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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

JORGE SOLIS FLORES, individually and on behalf of all others similarly situated, Plaintiff, vs. S. MARTINELLI & COMPANY, a California Corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 24CV01510 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** [Assigned for All Purposes to Hon. Timothy Schmal in Department 10] Date: October 23, 2025 Time: 8:30 a.m. Dept.: 10

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on October 23, 2025 at 8:30 a.m. before the Honorable Timothy Schmal, judge presiding in Department 10 of the above-referenced Court, Plaintiff JORGE SOLIS FLORES ("Plaintiff") will and hereby does move the Court for an Order: (1) granting final approval to the Class of the settlement; (2) fully and finally approving and directing distribution to the Class of the settlement sum pursuant to the terms of the Class Action and Private Attorney General Act (Labor Code § 2698, *et seq.)* Settlement Agreement ("Settlement" or "Settlement Agreement") in this matter, (3) fully and finally approving the Class Representative Enhancement Payment, (4) fully and finally approving the Settlement Administrator's costs, and (5) fully and finally approving the award of attorney's fees and costs.

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

This Motion will be based on the Memorandum of Points and Authorities included herein, the [Proposed] Order Granting Final Approval of Settlement and Judgment, upon the class papers previously filed with this Court, and the supporting Declarations of Edward Choi, Justin Lo, Jorge Solis Flores, and Yami Burns upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: September 25, 2025

LAW OFFICES OF CHOI & ASSOCIATES, APLC

By:______________________________

Edward W. Choi
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff and Class Representative JORGE SOLIS FLORES ("Plaintiff" or "Class Representative") submits this Memorandum in support of the Motion for Final Approval of Class Action Settlement.

The settlement entered into by and between Plaintiff and Defendant S. MARTINELLI & COMPANY ("Defendant") (Plaintiff and Defendant are collectively referred to as "Parties") provides for a settlement fund of One Million Six Hundred Fifty Thousand Dollars and Zero Cents ($1,650,000.00) (the "Gross Settlement Amount" or "Settlement Fund") to be created for the benefit of the Class. From this Settlement Fund, attorney's fees, litigation costs, enhancement payments to Plaintiff, Private Attorneys General Act ("PAGA") payment, and the costs of settlement administration are to be paid.

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

Per the Court's ruling, the Settlement Administrator in this matter distributed the Class Notice. (*See* Declaration of Yami Burns ("Burns Decl.") at ¶¶ 3-5.) Notice Packets were mailed via First Class Mail to 522 Class Members contained in the Class List, 0 Notice Packets were returned by the post office. Further, there have been no objections filed to the Settlement and 1 request for exclusion has been received. (*Id.* at ¶¶ 5-8.) Thus, there is a 99.8% participation in the settlement and this favorable response by the Class supports the Court's Preliminary Approval Order finding that the Settlement was fair, adequate and reasonable.

In sum, as a result of the notice process, and in light of the complete lack of any objections and only one request for exclusion, the Court may confirm its preliminary approval as this process supports the Court's initial finding that the Settlement is fair, adequate and reasonable.

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

- The Settlement Fund provides a total settlement sum of $1,650,000.00 for a class size of 522 Class Members, with the average award being $1,823.86, and the highest individual Settlement Award will be approximately $3,802.14 (Burns Decl. ¶ 9);
- Plaintiff performed adequate investigation of this case, including the production of class data for the entire class necessary for Plaintiff to fully evaluate this case; and
- A highly regarded Settlement Administrator was retained, Phoenix Settlement Administrators, at a competitive price.

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

II. THE SETTLEMENT

A. Class Members Were Provided Proper Notice.

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

The Preliminary Approval Order contemplated that the Notice Packet, as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further, that Phoenix would serve as the Settlement Administrator.

As clearly stated in the Declaration of the Settlement Administrator, notice was provided to Class Members as required by the Preliminary Approval Order. The Settlement Administrator received a Class Member mailing list from Defendant that included 522 Class Members, and, on July 25, 2025, each of the persons identified on the mailing list was sent the Notice Packet via first class mail. (Burns Decl. at ¶ 5.) As of the date of this declaration, zero (0) Notice Packets are considered undeliverable. . (*Id*. at ¶ 6.) PSA has received <u>one (1) Request for Exclusion</u> (*i.e.* "Opt-Out's") and zero (0) objections to the Settlement. (*Id*. at ¶ 7-8.) Thus, there is a 99.8% notice success rate.

The provision of the notice to Class Members and administration of the settlement as described above meets the requirements for the "best notice practicable" in this case as necessary to protect the due process rights of Class Members. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of "best notice practicable" with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be 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 the right and process to opt-out or object, 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 exclusion, objection, 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 Edward Choi ("Choi Decl.") at ¶¶ 6-8.) In addition, the resolution of this case was reached only after the production and analysis of class payroll data, and only after a full day of mediation. (*Id.* at ¶8)

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 and only one (1) class member who has opted out of the current settlement***. (Burns Decl. at ¶¶ 7-8.)

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) The Court should further construe the lack of any objection to this current settlement, as well as the extremely small number of opt-outs, as 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. <u>Standard of Review</u>

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.

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[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.

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 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.

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2. <u>The Settlement Is Presumed To Be Fair</u>

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.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arms' length, and with the assistance an experienced mediator. (Choi Decl. at ¶8). Class Counsel engaged in significant investigation before settling. (*Id*.) Furthermore, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Choi Decl. at ¶ 10; Declaration of Justin Lo ("Lo Decl.") ¶¶ 5-6)

3. <u>Two-Way Costs and Other Risks Inherent In Continued Litigation Favor Final Approval</u>

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement") (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 1 53, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

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

The risks of this case were weighed by Class Counsel and should be considered a significant issue by the Court in its determination of final approval. Class Counsel obtained a very substantial settlement for the Class that resulted in a fair recovery which at the same time provides for finality and no risk of costs by the Class Members or the Class Representative. Indeed, the highest settlement payment to a Class Member is $3,802.14, and average settlement payment to the Class being approximately $1,823.86. (Burns Decl. at ¶ 9.)

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

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

4. <u>The Complexity, Expense and Likely Duration of Continued Litigation Against Defendant Favor Final Approval</u>

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

As noted above, continued litigation could have led to appeals on a number of issues. On the other hand, the settlement that was reached provides to all Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members would be left without a remedy as a practical matter and courts across the State would have to address the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore consistent with the "overriding public interest in 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. (Choi Decl. at ¶ 7.) 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, Mediation, and the Settlement Discussions Undertaken In This Action Favor Final Approval

Prior to negotiating the settlement, Class Counsel engaged in significant investigation on a number of topics and categories. Plaintiff and Defendant engaged in an extensive meet and confer process that resulted in Defendant producing all of the data necessary to allow Plaintiff to ascertain and determine the potential amount of damages that Defendant possibly could be liable for if Plaintiff prevailed at trial. (Choi Decl. at ¶ 6.) Further, the Parties participated in a private mediation before Steve Serratore, Esq., a highly experienced and well-respected mediator in wage and hour class actions. (*Id*. at ¶ 8.)

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, a class representative enhancement of Ten Thousand Dollars ($10,000.00), pursuant to the terms of the Settlement Agreement. Plaintiff requests that this Court approve such service payment in light of the efforts Plaintiff put into this case, the absence of any objection to their service payment, and the excellent result achieved.

As shown in the supporting declaration, the Class Representative spent significant time with Class Counsel on a number of occasions to discuss the case, including providing substantive information regarding Defendant's practices, and providing documents related to his own claims and the claims of the Class. As part of his duties as Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

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

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

Courts have routinely granted approval of settlements containing such enhancements. In

League of Martin v. City of Milwaukee, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that the proposed settlement properly granted the named plaintiffs individual relief. It is "not uncommon for Class Members…to receive special relief in settlement… [The Plaintiff]…had been instrument in prosecuting this lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi v. Western Elec. Co.*, 527 F. Supp. 18 (D. N. J. 1981), a named plaintiff in a Title VII class action was awarded individual relief of back-pay and interest, reinstatement, punitive damages and counsel fees. Similarly, in *Women's Committee for Equal Employment Opportunity v. NBC*, 76 F.R.D. 173 (SDNY 1977), the court approved as fair a settlement that included awards to 16 named plaintiffs of virtually all the damages they sought.

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

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

V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel has achieved an excellent settlement in this litigation, as set forth in the Settlement Agreement and this Motion. The proposed settlement provides substantial benefits to the Class and was reached after aggressive investigation and litigation by Class Counsel. Class

Counsel and Plaintiff achieved a $1,650,000.00 settlement fund for the benefit of the Class to compensate the Class for the claims alleged. There have been no objections filed against the Settlement or to Class Counsel's request for attorneys' fees in the amount of $577,500.00. As more fully detailed below, Class Counsel's request for attorney's fees and reimbursement of costs, is fair, reasonable, and adequate. Accordingly, final approval should be granted.

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

Class Counsel's application for an award of attorneys' fees in the amount of $577,500.00 of the $1,650,000.00 settlement fund created on behalf of the Class is reasonable and fair. The requested fee represents fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis.

Class Counsel seeks a fee award calculated as 35% of the total value of the Settlement for the successful prosecution and resolution of this action.

California state and federal courts routinely award fee awards of one-third of the settlement fund in class actions. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also Wershba*, *supra*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method); *In re* Pacific *Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award). Indeed, the California Supreme Court approved the use of the "percentage of fund" method in California. *See Laffitte v. Robert Half Int'l, Inc.*, (2016) 1 Cal.5th 480, 506 ("the percentage of fund method survives in California class action cases…"). Specifically, the *Laffitte* Court held:

> "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 recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts."

Id. at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.,* 9

F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately reflects the results achieved than the lodestar method and "establishes reasonable expectations on the part of Plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.").

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

Further, "the response of the class members to attorneys' fee notice, though not decisive, is relevant to the… reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's "approximation of the market" for fees is well supported. *Id*. at p. 1269.

In this case, the class notice specifically notified class members that Plaintiff's Counsel would be seeking thirty-five percent (35%) of the settlement fund as attorneys' fees. To date, a single class member has not objected to the settlement. This strong favorable response also supports the requested fees.

In addition, it is recognized that one of the primary factors justifying an enhanced attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974). No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who had agreed to 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.

Here, it is clear that a settlement fund of $1,650,000.00 has been created. For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a long battle with a corporate Defendant with more resources than Plaintiff and his counsel. As such, the requested fee should be awarded.

VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of costs, in the amount of $21,267.07 is fair and reasonable. Pursuant to the terms of the Settlement Agreement, Plaintiff is allowed to seek reimbursement of litigation costs up to a maximum of $50,000.00. However, Class Counsel seek reimbursement of $21,267.07 in litigation related costs. (Choi Decl. at ¶12; Ex. A; Lo Decl. ¶ 9; Ex. A). The authority for the court to award this is the parties' settlement agreement and Labor Code §§226 and 1194. As such, this request should be approved.

VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As shown on the Declaration of Yami Burns, the class administration fees for the administration of the settlement in this matter amounts to $11,000.00 (Burns Decl. at ¶ 10; Ex B). For such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. CONCLUSION

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

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

1. Granting final approval to the proposed Settlement Agreement;

2. Approving distribution of the settlement funds pursuant to the terms of the Settlement Agreement;

3. Approving Plaintiff's request for award of the class representative enhancement with payment pursuant to the terms of the Settlement Agreement;

4. Approving Plaintiff's request for an award of the Class Counsel's fees and costs with payment pursuant to the terms of the Settlement Agreement;

5. Approving Plaintiff's request for payment of the settlement administration costs with payment pursuant to the terms of the Settlement Agreement; and

6. Entering final judgment as to all members of the Settlement Class in this action.

DATED: September 25, 2025

LAW OFFICES OF CHOI & ASSOCIATES, APLC

By: Edward W. Choi

Edward W. Choi
Attorneys for Plaintiff and the Class