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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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: April 10, 2018

Time: 2:00 P.M.

Dept.: 310

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

2 **PLEASE TAKE NOTICE** that on April 10, at 2:00 p.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Kenneth R. Freeman, judge presiding, in Department
4 310 of the above referenced Court located at 600 S. Commonwealth Ave., Los Angeles, CA
5 90005, Plaintiff Mayra Ramirez ("Plaintiff") will and hereby does move the Court for an Order:
6 (1) granting final approval to the Class of the settlement; (2) fully and finally approving and
7 directing distribution to the Class of the settlement sum pursuant to the terms of the Amended
8 Joint Stipulation of Class Action Settlement (hereafter "Stipulation" or "Settlement Agreement")
9 in this matter, (3) fully and finally approving the enhancement payment to the Class
10 Representative, (4) fully and finally approving the Claims Administrator's costs, and (5) fully
11 and finally approving the award of attorney's fees and costs.

12 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
13 provides for court approval of the settlement of a purported class action and allows the Court to
14 grant final certification of a class for settlement purposes. In light of the overwhelmingly
15 positive response, as shown by the lack of any objections to the settlement, there is no question
16 that the settlement is fair, reasonable and adequate and thus should be granted final approval.

17 This Motion will be based on the Memorandum of Points and Authorities included
18 herein, the [Proposed] Order Granting Final Approval of Class Settlement and Judgment, upon
19 the class papers previously filed with this Court, and the supporting Declarations of Larry W.
20 Lee, William L. Marder, Mayra Ramirez, and Elizabeth Kruckenberg, upon the oral arguments
21 of counsel (should there be any), and on the complete records and file herein.

22
23 DATED: March 19, 2018

DIVERSITY LAW GROUP, P.C.

24
25 By: 

Larry W. Lee

26 Attorneys for Plaintiff and the Class
27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff and Class Representative Mayra Ramirez (“Plaintiff” or “Class Representative”)
4 submits this Memorandum in support of the Motion for Final Approval of Class Action
5 Settlement.

6 The settlement entered into by and between the parties provides for a settlement fund of
7 Nine Hundred Fifteen Thousand Dollars (\$915,000) (the “Settlement Fund”) to be created for the
8 benefit of the Class. From this Settlement Fund, attorney’s fees, litigation costs, enhancement
9 payments to each Plaintiff, PAGA payment, and the costs of claims administration are to also be
10 paid.

11 The history of this litigation was previously detailed in Plaintiff’s preliminary approval
12 motion, and thus is incorporated herein.

13 Per the Court’s ruling, the Claims Administrator in this matter distributed the Class
14 Notice. (*See* Declaration of Elizabeth Kruckenberg (“Kruckenberg Decl.”) at ¶¶ 3-5.) There
15 have been *no* objections filed to the Settlement. (*Id.* at ¶ 9.) Moreover, there has been only one
16 request for exclusion from the settlement. (*Id.* at ¶ 8.) Thus, this favorable response by the Class
17 supports the Court’s Preliminary Approval Order finding that the Settlement was fair, adequate
18 and reasonable.

19 In sum, as a result of the notice process, and in light of the complete lack of any
20 objections and one opt-out, the Court may confirm its preliminary approval as this process
21 supports the Court’s initial finding that the Settlement is fair, adequate and reasonable.

22 In addition to the results of the notice process, for the same reasons as set forth earlier in
23 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represents
24 the basic points previously covered supporting approval of the Settlement:

- 25 • The Settlement provides a total settlement sum of \$915,000 for a class size of
26 1,627 Class Members;
- 27 • Plaintiff performed adequate investigation of this case, including the production
28 of information by Defendant of payroll policies and class data necessary for

1 Plaintiff to fully evaluate this case; and

- 2 • A highly regarded claims administrator was retained, Phoenix Settlement
3 Administrators, at a competitive price.

4 With this additional information, the Court should grant Final Approval consistent with
5 the Preliminary Approval Order.

6 **II. THE SETTLEMENT**

7 **A. Class Members Were Provided Proper Notice.**

8 The notice procedures required by the Preliminary Approval Order have been followed
9 and satisfy all due process rights of Class Members.

10 The Preliminary Approval Order contemplated that the Class Notice, as approved in the
11 Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the
12 Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement
13 Administrators (“Phoenix” and/or “Claims Administrator”) would serve as the Claims
14 Administrator.

15 As clearly stated in the Declaration of the Claims Administrator, notice was provided to
16 Class Members as required by the Preliminary Approval Order. The Claims Administrator
17 received a Class Member mailing list from Defendant that included 1,627 Class Members, and,
18 on December 18, 2017, each of the persons identified on the mailing list was sent the Class
19 Notice and Claim Form via first class mail. (Kruckenberg Decl. at ¶ 5.) As part of the
20 settlement notice process, the Claims Administrator has re-mailed Class Notices to 77 Class
21 Members using newly updated addresses. (Kruckenberg Decl. at ¶ 6.)

22 The provision of the notice to Class Members and administration of the claims process as
23 described above meets the requirements for the “best notice practicable” in this case as necessary
24 to protect the due process rights of Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*,
25 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the
26 litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*,
27 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be
28 identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.

306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

Here, the Class Members were provided with a mailing regarding the settlement that explained the settlement and allowed Class Members to seek information, ask questions, and seek additional forms. As such, proper notice has been given to the Class Members.

The Court, therefore, may proceed to determine the fairness and adequacy of the Settlement, and order its approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

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

A. The Terms Of The Settlement, The Negotiation Of The Settlement And The Reception Of The Settlement By Class Members All Strongly Support The Conclusion That The Settlement Is Fair, Adequate And Reasonable

Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The Agreement was the product of negotiation between highly able and experienced attorneys on both sides, possessed of the relevant data and extensive legal research which they had carefully analyzed. (Declaration of Larry W. Lee (“Lee Decl.”) at ¶ 5). In addition, the resolution of this case was reached only after the production of payroll policies and class payroll data, and only after mediation and further significant drawn out negotiations. (Lee Decl. at ¶¶ 5 & 6).

The results after mailing of the Class Notice support confirmation of the Court’s preliminary approval of the settlement with final approval of the settlement, as evidenced by the fact that *there is not a single Class member who has objected to the current settlement.*

The Court may appropriately infer that the class action settlement is fair, adequate and reasonable when, among other reasons, few class members object to it. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d

566, 577 (9th Cir. 2004) (approving settlement with 45 objections and 500 opt-outs from a 90,000-person class, representing .05% and .56% of the class, respectively); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class members opted out, court found that positive class reaction “strongly supports settlement”). Here, the lack of any objections to this current settlement and the existence of one single opt-out is an indication that Class Members themselves view the settlement as fair, adequate and reasonable.

B. Under Well-Established Legal Principles, the Court Should Grant Final Approval to the Settlement

1. Standard of Review

On a motion for final approval of a class action settlement under Civil Code § 1781(f) and Federal Rules of Civil Procedure (“FRCP”) Rule 23(e), a court’s inquiry is whether the settlement is “fair, adequate and reasonable.”¹ *Officers for Justice v. Civil Serv. Comm’n*, 668 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983). A settlement is fair, adequate and reasonable, and therefore merits final approval, when “the interests of the class are better served by the settlement than by further litigation.” See Manual for Complex Litigation Fourth (Fed. Judicial Center 2004) (“Manual”), § 21.6 at 309.

The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. See 4 Newberg on Class Actions 4th § 11.41 (2008); *Chemical Bank v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

Although the Court possesses “broad discretion” in determining that a proposed class action settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. See *Officers for Justice*, *supra* 688 F.2d at 625. Accordingly, the Court should give due regard to what is otherwise a “private consensual agreement” between the

¹ Both Civil Code § 1781(f) and FRCP Rule 23 have been expressly authorized by the California Supreme Court for use in all California class action litigation. See *Vasquez v. Superior Court* (1971) 4 Cal. 3rd 800, 820-821.

parties. *Id.*; see also *Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379 (D. Ariz. 1989), *aff'd sub nom.*, *City of Seattle*, 955 F.2d 1268; Manual § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement.”)

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

As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp* cautioned: “[i]t cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.’” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.

2. The Settlement Is Presumed To Be Fair

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

[A] presumption of fairness exists where : (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.

Dunk v. Ford Motor Co (1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146; accord, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F Supp at 1387.

1 The settlement in the case at bar warrants approval and carries a presumption of fairness.
2 As previously noted in the application for Preliminary Approval, this current settlement was
3 negotiated at arms' length, and only after the entire payroll data for the class was produced and
4 analyzed. (Lee Decl. at ¶¶ 5-6).

5 Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in
6 the supporting declarations, Class Counsel has significant experience in class actions and
7 employment wage and hour matters. (Lee Decl. at ¶¶ 12-14; Declaration of William L. Marder
8 ("Marder Decl.") at ¶¶ 8-13).

9 **3. Two-Way Costs and Other Risks Inherent In Continued Litigation**
10 **Favor Final Approval**

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

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

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

1 very substantial settlement for the Class that resulted in a fair recovery which at the same time
2 provides for finality and no risk of attorneys' fees or costs by the Class Members or the Class
3 Representative.

4 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding
5 significant legal and factual battles that otherwise may have prevented the Class from obtaining
6 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious and
7 can be successfully litigated, they are experienced and fully understand the inherent risks and
8 uncertainty involved with such matters as the resolution of class certification, the outcome of a
9 potential trial, and the outcome of any appeals that would inevitably follow should the Class
10 prevail at trial.

11 Class Counsel has also assessed the same risks in connection with the current settlement.
12 Because the settlement provides immediate and substantial relief, without the attendant risks and
13 delay of continued litigation – not to mention the threat of litigation fees and costs – Class
14 Counsel believe that the settlement warrants the Court's final approval.

15 **4. The Complexity, Expense and Likely Duration of Continued**
16 **Litigation Against Defendant Favor Final Approval**

17 Another factor considered by courts in approving a settlement is the complexity, expense,
18 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
19 157. In applying this factor, the Court must weigh the benefits of the settlement against the
20 expense and delay involved in achieving an equivalent or more favorable result at trial. *See*
21 *Young v. Katz*, 447 F.2d 431, 433-434 (5th Cir. 1971).

22 As noted above, continued litigation could have led to appeals on a number of issues. On
23 the other hand, the settlement that was reached provides to all Class Members – regardless of
24 their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval,
25 the Class Members would be left without a remedy as a practical matter and courts across the
26 State would have to address the issues presented here in a piecemeal, costly, and time-consuming
27 manner. The settlement in this case is therefore consistent with the “overriding public interest in
28

settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst v. Safeco Corp.*, 529 F.2d at 950 (footnote omitted); *see also* 4 Newberg at § 11.41.

5. The Opinion of Experienced Counsel Favors Final Approval

Class Counsel supports the settlement as fair, reasonable and adequate, and in the best interest of the Class Members as a whole. (Lee Decl. at ¶ 7; Marder Decl. at ¶ 2). Similarly, counsel for Defendant is also in favor of this settlement.

The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F.Supp. at 617; *Linney*, 151 F.3d at 1242.

6. Discovery and the Settlement Discussions Undertaken In This Action Favor Final Approval

Prior to negotiating the settlement, Class Counsel engaged in significant investigation of the claims at issue. Defendant also produced key data pertaining to the class members that allowed Plaintiff to ascertain and determine the potential amount of damages that Defendant possibly could be liable for if Plaintiff prevailed at trial. (Lee Decl. at ¶ 5). It was only after the production of such information and data that the Parties engaged in settlement discussions which ultimately led to this settlement. (Lee Decl. at ¶ 5).

As detailed above, each of the factors counsel strongly in favor of final approval of the Settlement by this Court.

IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Plaintiff has requested, and Defendant does not oppose, an enhancement of Twelve Thousand Five Hundred Dollars (\$12,500), pursuant to the terms of the Settlement Agreement. Plaintiff requests that this Court approve such service payments in light of the efforts Plaintiff put into this case, the absence of any objection to her service payment, and the excellent result achieved.

1 As shown in the supporting declaration, the Class Representative spent time with Class
2 Counsel on a number of occasions to discuss the case, including providing substantive
3 information regarding Defendant's practices, and providing documents related to her own claims
4 and the claims of the Class. (Declaration of Mayra Ramirez ("Ramirez Decl.") at ¶¶ 3-11). As
5 part of her duties as Class Representative, Plaintiff provided invaluable information, evidence,
6 and documents that resulted in this settlement.

7 In addition to the invaluable services the Class Representative provided, she also took a
8 significant risk, both professionally and monetarily, in acting as a Class Representative. Because
9 the claims alleged by Plaintiff involved the payment of fees and costs to the prevailing party,
10 Plaintiff could have possibly faced paying the costs of Defendant had Plaintiff not prevailed in
11 this action. (Ramirez Decl. at ¶ 8). Moreover, given that future employers are much less likely
12 to hire individuals who have filed suit against their prior employer, particularly cases of this
13 nature, the Class Representative could face negative employment prospects in the future.

14 The Class Representative took such risks upon herself and the whole class benefited from
15 this. Class Members did not have to file individual lawsuits and bear the risks of payment of
16 fees and costs if they did not prevail, nor did they have to face the potential for retaliation and
17 not getting future employment had they filed a lawsuit which is a public record. These are
18 significant benefits, even apart from the time the Class Representative has spent working on this
19 case, that weigh in favor of granting the requested enhancement.

20 Finally, as part of the class settlement, Plaintiff also agreed to give a general release of
21 her own individual claims, something that the Class Members did not have to do. Thus, Plaintiff
22 has sacrificed her own individual rights for those of the class members. This is a significant
23 factor to take into account that further warrants the award of the requested enhancement amount.

24 Courts have routinely granted approval of settlements containing such enhancements. In
25 *League of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that
26 the proposal settlement properly granted the named plaintiffs individual relief. It is "not
27 uncommon for Class Members...to receive special relief in settlement... [The Plaintiff]...had
28 been instrument in prosecuting this lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi v.*

1 *Western Elec. Co.*, 527 F. Supp. 18 (D. N. J. 1981), a named plaintiff in a Title VII class action
2 was awarded individual relief of back-pay and interest, reinstatement, punitive damages and
3 counsel fees. Similarly, in *Women's Committee for Equal Employment Opportunity v. NBC*, 76
4 F.R.D. 173 (SDNY 1977), the court approved as fair a settlement that included awards to 16
5 named plaintiffs of virtually all the damages they sought.

6 In *Lo Re v. Chase Manhattan Corp.*, 1979 U. S. Dist. LEXIS 12210, 19 FEP Cas. (BNA)
7 1366 (SDNY 1979), the court approved a class representative payment of \$229,000 out of a
8 \$1,579,000 settlement fund to the named plaintiff for his individual claims. One of the factors
9 considered by the court in determining that such payments were fair was the fact that none of the
10 absent Class Members objected to the enhancements. The court held that this fact showed that
11 the Class Members were not offended by these enhancements. *Id.* at 17. In the present case,
12 there are no objections filed by any individual to the requested amounts. As such, one can infer
13 that none of the Class Members have any disagreement with such individual enhancements.
14 Furthermore, and as explained above, the Class Representative took substantial risk in bringing
15 the current benefits to the class.

16 Here, this litigation has resulted in a significantly valuable benefit to the class, and the
17 Class Representative took on substantial risk and sacrifice in helping to get this financial benefit
18 to the class. As such, the enhancement should be awarded to the named Plaintiff for her
19 commitment, dedication, and risks taken for this litigation. Accordingly, the court should find
20 that the enhancement as fair and reasonable.

21 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

22 Class Counsel has achieved an excellent settlement in this litigation, as set forth in the
23 Settlement Agreement and this Motion. The proposed settlement provides substantial benefits to
24 the Class and was reached after aggressive investigation and litigation by Class Counsel. Class
25 Counsel and Plaintiff achieved a \$915,000.00 common fund for the benefit of the Class to
26 compensate the Class for the claims alleged. There have been no objections filed against the
27 Settlement or to Class Counsel's request for attorneys' fees in the amount of \$305,000.00 and
28 costs in the amount of \$14,189.89, which is substantially less than maximum allowable amount

1 of \$25,000.00. In fact, there has not been a single objection to the Settlement among the 1,627
2 Class Members. As more fully detailed below, Class Counsel's request for attorney's fees and
3 reimbursement of costs, is fair, reasonable, and adequate. Accordingly, final approval should be
4 granted.

5 **A. An Award of Attorneys' Fees and Costs is Requested When A Common**
6 **Fund Has Been Created for the Benefit of the Class**

7 Class Counsel's application for an award of attorneys' fees in the amount of \$305,000 of
8 the \$915,000 settlement fund created on behalf of the Class is reasonable and fair. The requested
9 fee represents fair compensation for undertaking complex, risky, expensive, and time-consuming
10 litigation on a contingent basis.

11 Class Counsel seeks a fee award calculated as thirty-three and one-third percent (33
12 1/3%) of the total value of the Settlement for the successful prosecution and resolution of this
13 action. Recently, the California Supreme Court issued its ruling regarding the award of
14 attorney's fees in wage and hour class action settlements. Under California law, the award of
15 attorneys' fees in common fund wage and hour class action settlements should start with the
16 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the
17 overwhelming majority of federal and state courts in holding that when class action litigation
18 establishes a monetary fund for the benefit of the class members, and the trial court in its
19 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
20 of a reasonable fee by choosing an appropriate percentage of the fund created."). Under the
21 percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a
22 reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a
23 fee is set by a court rather than by contract, the object is to set it at a level that will approximate
24 what the market will set... The judge, in other words, is trying to mimic the market in legal
25 services.").

26 An award of 33% of the fund in attorneys' fees mimics the marketplace as it "is
27 supported by the fact that typical contingency fee agreements provide that class counsel will
28 recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*

1 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
2 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
3 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, “empirical studies [that]
4 show that . . . fee awards in class actions average around one-third of the recovery.” *Chavez v.*
5 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

11 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
12 percent of the common fund is consistent with, and in the range of, awards in other class action
13 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
14 representing 33 1/3% of the fund clearly falls within that range, and is consistent with other
15 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical*
16 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
17 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were
18 between 25 percent and 35 percent, with almost no awards more than 35 percent.”); Eisenberg &
19 Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
20 Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation
21 nationwide conclude that fees representing one-third of the total recovery is consistent with
22 market rates).

23 The results delivered by Plaintiff’s Counsel also support the requested percentage of the
24 fund. Here, Plaintiff and her counsel secured a \$915,000 common fund settlement.

25 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
26 is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1
27 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
28 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the class

1 notice specifically notified class members that Plaintiff's Counsel would be seeking 1/3 of the
2 settlement fund as attorneys' fees. To date, no class member has objected to the settlement. This
3 strong favorable response also supports the requested fees.

4 In addition, it is recognized that one of the primary factors justifying an enhanced
5 attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of*
6 *Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974):

7
8 No one expects a lawyer whose compensation is contingent upon his success to
9 charge, when successful, as little as he would charge a client who had agreed to
10 pay for his services, regardless of success. Nor, particularly in complicated cases
producing large recoveries, is it just to make a fee depend solely on the reasonable
amount of time expended.

11 Here, it is clear that a common fund of \$915,000.00 dollars has been created as the entire
12 amount is to be paid out without any reversion. For Class Counsel, the fees here were wholly
13 contingent in nature and the case presented far more risk than the usual contingent fee case.
14 Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-
15 out battle with a defendant that has retained premier defense counsel.

16 As a secondary backup support for the percentage of the fund method, when fees are
17 allocated by percentage method, courts have discretion to "cross-check" the fees awarded
18 through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar
19 calculation, when used in this manner, does not override the trial court's primary determination
20 of the fee as a percentage of the common fund and thus does not impose an absolute maximum
21 or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite*
22 *Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does
23 not trump the primary reliance on the percentage of common fund method.]").

24 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar
25 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
26 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
27 court is not necessarily required to make such an adjustment." *Id.* (emphasis added). Thus, a
28 lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required;

1 in many cases, performing a cross-check “undermines” one of the primary reasons for using the
2 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
3 discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a
4 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*
5 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of
6 the Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar
7 approach set forth in this Report are now echoed by many authorities, who have been most vocal
8 about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already
9 overworked trial judge.”).

10 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
11 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); see also,
12 e.g., *Sutter Health Uninsured Pricing Cases*, 171 Cal App.4th 495, 512 (2009) (applying a 2.52
13 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
14 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
15 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
16 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
17 a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was
18 affirmed in full by the California Supreme Court in its new decision guiding lower courts on
19 assessing fees.

20 Moreover, the Ninth Circuit cited with approval a comprehensive study of fees awarded
21 by the percentage method shows that the majority of multipliers awarded are “in the 1.5-3.0”
22 range. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a
23 multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
24 over 30 cases). Federal district courts applying California law have likewise routinely approved
25 cross-check multipliers between 2 and 3 in employment cases. See, e.g., *Willner v. Manpower*
26 *Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a
27 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
28 *N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys' fees that resulted in lodestar

multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations). Other courts have found even higher multipliers to be reasonable by comparison to other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008) (approving a 5.2 multiplier on a cross-check after surveying a large body of cases affirming a higher multiplier).

With respect to Class Counsel's lodestar, to date, over 315 hours have been expended by Class Counsel in this matter. (Lee Decl. at ¶ 9; Marder Decl. at ¶ 4). Moreover, Class Counsel expects to incur approximately 20 additional hours of attorney time in finalizing this settlement. (Lee Decl. at ¶ 9; Marder Decl. at ¶ 5). Mr. Lee requests an hourly rate of \$700.00 per hour, and \$650 per hour for Mr. Marder. (Lee Decl. at ¶ 10; Marder Decl. at ¶ 6). The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "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*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class Counsel requests that the court find that these hours were reasonable in this litigation.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, e.g., the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

1 Class Counsel's skill and experience justify the requested rate. As shown in the
2 supporting declarations, Class Counsel have significant experience in the area of employment
3 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
4 employees in employment matters, particularly wage and hour cases. (Lee Decl. at ¶ 13; Marder
5 Decl. at ¶ 12). As such, based on the hours and applicable rate, the total lodestar to be expended
6 by Class Counsel through finalizing this settlement will be approximately \$227,100.00.

7 Once the court establishes the lodestar amount, it may enhance the fee award by a
8 multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at 48. The
9 pertinent factors include the difficulty of the questions involved and the skill in presenting them,
10 the contingent nature of the fee award, the extent to which the litigation precluded other
11 employment, and the percentage-of-the-fund the attorney would have received on the fair
12 market. *Id.*, *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive and the court
13 can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24
14 Cal. 4th 1122, 1139 (2001).

15 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
16 the-benefit, namely, no objections by Class Members, commendable conduct by counsel, and
17 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*,
18 82 Cal. App. 4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorney's
19 fee with no objections. The extreme effort undertaken by counsel, as shown by their hours and
20 the significantly high amount of claims being paid out, shows commendable conduct.

21 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
22 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at 52 (the promptness
23 of settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*,
24 courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not
25 punished, for achieving this goal in a timely fashion. *Id.*

26 The multiplier should be enhanced by the contingent nature of counsel's fee recovery.
27 The risks in taking on a class action case are enormous, not the least of which is time and effort.
28

1 For example, Class Counsel was also the counsel of record for plaintiff in *Blair v. Dole*, LASC
2 Case No. BC536197, wherein, after substantial litigation, this Court granted summary judgment
3 in favor of defendant. Similarly, with respect to the attendant wage statement claim, there was
4 also significant risk involved, as Plaintiff would still need to establish class certification and that
5 Class Members suffered “injury” as required under Labor Code § 226(e).

6 Thus, the risks are very real and substantial for Class Counsel. Not only was there
7 significant risk taken upon by Plaintiff’s counsel in this matter, but their ability to obtain the
8 current settlement should be seen as quite commendable.

9 Here based upon Plaintiff’s counsel’s lodestar of \$227,100.00, Plaintiff’s request for a
10 multiplier of 1.35 is reasonable and fair, particularly based on the factors described above.
11 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (Ct.App.2001) (noting that courts using
12 the lodestar method to calculate attorney fees awards in class actions typically apply multipliers
13 in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal.
14 Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and
15 hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210
16 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

17 As such, the requested fee award is fair and reasonable, and should be awarded in its
18 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
19 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
20 Class Counsel’s request for attorneys’ fees in the amount of \$305,000.00 is fair, reasonable, and
21 adequate.

22 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT** 23 **OF COSTS**

24 The request for reimbursement of costs, in the amount of \$14,189.89 is fair and
25 reasonable. Pursuant to the terms of the Settlement Agreement, Plaintiff is allowed to seek
26 reimbursement of litigation costs up to a maximum of \$25,000. To date, Class Counsel has
27 expended \$14,189.89 in litigation related costs. (Lee Decl. at ¶ 11; Marder Decl. ¶ 7). The
28

1 authority for the court to award this is the parties' Settlement Agreement and Labor Code §
2 218.5. As such, this request should be approved.

3 **VII. THE CLAIMS ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
4 **APPROVED**

5 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Claims
6 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
7 funds. In total, the class administration costs total \$11,000.00. (Kruckenberg Decl. ¶ 14). Thus,
8 class administration fees in the amount of \$11,000.00, as agreed to in the Settlement, should be
9 approved.

10 **VIII. CONCLUSION**

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

14 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form
15 proposed and submitted:

- 16 1. Granting final approval to the proposed Settlement Agreement;
- 17 2. Approving distribution of the settlement funds pursuant to the terms of the
18 Settlement Agreement;
- 19 3. Approving Plaintiff's request for award of the class representative enhancement
20 with payment pursuant to the terms of the Settlement Agreement;
- 21 4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs
22 with payment pursuant to the terms of the Settlement Agreement;
- 23 5. Approving Plaintiff's request for payment of the claims administration costs with
24 payment pursuant to the terms of the Settlement Agreement; and
- 25 6. Entering final judgment as to all members of the Settlement Class in this action.

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1 **RESPECTFULLY SUBMITTED,**

2
3 DATED: March 19, 2018

DIVERSITY LAW GROUP, P.C.

4
5 By: 

6 Larry W. Lee

7 Attorneys for Plaintiff and the Class

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

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

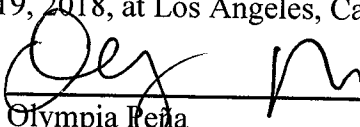
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1250, Los Angeles, California 90071.

On March 19, 2018, I served the following document(s) described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** 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 March 19, 2018, at Los Angeles, California.



Olympia Peña