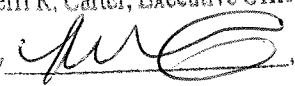


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Superior Court of California
County of Los Angeles

MAY 24 2017

Sherri R. Carter, Executive Officer/Clerk

By , Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST**

RAMON SINGLEY, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

BLS LIMOUSINE SERVICE OF LOS
ANGELES, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: BC619822

(Assigned to the Honorable Kenneth R. Freeman,
Department 310)

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

Date: August 31, 2017

Time: 11:00 A.M.

Dept.: 310

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

2 **PLEASE TAKE NOTICE** that on August 31, 2017, at 11:00 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Kenneth R. Freeman, judge presiding, in
4 Department 310 of the above referenced Court located at 600 S. Commonwealth Ave., Los
5 Angeles, CA 90005, Plaintiff Ramon Singley ("Plaintiff") will seek an Order: (1) approving the
6 Joint Stipulation of Class Action Settlement ("Stipulation" or "Settlement Agreement") in this
7 matter; (2) conditionally certifying the following Class for settlement purposes only: "All current
8 and former employees who were employed by Defendant in the State of California at any time
9 from May 9, 2015, through February 17, 2017"; (3) appointing Plaintiff Ramon Singley as the
10 Class Representative and Howard L. Magee, Larry W. Lee, and Kristen Agnew of Diversity Law
11 Group, P.C. as Class Counsel; (4) preliminarily approving the Stipulation and the total
12 Settlement Sum in the amount of \$450,000.00; (5) finding on a preliminary basis that the
13 Stipulation appears to be within the range of reasonableness of a settlement, including the
14 amount of the PAGA penalties, Class Representative Enhancement Award, Class Counsel fees
15 and costs, the claims administration fees, and the allocation of payments to Class Members, that
16 could ultimately be given final approval by this Court; (6) approving the Notice of Pending Class
17 Action Settlement (the "Class Notice") to be sent to Class Members; (7) appointing Phoenix
18 Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a Final
19 Fairness and Final Approval hearing.

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

23 The basis for this Motion, filed without any opposition from Defendant BLS Limousine
24 Service of Los Angeles, Inc. ("Defendant"), is that the proposed settlement is fair, adequate, and
25 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
26 class members to participate in, opt-out of, or object to the settlement.

27 This Motion will be based on the attached Memorandum of Points and Authorities, the
28 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of

1 Howard L. Magee, Larry W. Lee, Kristen Agnew and Plaintiff Ramon Singley, and upon the oral
2 arguments of counsel (should there be any) and on the complete records and file herein.

3 DATED: May 24, 2017

DIVERSITY LAW GROUP, P.C.

4
5 By: 

Larry W. Lee

6 Attorneys for Plaintiff and the Class
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1 **I. INTRODUCTION**

2 This is a wage and hour class and PAGA action seeking penalties from Defendant.
3 Plaintiff Ramon Singley ("Plaintiff") (Plaintiff and Defendant jointly referred to as the "Parties")
4 brought his claims based upon a class-wide basis for violation of various Labor Codes.
5 Defendant denies each, every, and all of the allegations of the Complaint.

6 Prior to the settlement of this action, the Parties engaged in informal discovery and
7 investigation. Specifically, Defendant produced the necessary payroll data for the entire class,
8 which allowed Plaintiff to calculate the potential amount of damages. Thereafter, the Parties
9 engaged in direct negotiations and were ultimately able to reach the current settlement.

10 **Significantly, this entire amount is non-reversionary, such that no monies will revert back**
11 **to Defendant.**

12 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
13 risks and uncertainty of class certification and the merits of this case.

14 Although Plaintiff and his counsel are certain that they can prevail on class certification,
15 as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific
16 risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Based
17 on their own independent investigation and evaluation, the Parties and their respective counsel
18 are of the opinion that the Settlement for the consideration and on the terms set forth in the
19 Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class
20 and Defendant in light of all known circumstances and the expenses and risks inherent in
21 litigation. (Declaration of Larry W. Lee ("Lee Decl.") at ¶ 12).

22 Therefore, the Parties respectfully request that the Court grant this Motion for
23 Preliminary Approval of Class Action Settlement.

24 **II. DISCUSSION**

25 On May 9, 2016, Plaintiff filed a complaint in the Superior Court of the State of
26 California for the County of Los Angeles on behalf of himself and all other employees who
27 worked for Defendant in California. (Lee Decl. ¶ 2). Plaintiff asserted claims for: (i) violation
28 of Cal. Labor Code § 226; and (2) Violation of Cal. Labor Code § 2698, et seq. predicated on

1 violations of Labor Code §§204 and 226. (Lee Decl. ¶ 2). Specifically, Plaintiff asserted that the
2 wage statements Defendant issued to its employees failed to accurately identify the name and
3 address of the employer in violation of Labor Code § 226(a), and further, that during each pay
4 period, the wages to every employee were paid past the allowable deadlines set forth in Labor
5 Code § 204. (Lee Decl. ¶ 3).

6 Thereafter, Defendant asserted that Plaintiff was subject to an arbitration agreement,
7 including the possibility of a class action waiver. (Lee Decl. ¶ 4). Indeed, Defendant filed its
8 motion seeking to compel Plaintiff to arbitration of his non-PAGA claims, and striking the class
9 allegations. (Lee Decl. ¶ 5). However, before such motion was heard, the Parties also agreed to
10 attempt a class-wide resolution of this matter. (Lee Decl. ¶ 6). In connection therewith,
11 Defendant provided Plaintiff with the necessary payroll data for the entire class so that a damage
12 analysis could be put together. (Lee Decl. ¶ 7). After receiving, reviewing and analyzing such
13 data, the Parties engaged in direct negotiations, which ultimately resulted in the Parties reaching
14 the current settlement. (Lee Decl. ¶ 8).

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

19 Approval of class action settlements involves a two-step process. First, counsel
20 submits the proposed terms of settlement and the court makes a preliminary
21 fairness evaluation. If the preliminary evaluation of the proposed settlement does
22 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
23 unduly preferential treatment of class representatives or of segments of the class,
24 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.

25 Thus, the preliminary approval by the trial court is simply a conditional finding that the
26 settlement appears to be within the range of acceptable settlements. As Professor Newberg
27 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
28 concerning a tentative settlement proposal may vary. The court may find that the settlement

1 proposal contains some merit, is within the range of reasonableness required for a settlement
2 offer, or is presumptively valid subject only to any objections that may be raised at a final
3 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
4 2002).

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

7 When the parties to an action reach a monetary settlement, they will usually
8 prepare and execute a joint stipulation of settlement, which is submitted to the
9 court for preliminary approval. The stipulation should set forth the central terms
10 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.

11 *Id.* at § 11.24.

12 Here, the Parties have reached such an agreement and have submitted to this Court in
13 connection with this Motion a copy of the Settlement Agreement fully setting forth the
14 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
15 agreement reached by the Parties, which include, among other things, the method for calculating
16 the Class Members’ individual settlements.

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

26 The strength of the findings made by a judge at a preliminary hearing or
27 conference concerning a tentative settlement proposal. . . . may be set out in
28 conditional orders granting tentative approval to the various items submitted to
the court. Three basic rulings are often conditionally entered at this preliminary

1 hearing. These conditional rulings may approve a temporary settlement class, the
2 proposed settlement, and the class counsel's application for fees and expenses.

3 4 Newberg on Class Actions, at §11.26

4 In addition to such terms as class identification, settlement amount and payment
5 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
6 to which the Parties stipulate to the Court's provisional certification of the Class, but do so for
7 the purposes of this settlement only.

8 **A. Proposed Class Definition**

9 The current settlement is being settled on behalf of "all current and former employees
10 who were employed by Defendant in the State of California at any time from May 9, 2015,
11 through February 17, 2017." There are approximately 265 individuals that comprise of this
12 class. See Settlement Agreement ¶ 5.

13 **B. Settlement Terms and Evaluation**

14 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
15 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
16 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
17 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute
18 their judgment for that of the proponents, particularly where, as here, settlement has been
19 reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural*
20 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*,
21 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re*
22 *Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln*
23 *Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

24 While the recommendations of counsel proposing the settlement are not conclusive, the
25 Court can properly take them into account, particularly where, as here, they have been involved
26 in formal and informal discovery and negotiations for some period of time, appear to be
27 competent, have experience with this type of litigation, and have exchanged substantial evidence
28 from the opposing party. See *Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural*

1 *Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171
2 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o long as the integrity of the arm’s length negotiation
3 process is preserved, however, a strong initial presumption of fairness attaches to the proposed
4 settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of counsel, who
5 are most closely acquainted with the facts of the underlying litigation”)).

6 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
7 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a
8 number of wage and hour class actions and have extensive litigation experience. (Lee Decl. at ¶¶
9 17-20; Magee Decl. ¶¶ 3-4; Agnew Decl. ¶ 3). Each side has apprised the other of their
10 respective factual contentions, legal theories and defenses, resulting in negotiations taking place
11 between the Parties. (Lee Decl. at ¶ 14).

12 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
13 face liability in the amount of approximately \$1 million for the wage statement violations
14 pursuant to Labor Code § 226(e), and approximately \$2 million in PAGA penalties. (Lee Decl. at
15 ¶ 9).

16 The settlement for each participating Class Member is fair, reasonable and adequate,
17 given the inherent risks of litigation, including the substantial risks relative to class certification,
18 the potential dismissal of the class claims through Defendant’s arbitration agreement, the Court’s
19 discretion to decrease the PAGA penalties, and the costs of pursuing such litigation. The
20 settlement is the result of extensive arms’ length negotiations between the Parties and their
21 counsel.

22 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
23 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
24 involved in not prevailing on one or more of the causes of action or theories alleged in the
25 operative Complaint, the possibility of non-certification and potential for appeals. (Lee Decl. at
26 ¶ 15).

27 Indeed, numerous courts have held that gross settlements approximating between only 8
28 and 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*

1 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
2 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
3 settlement amounting to only a fraction of the potential recovery does not per se render the
4 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should
5 be assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
6 settlement is fair and adequate depends on the “the difficulties in proving the case”);
7 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
8 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
9 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
10 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
11 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
12 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
13 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
14 approximately 15% of the potential recovery was fair and reasonable).

15
16 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice,
17 should any Class Member wish to pursue his or her own case for the claims being released
18 herein, each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from
19 the settlement. Moreover, as set forth in the Class Notice, Class Members are advised of their
20 right to attend the final approval hearing and object to any of the terms contained in the
21 Settlement Agreement, provided that they give proper notice to the Parties and the Court.

22 **1. Amount and Manner of Distribution of the Compensation to be**
23 **Provided to Class Members Including the Amount, or an Estimate, of**
24 **What Each Class Member Will Receive**

25 The Stipulation provides for \$450,000.00 as the total Settlement Sum. The Net
26 Settlement Sum (calculated after deduction of attorneys’ fees, costs, class representative service
27 payments, LWDA payment, and claims administration costs) shall be paid to all settlement Class
28 Members based on the number of wage statements each person received. Finally, \$7,500.00 of

1 the total Settlement Sum will be allocated to penalties under the PAGA and paid to the Labor
2 Workforce Development Agency (the “LWDA”). Based thereon, it is estimated that
3 approximately \$256,000.00 will be available to be distributed to the Class. (Lee Decl. ¶ 10).

4 Based thereon, on a raw average, each class member potential may recover
5 approximately \$966.00 per person. (Lee Decl. ¶ 11). This amount actually paid to each class
6 member may increase or decrease depending on the actual number of wage statements each
7 Class Member received. Finally, uncashed checks (upon the expiration date) shall be escheat to
8 the California Department of Industrial Relations’ Unclaimed Wages Fund. (Settlement
9 Agreement at ¶ 51).

10 **2. Whether, and Under What Circumstances, Amounts Available for**
11 **Payment in Settlement Might Not be Paid to Class Members or Might**
12 **Revert to the Defendants**

13 None of the settlement funds will revert to Defendant.

14 **3. Scope of the Release of Class Members’ Claims**

15 As a condition of participating in this class action settlement, class members shall waive
16 and release any and all claims, rights, demands, liabilities and causes of action of every nature
17 and description, whether known or unknown, for violation of Labor Code § 226 for failure to
18 provide accurate and complete wage statements, for violation of Labor Code §204 for failure to
19 timely pay wages, and for violation of PAGA (Labor Code § 2699 et seq.) predicated on the
20 violation of Labor Code §§ 204 and 226. (Settlement Agreement at ¶ 23). Thus, the release is
21 significantly limited.

22 **4. Tax Treatment of Settlement Amounts**

23 As Plaintiff’s lawsuit sought interest and penalties, the Parties have agreed that 100% of
24 all settlement payments to class members shall be deemed as IRS Form 1099 income and not
25 subject to withholdings and deductions. (Settlement Agreement at ¶ 54).

26 **5. Affirmative Obligations to be Undertaken by Class Members or Class**
27 **Counsel and the Reasons for Any Such Obligations**
28

1 As stated above, settlement class members do not need to do anything should they wish
2 to receive their share of the settlement funds. Thus, this substantially decreases the amount of
3 burden each settlement class member must bear in order to receive their settlement share. If a
4 class member does not wish to take part in this settlement and be bound by the release, the class
5 member must submit an exclusion request.

6 **C. Notice to Class Members**

7 Within twenty (20) days of the preliminary approval of this settlement, Defendant will
8 confidentially transmit to the Claims Administrator each settlement class member's first, last,
9 and middle name; last known address and telephone number; social security number; and any
10 other information required to effectuate the Settlement. Upon receipt of the information and prior
11 to mailing the Class Notice, the Claims Administrator shall perform a search based on the
12 National Change of Address Database for information to update and correct for any known or
13 identifiable address changes. Any Class Notices returned to the Claims Administrator as non-
14 deliverable on or before the opt-out deadline shall be sent promptly via regular first-class U.S.
15 mail to the forwarding address affixed thereto and the Claims Administrator shall indicate the
16 date of such re-mailing on the Class Notice. If no forwarding address is provided, the Claims
17 Administrator shall promptly attempt to determine the correct address using a skip-trace, or other
18 search using the name, address and/or Social Security number of the Settlement Class member
19 involved, and shall then perform a single re-mailing.

20 **D. Typicality and Adequacy of Representation**

21 **1. Class Representative's Claims are Typical of the Class**

22 The commonality requirement is met when there are questions of law and fact common to
23 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
24 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
25 facts couple with disparate legal remedies within the class"). Commonality requires only that
26 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
27 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
28 Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior*

1 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
2 Where the employer's conduct is uniformly directed at a class of employees, as it is here, the
3 class wide impact of the Defendant's policies satisfies the commonality requirement. *See*
4 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

5 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
6 violated the Labor Code by issuing wage statements that failed to identify the accurate name and
7 address of the employer, and further, that during each pay period, the earned wages of each
8 employee was paid untimely. (Declaration of Ramon Singley ("Singley Decl.") ¶ 2).

9 As part of his employment with Defendant, Plaintiff alleges that he and other employees
10 received wage statements that failed to identify the accurate name and address of the employer.
11 Further, Plaintiff alleges that he was paid on the same payroll schedule as all other employees
12 *Id.* In other words, Plaintiff was subjected to the same policy and practice as other Class
13 Members. Thus, Plaintiff's claims are typical to those of class members.

14 Moreover, Plaintiff does not have any interests adverse to the class, nor have any such
15 issues been raised or presented. (Singley Decl. ¶ 3). Plaintiff has taken all necessary steps to
16 represent the interests of the Class, and by providing information and documents to Plaintiff's
17 counsel. (Singley Decl. ¶ 3). For such reasons, Plaintiff has adequately represented the class
18 members and will continue to do so.

19 **2. Class Counsel Has Adequately Represented the Class and Has**
20 **Experience with Wage and Hour Class Actions**

21 From the inception of the case, Class Counsel has zealously represented the interests of
22 the class. The settlement was obtained for the benefit of the class, as opposed to the individual
23 Class Representative. Further, Class counsel has been approved as class counsel on a number of
24 prior cases, have litigated numerous other class action cases, and are competent to represent the
25 class. (Lee Decl. at ¶ 13; Magee Decl. ¶¶ 3-4; Agnew Decl. ¶ 2).

26 **E. Costs and Fees**

27 **1. Attorneys' Fees and Costs**
28

1 California state and federal courts have recognized that an appropriate method for
2 determining award of attorneys' fees is based on a percentage of the total value of benefits to
3 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
4 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,
5 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997).
6 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
7 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
8 bear the entire burden alone." *Vincent*, 557 F. 2d at 769.

9 The Common Fund doctrine is predicated on the principle of preventing unjust
10 enrichment. When a litigant's efforts create or preserve a fund from which others derive
11 benefits, he may require the passive beneficiaries to compensate those who created the fund.
12 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
13 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12
14 Cal.4th 105, 110 (1995), the California Supreme Court recognized that the common fund
15 doctrine has been applied "consistently in California when an action brought by one party creates
16 a fund in which other persons are entitled to share." The reasons for applying the common fund
17 doctrine include: "...fairness to the successful litigant, who might otherwise receive no benefit
18 because his recovery might be consumed by the expenses; correlative prevention of an unfair
19 advantage to the others who are entitled to share in the fund and who should bear their share of
20 the burden of its recovery; encouragement of the attorney for the successful litigant who will be
21 more willing to undertake and diligently prosecute proper litigation for the protection or recovery
22 of the fund if he is assured that he will be properly and directly compensated should his efforts
23 be successful." *Id.*

24 Indeed, most recently, the California Supreme Court has also now held that the award of
25 attorneys' fees in common fund wage and hour class action settlements should start with the
26 percentage method. See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the
27 overwhelming majority of federal and state courts in holding that when class action litigation
28 establishes a monetary fund for the benefit of the class members, and the trial court in its

1 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
2 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

3 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
4 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
5 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
6 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
7 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

8 The parties have agreed to a payment of a maximum of 33 1/3% of the settlement
9 (\$150,000.00) for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a
10 payment of the foregoing attorney’s fees and, thus, this payment should be presumed to be fair.

11 Further, the parties have agreed to reimbursement of class counsel’s litigation costs.
12 Class counsel have, at their own risk, expended costs, for example, to file this instant action,
13 service of process, and payment of other litigation related costs.

14 Based on the foregoing, the court should preliminarily approve the attorney’s fees and
15 costs being requested by the parties.

16 **2. Proposed Payment to Class Representatives**

17 Class Representative Ramon Singley requests a modest enhancement of \$15,000.00. The
18 Class Representative met and conferred with Class Counsel on a number of occasions to discuss
19 the case, provided documents and information to Class Counsel, and reviewed the Settlement
20 Agreement. As part of his duties as the Class Representatives, Plaintiff provided invaluable
21 information, evidence, and documents that resulted in this settlement. In addition to the
22 invaluable services that Plaintiff provided, he also took a significant risk, both professionally and
23 monetarily, in acting as the Class Representative and seeking benefits on behalf of the class.
24 Because the claims alleged by the class representative involved the payment of costs to the
25 prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had Plaintiff
26 not prevailed in this action.

27 Furthermore, given that future employers are much less likely to hire individuals who
28 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face

1 prejudice in the future from other potential employers. Plaintiff took this risk upon himself and
2 the whole class benefited from these risks taken by Plaintiff. Class members did not have to file
3 individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did
4 they have to face the potential for retaliation and not getting future employment had they filed a
5 public lawsuit.

6 Finally, Plaintiff has agreed to provide a full general release of all claims as part of this
7 settlement. This is something that other Class Members did not have to give, and which Plaintiff
8 sacrificed for the benefit of the Class.

9 **3. Class Administration Fees**

10 The parties have agreed to an estimated payment of \$6,500.00 to the class administrator,
11 Phoenix Settlement Administrators to send notices and to administer this settlement. Phoenix
12 Settlement Administrator is a well-recognized class action settlement administrator. The parties
13 believe that the administration fee is reasonable and should be approved.

14 **III. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
15 **PRELIMINARY APPROVAL**

16 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
17 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
18 result of informed, extensive, and arms' length negotiations conducted by counsel for respective
19 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
20 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
21 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,
22 and set a date for a final approval hearing.

23
24 DATED: May 24, 2017

DIVERSITY LAW GROUP, P.C.

25
26 By: 

Larry W. Lee

Attorneys for Plaintiff and the Class

(Code of Civil Procedure Sections 1013a, 2015.5)

Olympia Peña