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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DIVA ALFARO on behalf of herself and all similarly situated persons, and the general public, Plaintiff, v. PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC.; and DOES 1 through 25, inclusive, Defendants.	CASE NO. CVRI2103949 **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE ENHANCEMENTS, ATTORNEYS' FEES AND COSTS AND JUDGMENT THEREON** *Assigned for all purposes to the Honorable Harold Hopp, Dept. 1* Hearing Date: November 17, 2023 Time: 8:30 a.m. [Complaint filed: August 27, 2021]

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 17, 2023 at 8:30 a.m. or as soon thereafter as counsel may be heard in Department 1 of the Superior Court of the State of California for the County of Riverside, Plaintiff DIVA ALFARO (hereafter "Plaintiff") will and hereby does, move for an Order granting final approval of the class action and PAGA settlement provisionally approved by this Court on July 28, 2023 and entry of final judgment pursuant to Code of Civil Procedure § 382 and California Rule of Court, rule 3.769.

This motion is made on the grounds that the settlement is fair, reasonable, and adequate because it is the product of arm's-length, good-faith negotiations after significant litigation, given the relative strengths and weaknesses of the claims and defenses, as well as the risks involved in pursuing further litigation. This motion will be based upon this Notice, the accompanying Memorandum of Points and Authorities, Declaration of Reuben D. Nathan, Declaration of Matthew Righetti, Declaration of John Glugoski, Declaration of Nick Castro on behalf of ILYM Administrators, and Declaration of Plaintiff Diva Alfaro, as well as the pleadings and papers on file herein and upon any other matters that may be presented to the Court at the hearing

NATHAN & ASSOCIATES, APC

Dated: October 26, 2023

By: /s/Reuben D. Nathan
Reuben D. Nathan, Esq.
Attorney for Representative Plaintiff
DIVA ALFARO

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This case arises against Defendant Paramount Mortgage Residential Group, Inc. (the "Defendant" or "PRMG")) for various alleged wage and hour violations suffered by Plaintiff and the Class Members. PRMG is a privately held mortgage company and residential home lender existing under the laws of the State of California, which primarily sells and services mortgages to residents throughout the United States. Plaintiff worked as an exempt and non-exempt employee from September 2019 to December 2020 in the State of California.

The lengthy procedural history and discovery efforts in this case are outlined in the Declaration of Reuben Nathan ("Nathan Decl.) ¶¶5-12.

The Gross Settlement Amount for release of the class, PAGA, and Plaintiff's individual claims is $1,000,000.00. Settlement Agreement ¶14. The settlement class consists of 1,132 employees and provides the settlement class with an average payment of approximately $880.00 per class member.

Pursuant to California Rules of Court, rule 3.769, Plaintiffs now ask the Court to grant final approval of the Settlement because it is fair, reasonable and in the best interests of the Class Members. The proposed Settlement before this Court is a full and complete settlement of the claims asserted against Defendants in this action. If all relief requested by Plaintiff is granted, Defendant will pay One Million Dollars and No Cents ($1,000,000.00) to settle all claims raised in the Third Amended Complaint filed by Plaintiffs on April 11, 2023, which includes payment $21,937.50 to the California Labor and Workforce Development Agency (i.e., 75% of the $29,250.00 amount allocated to resolve the PAGA allegations). This is an excellent result for the class, which consists of 1,132 individuals (current and former similarly situated employees within the statute of limitations) and the LWDA, and approval of Class Counsel request for attorneys' fees and costs in the amount of $350,000. (Nathan Decl. ¶¶ 13-14).

On July 28, 2022, this Court entered an Order Granting Preliminary Approval of Class Action and PAGA Settlement and directed Class Notice to be sent to the Class Members. The notice and response period is complete and there have been zero (0) opt outs and zero (0) objections, which speaks to the value of the settlement to Class Members. As set forth below, the settlement is fair, reasonable, and adequate, and Plaintiff respectfully requests that the Court grant final approval.

II. SUMMARY OF THE CLAIMS

This class action is brought on behalf of all non-exempt employees that were employed by Defendants in the State of California. Defendants employed Plaintiff Diva Alfaro from September 2019 to December 2020. On or about August 27, 2021, Plaintiff initiated this action. Based upon matters learned during discovery the pleadings were amended three times. The Third Amended Complaint asserts claims for alleged violations of California Labor Code sections This class action is brought pursuant to Labor Code §§ 201, 202, 203, 221, 222, 223, 224, 226(a), 226.2 226.3, 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, *et seq*., and 2698, *et seq*., and California Business and Professions Code section 17200, et al., and the California Labor Code.[1] The current pleading also includes a PAGA claim seeking penalties pursuant to California Labor Code section 2699, et seq., More specifically, in the Sixth Amended Complaint, Plaintiffs alleged the following causes of action: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime; (3) Improper Meal Periods; (4) Improper Rest Periods; (5) Improper Wage Statements; (6) Wages Not Paid Upon Separation, and (7) Unfair Business Practices; and (8) Violation of California Labor Code §2698, et seq.

III. TERMS AND CONDITIONS OF THE SETTLEMENT

The material terms and conditions of the Settlement are summarized below.

1. <u>Class Definition.</u> The Settlement Agreement, consistent with the preliminary approval order, provides for a settlement Class defined as:

All current and former non-exempt employees and loan officers who were employed by Paramount Residential Mortgage Group, Inc., in the State of California, at any time from March

[1] The claims also include alleged violations of IWC California Wage Order 4-2001_and California Code of Regulations, Title 8, section 11000, et seq.

1, 2020 through the date of preliminary approval

2. Settlement Fund. The settlement fund of One Million Dollars ($1,000,000.00) (the "Gross Settlement Amount" or "Settlement Fund") is a fixed common fund with no reversion to the Defendants. (Settlement Agreement ¶ 14). The Settlement Fund will be used to satisfy all elements of the Settlement. Defendants will separately pay Defendants' share of its payroll tax burden.

3. Settlement Class Information. According to §14(j) of the Settlement Agreement, Defendants estimated that there would be 1,132 participating Class Members that were employed for an estimated 79,055 total workweeks as of February 8, 2023 (ILYM Decl. ¶12 As of the date of the ILYM Decl., ILYM has reported that there are a total of 1,132 Participating Claimants, which represents 100% of the 1,132 Settlement Class Members. (Decl. of ILYM ¶ 12).

4. Gross Recovery Payouts: The Settlement Fund provides tremendous benefit to the Class Members. The Total Settlement Amount results in the highest gross recovery of $1,121.98 for a Class Member. The average gross recovery per Class Member under the class will be $490.95. (Decl. of ILYM ¶ 13)

5. Agreed Upon Payments from the Settlement Fund. Defendants agreed to pay from the Settlement Fund: (1) up to $5,000.00 to Plaintiff for Class Representative Service Payment; (2) PAGA Penalties of up to $29,250.00; (3) an award of not more than $350,000 (35% of the Settlement Fund) to Class Counsel for attorneys' fees and costs· The portion of the PAGA Penalties due to the Class Members ($7,312.50) will be added to the Net Settlement Fund, and the balance of the Settlement Fund shall be distributed to Participating Class Members on a pro rata basis relative to their workweeks. (Settlement Agreement §§9, 23, 52(i)).

6. Notice Process and Approval Rate. The Settlement Administrator mailed the Class Notice to Class Members on August 24, 2023. (ILYM Decl. ¶ 7). Class Members did not have to submit a claim form to participate in the Settlement; however, the Class Notice contained personalized calculations and Class Members were given an opportunity to confirm or dispute workweeks credited by Defendants. During the sixty (60) day notice period, there were zero (0) disputes about workweeks credited or objections to the settlement and zero (0) Class Members opted out of the Settlement. (Decl. of ILYM ¶¶ 10-11).

7. Net Settlement Payout. If the Court grants final approval of the Settlement, the entire Settlement Fund will be paid out with no reversion to the Defendants. (Settlement Agreement ¶¶14, 55. Class Members will receive an estimated average gross recovery of $490.95 with the estimated highest gross recovery being $1,121.98. (Decl. of ILYM ¶ 13). Parties agree Defendants will pay the Gross Settlement Amount of $1,000,000.00 including the Settlement Administration Costs, and Employment Taxes, within fifteen (15) days of the Effective Date. (Settlement Agreement ¶ 51, MPA Sect. III. A-D.

8. Unclaimed Funds. If any settlement checks remain uncashed 180 days after they are mailed by the Settlement Administrator, the Settlement Administrator will deposit such funds with the State of California Controller's Office Unclaimed Property Fund in the names of those Class Members who did not cash their checks. (Settlement Agreement ¶ 52(c).

9. Settlement Administrator's Fees. The Settlement Administrator's charges are $15,000.00 from the Settlement Fund. (ILYM Decl. ¶ 14; Settlement Agreement ¶ 52(h).

Release. As part of the Settlement, Plaintiffs and all Class Members who do not opt out of the Settlement will release all claims against Defendants arising from or related to the allegations in this lawsuit. The release is narrowly tailored to encompass only the claims that are specifically alleged in, or reasonably encompassed by, Plaintiffs' Sixth Amended Complaint.

IV. NOTICE TO THE CLASS WAS PROVIDED; THERE WERE NO OBJECTIONS AND NO REQUESTS FOR EXCLUSION

In its July 28, 2023, Order Granting Preliminary Approval of Class Action and PAGA Settlement, the Court ordered the approved Class Notice to be mailed to all Class Members. The Settlement Administrator caused the Class Notice to be mailed on August 24, 2023. The deadline to file objections or to opt-out was through October 9, 2023. As of the date of filing of this Application, there were no objections. (ILYM Decl. ¶¶7 - 12) and zero exclusions. The Settlement has been met with overwhelming approval and support from the Class Members.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AS THE REQUIREMENTS FOR CLASS CERTIFICATION HAVE BEEN MET

The Settlement Class was preliminarily certified based upon the showing in the Motion for

Preliminary Approval that the requirements for class certification were met. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 237-238). Code of Civil Procedure § 382 provides that a party seeking class certification must show "(1) the existence of an ascertainable class and (2) a well-defined community of interest among the class members." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469; *Occidental Land v. Superior Court* (1976) 18 Cal.3d 355, 360; *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 471). The class representative must also show that (3) maintenance of a class action will result in a substantial benefit to the litigants and to the Court. (*Richmond, supra*, 29 Cal.3d at 477; *Occidental Land, supra*, 18 Cal.3d 355, 360). The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond, supra*, 29 Cal.3d at 470).

The parties have agreed that subject to final approval of the Settlement Agreement and for the purpose of settling their dispute, there is sufficient basis for the Court to find that these requirements have been met regarding the Settlement Class. (Settlement Agreement ¶¶13, 55).

1. <u>Ascertainable and Numerous Class</u>

Defendants identified through their records 1,132 persons who qualify as Class Members. (ILYM Decl. ¶ 5-6). This amount is "numerous," and it would be impracticable to try to bring each of those Class Members before the Court.

2. <u>Predominating Common Questions of Law and Fact</u>

Plaintiff contends – and discovery has shown -- that all Class Members share the same community of interest in recovering damages for alleged wage and hour violations under the California Labor Code arising from their employment with a common employer. The right to recover wages, interest, penalties and attorneys' fees is common to all Class Members and depends upon the same theories, namely that Plaintiff and the Class Members were not paid the correct overtime rate, worked off the clock, were not paid premiums for meal and rest breaks that were missed, interrupted, cut short, were not paid all wages at termination, and were not provided accurate wage statements. *Brinker Restaurant Corp. v. Superior Court* (*Brinker*) (2012) 53 Cal.4th 1004, 1021 [The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. . . accord. *Sav–On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal.4th 319, 326. The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytic matter, likely to prove amenable to class treatment."].

3. <u>Class Representatives' Claims Are Typical</u>

Plaintiffs' claims are typical of those of the Class in that all Plaintiff and Class Members were subject to the same type of employment practices and policies during the Class Period and make the same claims for damages. *Classen v. Weller*, (1983) 145 Cal.App.3d 27, 45; *Sav-On*, 34 Cal.4th at 326.

4. <u>The Class Representatives and Class Counsel Are Adequate</u>

Plaintiff is an adequate class representative and has no conflicts of interest with other Class Members. By actively prosecuting the case through Settlement, Plaintiff has shown she has no interests antagonistic to the Class and has adequately served the Class. (Nathan Decl. ¶¶ 15-17; Alfaro Decl. ¶ 3.).

Finally, Class Counsel has adequately represented Plaintiff and the Class Members. Proposed Class Counsel Reuben Nathan, John Glugoski, and Matthew Righetti have substantial experience in employment, consumer law and class action procedure. (Nathan Decl. ¶ 18; Glugoski Decl. ¶ 1 Righetti Decl. ¶¶ 1-5). Each of the lead attorneys have been approved by courts to serve as Class Counsel on numerous prior occasions and they have never been rejected from serving as class counsel. (Nathan Decl. ¶¶ 19, Glugoski Decl. ¶1 Righetti Decl. ¶ 1).

5. <u>There Will Be Substantial Benefit to the Court and Litigants by Certification</u>

As explained above, the Class Members will benefit by receiving meaningful compensation for their back wages as part of a representative action rather than being required to pursue individual actions which cost would outweigh the benefits. However, those who believed they could recover a greater amount of damages were free to opt out and pursue their own actions. In addition, Class Counsel remained in contact with a good portion of the Class Members who were overwhelming satisfied with the Settlement, but these individuals were prepared to enforce their rights had Defendants not reached a settlement and chose to file a motion to compel arbitration. However, only two chose to do so. The benefit to the Court is that protracted litigation including more depositions, class certification, cross-summary judgment motions, then weeks of trial and related docket work can be avoided.

Generally, a class suit is appropriate "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385; *see Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 808). In the instant case, there are 1,132 Class Members, a large percentage of which executed arbitration agreements[2] that are alleged by Defendants to be enforceable, and any denial of class relief would force these individual Class Members to file potentially thousands of individual arbitrations actions to achieve virtually the same benefits set forth in the Settlement Agreement.

VI. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AS IT REPRESENTS A FAIR AND REASONABLE COMPROMISE OF THE DISPUTED CLAIMS

In California, the ultimate test for approval of a proposed class action settlement is well established. Among the inter-related factors that the court is to consider are: (1) whether the settlement was reached through arm's length bargaining; (2) the strength of Plaintiff's case; (3) the risk, expense, complexity and likely duration of further litigation; (4) the benefits conferred by the settlement; (5) the experience and views of counsel; (6) the extent of discovery completed and the stage of the proceedings and whether they are sufficient to allow counsel and the court to act intelligently; (7) the presence of a governmental participant and (8) the reaction of the class members to the proposed settlement including the percentage of objectors. *Wershba, supra,* 91 Cal. App. 4th at 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. As courts have explained, "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." (*Id.* at 246).

Courts presume the absence of fraud or collusion in negotiation of the settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg on Class Actions*, § 11.51; *In re Chicken Anti-Trust Litigation* (M.D. GA 1980) 560 F. Supp 957, 962; *Pridd v. Edelman* (6th Circuit 1989) 883 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co*. (7th Cir. 1987) 834 F.2d 677, 681). Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F. Supp 1087, 1093; *Steinberg v. Carey* (S.D. NY 1979) 470 F. Supp 471, 474; *In re Armored Car Anti-Trust Litigation* (ND GA 1979) 472 F.Supp. 1357; *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (ED PA 1978) 79 F.R.D. 571).

Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.* at 250, quoting, *Air Line Stewards, Loc. 550 v. American Airlines, Inc.* (7th Cir.1972) 455 F.2d 101, 109.

Pursuant to *Kullar,* the Settlement overwhelmingly satisfies the requirements for final approval. *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128.

1. <u>Settlement Negotiations Were Conducted At "Arm's Length," And Resulted In A Fair Compromise, The Strength of Plaintiffs' Case, The Expense, Complexity And Likely Duration Of Further Litigation, Financial Condition of Defendant, And The Benefits Conferred By The Settlement</u>

The Settlement is the product of serious, informed and non-collusive negotiations. Settlement was only after vigorously pursuing litigation, researching various underlying issues, conducting extensive discovery, issuing Belaire-West notice and obtaining contact information for Class

Members, conducting interviews of more than 120 current and former employees, creating a damage model, and evaluating Defendant's financial condition. (Nathan Decl. ¶ 20).

Class Counsel reviewed data, client interviews, and documents prior to resolving the case. Decl. Nathan ¶21. The detailed data was sufficient to evaluate potential exposure and was in fact extensively evaluated by Plaintiff. After approximately 6 months of negotiations, a MOU was executed on March 20, 2023 and ultimately memorialized in the Joint Stipulation of Settlement. (Nathan Decl. ¶ 22).

During all settlement discussions the parties conducted their negotiations at arms' length, and, in spite of a mutual desire to resolve the case, always in an adversarial manner. The parties have been able to construct a settlement that, given the constraints and realities of the case, is fair, reasonable, adequate, and is in the best interests of the Class. (Nathan Decl. ¶ 23; Glugoski Decl. ¶¶ 2)

Arriving at a settlement acceptable to both parties was no small achievement. In fact, Defendants vigorously defended this case and attempted to compel the case to arbitration. Defendants and their counsel felt strongly about their ability to prevail on the issue of class certification and believed that Defendants had defenses to a potentially large number, if not all, individual claims within the Class. In their defense, Defendants contended that the *Alfaro Action* could not properly be maintained as a class or PAGA action; that some or all of the claims were subject to arbitration, that Class Members were properly classified as exempt from state overtime requirements based on inside the sales exemption; that Defendants did not fail to pay Class Members, who are former employees, any wages allegedly due at the time of their termination; that Defendants provided accurate, itemized wage statements to Class Members; that Defendants provided meal and rest periods to the Class Members; that Defendants did not fail to reimburse employees for business expenses necessarily incurred in the performance of their duties; that Defendants did not violate California Business and Professions Code § 17200 et seq., and that Defendants (a) is not liable for any of the penalties claimed or that could be claimed in the Complaints, and/or (b) penalties would be substantially reduced by the Court.

The negotiations took into account the strengths and weaknesses of the opposition's positions. Negotiations were protracted, but always cordial and professional. As litigation progressed the parties' discussions involved the gradual narrowing of opposing positions. The proposed Settlement Agreement was reached at the end of a process that was neither fraudulent nor collusive. If settlement is not approved then it will proceed to a contested hearing on class certification and then to trial with a Defendant that will most likely not be able to withstand judgment depending upon the award.

The proposed Settlement will guarantee that the Class Members will receive compensation for their claims now rather than years in the future. A settlement will also allow Class Members to receive payment without the risk of a contested motion for class certification and trial on the merits that would including all the extra time and expense involved in that process. Importantly, the proposed settlement provided Class Members with a choice by preserving for them the right to opt out.

Pursuant to *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116, Class Counsel has conducted a class-wide damages assessment in light of the proof and risk factors discussed above and believe that the Settlement is fair reasonable and adequate. Class Counsel calculated the realistic total exposure i.e. damages for the Class Period of approximately $5M, exclusive of attorneys' fees and costs. (Nathan Decl. ¶¶ 24).

Consequently, the Settlement of $1,000,000.00 represents 20% of the full realistic value of the claims (exclusive of wage statement, interest, penalties, and attorneys' fees and costs). (Nathan Decl. ¶¶ 25).

2. <u>Class Counsel Is Experienced and Recommend Settlement</u>

Proposed Class Counsel Reuben Nathan and John Glugoski have substantial experience in employment law and employment class actions. They have been approved as Class Counsel on numerous prior occasions and have never been deemed inadequate as class counsel. (Nathan Decl. ¶¶25; Glugoski Decl. ¶¶ 1 and Declaration of J. Glugoski in Support of Preliminary Approval). Proposed Class Counsel have worked diligently to advance the interests of the class with no unnecessary duplication of effort. (Nathan Decl. ¶¶27; Glugoski Decl. ¶¶17 and Decl. of J. Glugoski in Support of Preliminary Approval). Proposed Class Counsel recommends settlement on the proposed terms. (Nathan Decl. ¶¶28; Glugoski Decl. ¶¶17). Proposed. Such recommendations should be given a presumption of reasonableness. (*Cellphone Termination Fee Cases*, (2009) 180

Cal.App.4th 1110, 1117-18; *Williams v. Vukovich* (6th Cir. 1983) 720 F.2d 909, 922-23 [The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs]).

3. <u>No Government Participant</u>

No government agency is directly involved in this case; *however*, Plaintiff has been authorized to prosecute the PAGA claims on behalf of the LWDA. (Nathan Decl. ¶ 29). The Settlement provides PAGA Penalties of $29,250.00, $21,937.50 of which will be paid to the Labor Workforce Development Agency (if this Motion is approved as requested). The remaining portion due to the Class Members will be added to the Net Settlement Amount and distributed to the Class Members pro rata. (Settlement Agreement ¶ 52(i)). As required, Plaintiff provided the LWDA with requisite notice of this proposed settlement. Nathan Decl. ¶ 30 As of the date of this filing, Plaintiffs have not received any response from the LWDA. (Nathan Decl. ¶30)

Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900, at *24. Moreover, the amount allocated to the LWDA is well within the range of reasonable PAGA settlement amounts approved by courts. (*Nordstrom Com. Cases* (2010) 186 Cal. App. 4th 576, 579 ["[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims."]; *Hopson, supra* [approving a PAGA settlement]

4. <u>The Investigation And Discovery Completed And The Stage Of Proceedings Is Sufficient</u>

There has been an extraordinary amount of necessary investigation and discovery in this case. Over the course of this litigation, the parties have obtained an abundance of information to assist them in properly analyzing their respective positions. Both sides have had ample opportunity to investigate the veracity and scope of the class claims. Class Counsel has conducted hundreds of interviews with Class Members to have better understanding of the claims and hurdles presented by this case.

In addition to informal discovery, Plaintiff through her counsel: 1) Conducted interviews class members and reviewed documents and files; 2) Investigated the Class Members' claims based on the theories of the *Alfaro Action*; 3) Researched initial case investigation prior to filing the case, 5) Prepared the initial complaint and five amendments, 5) Propounded voluminous sets of discovery, 6) Prepared and mailed a Belaire-West notice to Class Members, 7) Interviewed hundreds of Class Members, 8) Prepared for depositions, 10) Reviewed data and files, 11) Reviewed employment agreements, 12) Creating damage models, 13) Assessed risks including Defendant's insolvency 14) Drafted lengthy 'meet and confer' letters, 15) Prepared stipulations, 16) Reviewing arbitration agreements and opposed motion to compel arbitration, and 17) Engaged in litigation strategy. (Nathan Decl. ¶¶ 31-32; Glugoski Decl. ¶ 18). Plaintiff propounded discovery on Defendants. Class Counsel also obtained executed declarations from Paul Rozo CEO of Defendant to provide the parties and this Court with a better understanding of the state of the business. Nathan Decl. ¶¶34; Glugoski Decl. ¶¶18)

Counsel for the Parties have further invested extensive time investigating the applicable law (*Vaquero v. Stoneledge Furniture, et al*., *Ibarra v. Wells Fargo, et al*., *Magadia v. Walmart, et al*., and *Ferra v. Loews Hollywood Hotel, et al*.), which is constantly evolving as it relates to class certification, full briefing of motions and issues related to summary judgment, class certification, Plaintiffs' claims and damages, the defenses thereto, and facts discovered. Plaintiff believes that the investigation and research discovered through the date of settlement has supported their main contentions alleging that Defendant failed to pay overtime wages, failed to provide required premiums for meal and rest break violations, failed to pay all wages owed, and failed to reimburse individuals for business expenses. Nathan Decl. ¶ 34; Glugoski Decl. ¶¶19)

5. <u>The Reaction of the Class Members</u>

"A favorable reception by the Class constitutes 'strong evidence' of the fairness of a proposed settlement and supports judicial approval." (*In re: Paine Webber Ltd. Pships. Litig*. (2d Cir. 1997) 171 F.R.D. 104, 126, *aff'd*, 117 F.3d 721; *see also, Wal-Mart Stores, Inc. v. Visa USA, Inc.* (2d Cir. 2005) 396 F.3d 96, 119). "By any standard, the lack of objection of the Class Members favors approval of the Settlement." (*In re Omnivision, supra*, 559 F.Supp.2d at 1043; *see also, Ross v. A.H.*

Robins (S.D.N.Y. 1988) 700 F. Supp. 682, 684 - "The absence of objectants may itself be taken as evidencing the fairness of a settlement"; *In Re Warner Communications Securities Litigation* (S.D.N.Y. 1985) 618 F. Supp. 735, 746 - noting that two objections to settlement was very low; *Milstein v. Huck* (E.D.N.Y. 1984) 600 F. Supp. 254, 267 - explaining that the reaction of the class was "overwhelmingly favorable" because no objections to the settlement had been filed). There have been zero (0) objections and zero (0) requests for exclusion. As such, the reaction of the Class Members to the Settlement has been overwhelmingly positive, especially considering the size of the class.

VII. THE COURT SHOULD GRANT AN INCENTIVE AWARD TO CLASS REPRESENTATIVES

A Class Representative Service Award, at times misbranded as an "incentive award," is commonly given to the named plaintiff(s) in a class action. "It is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. Coca Cola Bottling Company of Los Angeles* (2010) 186 Cal. App. 4th 399-approving $5,000.00 incentive awards to two class representatives which was more than twice as much as the average payment the class members received, because "[t]hey are intended to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class and to compensate class representatives for their time, effort and inconvenience."; *see also,* In re *California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, 11).

Moreover, class members who step forward to serve as class representatives sometimes expose themselves to financial risk with respect to a costs award should defendant prevail in the action. Finally, class members who serve as class representatives sometimes expose themselves to retaliation, such as in the form of a cross-complaint, in which case enhanced compensation may be in order. (*Staton v. Boeing Co., supra,* 327 F.3d at p. 977).

The Settlement Agreement provides that the named Plaintiff Diva Alfaro may seek up to a $5,000.00 as a Class Representative Service Award for her efforts spearheading the class action on behalf of the Class Members. The total amounts sought are each a mere .0005% of the Settlement

Fund for Diva Alfaro is reasonable and fair in light of the recoveries due to the absent class members.

As detailed in their accompanying declarations, each Plaintiff was instrumental in bringing the lawsuit and obtaining the Settlement on behalf of the Class. Plaintiff counsel has firsthand knowledge of some of the efforts they each expended. Plaintiff requested counsel file the lawsuit and consulted with Class Counsel prior to the filing of the case and throughout the case, including, but not limited to engaging in extensive discovery responses and requests, assisting counsel contact class members, assisting Class Counsel review documents, wage statements, assisted with the formulation of discovery requests, consulted with Class Counsel regarding the MOU, Settlement Agreement and prepared declarations in support of preliminary approval and final approval of the Settlement.

Plaintiff has agreed to a general release of all of her individual claims against Defendants in exchange for $20,000.00 and has agreed not to re-apply for employment with Defendant. Plaintiff was subjected to an additional one or two actions committed by Defendant, which were overlapping in general theory but particular to Plaintiff and her individual claims. Additionally, Plaintiff took significant risk by filing the instant action with mortgage lending being a relatively small industry with the same cast of characters. Alfaro Decl. ¶¶3-10

Without their efforts, the Class Members are unlikely to have obtained any recovery. Notably, the proposed Class Representative Service Award was presented to the Class Members and no one objected to it. (ILYM Decl. ¶¶ 9-12).

VIII. THE COURT SHOULD GRANT THE MOTION FOR ATTORNEY'S FEES OF $350,000.00 AND REIMBURSEMENT OF COURT COSTS AND EXPENSES OF $25,000.00

Consistent with the scope of this action and nature of the relief granted to the Class, and the amount of time expended in prosecution of the case, Plaintiffs and Class Counsel hereby move for an award of attorney's fees and costs of $350,000.00 Pursuant to California Rules of Court, rule 3.769 (b), Class Counsel discloses the existence of a "fee splitting agreement" that has been approved by Plaintiff in writing.[3] Class Counsel advised this Court of the fee-splitting arrangement between Class

[3] CMO states that attorneys must disclose split of attorney's fees

Counsel at the MPA hearing. Consequently, in accordance with that agreement, the Nathan & Associates seeks $175,000 and Righetti Glugoski, PC seeks $175,000 in attorney's fees and $11,676.25 in costs. Nathan Decl. ¶¶35; Glugoski Decl. ¶¶20).

1. Attorneys Fees Award of $350,000 Is Justified.

The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the benefits achieved by Class Counsel for the Class Members. As outlined above and set forth in the accompanying declarations of Reuben Nathan and John Glugoski, Class Counsel diligently litigated and investigated this case without duplication of efforts.

Courts recognize two methods for calculating attorney's fees in class action cases. The first calculates attorney fees based on a percentage of the common benefit bestowed on the class. The second uses a "lodestar" as the basis-determined by multiplying the hours counsel reasonably expended by reasonable hourly rates-which may be enhanced by a multiplier. *Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 26. The requested attorneys' fees is justified under either approach.

a. Percentage of Common Fund Approach

California courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao, supra,* 82 Cal.App.4th at 26). The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful. *Sweet*, *supra*, 12 Cal. 4th at 111). In *Quinn*, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (Quinn, *supra*, 15 Cal. 3d at 167). Similarly, in *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Sweet*, *supra*, 12 Cal. 4th at 110).

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao*, *supra*, 82 Cal. App. 4th at 31 n.5, citing, *In re Activision Sec. Litig*. (N.D. Cal 1989) 723 F. Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig*., *supra,* 723 F. Supp. at 1378-79).

Plaintiff's counsel's request for fees of 35% of the Settlement Fund is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See, In re: Activision Sec. Litig., supra,* 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund...Usually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." *Newberg*, *supra*, § 14.6 at 550.

Courts in the Ninth Circuit look to the following factors when determining what a proper percentage is for an award of attorneys' fees: (1) the results achieved; (2) the risks of litigation; (3) whether there are benefits to the class beyond the immediate generation of a cash fund; (4) whether the percentage rate is above or below the market rate; (5) the contingent nature of the representation and the opportunity cost of bringing the suit; (6) reactions from the class; and (7) a lodestar cross-check. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048. Here, Class Counsel has met each and every *Vizcaino* factor such as (1) making sure each Class Member gets a monetary award without having to file a claim; (2) assuming great risk in more than three years of litigation while having to turn down other cases; (3) ensuring Defendants are enforcing policies that will comply with the requirements of the Labor Code which serves to benefit members of both the Class and the general public; (4) seeking a percentage rate that is consistent with the market rate; (5) taking the matter wholly on a contingent basis at great opportunity cost; (6) virtually no negative class reaction; and (7) meeting the lodestar reasonableness check. *See also, Cifuentes* v. *CEVA Logistics U.S., Inc*. (S.D. Cal. October 23, 2017) 2017 WL 4792425; *Good Morning to You Prods. Corp. v. Warner/Chappell Music, Inc*. (C.D. Cal. Aug. 16, 2016). No. CV 13-4460-GHK (MRWx), 2016 WL 6156076, at *2–5; *Bautista v. Harvest Management Sub LLCs* (C.D. Cal. July 14, 2014) 2014 WL 12579822 at *13-14.

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this case on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class would be certified, leaving a large number of putative class members unlikely to receive any recovery. Even after approval of the Settlement Agreement, Class Counsel will be called upon to expend additional amounts of time fielding calls from Class Members, interviewing them, and resolving issues that may arise, administering the settlement and reporting finality of the Settlement. The Court should finally approve the requested attorney's fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risks undertaken by Class Counsel. The requested attorneys' fees and costs are not opposed by Defendants and are well within established guidelines.

b. <u>Lodestar Calculation Approach</u>

The trial court also has broad authority to calculate the lodestar. (*PLCM Group, Inc.* v. *Drexler* (2000) 22 Cal.4th 1084, 1094-1095 - [T]he fee setting inquiry in California ordinarily begins with the "lodestar," i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate). "California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.," The reasonable hourly rate is that prevailing in the community for similar work, The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. (*Id.* at 1095).

c. Reasonable Hourly Rate

In calculating the lodestar, a billing rate of $925.00 per hour was used for Attorney Reuben Nathan and $1050.00 for Attorney Matthew Righetti and $850.00 for John Glugoski of Righetti Glugoski, PC. These are equivalent to their current billing rates on a non-contingency fee basis. Nathan Decl. ¶¶36; Glugoski Decl. ¶¶12, Righetti Decl. ¶ 14) These amounts are also supported by their considerable experience and are consistent with their hourly rates that have been approved by other courts, as set forth in the accompanying declarations. Nathan Decl. ¶¶37; Righetti Decl. ¶ 15 Glugoski Decl. ¶¶13)

d. Number of Hours Expended

In determining the number of hours expended by counsel, compensable hours include services provided prior to the filing of the complaint that were reasonably required. (*Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 655). Moreover, detailed time records are not required. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; *see also*, *Wershba., supra,* 91 Cal.App.4th at 255).

Although not required to do so, Class Counsel has submitted detailed summary billing number of hours expended. (See, Exhibits 1,2 and 3 attached hereto; Nathan Decl. ¶¶ 38-39; Glugoski Decl. ¶21 and Righetti Decl. ¶)

As of the filing of this motion, attorney Reuben Nathan of Nathan & Associates, APC and John Glugoski of Righetti Glugoski, PC has expended over 288.4 hours for the Righetti Glugoski firm and 235.1 hours for Nathan & Associates in the prosecution of this lawsuit. The lodestar of attorney Nathan, Glugoski and Righetti as of the filing of this motion is $405,222.50. ($187,755 for the Righetti Glugoski firm and for Nathan & Associates). (Nathan Decl. ¶¶ 40; Glugoski Decl. ¶ 21 and Righetti Decl. ¶ 20).

There was no duplication of effort and the combined efforts of Class Counsel were required for the successful outcome in the case. Nathan Decl. ¶¶41; Glugoski Decl. ¶¶21 and Righetti Decl. 20) It is estimated that Class Counsel will expend (in total) an additional 10 hours of time included their current lodestars for preparing and attending the final approval hearing and overseeing the completion of administration of this Settlement including communicating with numerous Class Members, resolving claims disputes, preparing pleadings for and attending the later hearings, monitoring the distribution of proceeds, following up on missing payments, etc.

e. Reimbursement of Court Costs and Expenses of $11,676.25 Is Justified

Nathan & Associates, APC has expended $8,691.18 in litigation costs and expenses (Ex. 2, Nathan Decl. ¶ 45), and requests reimbursement in such amounts. Righetti Glugoski, PC has expended $2,985.07 in litigation costs (Ex 2, Glugoski Decl. ¶25), and therefore requests reimbursement in such amounts.

IX. CONCLUSION

The proposed Settlement is fair, reasonable, and, adequate. It resolves the case favorably to the Class by providing substantial cash payments to Class Members. It is non-collusive and was achieved as the result of informed, extensive, and arms-length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. All Class Members have tacitly approved the Settlement by participating in the Settlement and zero objections and zero exclusions to the Settlement have been submitted. For the reasons set forth herein, Plaintiffs respectfully request that this Court grant final approval to the proposed Settlement and enter the Order and Judgment in the form submitted concurrently herewith.

Respectfully Submitted,

NATHAN & ASSOCIATES, APC

Dated: October 26, 2023

By: /s/ Reuben D. Nathan
Reuben D. Nathan, Esq.
Attorney for Representative Plaintiff
DIVA ALFARO