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ELECTRONICALLY FILED

Superior Court of California,
County of San Benito

09/17/2024 at 12:28:15 PM

By: Leticia Torres, Deputy Clerk

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 PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

Date: 11/13/2024

Time: 3:30 PM a.m/p.m.

Dept.: 1

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

2 **PLEASE TAKE NOTICE** that, 11/13/2024 2024, at 3:30 PM a.m/p.m., or as soon
3 thereafter as the matter may be heard before the Hon. Jose “Omar” Rodriguez, Judge presiding in
4 Department 1 of the above-referenced Court located at 450 Fourth St., Hollister, CA 95023, Plaintiff Joe
5 Betancur (“Plaintiff”) will and hereby does move the Court for an Order:

6 1. Preliminarily approving the class action settlement and Joint Stipulation of Class Action
7 Settlement and Release of Claims (“Joint Stipulation,” or “Settlement Agreement”);

8 2. Provisionally certifying the Settlement Class, which is defined as: All current and former
9 non-exempt employees, including temporary staffing employees, who worked for Defendant Pride
10 Conveyance Systems, Inc. (“Defendant”) at any time in the State of California from January 1, 2019,
11 through May 18, 2024;

12 3. Appointing Larry W. Lee of Diversity Law Group, and Dennis S. Hyun of Hyun Legal,
13 APC as Class Counsel;

14 4. Approving the proposed “Notice of Class Action Settlement,” which is attached to the
15 Joint Stipulation as Exhibit “A”;

16 5. Approving Xpand Legal as the settlement administrator (“Administrator”) jointly
17 selected by the Parties for the purposes of this settlement, and approving and directing distribution to the
18 Class of the Notice of Proposed Settlement and Hearing Date; and

19 6. Setting a final fairness and approval hearing.

20 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court
21 approval of the settlement of a purported class action.

22 The basis for this Motion, filed without any opposition from Defendant (“Defendant”), is that the
23 proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are
24 adequate to ensure the opportunity of class members to participate in, opt out of, or object to the
25 settlement.

26 This Motion will be based on the Memorandum of Points and Authorities included herein, the
27 Joint Stipulation for a Class Action Settlement and Release (hereinafter referred to as “Stipulation” or
28 “Settlement Agreement”) and the proposed Notice of Class Action Settlement, the Addendum thereto,
Proposed Settlement and Hearing Date, and the supporting Declarations of Larry W. Lee, Dennis S.

Hyun, and Plaintiff, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: September 16, 2024

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Attorneys for PLAINTIFF and the CLASS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joe Betancur (“Named Plaintiff” or “Plaintiff”) seeks preliminary approval of this
4 class action settlement. As set forth in the Joint Stipulation of Class Action Settlement and Release
5 of Claims (“Joint Stipulation,” or “Settlement Agreement”), the Settlement Agreement provides for a
6 gross fund of \$600,000 and, more importantly, is **non-reversionary**, such that no funds will revert
7 back to Defendant Pride Conveyance Systems, Inc. (“Defendant”) (Plaintiff and Defendant
8 collectively, the “Parties”). Moreover, the Settlement Agreement does not require class members to
9 complete claim forms to participate. Rather, the class members will simply receive checks so long as
10 they do not opt-out.

11 The Complaint asserts eight causes of action for: (1) violation of Labor Code §§ 201-204,
12 558, 1194, 1197, and 1197.1; (2) violation of Labor Code §§ 201-204, 510, 558, and 1194; (3)
13 violation of Labor Code § 226.7; (4) violation of Labor Code §§ 226.7, 512, 1174, 1198, and 1199
14 and Wage Orders; (5) violation of Labor Code §§ 201-204, 233, and 246; (6) violation of Labor Code
15 § 226(a); (7) violation of Labor Code § 2698, et seq., the Private Attorneys General Act (the
16 “PAGA”); and (8) violation of Business & Professions Code § 17200, et seq., the Unfair Competition
17 Law or “UCL” (the “Complaint”).

18 Plaintiff’s claims arise from five main alleged practices: (1) failure to pay minimum and
19 overtime wages for pre and post-shift off-the-clock work; (2) failure to pay sick pay at the regular
20 rate; (3) failure to provide meal periods and/or pay meal period premium wages at the regular rate; (4)
21 failure to authorize and permit rest periods and/or pay rest period premium wages at the regular rate;
22 and (5) failure to pay overtime based on the regular rate.

23 Defendant contended that it paid wages for all hours worked, including for pre and post-shift
24 activities, that it maintained lawful meal and rest period policies (including as a result of having been
25 sued before for meal period claims), and that it paid overtime, meal/rest period premium wages and
26 sick time based on the regular rate of pay. While Plaintiff disagrees with Defendant’s contentions,
27 Defendant may have prevailed against Plaintiff’s motion for class certification and/or on the merits.
28 Thus, without this settlement, Defendant may have prevailed, leaving Plaintiff and the Class without

1 any remedies whatsoever.

2 Moreover, this settlement was reached after Plaintiff's counsel obtained and analyzed class
3 data and performed a damage analysis, attended mediation, and settled the case, which has involved
4 arms' length negotiations over the terms and conditions of this settlement. (Declaration of Larry W.
5 Lee. ("Lee Decl.") ¶ 7). With respect to class data, Plaintiff's counsel obtained shift and payroll data
6 from which he was able to calculate the total exposure. (*Id.*) Based on all of the evidence and data,
7 Plaintiff's counsel was able to perform calculations based on the allegations and value the maximum
8 damages and penalties at issue.

9 The Parties and their respective counsel participated in a mediation with experienced class
10 action mediator Michael Loeb on June 13, 2024. (Lee Decl. ¶ 7). After a full day of mediation, the
11 Parties were able to reach a settlement. (*Id.*) Thus, at all times, the negotiations leading to this
12 Settlement Agreement have been adversarial, non-collusive, and at arm's length. (*Id.*) The current
13 settlement is being settled on behalf of all current and former non-exempt employees who worked for
14 Defendant at any time in the State of California from January 1, 2019, through May 18, 2024, and
15 who do not opt out from the settlement, and who have not previously signed a release of claims.
(Joint Stipulation at §§ III(A)(1)-(2)).

16 Based on their own independent investigation and evaluation, the Parties and their respective
17 counsel are of the opinion that settlement for the consideration and on the terms set forth in the
18 Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and
19 Defendants in light of all known facts and circumstances and the expenses and risks inherent in
20 litigation. (Lee Decl. ¶ 3). Therefore, the Parties respectfully request that the Court grant this Motion
21 for Preliminary Approval of Class Action Settlement.

22 **II. BACKGROUND OF THE SETTLEMENT**

23 **A. Investigative Background**

24 This is a wage and hour class action. This settlement was reached after Plaintiff's counsel
25 obtained and analyzed class data and performed a damage analysis, attended mediation, and settled
26 the case, which has involved arms' length negotiations over the terms and conditions of this
27 settlement. (Declaration of Larry W. Lee ("Lee Decl.") ¶ 7). Prior to mediation, Defendant's counsel
28

1 provided data for the entire class from which Plaintiff's counsel could calculate damages. (*Id.*)
2 Moreover, prior to mediation, this case has been heavily litigated. (*Id.* ¶ 2). The Parties completed
3 the respective depositions of Plaintiff and Defendant's person most knowledgeable. (*Id.*) The Parties
4 also propounded and responded to formal written discovery and produced documents. (*Id.*)
5 Plaintiff's counsel also engaged in a lengthy meet and confer process with Defendant regarding its
6 discovery responses. (*Id.*)

7 After years of litigation, the Parties and their respective counsel participated in a mediation
8 with experienced class action mediator Michael Loeb, Esq., on June 13, 2024. (Lee Decl. ¶ 7). After
9 a full day of mediation, the Parties were able to reach a settlement. (*Id.*) Thus, at all times, the
10 negotiations leading to this Settlement Agreement have been adversarial, non-collusive, and at arm's
11 length. (*Id.*)

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

13 The Settlement Agreement provides for \$600,000.00 as the Gross Settlement Amount. This
14 amount is completely non-reversionary (*i.e.*, every single dollar will be paid out without any money
15 reverting back to Defendant). (Joint Stipulation at § III(B)(1)). The settlement payments to each
16 Class Member will depend on the number of workweeks worked by each Class Member. (Joint
17 Stipulation at § III(B)(9)). As set forth in the Agreement, 10% of each individual Class Member's
18 settlement amount shall constitute payment for alleged wages for the purposes of IRS reporting, 90%
19 shall constitute payments for alleged penalties and interest. (Joint Stipulation at § III(B)(11)).
20 Moreover, Defendant is responsible for the employer-side payroll taxes in addition to the Gross
21 Settlement Amount. (*Id.*)

22 Additionally, the Settlement Agreement provides for an appropriately tailored release. (*See*
23 Joint Stipulation at § III(A)(7)). The Settlement Agreement provides a release only for claims arising
24 out of or related to the factual allegations set forth in the Action, including claims for alleged claims
25 for meal period and regular rate violations and derivative claims for penalties, the PAGA and the
26 UCL. (*Id.* at §§ III(A)(7)-(8)).

27 Based upon Defendants' records, the estimated number of Settlement Class Members is
28 approximately 481 individuals. (Joint Stipulation at § III(C)(11)). Class Members may opt-out of the

1 Settlement if they so choose. In agreeing to the Settlement, Plaintiff took into consideration the
2 number of Class Members, rates of pay, and the number and length of shifts worked by each Class
3 Member. This enabled Plaintiff to calculate the potential damages and negotiate the settlement sum
4 based on a clear understanding of the exposure in this case.

5 As part of the Settlement Agreement, Defendant does not object to Plaintiffs' Counsel's
6 request for attorney's fees up to thirty-five percent (35%) of the total settlement sum, or \$210,000,
7 and up to \$50,000 for reimbursement of litigation costs. (Joint Stipulation at § III(B)(5)). Also, as
8 part of the Settlement Agreement, Defendant does not object to Named Plaintiff's request for an
9 enhancement of \$15,000. (*Id.* at § III(B)(4)). Additionally, the Settlement Agreement calls for a
10 \$60,000 payment for PAGA penalties - 75% of which is payable to the California Labor and
11 Workforce Development Agency ("LWDA") and 25% of which will be included in the settlement
12 pool to be paid to the Class Members. (*Id.* at § III(B)(7)). Finally, the Settlement Agreement also
13 provides for the payment of the settlement administrator's costs, which shall not exceed \$8,500.00.
14 (*Id.* at § III(B)(6)).

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

16 Based on their own respective independent investigations and evaluations, the Parties and
17 their respective counsel are of the opinion that settlement for the consideration and on the terms set
18 forth in their Agreement is fair, reasonable, and adequate and is in the best interests of the Class and
19 the Defendant in light of all known facts and circumstances and the expenses and risks inherent in
20 litigation. (Lee Decl. at ¶ 3). Defendant denies any liability or wrongdoing of any kind associated
21 with the claims alleged by Plaintiff.

22 Using the figures exchanged prior to mediation, based on a class size of approximately 481
23 Class Members and the \$600,000 recovery, Class Members will each get a raw average of
24 approximately \$533.26, after deducting the PAGA payment to the LWDA, Plaintiff's enhancement,
25 attorneys' fees and costs, and administration costs. (Lee Decl. ¶ 8). This amount will be greater or
26 lower based on the number of workweeks worked by the Class Member during the Class Period. (*Id.*)
27 This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly
28 suffered greater harm. Further, Class Members may choose to exclude themselves from this

1 settlement and not participate in the settlement.

2 **III. LEGAL ANALYSIS**

3 **A. Two-Step Approval Process**

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

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

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

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

21 When the parties to an action reach a monetary settlement, they will usually prepare
22 and execute a joint stipulation of settlement, which is submitted to the court for
23 preliminary approval. The stipulation should set forth the central terms of the
agreement, including but not limited to, the amount of settlement, form of payment,
manner of determining the effective date of settlement and any recapture clause.

24 *Id.* at § 11.24. Here, the Parties have reached such an agreement and have submitted to this Court in
25 connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement
26 reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached
27 by the Parties, which include, among other things, the method for calculating the Class Members’
28

1 individual settlements.

2 **B. The Settlement is Fair and Reasonable and Not the Result of Fraud or Collusion**

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

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

20 Here, both Plaintiffs’ and Defendant’s counsel have a great deal of experience in wage and
21 hour class action litigation. (Declaration of Dennis S. Hyun (“Hyun Decl.”) at ¶¶ 3-6; and Lee Decl.
22 at ¶¶ 3-6). Plaintiff’s counsel has been approved as class counsel in a number of wage and hour class
23 actions. (Hyun Decl. at ¶ 6; Lee Decl. at ¶ 6). Moreover, Plaintiff’s counsel conducted an extensive
24 investigation of the factual allegations involved in this case since the inception. (Lee Decl. at ¶ 2).
25 Each side has apprised the other of their respective factual contentions, legal theories and defenses,
26 resulting in extensive arms-length negotiations taking place among the Parties. Plaintiff’s counsel
27 obtained class data from which he was able to perform a damage analysis. (*Id.* ¶¶ 2-3, 7-8). This

1 settlement was the result of extensive arms' length negotiations between counsel for the Parties,
2 including having the assistance of a mediation before a highly regarded mediator with significant
3 experience in wage and hour class actions.

4 The settlement for each participating Class Member is fair, reasonable and adequate, given the
5 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
6 litigation. Further, while Plaintiff believes that he could prevail on the merits, Plaintiff also believes
7 in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
8 involved in not prevailing on one or more of the causes of action or theories alleged in the Complaint
9 and in the possibility of losing at trial or on summary judgment. (Lee Decl. at ¶ 3). Defendant
10 adamantly disputes liability as well.

11 The settlement is a compromise for the alleged damages of Class Members for the claims
12 asserted in the Complaint. The settlement also compensates the Named Plaintiff for a **general Civil**
13 **Code § 1542 release** for his individual claims and provides Plaintiff with an additional incentive
14 payment for Plaintiff's involvement in this Action, which included providing meeting and conferring
15 with Plaintiff's counsel, reviewing the pleadings in this case, and preparing for and sitting for his
16 deposition. (Declaration of Joe Betancur ("Betancur Decl.") at ¶ 3). This incentive payment also
17 takes into consideration the risks, time, effort and expenses incurred by said Named Plaintiff in
18 coming forward to provide invaluable information, negotiate and litigate this matter on behalf of all
19 Class Members.

20 Despite the asserted fairness of the settlement terms, should any potential Class Member,
21 upon reviewing the Notice of Class Action Settlement, object to the terms of the settlement as set
22 forth in the Settlement Agreement, each has the right to submit a request for exclusion (*i.e.*, opt out)
23 from the settlement, pursuant to which the Class Member would retain any claim he or she may have
24 against Defendant. Moreover, potential Class Members, upon providing proper notice to the Parties
25 and 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 **C. The Proposed Class Settlement Meets the *Kullar* Factors**

28 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th

1 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted
2 sufficient investigation and the settlement is reasonable in light of the strengths of the plaintiff's
3 claims. As discussed herein, Plaintiff's counsel has conducted extensive investigation and, in light of
4 the strength and weaknesses of Plaintiff's claims, Plaintiff's attorneys submit that this settlement is
5 fair pursuant to *Kullar*.

6 **1. Plaintiff's Counsel Conducted Extensive Investigation**

7 As stated above, in preparation for mediation, Prior to mediation, Defendant's counsel
8 provided data for the entire class from which Plaintiff's counsel could calculate damages. (Lee Decl.
9 ¶ 7). Plaintiff also conducted formal discovery, including written and document discovery, and
10 completed the deposition of Defendant's PMK. (*Id.* ¶ 2). After years of formal litigation, the Parties
11 reached an informed settlement after investigation of the claims.

12 **2. Strengths and Weaknesses of Plaintiff's Claims**

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

18 **3. Potential Value of the Class Claims**

19 As stated above, in preparation for mediation, Plaintiff obtained various payroll data in order
20 to formulate an estimated damage analysis. Plaintiff's counsel estimated the soaking wet damages as
21 follows:

21	Minimum Wages	\$118,947.17
22	Overtime Wages	\$178,420.76
23	Rest Periods	\$1,427,366.07
24	Meal Periods	\$1,427,366.07
25	Sick Pay	\$279,030.96
26	Labor Code § 226	\$1,028,000.00
	Labor Code § 203	\$2,854,332.00
	PAGA penalties	\$8,686,600.00
	Total	\$16,000,063.03

27 However, because Defendant argued that it maintained lawful policies, Plaintiff's counsel
28

believes a 75% discount is warranted, such that the realistic exposure on the underlying Labor Code damages/penalties are \$1,828,365.76. (Lee Decl. ¶ 9).

Moreover, while the soaking wet PAGA penalties are \$8,686,600.00, PAGA penalties are discretionary and subject to reduction by this Court. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where "...if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed the trial court's reduction of PAGA penalties by 90 percent, citing the employer's good faith attempt at complying with the law. Defendant argued that based on their compliant policies, that the Court would not be inclined to impose maximum PAGA penalties based on their compliant policies and good faith attempt to pay out any premiums that were due to class members. (*Id.*) Accordingly, here Plaintiff believes that a 90% reduction in PAGA penalties is warranted, for a total realistic exposure of \$868,660.00. (Lee Decl. at ¶ 9). Thus, the total realistic damages, Labor Code and PAGA penalties amount to \$2,697,025.76. (*Id.*)

Thus, a \$600,000 gross settlement represents 22.25% of the potential realistic exposure, which is in line with numerous court decisions. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015).

Here, the settlement fund is non-reversionary, such that 100% of the settlement amount will be available for distribution to class members who do not opt-out. Moreover, the settlement does not require claim forms. Rather, class members who did not opt-out will receive a check. Further, the settlement fund will be paid out entirely in cash (as opposed to a voucher, coupon, etc.). Thus, as the gross settlement amount of \$600,000.00 comprises approximately 22.25% of the total potential realistic exposure, the settlement is fair and reasonable.

D. The Proposed Class Representative Enhancement and Attorneys' Fees Should be Preliminarily Approved

While Named Plaintiff and Class Counsel will submit detailed records and declarations in

1 connection with the final approval motion, the proposed class representative enhancement and
2 attorneys' fees should be preliminarily approved.

3 With respect to the class representative enhancement, Named Plaintiff asserts that this amount
4 is particularly justified in this case given the amount of time the Named Plaintiff has expended.
5 Specifically, the Named Plaintiff has invested approximately 60 hours into the prosecution of this
6 matter, including meeting and/or conferring with his counsel in connection with the assistance of the
7 class claims, such as providing information and various documents, as well as preparing for and
8 sitting an entire day for his deposition. (Betancur Decl. at ¶ 3). In addition to the above, the risks and
9 consequences involved in the filing of this lawsuit further justify the requested enhancement amount.
10 Indeed, the filing of a major class action lawsuit against a former employer can result in unintended
11 consequences of retaliation by future potential employers.

12 Moreover, while other class members will be reaping the benefits of the current settlement,
13 such individuals did not have to put up their personal stakes in the prosecution of this case. Indeed,
14 had Plaintiff failed to prevail on the wage/hour class claims, Plaintiff may have been solely
15 responsible for the costs incurred by Plaintiff's counsel. Given the size of this case, any such costs
16 would have been significant if Plaintiff failed to prevail. Despite all of this, Plaintiff still agreed to
17 take upon such burdens and risks alone, for the benefit of the various class members.

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

26 Under California law, the award of attorneys' fees in common fund wage and hour class
27 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.
28 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in

1 holding that when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
3 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
4 fund created.”). Under the percentage of the fund method, the Court’s objective remains to “mimic
5 the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J.
6 Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level that will
7 approximate what the market will set... The judge, in other words, is trying to mimic the market in
8 legal services.”).

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

20 Thus, Named Plaintiff respectfully requests that this Court preliminarily approve the request
21 for class representative enhancement and attorneys’ fees.

22 **IV. UNCASHED SETTLEMENT CHECKS WILL BE SENT TO THE CALIFORNIA** 23 **CONTROLLER TO HOLD THE MONIES FOR CLASS MEMBERS**

24 Any checks issued by the Settlement Administrator to Class Members shall be negotiable for
25 not less than one hundred eighty (180) days from issuance. Those funds represented by Settlement
26 Checks remaining un-cashed for more than 180 days after issuance (collectively, “Voided Settlement
27 Checks”) will be transmitted to the California State Controller’s Office’s Unclaimed Property
28 Division in the name of the Participating Class Member and/or Aggrieved Employee to whom the

1 funds relate. (Settlement Agreement at § III(E)(2)).

2 **V. THE PARTIES RESPECTFULLY REQUEST AN ORDER FROM THIS COURT**
3 **ORDERING THAT TEMPORARY AGENCIES PROVIDE NECESSARY CONTACT**
4 **INFORMATION TO THE ADMINISTRATOR**

5 During the settlement class period, Defendant employed approximately 481 settlement class
6 members through temporary agencies, including Infinity Staffing Services, Manpower, and Full
7 Steam Staffing. (Lee Decl. ¶ 8). To facilitate the administration of the settlement, the Parties
8 respectfully request that the Court include in its Order that these temporary agencies cooperate with
9 the Settlement Administrator in providing names, addresses, telephone numbers, social security
10 numbers, and number of workweeks each class member who was assigned through these agencies to
11 work for Defendant during the Class Period (“Class List and Data” as defined in the Settlement
12 Agreement). This information will be kept in confidence by the Settlement Administrator and not
13 shared with Plaintiff’s counsel. Indeed, this entire class notice process is similar to the opt-out
14 process for obtaining putative class member contact information as set forth in *Belaire-West*
15 *Landscape, Inc. v. Superior Court*, 149 Cal. App. 4th 554 (2007). If a class member does not want to
16 be part of this settlement process, he/she is free to opt-out pursuant to the terms of the Settlement
17 Agreement.

17 **VI. PROPOSED SCHEDULE OF SETTLEMENT ADMINISTRATION**

18 Plaintiff proposes the following schedule for the fairness hearing and final proceedings:

19 1. Defendants and all temporary agencies who have provided employees who are
20 members of the class, such as Infinity Staffing Services, Manpower, and Full Steam Staffing, shall
21 provide the Settlement Administrator, in electronic format and within 21 calendar days upon granting
22 of the preliminary approval Order by this Court, with the Class List and Data so that the Settlement
23 Administrator can mail the Notices of Class Action Settlement to the Class. Within ten (10) calendar
24 days of receipt of the Class List and Data, the Settlement Administrator shall mail out the Notices of
25 Class Action Settlement to the Class Members using the most current mailing address identified by
26 reference to the Class Information and the National Change of Address (“NCOA”) database.

27 2. Deadline for Objection: within forty-five (45) calendar days after first mailing of
28

1 notice to class.

2 3. Deadline for Exclusion: within forty-five (45) calendar days after first mailing of
3 notice to class.

4 4. Filing date for Motion for Final Approval of Class Action Settlement, Attorneys' Fees
5 and Costs, Representative Enhancement and Administration Costs: 16 court days before final
6 approval hearing.

7 5. Fairness Hearing and Final Approval Hearing: to be determined by the Court.

8 **VII. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
9 **PRELIMINARY APPROVAL**

10 Here, the proposed Settlement is fair, adequate, and reasonable. It will result in both
11 substantial monetary benefits to class members; it is **non-reversionary**; it is non-collusive; and it was
12 achieved as the result of informed, extensive, and arms' length negotiations and discovery conducted
13 by counsel for respective parties who are experienced in wage and hour class action litigation. In
14 sum, Plaintiff respectfully request this Court, as part of the preliminary approval process, do the
15 following:

16 1. Review the proposed Settlement Agreement;

17 2. Find that the proposed settlement preliminarily appears to be fair and adequate, and
18 whether the proposed class of settling plaintiffs preliminarily appears to meet the applicable
19 certification criteria;

20 3. Review and approve the Notice of Class Action Settlement which is attached as
21 Exhibit "A" to the Settlement Agreement;

22 4. Direct notice to be given to the Class, and set a hearing for final review of the
23 proposed Settlement; and

24 5. Approve Xpand Legal to serve as the Settlement Administrator to handle the notice
25 and administration procedures.
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27
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1 DATED: September 16, 2024

DIVERSITY LAW GROUP, P.C

2 By: 
3 Larry W. Lee
4 Attorneys for Plaintiff and the Class
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