

1 Larry W. Lee (State Bar No. 228175)
2 lwlee@diversitylaw.com
3 Nicholas Rosenthal (State Bar No. 268297)
4 nrosenthal@diversitylaw.com
5 DIVERSITY LAW GROUP, P.C.
6 550 South Hope Street, Suite 2655
7 Los Angeles, California 90071
8 (213) 488-6555
9 (213) 488-6554 facsimile

8 Edward W. Choi, Esq. SBN 211334
9 LAW OFFICES OF CHOI & ASSOCIATES
10 3435 Wilshire Boulevard, Suite 2400
11 Los Angeles, CA 90010-2006
12 Telephone: (213) 381-1515
13 Facsimile: (213) 233-4409
14 Email: edward.choi@calaw.biz

Thomas M. Lee, SBN 210599
LEE LAW OFFICES, APLC
3435 Wilshire Blvd Suite
2400
Los Angeles, California
90010
Telephone: (213) 251-5533
Facsimile: (213) 251-5534
Email:
leethomas.esq@gmail.com

13 Attorneys for Plaintiff and the Class

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17 BENJAMIN CASTRO, as an
18 individual and on behalf of all others
19 similarly situated,

19 Plaintiffs,

20 vs.

21 CONTINENTAL AIRLINES, INC.,
22 a Delaware Corporation; UNITED
23 AIRLINES, INC, a Delaware
24 Corporation; and DOES 1 through
25 100, inclusive,

25 Defendants.

CASE NO. 2:14-cv-00169-SVW-AGR

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

Date: August 3, 2015
Time: 1:30 p.m.
Courtroom: 6
Judge: Stephen V. Wilson

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 1:30 p.m., on August 3, 2015, or as soon thereafter as the matter can be heard in Courtroom 6 of the United States District Court, Central District of California, Central Division, located at 312 N. Spring St., Los Angeles, CA 90012, before the Honorable Stephen V. Wilson, Plaintiff Zyra Garcia (“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 motion on the grounds that the proposed settlement is fair and within the range of possible final approval. 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 accompanying Declarations of Zyra Garcia, Larry W. Lee, Edward Choi, and Thomas Lee, the accompanying Joint Stipulation of Class Action 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.

Plaintiff met and conferred with Defendants regarding this Motion. Defendants have agreed to not oppose this Motion, and in fact, are in favor of it.

DATED: July 2, 2015

DIVERSITY LAW GROUP, P.C.

By: /S/LARRY W. LEE

Larry W. Lee, Esq.

Attorney for Plaintiff and the Class

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF AGREEMENT.....	1
A. History Of The Case.....	2
B. Summary Of The Claim At Issue and the Current Settlement.....	3
C. The Proposed Settlement Class Satisfies The Elements For Certification	5
1. Numerosity	5
2. Ascertainability	6
3. Typicality.....	6
4. Commonality.....	6
5. Adequacy.....	7
6. Common Questions of Law and Fact Predominate.....	7
7. Superiority of Class Action.....	8
D. The Settlement Is Fair, Reasonable, And Adequate.....	8
II. LEGAL ANALYSIS	8
A. Two-Step Approval Process.....	9
B. The Standard For Preliminary Approval.....	10
C. The Settlement Is Fair And Reasonable And Not The Result Of Fraud Or Collusion.....	11
1. The Settlement May be Presumed Fair and Reasonable.....	11
a. Experience Of Class Counsel.....	12
b. Investigation And Discovery Prior To Settlement.....	12
2. The Settlement Is Fair, Reasonable and Adequate.....	13
a. Risk Of Continued Litigation.....	13
b. The Settlement Is Within The Range Of Reasonableness	14
c. The Complexity, Expense, And Likely Duration Of Continued Litigation Against The Settling Defendant Favors Approval	15
d. Non-Admission Of Liability By Defendant.....	16

1 D. Attorneys’ Fees, Costs, And Class Representative Enhancement16
2 III. CONCLUSION.....17

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

Boyd v. Bechtel Corp.,
 485 F. Supp. 610, 616-17 (N.D. Cal. 1979)13

Cook v. Niedert,
 142 F.3d 1004, 1015 (7th Cir. 1998)6

Girsh v. Jepson,
 521 F.2d 153, 157 (3d Cir. 1975)13, 15

Hammon v. Barry,
 752 F. Supp. 1087, 1093-1094 (D.D.C. 1990)11

Hanlon v. Chrysler Corp.,
 150 F.3d 1011, 1019 (9th Cir. 1998).....6, 8

Harris v. Palm Springs Alpine Estates, Inc.,
 329 F.2d 909, 913-14 (9th Cir.1964).....5

In re Chicken Antitrust Litig.,
 560 F. Supp. 957, 962 (N.D. Ga. 1980).....11

In re General Motors Corp.,
 55 F.3d 768, 806 (3d Cir. 1995).....14

In re United Energy Corp. Solar Power Modules Tax Shelter Invs. Sec. Litig.,
 122 F.R.D. 251, 256 (C.D. Cal. 1988).....6

Lerwill v. Inflight Motion Pictures, Inc.,
 582 F.2d 507, 512 (9th Cir. 1978).....7

Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.,
 834 F.2d 677, 682 (7th Cir. 1987)11

McKenzie v. Federal Express Corp.,
 2012 US Dist Lexis 103666 .(C.D. Cal. July 2, 2012).....15

1 *National Rural Telecomms. Coop. v. DIRECTV, Inc.*,
 2 221 F.R.D. 523, 528 (C.D. Cal. 2004).....12, 16
 3 *Officers for Justice v. Civil Serv. Comm’n of City & County of San Francisco*,
 4 688 F.2d 615, 625 (9th Cir. 1982)10, 15
 5 *Philadelphia Hous. Auth. v. Am. Radiator & Standard. Sanitary Corp.*,
 6 323 F. Supp. 364, 372 (E.D. Pa. 1970).....10
 7 *Priddy v. Edelman*,
 8 883 F.2d 438, 447 (6th Cir. 1989).....11
 9 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*,
 10 79 F.R.D. 571, 576 (E.D. Pa. 1978)12
 11 *Steinberg v. Carey*,
 12 470 F. Supp. 471, 478 (S.D.N.Y. 1979)11
 13 *Util. Reform Project v. Bonneville Power Admin.*,
 14 869 F.2d 437, 443 (9th Cir. 1989)10
 15 *Van Bronkhorst v. Safeco Corp.*,
 16 529 F.2d 943, 950 (9th Cir. 1976)16
 17 *Van Vranken v. Atlantic Richfield Co.*,
 18 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)16
 19 *Young v. Katz*,
 20 447 F.2d 431, 433-34 (5th Cir. 1971).....15

20 **Statutes**

21 Labor Code § 226(a)2, 3, 4, 8
 22 Labor Code § 226(e).....4
 23 Labor Code § 2698.....8
 24 Labor Code §2699.....4

25 **Rules**

26 Federal Rule of Civil Procedure 236, 7, 8
 27 Federal Rule of Civil Procedure 30(b)(6)2, 13
 28

Other Authorities

4 Conte & Newberg, Newberg on Class Actions,
§ 11.26 (4th ed. 2010)..... 10, 12, 15, 16
5 James Wm. Moore et al., Moore’s Federal Practice § 23.165 (3d ed. 2010)10
Manual for Complex Litigation (“MCL”) (4th ed. 2004), § 21.6329, 11, 14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

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

3 Plaintiff Zyra Garcia (“Plaintiff”) seeks preliminary approval of the Joint
4 Stipulation of Class Action Settlement and Release (hereinafter referred to as
5 “Settlement Agreement”) that she has reached in the above-captioned matter with
6 Defendants Continental Airlines, Inc. and United Airlines, Inc. (“Defendants”)
7 (Defendants and Plaintiff collectively referred to as the “Parties”). The Parties
8 have now reached a proposed settlement of the class/representative claims at issue.

9 Specifically, the Parties have reached a class-wide resolution of the claims
10 alleged in this lawsuit on behalf of a class of employees is defined as “all current
11 and former Continental Legacy Employees who worked in California for
12 Continental Airlines, Inc. who were paid by Continental Airline, Inc.’s payroll
13 system at any time during the period of time from November 27, 2012, through
14 December 31, 2014 (the “Continental Legacy Employees Class”). Continental
15 Legacy Employees are individuals who were employees of Defendant Continental
16 Airlines, Inc. but then became employees of United Airlines, Inc. after the
17 companies merged and became a single entity in 2013.

18 The terms of the settlement provide that Defendants shall pay a gross
19 settlement fund of Three Million Two Hundred Fifty Thousand Dollars and Zero
20 Cents (\$3,250,000.00). After deduction for claims administration costs, attorneys’
21 fees, costs, and Plaintiff’s representative enhancement, the net settlement fund of
22 approximately \$2,165,000.00 will be distributed between an estimated 3,763 class
23 members based upon the number of pay checks each class member received.
24 Moreover, this is a **non-reversionary settlement**, such that the entire settlement
25 amount will be distributed and no remaining amounts, *i.e.*, unclaimed funds, will
26 revert back to Defendant.

27 Accordingly, through this Motion, Plaintiff respectfully requests preliminary
28 approval of the class action settlement.

1 **A. History Of The Case**

2 On November 27, 2013, Benjamin Castro¹ filed this class action lawsuit in
3 the Los Angeles County Superior Court. Declaration of Larry W. Lee (“Lee
4 Decl.”) ¶ 2. On January 8, 2014, Defendants removed the case to the United States
5 District Court for the Central District of California. Lee Decl. ¶ 3. On February
6 10, 2014, the First Amended Complaint pursuant to the Parties stipulation and this
7 Court’s Order. Lee Decl. ¶ 4. In essence, the complaints alleged that Defendants
8 failed to issue accurate itemized wage statements in compliance with California
9 Labor Code § 226(a). Lee Decl. ¶ 5. In particular, it was alleged that the wage
10 statements failed to identify the pay period start date, the total hours worked, and
11 the employee ID number, as required by Labor Code § 226(a). Lee Decl. ¶ 5.

12 Thereafter, the Parties engaged in significant discovery. Specifically
13 Plaintiff issued various written discover requests including interrogatories and
14 document requests. Lee Decl. ¶ 6. In response, Defendants produced responses
15 and nearly 4,000 pages of documents. Lee Decl. ¶ 7. Because of various disputes,
16 motions to compel were also filed against Defendants, which were ultimately
17 resolved by Magistrate Judge Rosenberg. Lee Decl. ¶ 8.

18 Subsequently thereafter, the depositions of Defendants’ FRCP 30(b)(6)
19 witnesses were taken, which took place in Houston, TX and Chicago, IL. Lee
20 Decl. ¶ 9. Similarly, Defendants also took the deposition of Benjamin Castro. Lee
21 Decl. ¶ 10. Based upon the discovery conducted, the Parties agreed to further
22 amend the complaint. Lee Decl. ¶ 11. As such, pursuant to this Court’s Order, the
23 Second Amended Complaint (“SAC”) was filed on May 16, 2014. Lee Decl. ¶ 12.

24 While the SAC continued to assert the same causes of action, and continued
25 to assert the wage statements failure to identify the pay period start date and total
26 hours worked, the allegation regarding the employee ID number was withdrawn.

27 ¹ As further explained below, Plaintiff Zyra Garcia recently replaced Benjamin Castro as the
28 Named Class Representative.

1 Lee Decl. ¶ 13. However, the SAC also alleged that the wage statements failed to
2 identify the accurate name of the legal entity that is the employer. Lee Decl. ¶ 14.

3 On September 5, 2014, the Motion for Class Certification was filed. Lee
4 Decl. ¶ 15. While said motion was pending, the Parties agreed to mediate this
5 case, and did so with mediator Mark Rudy on October 1, 2014. Lee Decl. ¶ 16.
6 Mr. Rudy is a well experienced and respected mediator in the area of wage and
7 hour class actions. Lee Decl. ¶ 17. Based upon said mediation, and a mediator's
8 proposal from Mr. Rudy, the Parties reached a class-wide settlement of this case.
9 Lee Decl. ¶ 18.

10 Subsequent thereto, it was discovered that Benjamin Castro may have a
11 conflict of interest with the class members with respect to the class-wide
12 settlement. Lee Decl. ¶ 19. As a result thereof, the Parties agreed to replace Mr.
13 Castro with Plaintiff Zyra Garcia as the named representative, which this Court
14 approved on May 11, 2015. Lee Decl. ¶ 20. As such, the Third Amended
15 Complaint was filed on May 11, 2015, which identifies Plaintiff Zyra Garcia as the
16 named representative, and which is the operative complaint in this action. Lee
17 Decl. ¶ 21.

18 As shown above, from the time of removal to the instant settlement, this case
19 has been actively and vigorously litigated by both Parties. Based thereon, Plaintiff
20 respectfully requests that preliminary approval of the current settlement be granted.

21 **B. Summary Of The Claim At Issue and the Current Settlement**

22 As described above, this lawsuit arises out of Defendants' issuance of
23 itemized wage statements (i.e., pay stubs), which every employer is required to do
24 in California pursuant to Labor Code § 226(a). Plaintiff alleges that as a matter of
25 corporate policy, practice and procedure, each and every wage statement issued by
26 Defendants to the class members did not accurately identify the pay period start
27 date, the total hours worked, and the name of the legal entity that is the employer.
28 As a result of such conduct, Plaintiff asserts that the wage statements violated

1 Labor Code § 226(a). As a result of such violations, Plaintiff alleged that
2 Defendants were liable for penalties pursuant to Labor Code § 226(e) and Labor
3 Code § 2699 *et seq.*

4 Defendants, however, strongly disagree with Plaintiff’s contentions and
5 believes that Plaintiff’s claims are without merit. In particular, Defendants contend
6 that the claims are not subject to class certification. Further, Defendants argued
7 that the alleged violations did not amount to the “knowing and intentional” or
8 “injury” standards that are required to be established under Labor Code § 226(e),
9 and that any penalties awarded would be unjust and capricious in nature. Further,
10 to the extent that any appeals would have to be taken, Plaintiff and the Class would
11 not have received any compensation from this case until such appeals were
12 exhausted and assuming that the appeal was decided in Plaintiff’s favor.
13 Therefore, Plaintiff and the Class would have faced substantial risk in proceeding
14 with the litigation had a settlement not been reached.

15 The negotiations were hard fought and contentious. As a result thereof, the
16 parties have reached the current settlement, which provides for a total settlement
17 sum of \$3,250,000.00, inclusive of payments to settlement class members, class
18 representative enhancements, attorneys’ fees and costs, payment to the State of
19 California, and administration costs.

20 Pursuant to the terms of the Settlement Agreement, the Net Settlement
21 Amount (“NSA”) (after deduction of attorneys’ fees, costs, enhancement fees,
22 PAGA penalties, and costs of administration) will be allocated as follows:

23 The Claims Administrator will determine the number of
24 paychecks each Class Member received as a Class
25 Member during the Settlement Class Period
26 (“Paychecks”). The Claims Administrator will
27 preliminarily calculate each Class Member’s settlement
28 amount (“Individual Settlement Payment”) based upon

1 the number of Paychecks as follows:

2 (a). The number of Paychecks of all Class Members
3 will be totaled (“Total Paychecks”).

4
5 (b). The Net Settlement Amount will be divided by the
6 Total Paychecks, and the resulting number will be the
7 “Paycheck Penalty Value.”

8 (c). Each Class Member’s number of Paychecks will
9 be multiplied by the Paycheck Penalty Value, and the
10 resulting number will equal each Class Member’s
11 “Individual Settlement Payment.”

12 (Settlement Agreement at ¶ 14).

13 The Class Members can be ascertained from Defendants’ payroll records.
14 Lee Decl. ¶ 29. Indeed, based upon Defendants’ records, the Class Members have
15 been ascertained to be approximately 3,763 individuals.

16 Finally, no claim forms will be necessary for any Class Member to
17 participate in the settlement. Thus, any Class Member who does not opt-out from
18 this Settlement will automatically be issued their share of the settlement proceeds.

19 **C. The Proposed Settlement Class Satisfies The Elements For**
20 **Certification**

21 The proposed settlement class meets all the requirements for class
22 certification:

23 **1. Numerosity**

24 The numerosity requirement is satisfied if the proposed class is “so
25 numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1).
26 Impracticable does not mean impossible, only that it would be difficult or
27 inconvenient to join all members of the class. *Harris v. Palm Springs Alpine*

1 *Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). The class consists of
2 approximately 3,763 total persons. Lee Decl. ¶ 29. Accordingly, here, the Class is
3 numerous and clearly satisfies the numerosity prong as the class exceeds 100
4 individuals.

5 **2. Ascertainability**

6 As stated, above, Defendants have already ascertained the Class Members
7 through Defendants' payroll records. Lee Decl. ¶ 29.

8 **3. Typicality**

9 Typicality under Rule 23(a)(3) is satisfied if the representative plaintiff's
10 claims share a common element with the class: i.e., those claims arise from the
11 same course of conduct that gave rise to the claims of other settlement class
12 members. *In re United Energy Corp. Solar Power Modules Tax Shelter Invs. Sec.*
13 *Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988). Here, Plaintiff submits that her
14 claims are typical of those of other Class Members because she alleges that she
15 suffered injury from the same specific actions that she alleges harmed other
16 members of the class, specifically Plaintiff received inaccurate wage statements,
17 just like the rest of the Class, all of which were processed through the same payroll
18 system. Declaration of Zyra Garcia ("Garcia Decl.") at ¶¶ 2-4. It is Plaintiff's
19 position that her claims are typical of the class as a whole because they arise from
20 the same factual basis and are based on the same legal theory as those applicable to
21 the Class Members. Garcia Decl. ¶¶ 2-4.

22 **4. Commonality**

23 Commonality relates to whether there are "questions of law or fact common
24 to the class." Fed. R. Civ. P. 23(a)(2). Commonality is satisfied if there is one
25 issue common to class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
26 (9th Cir. 1998). Here, Plaintiff contends the common issues include, among other
27 things, whether Defendants failed to provide accurate itemized wage statements.
28

1 Garcia Decl. ¶¶ 2-4.

2 **5. Adequacy**

3 Adequacy under Rule 23(a)(4) is satisfied if the named plaintiffs have no
4 disabling conflicts of interest with other members of the class and Class Counsel
5 are competent and well qualified to undertake the litigation. *Lerwill v. Inflight*
6 *Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). No conflict exists
7 between Plaintiff and the Class because Plaintiff has been damaged by the same
8 alleged conduct as all Class Members and has the incentive to fairly represent all
9 Class Members' claims to achieve the maximum possible recovery. Garcia Decl.
10 ¶¶ 5-6. Despite the settlement, Plaintiff remains willing to vigorously prosecute
11 this action to the benefit of the class.

12 Furthermore, Plaintiff is represented by attorneys who have extensive
13 experience in complex wage and hour litigation as is detailed in each of their
14 declarations supported herewith. Lee Decl. ¶¶ 32-34; Declaration of Edward Choi
15 ¶¶ 7-9; Declaration of Thomas Lee ¶¶ 7-9.

16 **6. Common Questions of Law and Fact Predominate**

17 Here, common questions of law or fact predominate over individual
18 questions pursuant to Rule 23(b)(3). These issues of fact and law raised in this
19 action are common to all members of the classes and predominate in this case.
20 Here, Plaintiff contends that Defendants failed to provide accurate itemized wage
21 statements. Based on discovery, Plaintiff believes and asserts that Defendants
22 committed these violations as to Plaintiff in the same manner as to all Class
23 Members. Garcia Decl. ¶¶ 2-4.

24 **7. Superiority of Class Action**

25 The requirement that a class action is superior to other methods of
26 adjudication under Rule 23(b)(3) is also met. Courts have recognized that the class
27 action device is superior to other available methods for the fair and efficient
28

1 adjudication of controversies involving large number of employees in wage and
2 hour disputes. *See, e.g. Hanlon*, 150 F.3d at 1022. Without class-wide relief in
3 this action, the Class Members would be forced to litigate numerous cases on a
4 piecemeal basis.

5 **D. The Settlement Is Fair, Reasonable, And Adequate**

6 Based on their own respective independent investigations and evaluations,
7 the Parties and their respective counsel are of the opinion that settlement for the
8 consideration and on the terms set forth in their Settlement is fair, reasonable, and
9 adequate and is in the best interests of the Class and the Defendants in light of all
10 known facts and circumstances and the expenses and risks inherent in litigation.
11 Lee Decl. ¶ 22; Declaration of Edward Choi ¶ 6; Declaration of Thomas Lee ¶ 6.

12 Defendants deny any liability or wrongdoing of any kind associated with the
13 claims alleged by Plaintiff. Defendants maintains that the wage statements they
14 issued to its employees were lawful, that any violation, should there be any, was
15 not knowing and intentional, nor was there any injury suffered by Plaintiff or the
16 class members. As such, Defendants maintain that they are not liable for violating
17 Labor Code Sections 226(a), or 2698, *et seq.*

18 Further, based on the approximate 3,763 Class Members, each of them will
19 receive, on a raw average, of approximately \$576.00 in settlement awards after
20 deduction for attorneys' fees, enhancement payment, payment to the Labor and
21 Workforce Development Agency ("LWDA"), administration costs and litigation
22 costs.

23 Moreover, this is a **non-reversionary settlement**, such that the entire
24 settlement amount will be fully distributed to the class and no remaining amounts,
25 *i.e.*, unclaimed funds, will revert back to Defendants. Further, to the extent that
26 any individuals opt-out of this settlement, class members could actually receive
27 greater amounts based on redistributions of the settlement fund.

28 **II. LEGAL ANALYSIS**

1 **A. Two-Step Approval Process**

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

7 Review of a proposed class action settlement generally
8 involves two hearings. First, counsel submit the
9 proposed terms of settlement and the judge makes a
10 preliminary fairness evaluation. In some cases, this
11 initial evaluation can be made on the basis of information
12 already known, supplemented as necessary by briefs,
13 motions, or informal presentations by parties.... The
14 judge must make a preliminary determination on the
15 fairness, reasonableness, and adequacy of the settlement
16 terms and must direct the preparation of notice of the
17 certification, proposed settlement, and date of the final
18 fairness hearing.

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

20 Thus, the preliminary approval by the trial court is simply a conditional
21 finding that the settlement appears to be within the range of acceptable settlements.
22 As Professor Newberg comments, “[t]he strength of the findings made by a judge
23 at a preliminary hearing or conference concerning a tentative settlement proposal
24 may vary. The court may find that the settlement proposal contains some merit, is
25 within the range of reasonableness required for a settlement offer, or is
26 presumptively valid subject only to any objections that may be raised at a final
27 hearing.” 4 Conte & Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2010).
28 Accordingly, a court should grant preliminary approval of a class action settlement

1 where it is within the “range of reasonableness.” Here, the Parties have reached
2 such an agreement and have submitted it to the Court in connection with this filing.

3 **B. The Standard For Preliminary Approval**

4 As a matter of public policy, settlement is a strongly-favored method for
5 resolving disputes. *Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d
6 437, 443 (9th Cir. 1989). This is especially true in complex class actions such as
7 this case. *Officers for Justice v. Civil Serv. Comm’n of City & County of San*
8 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

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

26 Here, the proposed settlement does not pose such issues. This was a highly-
27 contentious litigation with the Parties each being represented by highly-competent
28 counsel. As discussed above and the declarations submitted herewith, the Parties

1 engaged in substantial investigation and discovery related to the claims and
2 defenses alleged in this case, as well as substantial motion practice, including the
3 filing of discovery motions and a Motion for Class Certification. Further, the
4 proposed settlement was reached after the Parties utilized the assistance of an
5 experienced mediator and after substantial arms-length negotiations between the
6 Parties.

7 As detailed herein, the proposed Settlement satisfies the standard for
8 preliminary approval as it is well within the range of possible approval and there
9 are no grounds to doubt its fairness. Counsel for Plaintiff and Defendants have
10 extensive experience in employment law, particularly wage and hour litigation, and
11 reached a settlement only after mediation and extensive arm's-length negotiations.

12 **C. The Settlement Is Fair And Reasonable And Not The Result Of 13 Fraud Or Collusion**

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

15 Courts presume the absence of fraud or collusion in the negotiation of
16 settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d
17 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank &*
18 *Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F.
19 Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that
20 of the proponents, particularly where, as here, settlement has been reached with the
21 participation of experienced counsel familiar with the litigation. *National Rural*
22 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004);
23 *Hammon v. Barry*, 752 F. Supp. 1087, 1093-1094 (D.D.C. 1990); *Steinberg v.*
24 *Carey*, 470 F. Supp. 471, 478 (S.D.N.Y. 1979); *Sommers v. Abraham Lincoln*
Federal Sav. & Loan Ass'n, 79 F.R.D. 571, 576 (E.D. Pa. 1978).

25 While the recommendations of counsel proposing the settlement are not
26 conclusive, the Court can properly take them into account, particularly where, as
27 here, they have been involved in extensive litigation, informal and formal
28

1 discovery, appear to be competent, and have experience with this type of litigation.
 2 Newberg on Class Actions at §11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at
 3 528 (“So long as the integrity of the arm’s length negotiation process is preserved,
 4 however, a strong initial presumption of fairness attaches to the proposed
 5 settlement . . . and ‘great weight’ is accorded to the recommendations of counsel,
 6 who are most closely acquainted with the facts of the underlying litigation.”)
 7 (Citations omitted).

8 **a. Experience Of Class Counsel**

9 Here, both counsel for Plaintiff and Defendants have a great deal of
 10 experience in wage and hour class action litigation. Plaintiff’s attorneys have been
 11 approved as class counsel in a number of other wage/hour class actions and have
 12 litigated class action cases for years. Lee Decl. ¶¶ 32-34; Declaration of Edward
 13 Choi ¶¶ 7-10; Declaration of Thomas Lee ¶¶ 7-10. Moreover, Plaintiff’s Counsel
 14 conducted an extensive investigation of the factual allegations involved in this
 15 case. Lee Decl. ¶¶ 6-10. Thus, based upon such experience and knowledge of the
 16 current case, Plaintiff’s Counsel believe that the current Settlement is fair,
 17 reasonable and adequate. Lee Decl. ¶ 22; Declaration of Edward Choi ¶ 6;
 18 Declaration of Thomas Lee ¶ 6.

19 **b. Investigation And Discovery Prior To Settlement**

20 Each side has apprised the other of their respective factual contentions, legal
 21 theories and defenses, resulting in extensive arms-length negotiations taking place
 22 among the Parties. Indeed, Defendants have provided to Plaintiff detailed data on
 23 the damages for the Class. Moreover, extensive discovery was conducted in this
 24 case. In addition to the written discovery and substantial document and data
 25 production, Plaintiffs also took multiple depositions of Defendant’s FRCP 30(b)(6)
 26 witnesses with respect to the practices at issue here. Lee Decl. ¶ 9.

27 Plaintiff has received the class data necessary to analyze and determine
 28 liability and potential exposure on the amount of penalties and damages owed to

1 the class. In other words, Plaintiff has conducted detailed discovery on both
2 liability and damages. Based on this independent investigation, the potential value
3 of the class members' settled claims was approximately \$7,597,450.00. Lee Decl.
4 ¶ 22.

5 Defendants contend that its wage statements it issued to its employees were
6 proper. Defendants further contend that it would have prevailed on the merits had
7 this case not resolved through this settlement.

8 As such, Class Counsel are of the opinion that the Settlement is fair,
9 reasonable, and adequate and is in the best interest of the Class Members in light of
10 all known facts and circumstances and the risks inherent in litigation. Lee Decl. ¶
11 22; Declaration of Edward Choi ¶ 6; Declaration of Thomas Lee ¶ 6.

12 **2. The Settlement Is Fair, Reasonable and Adequate**

13 The settlement for each participating Class Member is fair, reasonable and
14 adequate, given the inherent risk of litigation, the risk of appeals, the risks in an
15 area where it is argued that the law is unsettled, and the costs of pursuing such
16 litigation.

17 **a. Risk Of Continued Litigation**

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

25 Here, the Settlement affords fair relief to the Class, given that it avoids
26 significant legal and factual battles that otherwise may have prevented the Class
27 from obtaining any recovery at all. While Plaintiff's attorneys believe that the
28

1 Class' claims are meritorious, they are experienced and realistic, and understand
2 that the outcome of a trial, and the outcome of any appeals that would inevitably
3 follow if Plaintiff prevailed, are inherently uncertain in terms of both outcome and
4 duration. Moreover, Defendants intended to file a motion for full and/or partial
5 summary judgment disposing of the class claim had this case not resolved through
6 settlement, which would also have likely generated appeals by the Parties. Given
7 these uncertainties in litigation and the risk of summary judgment to both Parties,
8 the Parties agreed to resolve this case through a class action settlement, which
9 eliminates the risks of continued litigation while providing a substantial benefit to
10 the class.

11 **b. The Settlement Is Within The Range Of**
12 **Reasonableness**

13 The standard of review for class settlements is whether the Settlement is
14 within a range of reasonableness. As Professor Newberg comments:

15 Recognizing that there may always be a difference of
16 opinion as to the appropriate value of settlement, the
17 courts have refused to substitute their judgment for that
18 of the proponents. Instead the courts have reviewed
19 settlements with the intent of determining whether they
20 are within a range of reasonableness....

21 4 Newberg on Class Actions, at §11.45.

22 Here, the settlement fund is non-reversionary, such that no monies will
23 revert back to Defendants. Assuming that every class member elects to participate
24 in the settlement, each class member will receive his or her pro rata share, with
25 each person receiving on average an approximate amount of \$575.00. Indeed, an
26 "apple to apple" comparison can be made between this settlement, which is in the
27 gross settlement amount of \$3,250,000 for 3,763 individuals, and the settlement in
28 *McKenzie v. Federal Express Corp.*, 2012 US Dist Lexis 103666 (C.D. Cal. July 2,

1 2012), which involved a gross settlement amount of \$8,250,000 for 14,348
2 individuals. Not only did the *McKenzie* case involve the same exaction violations
3 as alleged in the current case, the District Court found that the *McKenzie*
4 settlement to be fair, reasonable and adequate. *Id.* at *6. Given that the settlement
5 dollar per class member is significant higher in the current case than in the
6 *McKenzie* case, it should lead to the logical conclusion that the current settlement
7 is indeed fair, reasonable and adequate.

8 Moreover, in the event that class members elect to exclude themselves from
9 the settlement, these funds will be redistributed to the class, such that class
10 members' payments will increase. Further, the settlement fund will be paid out
11 entirely in cash (as opposed to a voucher, coupon, etc.). In addition, as set forth in
12 the Settlement Agreement, the release is significantly limited to the claims asserted
13 in the operative complaint. For these reasons, and for the reasons set forth above
14 relating to the total liability and the risks of prevailing on the theories of liability
15 alleged, Plaintiff believes that the current Settlement is fair, reasonable, and
16 adequate.

17 **c. The Complexity, Expense, And Likely Duration Of**
18 **Continued Litigation Against The Settling Defendants**
19 **Favors Approval**

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

25 The Settlement provides to all Class Members fair relief in a prompt and
26 efficient manner. Were the parties to engage in continued litigation of this matter,
27 the Parties would then litigate the merits of the class claim either by summary
28

1 judgment or trial, which would have likely led to drawn out appeals by both
2 Parties. Given the realities of litigation, this process places ultimate relief several
3 years away. The idea of balancing a fair recovery now, with settlement dollars
4 being paid out now, as opposed to a years-long litigation and appeals process
5 regarding various potential issues, is a significant factor in favor of approval of the
6 class settlement. *DIRECTV*, 221 F.R.D. at 526-27 (“Avoiding such a trial and the
7 subsequent appeals in this complex case strongly militates in favor of settlement
8 rather than further protracted and uncertain litigation.”).

9 The Settlement in this case is therefore consistent with the “overriding
10 public interest in settling and quieting litigation” that is “particularly true in class
11 action suits.” See *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
12 1976); 4 Newberg on Class Actions, at § 11.41.

13 **d. Non-Admission Of Liability By Defendant**

14 Finally, Defendants deny any liability or wrongdoing of any kind associated
15 with the claims alleged in this lawsuit. Defendants maintain that the claims
16 asserted in this matter were not certifiable and that they have complied at all times
17 with all California wage and hour laws. Because of such denial, if this case is not
18 resolved, it will likely continue to be a long and protracted litigation.

19 **D. Attorneys’ Fees, Costs, And Class Representative Enhancement**

20 Pursuant to the terms of the Agreement, and without opposition from
21 Defendants, Plaintiff will also be entitled to request enhancement amounts, up to a
22 maximum of \$5,000.00 to Plaintiff, which is to compensate the Plaintiff for the
23 actions the Plaintiff has taken to protect the interests of the class, the degree to
24 which the class has benefited from those actions and the amount of time and effort
25 she expended in pursuing the litigation. *Cook v. Niedert*, 142 F.3d 1004, 1015 (7th
26 Cir. 1998); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300
(N.D. Cal. 1995).

27 Similarly, Class Counsel will seek an award of attorneys’ fees of not more
28

1 than 30% of the Maximum Settlement Amount and reimbursement of actual costs
2 of up to \$25,000.00. Both the requested enhancement amounts and attorneys' fees
3 and costs will be requested simultaneously with Plaintiff's motion seeking final
4 approval of this class action settlement.

5 **III. CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that the Court grant
7 preliminary approval for the proposed class action settlement and schedule a
8 "fairness hearing," i.e. a hearing on the final approval of the settlement.

9 DATED: July 2, 2015

DIVERSITY LAW GROUP, P.C.

11 By: /S/LARRY W. LEE
12 Larry W. Lee, Esq.
13 Attorney for Plaintiff and the Class
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28