19
<i>Manual for Complex Litigation Fourth</i> (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 309.....	14, 15

Rules

California Rule of Court 3.769	14
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1 **I. INTRODUCTION**

2 Plaintiff Joe Betancur (“Plaintiff”) now seeks the Court’s final approval of the Class Action
3 Settlement. The Settlement provides for a \$600,000.00 **non-reversionary** common fund to be created
4 for the benefit of the Class, from which attorneys’ fees, litigation costs, payment to the California
5 Labor & Workforce Development Agency (the “LWDA”), and costs of settlement administration are
6 to be paid. After these deductions, the Net Settlement Amount will be paid to all class members who
7 did not opt-out of the Settlement.

8 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
9 Approval of Class Action Settlement. The Court preliminarily approved this Settlement on December
10 13, 2024, directing distribution of class notice and scheduling the hearing for final approval of
11 settlement (the “Preliminary Approval Order”).

12 As directed by the Court, the Settlement Administrator distributed the class notice to 396 class
13 members. Declaration of Jonathan Paul (“Admin. Decl.”) (on behalf of Xpand Legal (“Xpand”)) ¶ 4.
14 The deadline to opt-out, or object is April 7, 2025. *Id.* at ¶ 9. As of March 28, 2025, only one
15 Request for Exclusion has been received and there have been no objections. *Id.* at ¶¶ 7-8.¹ Of the 396
16 notices sent, seven (7) notices have been returned as undeliverable because an updated address could
17 not be located after conducting a skip-trace. *Id.* at ¶ 4. As such, there is over a 99.75% participation
18 rate. Thus, an inference can be made that the Class supports the Court’s Preliminary Approval Order
19 finding that the Settlement Agreement is fair and reasonable.

20 In sum, as a result of the settlement administration process, the lack of any objections and opt-
21 outs, and the amount of class funds being paid out to the class members, the Court may confirm its
22 preliminary approval as this process supports the Court’s initial finding that the Settlement is fair and
23 reasonable. The fact that no objections were filed is instructive that class members believe that the
24 settlement was fair and reasonable.

25
26
27 ¹ Plaintiff will file a supplemental declaration from the Settlement Administrator after the expiration of
28 the response deadline of April 7, 2025, but before the hearing on this Motion.

1 In addition to the results of the notice process, for the same reasons as set forth earlier in
2 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following represent the
3 basic points previously covered supporting approval of the Settlement:

- 4 ▪ The Settlement provides a total settlement sum of \$600,000.00 which is **non-**
5 **reversionary**;
- 6 ▪ The Settlement is fair given that claiming Class Members will receive (*after deductions*
7 *for fees, costs, etc.*) a substantial amount of money (on average, each class member will
8 receive approximately \$734.08 and the highest award is \$2,359.95 (Admin. Decl. ¶ 14);
- 9 ▪ Class Members did not need to submit claim forms to participate in the settlement, but
10 are being paid automatically;
- 11 ▪ The allocation reflects that payment of claims will be paid to all Class Members in
12 proportion to the number of wage statements reflecting payment of both overtime and
13 non-discretionary pay in the same pay period received by each Class Member;
- 14 ▪ Plaintiffs conducted significant investigation in this case, including exchanges of
15 information by Plaintiff and Defendant Pride Conveyance Systems, Inc. ("Defendant")
16 of class data for the entire class necessary for Plaintiff to fully evaluate this case and
17 perform a damage analysis;
- 18 ▪ This settlement was reached only after a full day of mediation with well-respected class
19 action mediator, Michael Loeb, Esq.;
- 20 ▪ A highly regarded administrator, Xpand Legal, was retained for no more than \$8,500;
21 and
- 22 ▪ California's LWDA will also be the beneficiary of this Settlement as it will receive
23 \$45,000, should this Settlement be granted final approval.

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

26 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT**

27 The notice procedures required by the Preliminary Approval Order have been followed and
28 satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that

1 the Notice of Class Action Settlement (the “Notice”), as approved in the Preliminary Approval Order,
2 be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary
3 Approval Order contemplated, further, that Xpand would serve as the Settlement Administrator.

4 As clearly stated in the Declaration of Jonathan Paul, notice was provided to Class Members,
5 as required by the Preliminary Approval Order. On February 18, 2025, Xpand cleared all
6 discrepancies and finalized the class list consisting of 396 Class Members. Admin Decl. at ¶ 4. On or
7 about February 21, 2025, each of the persons identified on the mailing list were sent the Class Notice
8 via first class mail. *Id.* As part of the administration process, the Settlement Administrator has re-
9 mailed Class Notices to four Class Members using newly updated addresses after performing an
10 address trace. *Id.* As of the date of this filing, seven (7) Notices remain undeliverable because an
11 updated address could not be located through skip-trace. *Id.* Further, the Notice provided Class
12 Members with the Class Counsel’s contact information, where they could further seek information
13 regarding the class settlement, leave questions for the Settlement Administrator, and update their
14 address. *Id.*, Exhibit B.

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

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

1 to participate fully in the claims, exclusion, and the approval process.

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

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

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

13 **1. The Class is Ascertainable**

14 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382
15 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available
16 for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App.
17 3d 1263, 1271 (1987). Here, the class is defined as: all current and former non-exempt employees,
18 including temporary staffing employees, who worked for Defendant in California at any time during
19 the Class Period (January 1, 2019, through May 18, 2024). There are 396 members that comprise of
20 the Class. Admin Decl. ¶ 4. This is far more than the minimum required to certify a class. Within the
21 context of manageability, the issue is whether there exists sufficient means for identifying class
22 members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class members have already been
23 identified by Defendant and Class Notice was provided to all of the above class members.

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

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

1 As set forth herein, Plaintiff's claims arise from five main alleged practices: (1) failure to pay
2 minimum and overtime wages for pre and post-shift off-the-clock work; (2) failure to pay sick pay at
3 the regular rate; (3) failure to provide meal periods and/or pay meal period premium wages at the
4 regular rate; (4) failure to authorize and permit rest periods and/or pay rest period premium wages at
5 the regular rate; and (5) failure to pay overtime based on the regular rate. Courts have held that such
6 claims are suited for class treatment. *Brinker v. Superior Court*, 50 Cal. 4th 1004, 1023 (2012);
7 *Shiferaw v. Sunrise Senior Living Mgmt., Inc.*, 2014 WL 12585796, at *8 (C.D. Cal. June 11, 2014).

8 **a. There Are Predominant Common Questions of Law and Fact**

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

13 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
14 violated the Labor Code. Again, courts have certified such claims.

15 **b. Plaintiff's Claims Are Typical of the Class Claims**

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

24 Plaintiff was employed as a non-exempt employee by Defendant from about December 2013,
25 until on or about July 9, 2020, and did receive sick pay, meal and rest period premium wages, and
26 minimum and overtime wages owed. Declaration of Joe Betancur in Support of Plaintiff's Motion for
27 Preliminary Approval ("Betancur Decl.") at ¶ 2. In other words, Plaintiff alleges that he was subjected
28 to the same policies and practices as other Class Members. Thus, Plaintiff contends that his claims are

1 typical to those of class members.

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

3 The class representative, through qualified counsel, must be capable of “vigorously and
4 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
5 846 (1984). Here, Plaintiff does not have any interests adverse to the class, nor has any such issues
6 been raised or presented. Betancur Decl. at ¶ 3. Plaintiff has taken all necessary steps to represent the
7 interests of the Class, including providing information and documents to counsel and reviewing
8 pleadings in this case. *Id.* at ¶¶ 3-4. For such reasons, Plaintiff has adequately represented the class
9 members and will continue to do so.

10 **B. Defendants’ Allegations and Unlikelihood of Class Certification**

11 Defendant would have contended that it maintained lawful policies, including requiring the
12 payment of wages for all hours worked, as well as providing timely meal and rest periods. Defendant
13 also would have contended that it paid sick pay, overtime, and meal and rest period premium wages
14 based on the regular rate of pay. Moreover, Defendant may have prevailed on class certification
15 and/or appealed if this Court ruled in Plaintiff’s favor.

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

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

22 Defendant always maintained that there is no liability. As stated above, Defendant believes
23 that a class could not have been certified. There is always a risk that the court will not grant
24 certification of the class, wherein the class will not be entitled to any damages. Based on the
25 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of
26 damages alleged, and a substantial amount of complex issues that would have necessitated significant
27 expenditure of time and expenses. Therefore, the risks, expenses and complexity of further litigation
28 warrant granting of this Motion.

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

4 Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation
5 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
6 Approval of Class Action Settlement, the Parties highlight the following facts. The Agreement was the
7 product of negotiation between highly able and experienced attorneys on both sides who possessed the
8 relevant data which they had carefully analyzed. Declaration of Larry W. Lee (“Lee Decl.”) at ¶¶ 3-9;
9 Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ at 3-7.

10 The results after mailing of the Class Notice support confirmation of the Court’s preliminary
11 approval of the settlement with final approval of the settlement, as evidenced by the fact that as of
12 March 28, 2025, ***only one Request for Exclusion and zero objections to the settlement were received.***
13 Admin. Decl. ¶¶ 7-8. The Court may appropriately infer that the class action settlement is fair,
14 adequate and reasonable, given that not a single class member has submitted an objection. *See Class*
15 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

18 **1. Standard of Review**

19 On a motion for final approval of a class action settlement under California Code of Civil
20 Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement
21 is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th
22 Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A settlement is
23 fair, adequate and reasonable, and therefore merits final approval, when “the interests of the class are
24 better served by the settlement than by further litigation.” *See Manual for Complex Litigation*, Fourth
25 (“MCL”), § 21.6 at 309. The law favors settlement, particularly in class actions and other complex
26 cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal
27 litigation. *See 4 Newberg on Class Actions*, § 11.41 (2002); *Chemical Bank v. City of Seattle*, 955 F.2d
28 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

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

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

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

25 **2. The Settlement is Presumed to Be Fair**

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

28 [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.

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

4 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
5 previously noted in the application for Preliminary Approval, this current settlement was negotiated at
6 arms' length. Lee Decl. at ¶¶ 7-9.

7 Second, Class Counsel engaged in extensive factual investigation before settling, including
8 reviewing class data. Lee Decl. at ¶¶ 7-9. Further, Class Counsel is highly experienced in this type of
9 litigation. As shown in the supporting declarations, Class Counsel has significant experience in class
10 actions and employment wage and hour matters. Lee Decl. at ¶¶ 3-6; Hyun Decl. at ¶¶ 3-6.

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

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

20 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been
21 potentially responsible for Defendant's costs. As such, should any individual bring individual claims
22 against Defendant on the same causes of action, he or she would each face the uncertainty of
23 prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not
24 be brought—thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or
25 seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither
26 Plaintiff, nor any of the class members will be required to pay for Defendant's litigation costs.

27 The risks of this case were weighed by Class Counsel and, should be considered a significant
28 factor by the Court in its determination of final approval. Class Counsel obtained a very substantial

1 settlement for the Class that resulted in a fair recovery which at the same time provides for finality and
2 no risk of costs by the Class Members or the Class Representatives.

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

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

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

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

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

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

8 **IV. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED**

9 Pursuant to well-settled law, Class Counsel seeks a fee award calculated as 35% of the Gross
10 Settlement Amount for the successful prosecution and resolution of this action. California state and
11 federal courts have recognized that an appropriate method for determining award of attorneys’ fees is
12 based on a percentage of the total value of benefits to class members by the settlement. *Wershba v.*
13 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977)
14 [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*,
15 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment
16 to the class and to “spread litigation costs proportionally among all the beneficiaries so that the active
17 beneficiary does not bear the entire burden alone.” *Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d
18 at 769.

19 The California Supreme Court issued its ruling regarding the award of attorney’s fees in wage
20 and hour class action settlements. Under California law, the award of attorneys’ fees in common fund
21 wage and hour class action settlements is proper under the percentage method. *See Laffitte v. Robert*
22 *Half Int’l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and
23 state courts in holding that when class action litigation establishes a monetary fund for the benefit of
24 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
25 fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage
26 of the fund created”). Under the percentage of the fund method, the Court’s objective remains to
27 “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir.
28 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level

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

11 The results delivered by Class Counsel also support the requested percentage of the fund. Here,
12 Plaintiffs and their counsel secured a \$600,000.00 settlement.

13 Moreover, “the response of the class members to attorneys’ fee notice, though not decisive, is
14 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
15 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of the
16 market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice Packet specifically notified
17 Class Members that Class Counsel would be seeking \$210,000.00 in attorneys’ fees. As of March 28,
18 2025, no Class Member has objected to the settlement and only one class member has requested
19 exclusion. This strong favorable response also supports the requested fees.

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

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

28 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$600,000.00 has been
created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far
more risk than the usual contingent fee case. Among the risks was the cost inherent in class action

1 litigation, as well as a long battle with corporate Defendants who had retained a highly experienced
2 defense firm. As such, the requested fee should be awarded.

3 **V. PLAINTIFF’S ENHANCEMENT AWARD SHOULD BE APPROVED**

4 Plaintiff requests a modest enhancement of \$15,000.00. Plaintiff personally met with Class
5 Counsel on a number of occasions to discuss the case, including providing substantive information
6 regarding Defendants’ practices. Betancur Decl. at ¶¶ 3-4. Accordingly, Plaintiff provided invaluable
7 information, evidence, and documents that resulted in this settlement.

8 In addition to the invaluable services that Plaintiff provided, he took significant risks, both
9 professionally and monetarily, in acting as the Class Representative, seeking benefits on behalf of the
10 class. Because the claims alleged by the Class Representative involved the payment of costs to the
11 prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had Plaintiff not
12 prevailed in this action. Moreover, Plaintiff understood that an individual case would have resolved
13 much faster than a class action and involved much less financial risk than a class action. Despite this,
14 however, Plaintiff agreed to pursue this case on behalf of the class.

15 Also, given that future employers are much less likely to hire individuals who have filed
16 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
17 significant risk in not being able to find suitable employment, all as a result of filing of this case
18 against Defendant. Plaintiff assumed these risks for the benefit of the class. Class members did not
19 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
20 they have to face the potential for retaliation and not getting future employment had they filed a
21 lawsuit which is a public record. These are significant benefits that weigh in favor of granting the
22 requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the
23 class, and Plaintiff assumed substantial risks in helping to achieve this financial benefit for the class.
24 As such, the enhancement should be awarded to Plaintiff for his commitment, dedication, and risks
25 taken for this litigation.

26 Courts have routinely granted approval of settlements containing such enhancements. *See Van*
27 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
28 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio

1 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v.*
2 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
3 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)
4 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S.
5 Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
6 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
7 \$25,000 Incentive award to class representative in ERISA case).

8 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
9 **COSTS**

10 The request for reimbursement of costs, in the amount of \$15,803.56 is fair and reasonable.
11 The costs are all litigation related costs, which have been detailed in the supporting declarations of
12 Class Counsel. Lee Decl. ¶ 11, Exh. A; Hyun Decl. ¶ 10.

13 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
14 **APPROVED**

15 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
16 Administrator, Xpand Legal, are to be paid out of the class settlement funds. As shown in the
17 Declaration of Jonathan Paul, the class administration fees expended in this matter amount to a total of
18 \$8,500.00. Admin. Decl. ¶ 14. For such reasons, it is requested that the Settlement Administrator's
19 fees be approved.

20 **VIII. CONCLUSION**

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

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

- 26 1. Granting final approval to the proposed Settlement Agreement in this action;
27 2. Approving distribution of the settlement funds to the class members pursuant to the
28 terms of the Settlement Agreement;

1 3. Approving Plaintiff Counsel's request for an award to Class Counsel for \$210,000 in
2 attorneys' fees and \$15,803.56 in costs with payment pursuant to the terms of the Settlement
3 Agreement;

4 4. Approving Plaintiff' request for payment of the settlement administration costs to
5 Xpand Legal in the amount of \$8,500.00 with payment pursuant to the terms of the Settlement
6 Agreement;

7 5. Approving Plaintiff' request for payment to the LWDA for \$45,000.00 with payment
8 pursuant to the terms of the Settlement Agreement; and

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

10
11 DATED: April 2, 2025

DIVERSITY LAW GROUP, P.C

12
13 By:  _____

Larry W. Lee

14 Attorneys for Plaintiff and the Class
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