

FILED
Superior Court of California
County of Los Angeles

JAN 28 2021

Therri R. Carr... Officer/Clerk
Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Case No.: BC705075

ARACELI RODRIGUEZ, an individual,
and on behalf of all similarly situated
employees

Plaintiff,

vs.

GARDENA HOSPITAL, L.P., a Limited
Partnership, and DOES 1 through 50,
inclusive,

Defendant.

~~[TENTATIVE]~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS

Date: January 28, 2021

Dept.: SSC-7

Time: 9:00 a.m

I. BACKGROUND

This is a wage and hour class action. On May 9, 2018, Plaintiff filed her Class
Action Complaint alleging the following causes of action: (1) Violation of Labor Code

1 §§510, 558, 1194, 1197 and 1197.1; (2) Violation of Labor Code §226 regarding record
2 keeping; and (3) Violation of Business and Professions Code §17200, et seq.

3 On or about July 11, 2018, Plaintiff filed a First Amended Complaint adding a
4 cause of action for violation of Labor Code §§2698, et seq. (“PAGA”) and dismissing
5 the first and third causes of action for underlying wage claims.

6 Thus, the operative First Amended Complaint is a pure Labor Code §226 class
7 claim along with a PAGA claim predicated on violation of Labor Code §226 (“Operative
8 Complaint” or “Action”). The Operative Complaint alleges that whenever employees
9 were paid overtime and/or double time wages, the wage statements failed to accurately
10 identify the applicable a single overtime and/or double time rates of pay, and the total
11 hours worked.

12 Counsel contends that the Parties conducted discovery, including informal
13 discovery, engaging in the meet and confer process, the production of documents and
14 class payroll data.

15 The parties engaged in mediation with mediator, Jeffrey Krivis, Esq. on May 8,
16 2019, which ultimately led to a settlement, a fully executed copy of which has been filed
17 with the Court on February 25, 2020.

18 On July 27, 2020, the court issued a checklist of items for the parties to address
19 and continued preliminary approval. In response, on October 15, 2020, the counsel filed
20 supplemental briefing (“Supp. Brief”).

21 Now before the Court is Plaintiff’s motion for preliminary approval of the
22 settlement. For the reasons set forth below the Court preliminarily grants approval for
23 the settlement on conditions that counsel: 1) file the Declaration of Jodey Lawrence; 2)
24 revise the releases to not take place until after the settlement is fully funded; and 3)
25 remove the confidentiality portions of the publicity provision in paragraph III.20.

1
2
3 **II. THE TERMS OF THE SETTLEMENT**

4 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

5 “Class” and “Class Members” mean and refer to all hourly non-exempt employees
6 of Defendant who received wage statements that included overtime or double time wages
7 during the Class Period. (Settlement Agreement, 2:22-24.)

8 “Wage Statements” means any wage statements received by Class Members that
9 included overtime or double time wages during the Class Period. As of the May 8, 2019
10 mediation, Defendant represented that the total number of Wage Statements issued to the
11 Class through April 9, 2019 was 27,809. (6:21-24.)

12 “Class Period” means the period from April 9, 2017 to April 30, 2019. (3:12)

13 As of the May 8, 2019 mediation, Defendant represented that the class includes
14 approximately 935 Settlement Class members through April 9, 2019. If the actual class
15 size at the end of the Class Period is 10% or more greater than the 935 Settlement Class
16 members as represented by Defendant, the Gross Settlement Amount will increase on a
17 pro-rata basis equal to the increase in class size. (2:24-28.)

18 The Parties stipulate and agree to the conditional certification of this Action for
19 purposes of this Settlement only. (¶III.10.a)

20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

22 The Gross Settlement Amount (“GSA”) is \$750,000 (4:15). This includes payment
23 of a PAGA penalty of \$40,000 to be paid 75% to the LWDA (\$30,000) and 25% to the
24 Aggrieved Employees (\$10,000) (¶5:11-14);

25 The Net Settlement Amount (“Net”) (\$ 412,500) is the GSA less:

- Up to \$250,000 (33 1/3%) for attorney fees (¶8);
 - **Fee Split:** Fees will be split as follows: 40% to Diversity Law Group, P.C., 40% to Law Offices of Choi & Associates, P.C., and 20% to David Lee Law. (Choi Decl., ¶18.)

- Up to \$25,000 for attorney costs (¶III.8);
- Up to \$7,500 for a service award to the proposed class representative (¶III.4);
- \$40,000 allocated as PAGA Penalties (5:11-14); and
- Estimated \$15,000 for settlement administration costs (¶III.9).

- Assuming the Court approves all maximum requested deductions, approximately \$412,500 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$441.18. ($\$412,500 \text{ Net} \div 935 \text{ class members} = \441.18). In addition, each class member will receive a portion of the PAGA penalty, estimated to be \$10.70 per class member. ($\$10,000 \text{ (25\% of \$40,000 PAGA penalty)} \div 935 \text{ class members} = \$ 10.70$)
- There is no Claim Requirement. (5:15-16.)
- The settlement is not reversionary. (4:28-5:3.)
- Calculation of Individual Settlement Amount: To determine the Individual Settlement Payment for each Participating Settlement Class Members, the Settlement Administrator will: Divide the number of Wage Statements received by the Participating Settlement Class Member by the total number of Wage Statements received by all Participating Settlement Class Members during the Class Period. The resulting percentage shall be applied to the Net Settlement Fund

1 to determine the Individual Settlement Payment for that Participating Settlement
2 Class Member. (§III.12.a)

3 ○ Tax Withholdings: 100% as penalties. (§III.12.b.)

4 ● Uncashed Checks: To the extent any Participating Settlement Class Member
5 fails to cash a settlement check within 180 days of issuance, the uncashed funds,
6 including interest accrued in the QSF, will escheat to the State Controller to be
7 deposited in the Unclaimed Property Fund, in the name of the Participating
8 Settlement Class Member. (§III.16.e)

9 ● Defendant shall fund the Qualified Settlement Fund within 30 days after the
10 Effective Date. (5, 21-23.)

11 ○ “Effective Date” means the date by which the Settlement is finally
12 approved, and the Superior Court’s Final Judgment becomes final. (3:18-
13 4:2.)

14
15 **C. TERMS OF RELEASES**

16 ● The Participating Settlement Class Members, including the Named Plaintiff,
17 release the Released Parties from the Released Claims. (§III.2)

18 ○ “Released Claims” is defined as follows: The Participating Settlement
19 Class Members shall fully and finally release and discharge the Released
20 Parties, during the Class Period, of all applicable California wage and hour
21 claims, rights, demands, liabilities and causes of action which were brought
22 or could have been brought in the Action against Defendant based on the
23 factual allegations of the Action, including all claims for improper or
24 inaccurate wage statements; penalties, including, but not limited to, pay-
25 stub penalties; and attorneys’ fees and expenses. The Released Claims

1 include all such claims arising under the California Labor Code related to
2 the factual allegations of the Action, including, but not limited to, sections
3 226, 226.3, and 2698 et seq. This release excludes the release of claims not
4 permitted by law. (6:3-11.)

- 5 ○ “Released Parties” means Defendant Gardena Hospital, L.P., and their past,
6 present, or future parents, subsidiaries and affiliated companies, and their
7 past, present, or future officers, directors, employees, partners, joint
8 employers, members, shareholders and agents, and any other successors,
9 assigns or legal representatives. (¶5:26-3:2.)
- 10 ● The named Plaintiff will also provide a general release and a waiver of the
11 protections of Cal. Civ. Code §1542. (4:8-14, ¶III.3)
- 12 ● The releases are effective as of the date of the Final Approval Order in this Action.
13 (¶III.2)

14 **D. SETTLEMENT ADMINISTRATION**

- 15 ● The proposed Settlement Administrator is Phoenix Settlement Administrator.
16 which has **NOT** provided evidence that no counsel are affiliated with it and that it
17 has adequate procedure in place to safeguard the data and funds to be entrusted to
18 it. (6:18)
- 19 ● Settlement administration costs are estimated to be \$7,000. (¶III.9)
- 20 ● Notice: The manner of giving notice is described below.
- 21 ● “Opt-Out/Objection Deadline Date” means the date, 45 calendar days after the
22 date the Notice is mailed, on or before which a Class Member’s written
23
24
25

1 objection or opt-out must be submitted in order to object or exclude themselves
2 from the Settlement. (5:8-10; ¶III.15.a) Class Members may also submit
3 workweek disputes by this deadline. (Notice, ¶4.a)

4 ○ In the event that 5% or more Class Members opt-out of the Settlement,
5 Defendant, in its sole discretion, may exercise its option of nullifying the
6 Agreement. (¶III.19)

- 7
- 8 • Notice of Final Judgment will be shall be available on the Settlement
9 Administrator's website. (Notice, pg. 6, ¶8.)

10

11 **D. ATTORNEYS' FEES**

12 Counsel for the proposed class seek \$250,000 (33 1/3 %) in attorney's fees and
13 \$25,000 in costs. (¶III.8).

14 Fees will be split as follows: 40% to Diversity Law Group, P.C., 40% to Law Offices
15 of Choi & Associates, P.C., and 20% to David Lee Law. (Choi Decl., ¶18.)

16

17 **E. SERVICE AWARDS**

18 The named plaintiff seeks an enhancement award of \$15,000. (¶III.4).

19

20 **E. ADDITIONAL TERMS**

21 Publicity: Neither the Named Plaintiff, nor Plaintiffs' Counsel shall issue any
22 press release related in any way to the Settlement. The Named Plaintiff and Plaintiffs
23 Counsel agree that, prior to preliminary approval of the Settlement, they will keep the
24 terms of this Settlement confidential except for purposes of communicating with the
25 Named Plaintiff only. The Named Plaintiff shall be informed that the Settlement is
confidential and shall be advised to keep the settlement confidential. From and after

1 preliminary approval of the settlement, the Class Members (including the Named
2 Plaintiff and Class Counsel) may: (1) as required by law; (2) as required under the
3 terms of the Settlement; or (3) as required under counsel's duties and responsibilities as
4 Class Counsel, comment regarding the specific terms of the Settlement. In response to
5 inquiries from the press, Named Plaintiff and Class Counsel agree to limit their
6 statements regarding the terms of the Settlement, whether oral, written or electronic
7 (including the world wide web), to say the Class Action has been resolved and that the
8 Named Plaintiff and Class Counsel are satisfied with the settlement terms. In the event
9 Named Plaintiff or Class Counsel breach the above terms of confidentiality, Defendant
10 will suffer damages in an amount which will be impractical or extremely difficult to
11 ascertain. In order to establish a reasonable amount of damage for such a breach, and to
12 put a limitation on such damages, Named Plaintiff and Class Counsel agree to pay to
13 Defendant, as liquidated damages, the sum of \$10,00.00 per proven breach. Because of
14 the impracticability of fixing actual damages, and because of the benefit to each Party
15 in fixing a limitation on damages, the Parties acknowledge that this provision for
16 liquidated damages does not constitute a penalty or forfeiture within the meaning of
17 Civil Code §§ 3275 or 3369 or any other provision of California law. Nothing herein is
18 intended to interfere with Class Counsel's duties and obligations to faithfully discharge
19 their duties as Class Counsel, including but not limited to answering questions from
20 Class Members. Nothing herein shall preclude Class Counsel from encouraging Class
21 Members to participate in the settlement, and Class Counsel shall be allowed to
22 publicize the terms of the Settlement for this purpose, including on Class Counsel's
23 web site or a web site devoted to the Settlement, at Class Counsel's expense. (¶III.20)

24 **III. SETTLEMENT STANDARDS AND PROCEDURE**
25

1 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
2 of an entire class action, or of a cause of action in a class action, or as to a party,
3 requires the approval of the court after hearing.” “Any party to a settlement agreement
4 may serve and file a written notice of motion for preliminary approval of the settlement.
5 The settlement agreement and proposed notice to class members must be filed with the
6 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
7 Court, rule 3.769(c).

8 “In a class action lawsuit, the court undertakes the responsibility to assess
9 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
10 dismissal of a class action. The purpose of the requirement [of court review] is the
11 protection of those class members, including the named plaintiffs, whose rights may not
12 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
13 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
14 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
15 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
16 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
17 agreement to the extent necessary to reach a reasoned judgment that the agreement is
18 not the product of fraud or overreaching by, or collusion between, the negotiating
19 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
20 concerned.”] [internal quotation marks omitted].

21 “The burden is on the proponent of the settlement to show that it is fair and
22 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
23 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
24 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
25

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’ this
24 is no bar to a class settlement because ‘the public interest may indeed be served by a
25

1 voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.”” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 The parties engaged in mediation with mediator, Jeffrey Krivis, Esq. on May 8,
11 2019, which ultimately led to a settlement. (Declaration of Edward Choi (“Choi Decl.”),
12 ¶5.)

13
14 **2. The investigation and discovery were sufficient**

15 Counsel contends that the Parties conducted discovery, including informal
16 discovery, engaging in the meet and confer process, the production of documents and
17 class payroll data. (*Ibid.*) Counsel further represents that in preparation for mediation,
18 they retained an expert witness to analyze relevant timesheets and payroll records and
19 engaged an independent third party to assess the financial condition of Defendant. (*Id.* at
20 ¶8.)

21 This is sufficient to value the case for settlement purposes.

22
23 **3. Counsel is experienced in similar litigation**

1 Class Counsel represent that are experienced in class action litigation, including
2 wage and hour class actions. (*Id.* at ¶¶21; Declaration of Larry W. Lee (“L. Lee Decl.”), ¶
3 6); Declaration of David J. Lee (“D. Lee Decl.”), ¶8).

4
5 ///

6 **4. Percentage of the class objecting**

7 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
8 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
9 the court receive objections to the proposed settlement, it will consider and either sustain
10 or overrule them at the fairness hearing.”].

11 12 13 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 14 **FAIR, ADEQUATE, AND REASONABLE**

15
16 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
17 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
18 does when it approves a settlement as in good faith under Code of Civil Procedure
19 section 877.6, the court must at least satisfy itself that the class settlement is within the
20 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
21 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
22 consider and weigh the nature of the claim, the possible defenses, the situation of the
23 parties, and *the exercise of business judgment* in determining whether the proposed
24 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
25 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

1
2 **1. Amount Offered in Settlement**

3 The most important factor is the strength of the case for plaintiffs on the merits,
4 balanced against the amount offered in settlement.” *Id.* at 130.

5 Class Counsel estimated Defendant’s maximum exposure at **\$9,686,400**.
6 Specifically, counsel estimated Defendant’s exposure to consist of Labor Code §226
7 penalties for 27,809 pay periods with 935 class members amounts to a maximum of
8 \$2,734,150 and PAGA penalties amounts to \$6,952,250. (Choi Decl., ¶9.)

9 Class Counsel obtained a gross settlement valued at \$ 750,000. This is 8% of
10 Defendant’s maximum exposure.

11
12 **2. The Risks of Future Litigation**

13 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
14 motion practice and appeals) are also likely to prolong the litigation as well as any
15 recovery by the class members. Even if a class is certified, there is always a risk of
16 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
17 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
18 conducting class actions, which means, under suitable circumstances, entertaining
19 successive motions on certification if the court subsequently discovers that the propriety
20 of a class action is not appropriate.”].) Further, the settlement was negotiated and
21 endorsed by Class Counsel who, as indicated above, are experienced in class action
22 litigation. Based upon their investigation and analysis, the attorneys representing
23 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
24 adequate. (Choi Decl., ¶11.)
25

1 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
2 which has been served with a copy of the Settlement Agreement and has not yet objected.
3 Any objection by it will be considered at the final fairness hearing. (Choi Decl., ¶22 and
4 Exhibit A thereto.)

5 6 **3. The Releases Are Limited**

7 The Court has reviewed the Releases to be given by the absent class members and
8 the named plaintiffs. The releases, described above, are tailored to the pleadings and
9 release only those claims in the pleadings. There is no general release by the absent
10 class. The named plaintiff's general releases is appropriate given that he was
11 represented by counsel in its negotiation.

12 13 **4. Conclusion**

14 Class Counsel estimated Defendant's maximum exposure at **\$9,686,400**. Class
15 Counsel obtained a gross settlement valued at \$750,000. This is approximately 8% of
16 Defendant's maximum exposure, which, given the uncertain outcomes, including the
17 potential that the class might not be certified, that liability is a contested issue, and that
18 the full amount of penalties would not necessarily be assessed even if the class is certified
19 and liability found, the settlement is within the "ballpark of reasonableness."

20 21 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

22 A detailed analysis of the elements required for class certification is not required,
23 but it is advisable to review each element when a class is being conditionally certified.
24 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
25 advocating class treatment must demonstrate the existence of an ascertainable and

1 sufficiently numerous class, a well-defined community of interest, and substantial
2 benefits from certification that render proceeding as a class superior to the alternatives.”
3 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

4 **1. The Proposed Class is Numerous**

5 There are 935 putative Class Members. (Motion, 4:14-16.) Numerosity is
6 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
7 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
8 *class action is liberally construed,*” and citing examples wherein classes of as little as
9 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
10 (1972) 28 Cal.App.3d 1017, were upheld).

11 **2. The Proposed Class Is Ascertainable**

12 “A class is ascertainable, as would support certification under statute
13 governing class actions generally, when it is defined in terms of objective
14 characteristics and common transactional facts that make the ultimate identification
15 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
16 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

17 The class is defined above. Class Members are ascertainable through
18 Defendant’s employee and payroll files. (Motion, 4:22-23.)

19 **3. There Is A Community of Interest**

20 “The community of interest requirement involves three factors: ‘(1) predominant
21 common questions of law or fact; (2) class representatives with claims or defenses typical
22 of the class; and (3) class representatives who can adequately represent the class.’”
23 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

24 Counsel contends that commonality is met because Plaintiff alleges that
25 Defendant, as a matter of corporate policy, practice or procedure violated the Labor Code

1 by providing Plaintiff and all other class members non-compliant wage statements.
2 (Motion, 5:9-11.)

3 Counsel further contends that the named plaintiff has claims typical of the class
4 because Plaintiff alleges that he received non-compliant wage statements, as the
5 remaining class members. (Motion, 5:11-12.) There appears to be no conflicts of interest
6 between the named Plaintiff and the Class. (Motion, 5 :13-16.) Class Counsel have
7 experience in class action litigation. (Motion, 5:19-26.)

8 9 **4. Substantial Benefits Exist**

10 Given the relatively small size of the individual claims, a class action is superior to
11 separate actions by the class members.

12 13 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 14 OF DUE PROCESS**

15 The purpose of notice is to provide due process to absent class members. A practical
16 approach is required, in which the circumstances of the case determine what forms of
17 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
18 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
19 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
20 stake of the individual class members; (4) the cost of notifying class members; (5) the
21 resources of the parties; (6) the possible prejudice to class members who do not receive
22 notice; and (7) the res judicata effect on class members.

23 **1. Method of class notice**

24 Defendant shall provide the Settlement Administrator and Class Counsel only, the
25 Class List and Data Report, within 20 business days of Preliminary Approval of the

1 settlement.(¶III.11.c) Within 10 days of receipt of the Class List and Data Report, the
2 Settlement Administrator shall mail the Notices, to each Class Member. (¶III.11.d) Prior
3 to mailing, the Settlement Administrator will perform a search based on the National
4 Change of Address Database information to update and correct for any known or
5 identifiable address changes. If a new address is obtained by way of a returned Notice
6 Packet, then the Settlement Administrator shall promptly forward the original Notice
7 Packet to the updated address via first-class regular U.S. mail indicating on the original
8 Notice Packet the date of such re-mailing. (¶III.13.a) Any Notices returned to the
9 Settlement Administrator as non-delivered on or before the Opt-Out/Objection Deadline
10 Date shall be sent to the forwarding address affixed thereto within 5 court days. If no
11 forwarding address is provided, then the Settlement Administrator shall promptly attempt
12 to determine a correct address using a single skip-trace, computer or other search using
13 the name, address and/or Social Security number of the individual involved, and shall
14 then perform a single re-mailing within 5 court days. (¶III.13.c)

15 16 **2. Content of class notice.**

17 A copy of the proposed class notice is attached to the Settlement Agreement as
18 Exhibit A. The notice includes information such as: a summary of the litigation; the
19 nature of the settlement; the terms of the settlement agreement; the maximum
20 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
21 the enhancement award, and claims administration costs); the procedures and deadlines
22 for participating in, opting out of, or objecting to, the settlement; the consequences of
23 participating in, opting out of, or objecting to, the settlement; and the date, time, and
24 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d).

1 3. Settlement Administration Costs

2 Settlement administration costs are estimated at \$15,000, including the cost of
3 notice. (¶III.9). Prior to the time of the final fairness hearing, the settlement
4 administrator must submit a declaration attesting to the total costs incurred and
5 anticipated to be incurred to finalize the settlement for approval by the Court.
6

7 **E. ATTORNEY FEES AND COSTS**

8 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
9 implied, that has been entered into with respect to the payment of attorney fees or the
10 submission of an application for the approval of attorney fees must be set forth in full in
11 any application for approval of the dismissal or settlement of an action that has been
12 certified as a class action.”

13 Ultimately, the award of attorney fees is made by the court at the fairness
14 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
15 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
16 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
17 1132-1136. In common fund cases, the court may use the percentage method. If
18 sufficient information is provided a cross-check against the lodestar may be conducted.
19 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
20 agreement by the parties to the contrary, “the court ha[s] an independent right and
21 responsibility to review the attorney fee provision of the settlement agreement and
22 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
23 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

24 The question of class counsel’s entitlement to \$250,000 (33 1/3%) in attorney
25 fees will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
2 the court with current market tested hourly rate information and billing information so
3 that it can properly apply the lodestar method and must indicate what multiplier (if
4 applicable) is being sought.

5 Class counsel should also be prepared to justify the costs sought (capped at
6 **\$25,000**) by detailing how they were incurred.

7
8 **F. SERVICE AWARD**

9 The Settlement Agreement provides for a service award of up to **\$7,500** for the
10 class representative. Trial courts should not sanction enhancement awards of thousands
11 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
12 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
13 quantification of time and effort expended on the litigation, and in the form of reasoned
14 explanation of financial or other risks incurred by the named plaintiffs, is required in
15 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
16 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
17 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

18 In connection with the final fairness hearing, the named Plaintiffs must submit a
19 declaration attesting to why they should be compensated for the expense or risk they
20 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

21 The Court will decide the issue of the enhancement award at the time of final
22 approval.

23
24 *///*

1 **V. CONCLUSION AND ORDER**

2 Contingent upon counsel addressing the following:

- 3 1) File the Declaration of Jodey Lawrence;
- 4 2) Revise the releases to not take place until after the settlement is fully funded;
- 5 and
- 6 3) Remove the confidentiality portions of the publicity provision in paragraph
- 7 III.20.

8 The Court hereby:

- 9 (1) Grants preliminary approval of the settlement as fair, adequate, and
- 10 reasonable;
- 11 (2) Grants conditional class certification;
- 12 (3) Appoints Araceli Rodriguez as Class Representative;
- 13 (4) Appoints the Law Offices of Choi & Associates, David Lee Law, and
- 14 Diversity Law Group, as Class Counsel;
- 15 (5) Appoints tor Phoenix Settlement Administrator as Settlement Administrator;
- 16 (6) Approves the proposed notice plan; and
- 17 (7) Approves the proposed schedule of settlement proceedings as follows:
- 18 • Preliminary approval hearing: January 28, 2021
- 19 • Deadline for Defendant to provide class list to settlement administrator:
- 20 February 25, 2021 (within 20 business days of preliminary approval)
- 21 • Deadline for settlement administrator to mail notices: March 8, 2021 (within 10
- 22 calendar days from receiving the class list)
- 23 • Deadline for class members to opt out: 4/23, 2021 (45 calendar days
- 24 from the initial mailing of the Notice Packets)
- 25

