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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SAMNANG TOUCH, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

COX AUTOMOTIVE CORP SVCS., LLC,
a limited liability company; COX
AUTOMOTIVE MOBILITY SOLUTIONS,
INC., a corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 2:23-cv-01945-TLN-CSK

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

Date: July 25, 2024
Time: 2:00 p.m.
Courtroom: 2, 15th Floor
Judge: Hon. Troy L. Nunley

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Attorneys for Plaintiff
SAMNANG TOUCH

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 2:00 p.m., on July 25, 2024, or as soon thereafter as the matter can be heard in Courtroom 2 of the United States District Court, Eastern District of California, located at Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA 95814, before the Honorable Troy L. Nunley, Plaintiff SAMNANG TOUCH (“Plaintiff”) will and hereby does move this Court for an Order preliminarily approving the proposed class action settlement. Specifically, Plaintiff respectfully requests that the Court order as follows:

1. Grant preliminary approval of the proposed class action settlement;
2. Grant conditional certification of the proposed settlement class;
3. Authorize the mailing of the proposed notice to the class of the settlement; and
4. Schedule a “fairness hearing,” i.e., a hearing on the final approval of the settlement.

Plaintiff makes this unopposed motion on the grounds that the proposed settlement is within the range of possible final approval, and notice should, therefore, be provided to the class. This Motion is based upon this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, the attached Memorandum of Points and Authorities in Support, the Declarations of Edward W. Choi, Larry W. Lee, Dennis S. Hyun, William L. Marder, and Samnang Touch, the accompanying Stipulation of Class Settlement and Release, any oral argument of counsel, the complete files and records in the above-captioned matter, and such additional matters as the Court may consider.

DATED: June 7, 2024

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

By: /s/ Edward W. Choi
Edward W. Choi
Attorneys for Plaintiff and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF AGREEMENT**

3 Plaintiff SAMNANG TOUCH (“Plaintiff” or “Named Plaintiff”) seeks preliminary
4 approval of the Stipulation of Class Settlement and Release (“Settlement Agreement”) that has
5 been reached in the above-captioned matter with Defendants COX AUTOMOTIVE
6 CORPORATE SERVICES, LLC and COX AUTOMOTIVE MOBILITY SOLUTIONS, INC.
7 (collectively referred to as “Defendant”) (Defendant and Plaintiff collectively referred to as the
8 “Parties”).

9 Through this Motion, Plaintiff seeks the Court’s approval of a partial settlement of the
10 Class Action claims brought in this action. Specifically, Plaintiff’s operative Complaint alleges
11 that Defendant violated Labor Code §226 by (1) failing to provide wage statements that included
12 the accurate total hours worked and (2) failing to provide wage statements that identified the
13 legal employer. Through this partial settlement, Plaintiff is settling his claim arising from
14 Defendant’s alleged failure to list the accurate total hours worked on wage statements whenever
15 non-exempt employees were paid overtime wages. Plaintiff will continue to litigate his claim for
16 violation of Labor Code §226 for failing to provide wage statements that identified the legal
17 employer.

18 **A. Procedural Background.**

19 *a. Summary of the Litigation.*

20 On May 19, 2023, Plaintiff filed his Complaint for violation of California Labor Code
21 §226 in the San Joaquin Superior Court. (Declaration of Edward Choi (“Choi Decl.”) ¶3). On
22 August 2, 2023, Plaintiff filed a Representative Complaint for violation California Labor Code
23 §2698, *et. seq.* (*Id.* at ¶4). On September 8, 2023, the San Joaquin Superior Court granted
24 Defendant’s Motion to Consolidate the two separate lawsuits that were filed by Plaintiff. (*Id.* at
25 ¶5). Defendant subsequently removed the action to the United States District Court for the
26 Eastern District of California and is currently assigned Case No. 2:23-cv-01945-TLN-CSK. (*Id.*)

27 The Parties subsequently agreed to private mediation and engaged in the same with well
28 respected mediator Steve Rottman on March 12, 2024. (*Id.* at ¶ 7). As discussed herein, the

1 Parties were able to resolve the wage statement claim arising from Defendant’s alleged failure to
2 list the accurate total hours worked. (*Id.*) The Parties were unable to settle the wage statement
3 claim involving the listing of the actual entity that employed Plaintiff and Class Members. (*Id.*)
4 The Parties are currently engaged in formal discovery on said claim. (*Id.*) Defendant denies any
5 liability or wrongdoing of any kind as to the total hours worked claim. (*Id.*).

6 *b. Summary of Investigation and Discovery.*

7 The Parties have served their Initial Disclosures and engaged in an extensive meet and
8 confer process regarding the data to perform a damage analysis and engage in a meaningful
9 mediation. (*Id.* at ¶8). In connection with initial disclosures and exchange of documents,
10 Plaintiff obtained and reviewed Defendant’s document production, including policy documents
11 and revised, corrected wage statements that the Defendant rolled out to employees starting on
12 May 19, 2022. (*Id.*).

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

14 The Parties have reached a class-wide resolution of the claims alleged in this lawsuit as
15 reflected in the Settlement Agreement on behalf of a class of employees defined as:

16 “Current and former California non-exempt employees of Cox
17 Automotive Corporate Services, LLC who, after May 19, 2022,
18 received wage statements showing a ‘total hours’ figure that did not
19 match the hours worked in the pay period.”

(Settlement Agreement ¶3).

20 The terms of the settlement provide that Defendant shall pay a Gross Fund Value of One
21 Hundred Fifty Thousand Dollars (\$150,000.00). (Settlement Agreement ¶10). Plaintiff currently
22 estimates that after deduction for Settlement Administration Costs, attorneys’ fees, costs, PAGA
23 penalties, and Plaintiff’s representative enhancement, the net settlement fund of approximately
24 \$48,500.00 will be distributed among approximately 150 class members based on the number of
25 wage statements containing payment of overtime wages received by Participating Class
26 Members during the Class Period, as reflected by Defendant’s payroll data. (Choi Decl. ¶9).

27 Any funds remaining uncashed after 180 days shall be distributed to the California State
28 Controller’s Office in the name of the Qualified Claimant. (Settlement Agreement ¶13.c.).

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

2 Based on their own respective independent investigations and evaluations, the Parties and
3 their respective counsel are of the opinion that settlement for the consideration and on the terms
4 set forth in their Settlement Agreement is fair, reasonable, and adequate and is in the best
5 interests of the class and the Defendant in light of all known facts and circumstances and the
6 expenses and risks inherent in litigation. (Choi Decl. at ¶12; Lee Decl. at ¶ 3; Hyun Decl. at ¶ 7;
7 Marder Decl. at ¶ 12).

8 Defendant denies any liability or wrongdoing of any kind associated with the claims
9 being settled herein. Defendant denies that class certification of the Settlement Class is
10 appropriate for any purpose other than that of settling the total hours worked claim. If this case
11 continued and proceeded to trial, Defendant also would assert that Plaintiff would not be able to
12 prevail on the total hours worked claim.

13 Based on the approximately 150 Class Members, each Class Member will receive a raw
14 average of approximately \$323.33 after deduction for attorneys' fees, class representative
15 enhancement payment, payment of penalties to the LWDA, settlement administration costs, and
16 litigation costs. (Choi Decl. at ¶ 10). Each individual Class Member's settlement amount may
17 be more or less than this raw average, depending on each respective Class Member's number of
18 wage statements containing payment of overtime wages received during the Class Period and the
19 number of opt-outs received.

20 **II. LEGAL ANALYSIS**

21 **A. The Class at Issue and the Settlement Fund.**

22 Defendant has agreed to collect information regarding the identity of the members of the
23 Settlement Class. The Parties have further agreed and stipulated that the Settlement Class be
24 certified on a provisional, non-mandatory basis for the purposes of this settlement only. As set
25 forth in the Settlement Agreement, the Settlement Class includes:

26 “Current and former California non-exempt employees of Cox
27 Automotive Corporate Services, LLC who, after May 19, 2022,
28 received wage statements showing a ‘total hours’ figure that did not

1 match the hours worked in the pay period.”
2 (Settlement Agreement ¶3). The Settlement Class ends as of July 7, 2023, the date that Cox
3 implemented the fix on its wage statements with respect to the total hours worked. (*Id.*)

4 **B. Two-Step Approval Process.**

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

9 Review of a proposed class action settlement generally involves
10 two hearings. First, counsel submit the proposed terms of
11 settlement and the judge makes a preliminary fairness evaluation.
12 In some cases, this initial evaluation can be made on the basis of
13 information already known, supplemented as necessary by briefs,
14 motions, or informal presentations by parties. If the case is
15 presented for both class certification and settlement approval, the
16 certification hearing and preliminary fairness evaluation can
17 usually be combined. The judge should make a preliminary
18 determination that the proposed class satisfies the criteria set out in
19 Rule 23(a) and at least one of the subsections of Rule 23(b). If
20 there is a need for subclasses, the judge must define them and
21 appoint counsel to represent them. The judge must make a
22 preliminary determination on the fairness, reasonableness, and
23 adequacy of the settlement terms and must direct the preparation of
24 notice of the certification, proposed settlement, and date of the
25 final fairness hearing.

26 Manual for Complex Litigation (“MCL”) (4th ed. 2004), § 21.632.

27 Thus, the preliminary approval by the trial court is simply a conditional finding that the
28 settlement appears to be within the range of acceptable settlements. As Professor Newberg
comments:

29 The strength of the findings made by a judge at a preliminary
30 hearing or conference concerning a tentative settlement proposal
31 may vary. The court may find that the settlement proposal
32 contains some merit, is within the range of reasonableness required
33 for a settlement offer, or is presumptively valid subject only to any
34 objections that may be raised at a final hearing.

35 4 Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2010). Accordingly, a court
36 should grant preliminary approval of a class action settlement where it is within the “range of
37 reasonableness.” Here, the Parties have reached such an agreement that is fair, reasonable, and
38

adequate, and have submitted it to the Court in connection with this filing.

C. The Standard for Preliminary Approval.

As a matter of public policy, settlement is a strongly-favored method for resolving disputes. *Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989). This is especially true in complex class actions such as this case. *Officers for Justice v. Civil Serv. Comm’n of City & County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Preliminary approval does not require the Court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. 5 James Wm. Moore et al., *Moore’s Federal Practice* § 23.165 (3d ed. 2010). In considering the settlement, the Court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. *Officers for Justice*, 688 F.2d at 625. Preliminary approval is merely the prerequisite to giving notice so that “the proposed settlement...may be submitted to members of the prospective class for their acceptance or rejection.” *Philadelphia Hous. Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970).

“The judge should raise questions at the preliminary hearing and perhaps seek an independent review if there are reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys.” MCL § 21.633.

Here, the proposed settlement does not pose such issues. Parties are represented by highly-competent counsel. As discussed above and in the declarations submitted herewith, the Parties engaged in substantial and thorough investigations related to the claims and defenses alleged in this case. Further, the proposed settlement was reached after Plaintiff obtained class data from which Plaintiff’s counsel was able to calculate potential exposure so that Plaintiff’s counsel could engage in informed negotiations. Moreover, the Parties utilized the assistance of Steve Rottman, a renowned class action mediator, and after substantial arm’s-length negotiations

1 between the Parties, the Parties were able to resolve the total hours worked claim.

2 As detailed herein, the proposed settlement satisfies the standard for preliminary approval
3 as it is well within the range of possible approval and there are no grounds to doubt its fairness.
4 The Parties’ attorneys have extensive experience in employment law, particularly wage and hour
5 litigation, and reached settlement only after mediation and extensive arm’s-length negotiations
6 subsequent to the mediation.

7 **D. The Proposed Settlement Class Satisfies the Elements for Class Certification.**

8 The Parties also may, at the preliminary approval stage, request that the court
9 provisionally approve certification of the class—conditional upon final approval of the
10 settlement. Settlements are highly favored, particularly in class actions. *Util. Reform Project v.*
11 *Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989); *Officers for Justice*, 688 F.2d at
12 625; *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D. Colo. 1997). Plaintiff
13 requests such provisional approval at the preliminary approval hearing:

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

22 4 Newberg on Class Actions at § 11.26.

23 Pursuant to the Settlement Agreement, the Settlement Class is defined as

24 “Current and former California non-exempt employees of Cox
25 Automotive Corporate Services, LLC who, after May 19, 2022,
26 received wage statements showing a ‘total hours’ figure that did not
27 match the hours worked in the pay period.”

28 (Settlement Agreement ¶3).

The proposed settlement class meets all the requirements for class certification as follows:

1. Numerosity

The numerosity requirement is satisfied if the proposed class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Impracticable does not mean

impossible, only that it would be difficult or inconvenient to join all members of the class. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). The Parties estimate that as of the Date of Preliminary Approval the class will consist of approximately 150 individuals. (Choi Decl. ¶9) Accordingly, here, the Class is numerous and clearly satisfies the numerosity prong.

2. Ascertainability

As stated, above, Defendants have already ascertained the Class Members through Defendant's payroll records. (Choi Decl. ¶9).

3. Typicality

Typicality under Rule 23(a)(3) is satisfied if the representative plaintiff's claims share a common element with the class: i.e., those claims arise from the same course of conduct that gave rise to the claims of other settlement class members. *In re United Energy Corp. Solar Power Modules Tax Shelter Invs. Sec. Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988).

Here, Plaintiff submits that his claims are typical of those of other Class Members because he alleges that he suffered injury from the same specific actions that he alleges harmed other members of the class. Specifically Plaintiff alleges that whenever he received wage statements that included overtime wages, the rates of pay were split into two separate lines showing the base rate of pay on one line and another line showing a rate of half of the base rate. (Touch Decl. at ¶3). As a result of the foregoing rates of pay being split into two separate lines, the wage statements did not reflect the correct number of total hours worked during the pay period. (*Id.*). It is Plaintiff's position that his claims are typical of the class as a whole because they arise from the same factual basis and are based on the same legal theory as those applicable to the Class Members. (*Id.*).

4. Commonality

Commonality relates to whether there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality is satisfied if there is one issue common to class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Here, Plaintiff contends the common issues include, among other things, whether Defendant failed to provide

accurate itemized wage statements. (Choi Decl. ¶11). Courts have routinely certified Labor Code Section 226(a) class actions, including in *Stafford v. Brink's, Inc.*, C.D. Cal. Case No. CV-14-01352-MWF (PLAx) and *Magadia v. Wal-Mart*, 2018 WL 339139 (N.D. Cal. Jan. 9, 2018). See also *McKenzie v. Fed. Express Corp.*, 275 F.R.D. 290, 299 (C.D. Cal. 2011); see also *Ortega v. J.B. Hunt Transp., Inc.*, 258 F.R.D. 361, 374 (C.D. Cal. 2009); *Alonzo v. Maximus, Inc.*, 275 F.R.D. 513, 521 (C.D. Cal. 2011).

5. Adequacy

Adequacy under Rule 23(a)(4) is satisfied if the named plaintiffs have no disabling conflicts of interest with other members of the class and Class Counsel are competent and well qualified to undertake the litigation. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

Plaintiff submits that no conflict exists between Plaintiff and the Class because Plaintiff allegedly has suffered the same alleged violations as all Class Members and has the incentive to fairly represent all Class Members' claims. (Touch Decl. ¶ 4; Choi Decl. ¶ 11). Despite the settlement, Plaintiff remains willing to vigorously prosecute this action to the benefit of the class.

Furthermore, Plaintiff is represented by attorneys who have extensive experience in complex wage and hour litigation as is detailed in each of their declarations supported herewith. (Choi Decl. ¶14; Lee Decl. ¶¶ 6-8; Marder Decl. ¶¶ 4-9; Hyun Decl. ¶¶ 3-6).

6. Common Questions of Law and Fact Predominate

Plaintiff contends that common questions of law or fact predominate over individual questions pursuant to Rule 23(b)(3). These issues of fact and law raised in this action are common to all members of the classes and predominate in this case. Here, Plaintiff contends that Defendant failed to provide employees with accurate itemized wage statements. As set forth above, courts have granted certification of such claims. Based on discovery, Plaintiff believes and asserts that Defendant committed these violations as to Plaintiff in the same manner as to all Class Members. (Choi Decl. ¶11).

7. Superiority of Class Action

Plaintiff submits that the requirement that a class action is superior to other methods of

1 adjudication under Rule 23(b)(3) is also met. Courts have recognized that the class action device
2 is superior to other available methods for the fair and efficient adjudication of controversies
3 involving large number of employees in wage and hour disputes. *See, e.g. Hanlon*, 150 F.3d at
4 1022. Without class-wide relief in this action, the Class Members would be forced to litigate
5 numerous cases on a piecemeal basis.

6 **E. The Settlement is Fair and Reasonable and Not the Result of Fraud or**
7 **Collusion.**

8 **1. The Settlement May be Presumed Fair and Reasonable.**

9 There is a presumption that a proposed settlement is fair and reasonable when it is the
10 result of arm's-length negotiations. *Williams v. Vukovich*, 720 F.2d 909, 922-23 (6th Cir. 1983)
11 ("The court should defer to the judgment of experienced counsel who has competently evaluated
12 the strength of his proofs."); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB), 2004
13 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) ("Where 'the Court finds that the Settlement is the
14 product of arm's length negotiations conducted by experienced counsel knowledgeable in
15 complex class litigation, the Settlement will enjoy a presumption of fairness.'") (Citations
16 omitted); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 380 (N.D. Ohio 2001)
17 ("When a settlement is the result of extensive negotiations by experienced counsel, the Court
18 should presume it is fair.").

19 Additionally, Courts presume the absence of fraud or collusion in the negotiation of
20 settlement unless evidence to the contrary is offered. *See Priddy v. Edelman*, 883 F.2d 438, 447
21 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677,
22 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980).
23 Courts do not substitute their judgment for that of the proponents, particularly where, as here,
24 settlement has been reached with the participation of experienced counsel familiar with the
25 litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
26 2004); *Hammon v. Barry*, 752 F. Supp. 1087, 1093-1094 (D.D.C. 1990); *Steinberg v. Carey*, 470
27 F. Supp. 471, 478 (S.D.N.Y. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*,
28 79 F.R.D. 571, 576 (E.D. Pa. 1978).

1 While the recommendations of counsel proposing the settlement are not conclusive, the
2 Court can properly take them into account, particularly where, as here, they have already been
3 involved in extensive litigation, extensive informal investigation and formal written discovery,
4 and expert discovery, appear to be competent, and have experience with this type of litigation.
5 Newberg on Class Actions at § 11.47; Nat'l Rural Telecomms. Coop., 221 F.R.D. at 528 (“So
6 long as the integrity of the arm’s length negotiation process is preserved, however, a strong
7 initial presumption of fairness attaches to the proposed settlement . . . and ‘great weight’ is
8 accorded to the recommendations of counsel, who are most closely acquainted with the facts of
9 the underlying litigation.”) (citations omitted). Here, this settlement was reached after discovery
10 and investigation, production of class data, and a full day of mediation and continued
11 negotiations. Therefore, a presumption of fairness exists.

12 **a. Experience of Class Counsel.**

13 Here, counsel for Parties have a great deal of experience in wage and hour class action
14 litigation. Plaintiff’s counsel has been approved as class counsel in a number of other wage/hour
15 class actions. (Choi Decl. ¶ 14; Lee Decl. ¶¶ 6-8; Marder Decl. ¶9; Hyun Decl ¶6). Moreover,
16 Plaintiff’s counsel conducted an extensive investigation and discovery of the factual allegations
17 involved in this case prior to filing suit and throughout the course of litigation. Thus, based upon
18 such experience and knowledge of the current case, Plaintiff’s counsel believe that the current
19 Settlement is fair, reasonable and adequate. (Choi Decl. ¶ 14; Lee Decl. ¶3; Marder Decl. ¶12;
20 Hyun Decl ¶ 7).

21 **b. Investigation and Discovery Prior to Settlement.**

22 As mentioned, Class Counsel conducted significant investigation and discovery in
23 furtherance of the prosecution of this action. This investigation and discovery included, among
24 other things: (a) exchanging initial disclosures; (b) inspection and analysis of wage statements;
25 and (c) conducting an exposure analysis. (Choi Decl. ¶8).

26 Defendant produced all of the wage statements that contained the alleged violation. (*Id.*
27 at ¶8). Utilizing the documents, Plaintiff was able to calculate that there were 444 wage
28 statement issued to 150 Class Members. (*Id.*).

1 An “apples to apples” comparison with a similar case shows that the Settlement is
2 reasonable. In the present case, the gross settlement of \$150,000 is for approximately 444 wage
3 statements. This amounts to approximately \$337.84 per wage statement at issue. The settlement
4 in *McKenzie v. Federal Express Corp.*, 2012 US Dist Lexis 103666 (C.D. Cal. July 2, 2012), which
5 involved a gross settlement amount of \$8,250,000 for 484,928 wage statements which amounted
6 to approximately \$17.00 per wage statement. Not only did the *McKenzie* case involve the same
7 exaction violations as alleged in the current case, the District Court found that the *McKenzie*
8 settlement to be fair, reasonable and adequate. *Id.* at *6. The current settlement amount is almost
9 20 times per wage statement that was approved in *McKenzie*. Thus, the logical conclusion is that
10 the current settlement is indeed, fair, reasonable and adequate.

11 **2. The Settlement is Fair, Reasonable, and Adequate.**

12 The settlement for each participating Class Member is fair, reasonable, and adequate,
13 given the inherent risk of going forward with trial, the risk of appeals, the risks in an area where
14 the law is unsettled, and the costs of pursuing such litigation.

15 **a. Risks of Proceeding with Trial and Any Appeals.**

16 To assess the fairness, adequacy and reasonableness of a class action settlement, the
17 Court must weigh the immediacy and certainty of substantial settlement proceeds against the
18 risks inherent in continued litigation. *In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir.
19 1995) (“present value of the damages plaintiffs would likely recover if successful, appropriately
20 discounted for the risk of not prevailing, should be compared with the amount of the proposed
21 settlement.”); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F.
22 Supp. 610, 616-17 (N.D. Cal. 1979); MCL § 21.62 at 316.

23 Here, the Settlement affords fair relief to the Class, while avoiding significant legal and
24 factual battles, especially at trial, that otherwise may have prevented the Class from obtaining
25 any recovery at all. Although Plaintiff’s attorneys believe the total hours worked claim is
26 meritorious, Plaintiff’s counsel are experienced and realistic, and understand that the outcome of
27 a trial, and the outcome of any appeals that would inevitably follow if the class prevailed at trial,
28 are inherently uncertain in terms of both outcome and duration.

1 In light of the risks and uncertainties in connection with proceeding with trial, Plaintiff
2 asserts that this settlement is fair, adequate and reasonable.

3 **b. The Settlement is Within the Range of Reasonableness.**

4 The standard of review for class settlements is whether the settlement is within a range of
5 reasonableness. As Professor Newberg comments:

6 Recognizing that there may always be a difference of opinion as to
7 the appropriate value of settlement, the courts have refused to
8 substitute their judgment for that of the proponents. Instead the
9 courts have reviewed settlements with the intent of determining
10 whether they are within a range of reasonableness....

11 4 Newberg on Class Actions, at §11.45.

12 Here, the settlement fund is non-reversionary, such that 100 percent of the Net Settlement
13 Amount will be available for distribution to Settlement Class Members who do not opt-out.
14 Moreover, the settlement does not require claim forms. Rather, Class Members who do not opt-
15 out will automatically receive a check. (Choi Decl. ¶9). Assuming that every Class Member
16 elects to participate in the settlement, each Class Member will receive his or her pro rata share,
17 with each person receiving on average an approximate amount of \$323.33. (Choi Decl. ¶10)
18 Further, the settlement fund will be paid out entirely in cash (as opposed to a voucher, coupon,
19 etc.). (*Id.*).

20 In addition, as set forth in the Settlement Agreement, the release for Settlement Class
21 Members is limited to only the claims alleged in the operative complaint. Specifically, the
22 Settlement Agreement defines “Released Claims” as follows:

23 Each member of the Settlement Class, regardless of whether that member
24 submitted a timely claim, releases Cox and the Releasees from any and all claims,
25 debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney’s
26 fees, damages, action or causes of action contingent or accrued for, which would
27 reasonably arise from the allegation that Cox violated Labor Code Section
28 226(a)(2) as to the 444 wage statements Cox has identified where the total hours
figure was greater than the hours worked in the pay period. It will not impact the
viability of claims that Cox failed to list an accurate employer name on wage
statements, except with respect to the specific 444 wage statements on which Cox
is making payments under this settlement agreement. The effective date of the
release will run from on May 19, 2022, through July 7, 2023, the date that Cox
implemented the fix on its wage statements with respect to the total hours worked.

1 Plaintiff also agrees that he will be barred from further pursuing the theory under
2 Labor Code § 226(a)(2) that Cox provided wage statements that inaccurately
3 listed hours worked to him and the remaining 150 individuals receiving settlement
payments within this lawsuit.

4 (Settlement Agreement ¶21)

5 For these reasons, and for the reasons set forth above relating to the total liability and the
6 risks of prevailing on the theories of liability alleged, Plaintiff believes that the current
7 Settlement is fair, reasonable, and adequate.

8 **c. The Complexity, Expense, and Likely Duration of Continued**
9 **Litigation Against the Settling Defendant Favors Approval.**

10 Another factor considered by courts in approving a settlement is the complexity, expense,
11 and likely duration of the litigation. *Officers of Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
12 157. In applying this factor, the Court must weigh the benefits of the settlement against the
13 expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v.*
14 *Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

15 The Settlement Agreement provides to all Class Members fair relief in a prompt and
16 efficient manner. Were the Parties to engage in continued litigation of the total hours worked
17 claim and proceed to trial, Plaintiff may risk losing class certification and at trial on liability
18 based on the reasons explained above. Moreover, following a decision at trial, there is also the
19 possibility of appeal. Given the realities of litigation, this process places ultimate relief several
20 years away. The idea of balancing a fair recovery now, with settlement dollars being paid out
21 now, as opposed to battling at trial and a lengthy appeal process, is a significant factor to be
22 considered. *DIRECTV*, 221 F.R.D. at 526-27 (“Avoiding such a trial and the subsequent appeals
23 in this complex case strongly militates in favor of settlement rather than further protracted and
24 uncertain litigation.”).

25 The settlement in this case is therefore consistent with the “overriding public interest in
26 settling and quieting litigation” that is “particularly true in class action suits.” *See Van*
27 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); 4 Newberg on Class Actions, at §
28 11.41.

1 **d. Non-Admission of Liability by Defendant.**

2 Finally, Defendant denies any liability or wrongdoing of any kind associated with the
3 claim being settled herein. Defendant maintains that it has complied at all times with California
4 wage and hour laws. Because of such denial, if this case is not resolved, there is a high
5 likelihood that the case will continue even after trial and into the process of appeal.

6 **F. The Notice to be Given is the Best Practicable.**

7 “For any class certified under Rule 23(b)(3), the court must direct to class members the
8 best notice practicable under the circumstances, including individual notice to all members who
9 can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The court must direct
10 notice in a reasonable manner to all class members who would be bound by a proposed
11 settlement, voluntary dismissal or compromise.” Fed. R. Civ. P. 23(e)(B).

12 Here, the terms of the Settlement Agreement provide for a notice distribution plan that is
13 designed to achieve the best notice that is practicable under the circumstances. The Claims
14 Administor will send Class Members, by first-class mail to their last known address, the Court-
15 approved Notice of Pendency of Class Action (“Notice”). The Notice will also include Cox’s
16 calculation of each Class Member’s payment under this settlement and the number of allegedly
17 defective wage statements the employee received. (Settlement Agreement ¶15, Ex. A). The
18 Notice provides Class Members with the information needed to make an informed decision. (*Id.*)
19 It provides a brief summary of the proposed settlement and information about the lawsuit, a
20 summary of the allocations under the Settlement and the amount that the Settlement Class
21 Member is estimated to receive, the Settlement Class Member’s rights and claims that are
22 included in the release, the Settlement Class Member’s options including procedures on how to
23 object and opt-out of the settlement, Class Counsel contact information for any questions,
24 information regarding the final approval hearing and how to appear, procedures on how to obtain
25 more information, contact information for class counsel and case website to be established by the
26 Settlement Administrator. (*Id.*) It also explains that those who do not opt out will be bound by
27 the settlement.

28 ///

1 **G. Attorney’s Fees, Costs, and Class Representative Enhancement.**

2 Pursuant to the terms of the Settlement Agreement, and without opposition from
3 Defendant, Plaintiff will also be entitled to request an enhancement up to a maximum of
4 \$5,000.00. (Settlement Agreement ¶11.b.). This amount is to compensate Plaintiff for his
5 efforts and work in prosecuting this case; meeting and communicating with his counsel;
6 reviewing the pleadings and documents in this case. (Touch Decl. ¶ 5).

7 Similarly, Class Counsel will seek an award of attorneys’ fees of not more than 33 1/3%
8 of the GFV (\$150,000.00). (Settlement Agreement ¶ 11.a.). Finally, Plaintiff and Class Counsel
9 will seek the reimbursement of costs, which mainly includes filing fees, and mediation costs of
10 up to \$20,000.00. (*Id.*)

11 **H. Settlement Administrator.**

12 The Parties have selected Xpand Legal as the Claims Administrator. (Settlement
13 Agreement ¶11.c) Plaintiff’s counsel obtained quotes from three separate administrators through
14 a blind bidding process. (Choi Decl. at ¶15). Xpand Legal provided the lowest quote and was
15 selected by the Parties. (*Id.*) The anticipated costs for the settlement administration are not to
16 exceed \$6,500.00. (Settlement Agreement ¶11.c.) The administration costs will be deducted
17 from the Gross Fund Value.

18 **I. CAFA Notice.**

19 Defendant will provide CAFA Notice pursuant to 28 U.S.C. ¶1715.

20 **J. California Labor Workplace Development Agency Notice.**

21 Plaintiff has provided notice to the Labor Workplace Development Agency of this
22 Motion. (Choi Decl. ¶16).

23 **III. CONCLUSION**

24 Based on the foregoing, Plaintiff respectfully requests that the Court (1) grant preliminary
25 approval for the proposed class action settlement; (2) authorize the mailing of the proposed
26 notice to the Class of the settlement; and (3) schedule a “fairness hearing,” i.e. a hearing on the
27 final approval of the settlement on a date that is at least 5 months after the court issues an Order
28 granting preliminary approval for the proposed class action settlement.

1 DATED: June 7, 2024

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

2 By: /s/ Edward W. Choi

3 Edward W. Choi

4 Attorneys for Plaintiff and the Class