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

MAYRA RAMIREZ, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SHERWOOD MANAGEMENT CO.,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: BC609901

[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: September 28, 2017
Time: 11:00 A.M.
Dept.: 310

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

2 **PLEASE TAKE NOTICE** that on September 28, 2017, at 11:00 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Kenneth R. Freeman, judge
4 presiding, in Department 310 of the above referenced Court located at 600 S. Commonwealth
5 Ave., Los Angeles, CA 90005, Plaintiff Mayra Ramirez ("Plaintiff") will seek an Order: (1)
6 approving the Joint Stipulation of Class Action Settlement ("Stipulation" or "Settlement
7 Agreement") in this matter; (2) conditionally certifying the following Class for settlement
8 purposes only: "All current and former non-exempt employees who were employed by
9 Defendant in the State of California at any time between February 10, 2012 through December
10 1, 2016" (the "Class Period"); (3) appointing Plaintiff Mayra Ramirez as the Class
11 Representative and Larry W. Lee of Diversity Law Group, P.C. and William Marder of Polaris
12 Law Group as Class Counsel; (4) preliminarily approving the Stipulation and the total Settlement
13 Sum in the amount of \$915,000.00; (5) finding on a preliminary basis that the Stipulation
14 appears to be within the range of reasonableness of a settlement, including the amount of the
15 PAGA penalties, Class Representative Enhancement Award, Class Counsel fees and costs, the
16 claims administration fees, and the allocation of payments to Class Members, that could
17 ultimately be given final approval by this Court; (6) approving the Notice of Class Action
18 Settlement (the "Class Notice") to be sent to Class Members; (7) appointing Phoenix Settlement
19 Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness
20 and Final Approval hearing.

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

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

28 This Motion will be based on the attached Memorandum of Points and Authorities, the

1 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of Larry
2 W. Lee, William Marder, and Plaintiff Mayra Ramirez, and upon the oral arguments of counsel
3 (should there be any) and on the complete records and file herein.
4

5 DATED: July 28, 2017

DIVERSITY LAW GROUP, P.C.

6
7 By: 

Larry W. Lee

8 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 Mayra Ramirez (“Plaintiff”) (Plaintiff and Defendant jointly referred to as the “Parties”)
4 brought her 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 formal and informal
7 discovery and investigation. Specifically, Plaintiff sought Defendant’s policies and practices
8 with respect to the alleged claims for purposes of class certification and merits. Moreover, in
9 connection with the mediation of this matter, Defendant produced the necessary payroll data for
10 the entire class, which allowed Plaintiff to calculate the potential amount of damages.
11 Thereafter, the Parties engaged in a private mediation with mediator Steve Serratore, and after
12 significant negotiations after the mediation, and upon a proposal by the mediator, the Parties
13 were ultimately able to reach the current settlement. **Significantly, this entire amount is non-**
14 **reversionary, such that no monies will revert back to Defendant.**

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

17 Although Plaintiff and her counsel are certain that they can prevail on class certification,
18 as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific
19 risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Based
20 on their own independent investigation and evaluation, the Parties and their respective counsel
21 are of the opinion that the Settlement for the consideration and on the terms set forth in the
22 Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class
23 and Defendant in light of all known circumstances and the expenses and risks inherent in
24 litigation. (Declaration of Larry W. Lee (“Lee Decl.”) at ¶ 10).

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

27 **II. DISCUSSION**

1 On February 10, 2016, Plaintiff filed a complaint in the Superior Court of the State of
2 California for the County of Los Angeles on behalf of herself and all other employees who
3 worked for Defendant in California. (Lee Decl. ¶ 2). Plaintiff asserted claims for: (1) violation
4 of Labor Code §§ 510, 558, and 1194; (2) violation of Labor Code § 226.7; (3) violation of
5 Labor Code § 226; (4) violation of Labor Code §§ 201-204; (5) violation of Labor Code § 2698,
6 et seq.; and (6) violation of Bus. & Prof. Code § 17200, et seq. (Lee Decl. ¶ 2). Specifically,
7 Plaintiff asserted that the overtime and meal break premium rates of pay Defendant issued to its
8 employees did not factor in the incentive/commission payments that the employees earned, that
9 the incentive/commission payments were paid untimely each month, that employees were
10 required to take on-duty meal breaks, and that the wage statements Defendant issued to its
11 employees failed to accurately identify the applicable rates of pay among other claims. (Lee
12 Decl. ¶ 3).

13 Thereafter, Plaintiff issued formal discovery upon Defendant seeking the documents
14 related to Defendant's policies and practices as to the alleged claims, and information regarding
15 numerosity. All such discovery were for purposes of both class certification and merits. In
16 response, Defendant produced a significant number of documents. (Lee Decl. ¶ 4). After the
17 issuance of such discovery, the Parties discussed and ultimately agreed to attempt a class-wide
18 resolution of this matter through mediation. (Lee Decl. ¶ 5). In connection therewith, Defendant
19 provided Plaintiff with the necessary payroll data for the entire class so that a damage analysis
20 could be put together. (Lee Decl. ¶ 6). After receiving, reviewing and analyzing such data, the
21 Parties engaged in a mediation with Steve Serratore, a well-respected mediator experienced in
22 wage and hour class actions. (Lee Decl. ¶ 7). While a settlement was not reached at the
23 mediation, after months of further negotiations with the assistance of the mediator, a "mediator's
24 proposal" was ultimately issued by Mr. Serratore, which the Parties ultimately accepted. (Lee
25 Decl. ¶ 8).

26 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
27 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
28

1 review after notice has been distributed to the class members for their comment or objections.

2 The Manual for Complex Litigation (Third) § 30.41 states:

3 Approval of class action settlements involves a two-step process. First, counsel
4 submits the proposed terms of settlement and the court makes a preliminary
5 fairness evaluation. If the preliminary evaluation of the proposed settlement does
6 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
7 unduly preferential treatment of class representatives or of segments of the class,
8 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.

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

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

19 When the parties to an action reach a monetary settlement, they will usually
20 prepare and execute a joint stipulation of settlement, which is submitted to the
21 court for preliminary approval. The stipulation should set forth the central terms
22 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.

23 *Id.* at § 11.24.

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
26 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
27 agreement reached by the Parties, which include, among other things, the method for calculating
28 the Class Members’ individual settlements.

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

10 The strength of the findings made by a judge at a preliminary hearing or
11 conference concerning a tentative settlement proposal. . . . may be set out in
12 conditional orders granting tentative approval to the various items submitted to
13 the court. Three basic rulings are often conditionally entered at this preliminary
hearing. These conditional rulings may approve a temporary settlement class, the
proposed settlement, and the class counsel’s application for fees and expenses.

14 4 Newberg on Class Actions, at §11.26.

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

19 **A. Proposed Class Definition**

20 The current settlement is being settled on behalf of “all current and former non-exempt
21 employees who were employed by Defendant in the State of California at any time during the
22 Class Period” There are approximately 1,646 individuals that comprise of this class. *See*
23 Settlement Agreement ¶ 5.

24 **B. Settlement Terms and Evaluation**

25 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
26 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
27 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
28 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute

1 their judgment for that of the proponents, particularly where, as here, settlement has been
2 reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural*
3 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*,
4 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re*
5 *Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln*
6 *Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

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

17 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
18 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a
19 number of wage and hour class actions and have extensive litigation experience. (Lee Decl. at ¶¶
20 17-20; Marder Decl. ¶¶ 8-13). Each side has apprised the other of their respective factual
21 contentions, legal theories and defenses, resulting in negotiations taking place between the
22 Parties. (Lee Decl. at ¶ 14).

23 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
24 face liability in the amount of approximately \$2.75 million for the class claims, and
25 approximately \$4.2 million in PAGA penalties. (Lee Decl. at ¶ 9).

26 The settlement for each participating Class Member is fair, reasonable and adequate,
27 given the inherent risks of litigation, including the substantial risks relative to class certification,
28 the Court’s discretion to decrease the PAGA penalties, and the costs of pursuing such litigation.

1 The settlement is the result of extensive arms' length negotiations between the Parties and their
2 counsel.

3 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
4 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
5 involved in not prevailing on one or more of the causes of action or theories alleged in the
6 operative Complaint, the possibility of non-certification and potential for appeals. (Lee Decl. at
7 ¶ 10).

8 Indeed, numerous courts have held that gross settlements approximating between only 8
9 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
10 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
11 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
12 settlement amounting to only a fraction of the potential recovery does not per se render the
13 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should
14 be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
15 settlement is fair and adequate depends on the "the difficulties in proving the case");
16 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
17 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
18 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
19 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
20 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
21 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
22 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
23 approximately 15% of the potential recovery was fair and reasonable).

24
25 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice,
26 should any Class Member wish to pursue his or her own case for the claims being released
27 herein, each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from
28 the settlement. Moreover, as set forth in the Class Notice, Class Members are advised of their

1 right to attend the final approval hearing and object to any of the terms contained in the
2 Settlement Agreement, provided that they give proper notice to the Parties and the Court.

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

6 The Stipulation provides for \$915,000.00 as the total Settlement Sum. The Net
7 Settlement Sum (calculated after deduction of attorneys' fees, costs, class representative service
8 payments, LWDA payment, and claims administration costs) shall be paid to all settlement Class
9 Members based on the number of weeks worked each Class Member worked during the Class
10 Period. Finally, \$5,000.00 of the total Settlement Sum will be allocated to penalties under the
11 PAGA, with 75% of said amount (\$3,750) paid to the Labor Workforce Development Agency
12 (the "LWDA"), and the remaining 25% (\$1,250) redistributed to the Class Members. Based
13 thereon, it is estimated that approximately \$557,750.00 will be available to be distributed to the
14 Class. (Lee Decl. ¶ 11).

15 Based thereon, on a raw average, each class member potential may recover
16 approximately \$338.85 per person. (Lee Decl. ¶ 12). This amount actually paid to each class
17 member may increase or decrease depending on the actual number of work weeks each Class
18 Member worked during the Class Period. Finally, uncashed checks (upon the expiration date)
19 shall be escheat to the California Department of Industrial Relations' Unclaimed Wages Fund.
20 (Settlement Agreement at ¶ 50).

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

24 None of the settlement funds will revert to Defendant.

25 **3. Scope of the Release of Class Members' Claims**

26 As a condition of participating in this class action settlement, class members shall waive
27 and release any and all claims, rights, demands, liabilities and causes of action of every nature
28 and description, whether known or unknown, that accrued during the Class Period arising from,

1 or related to (1) failure to timely pay all earned wages pursuant to California Labor Code
2 sections 201-204; (2) failure to provide accurate itemized wage statements pursuant to Labor
3 Code section 226; (3) failure to provide meal and rest breaks and premiums pursuant to Labor
4 Code section 226.7; (4) failure to pay overtime wages pursuant to Labor Code sections 510,
5 558, and 1194; (5) Unfair Business Practices pursuant to Business and Professions Code
6 section 17200 et seq. based on the afore-referenced Labor Code violations; and (6) violation of
7 the Private Attorney General Act pursuant to Labor Code section 2698 *et seq.* (“PAGA”)
8 predicated on the afore-referenced Labor Code violations as well as any and all wage and hour
9 claims that were asserted or could have been asserted based on the factual or legal allegations
10 contained in the Complaint. (Settlement Agreement at ¶ 23). Thus, the release is limited to the
11 claims and facts pled in the Complaint.

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

13 As Plaintiff’s lawsuit sought wages, interest and penalties, the Parties have agreed that
14 20% of all settlement payments to class members shall be deemed as wages subject to
15 withholdings and 80% shall be deemed as penalties and interest not subject to withholdings and
16 deductions. (Settlement Agreement at ¶ 53).

17 **5. Affirmative Obligations to be Undertaken by Class Members or Class** 18 **Counsel and the Reasons for Any Such Obligations**

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

24 **C. Notice to Class Members**

25 Within thirty (30) days of the preliminary approval of this settlement, Defendant will
26 confidentially transmit to the Claims Administrator each settlement class member’s full name;
27 last known mailing address; social security number; and the number of weeks worked by each
28 Class Member during the Class Period. Upon receipt of the information and prior to mailing the

1 Class Notice, the Claims Administrator shall perform a search based on the National Change of
2 Address Database for information to update and correct for any known or identifiable address
3 changes. Any Class Notices returned to the Claims Administrator as non-deliverable on or
4 before the opt-out deadline shall be sent promptly via regular first-class U.S. mail to the
5 forwarding address affixed thereto and the Claims Administrator shall indicate the date of such
6 re-mailing on the Class Notice. If no forwarding address is provided, the Claims Administrator
7 shall promptly attempt to determine the correct address using a skip-trace, or other search using
8 the name, address and/or Social Security number of the Settlement Class member involved, and
9 shall then perform a single re-mailing.

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

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

12 The commonality requirement is met when there are questions of law and fact common to
13 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
14 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
15 facts couple with disparate legal remedies within the class"). Commonality requires only that
16 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
17 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
18 Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
19 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
20 Where the employer's conduct is alleged to be uniformly directed at a class of employees, as it is
21 here, the class wide impact of the Defendant's policies satisfies the commonality requirement.
22 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

23 Plaintiff alleges, in part, that Defendant, as a matter of its corporate policy, practice, or
24 procedure violated the Labor Code by not paying overtime and meal premium rates correctly,
25 that whenever wage statements were issued, such wage statements did not identify the correct
26 rates of pay and applicable hours, that whenever commissions were earned, such commissions
27 were paid late, and that employees were required to take on-duty meal breaks. (Declaration of
28 Mayra Ramirez ("Ramirez Decl.") ¶ 2).

1 In other words, Plaintiff was allegedly subjected to the same policy and practice as other
2 Class Members. Thus, Plaintiff's claims are typical to those of class members.

3 Moreover, Plaintiff does not have any interests adverse to the class, nor have any such
4 issues been raised or presented. (Ramirez Decl. ¶¶ 3-4). Plaintiff has taken all necessary steps to
5 represent the interests of the Class, and by providing information and documents to Plaintiff's
6 counsel. (Ramirez Decl. ¶¶ 3-4). For such reasons, Plaintiff has adequately represented the class
7 members and will continue to do so.

8 **2. Class Counsel Has Adequately Represented the Class and Has**
9 **Experience with Wage and Hour Class Actions**

10 From the inception of the case, Class Counsel has zealously represented the interests of
11 the class. The settlement was obtained for the benefit of the class, as opposed to the individual
12 Class Representative. Further, Class counsel has been approved as class counsel on a number of
13 prior cases, have litigated numerous other class action cases, and are competent to represent the
14 class. (Lee Decl. at ¶ 13; Declaration of William Marder ¶ 3).

15 **E. Costs and Fees**

16 **1. Attorneys' Fees and Costs**

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

25 The Common Fund doctrine is predicated on the principle of preventing unjust
26 enrichment. When a litigant's efforts create or preserve a fund from which others derive
27 benefits, he may require the passive beneficiaries to compensate those who created the fund.
28 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at

35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995), 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.” The reasons for applying the common fund doctrine include: “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the 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.” *Id.*

Indeed, most recently, the California Supreme Court has also now held that the award of attorneys’ fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”).

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

The parties have agreed to a payment of a maximum of 33 1/3% of the settlement (\$305,000.00) for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be presumed to be fair.

1 Further, the parties have agreed to reimbursement of class counsel's litigation costs of up
2 to \$25,000.00. Class counsel have, at their own risk, expended costs, for example, to file this
3 instant action, service of process, mediation fees, and payment of other litigation related costs.

4 Based on the foregoing, the court should preliminarily approve the attorney's fees and
5 costs being requested by the parties.

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

7 Class Representative Mayra Ramirez requests an enhancement of \$12,500.00. The Class
8 Representative met and conferred with Class Counsel on a number of occasions to discuss the
9 case, provided documents and information to Class Counsel, and reviewed the Settlement
10 Agreement. As part of her duties as the Class Representatives, Plaintiff provided invaluable
11 information, evidence, and documents that resulted in this settlement. In addition to the
12 invaluable services that Plaintiff provided, she also took a significant risk, both professionally
13 and monetarily, in acting as the Class Representative and seeking benefits on behalf of the class.
14 Because the claims alleged by the class representative involved the payment of fees and costs to
15 the prevailing party, Plaintiff could have possibly faced paying the fees and costs of Defendant,
16 had Plaintiff not prevailed in this action.

17 Furthermore, given that future employers are much less likely to hire individuals who
18 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
19 prejudice in the future from other potential employers. Plaintiff took this risk upon herself and
20 the whole class benefited from these risks taken by Plaintiff. Class members did not have to file
21 individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did
22 they have to face the potential for retaliation and not getting future employment had they filed a
23 public lawsuit.

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

27 **3. Class Administration Fees**

28

1 The parties have agreed to an estimated payment of \$11,000.00 to the class administrator,
2 Phoenix Settlement Administrators to send notices and to administer this settlement. Phoenix
3 Settlement Administrator is a well-recognized class action settlement administrator. The parties
4 believe that the administration fee is reasonable and should be approved.

5 **III. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
6 **PRELIMINARY APPROVAL**

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

14
15 DATED: July 28, 2017

DIVERSITY LAW GROUP, P.C.

16
17 By: 

Larry W. Lee

Attorneys for Plaintiff and the Class

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
COUNTY OF LOS ANGELES]ss.
]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1250, Los Angeles, California 90071.

On July 28, 2017, I served the following document(s) described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the interested parties in this action as follows:

Kirstin E. Muller
Jacob R. Swiss
Hirschfeld Kraemer LLP
233 Wilshire Boulevard, Suite 600
Santa Monica, California 90401
Attorneys for Defendant Sherwood Management Co., Inc.

 X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a court order I caused the above-entitled document(s) to be served through Case Anywhere at the website www.caseanywhere.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 28, 2017, at Los Angeles, California.


Olympia Peña

(Code of Civil Procedure Sections 1013a, 2015.5)

PROOF OF SERVICE