

1 CHRIS BAKER, State Bar No. 181557  
cbaker@bakerlp.com  
2 MICHAEL CURTIS, State Bar No. 252392  
cbaker@bakerlp.com  
3 BAKER CURTIS & SCHWARTZ, P.C.  
4 44 Montgomery Street, Suite 3520  
San Francisco, CA 94104  
5 Telephone: (415) 433-1064  
Fax: (415) 366-2525

6 Attorneys for Plaintiff  
7 TINA PATEL

8  
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11  
12 TINA PATEL, in her representative capacity,  
13 Plaintiff,

14 vs.

15 ONEWEST RESOURCES, LLC, and Does 1-50,  
16 inclusive,  
17 Defendants.

Case No. BC653645

Assigned to Hon. Maren E. Nelson

**CLASS ACTION**

**PLAINTIFF TINA PATEL'S NOTICE  
OF MOTION AND MOTION FOR  
FINAL APPROVAL OF A CLASS  
ACTION SETTLEMENT AND  
RELATED MATTERS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Hearing Date: March 9, 2018  
Hearing Time: 9:00 a.m.  
Dept.: 307

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23 TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE THAT on March 9, 2018, at 9:00 a.m., or as soon after  
25 as the matter can be heard, in Department 307 of the above-entitled Court located at 600 South  
26 Commonwealth Avenue, Los Angeles, California, plaintiff Tina Patel will and hereby does move  
27 this Court, pursuant to California Rule of Court 3.769, for an order to: (1) certify the class for  
28 settlement purposes; (2) grant final approval of the Settlement; (3) order Defendant OneWest

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 14 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Crystal Vargas, Deputy

BY FAX

1 Resources, LLC (“OneWest”) to make a one-time deposit of the Class Settlement Amount of  
2 Four Hundred Twenty Thousand Dollars (\$420,000) into the Qualified Settlement Account  
3 established by the Settlement Administrator within ten (10) days of Notice of Entry of Judgment;  
4 and (4) order the Claims Administrator to distribute the settlement proceeds five (5) court days  
5 after the Effective Date, as defined in the Settlement Agreement. Plaintiff also requests that the  
6 Court enter judgment while reserving jurisdiction to enforce the terms of the final approval  
7 order, judgment and settlement agreement.

8 This Motion is based on this Notice of Motion, the Memorandum of Points and  
9 Authorities in support of this motion, the Declarations and Exhibits in support of this motion, all  
10 pleadings and papers filed herein, the arguments of counsel and any other matters properly  
11 before the Court.

12 Dated: February 14, 2018

BAKER CURTIS & SCHWARTZ, P.C.

13  
14 By: 

15 Chris Baker  
16 Attorneys for Plaintiff  
TINA PATEL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 25, 2017, this Court granted preliminary approval of the class action  
4 settlement in this case. (Ex. 9.)<sup>1</sup> In accordance with the Court’s order, the parties provided the  
5 Court-Ordered Notice of the Settlement and the Final Approval Hearing to 504 class members.  
6 (Ex. 3 ¶ 6.) No one has objected to or opted out of the settlement. (*Id.* at ¶¶ 10-11.)

7 Assuming the Court awards the maximum allowable deductions from the common fund  
8 for fees, costs, PAGA and enhancement payment, each class member will receive, on average,  
9 \$466, for claims that OneWest’s timekeeping program shorted them a few minutes of worktime a  
10 day. (*Id.* at ¶ 13.) The median settlement payment is \$603. 240 of the class members receiving  
11 the highest settlement payment of \$641. (*Id.*) This settlement confers substantial benefit on the  
12 class members, particularly after considering the difficulties of this wage and hour class action  
13 litigation. Settling now removes the risk of certifying this class and prevailing at trial and  
14 removes the delay of proceeding through trial and potential appeals.

15 The total settlement fund will equal approximately \$428,000, made up of the \$420,000  
16 cash settlement amount plus approximately \$8,000 that OneWest is separately paying for the  
17 employer’s share for payroll taxes. (*Id.* at ¶ 14.)<sup>2</sup>

18 Certification of the proposed class for settlement purposes is appropriate. Final approval  
19 of the Settlement is also appropriate.

20 Accordingly, Plaintiff asks that the Court to: (1) certify the class for settlement purposes;  
21 (2) grant final approval of the Settlement; (3) order OneWest to make a one-time deposit of the  
22 Class Settlement Amount of Four Hundred Twenty Thousand Dollars (\$420,000) into the  
23 Qualified Settlement Account; and (4) order the Claims Administrator to distribute the settlement

24 \_\_\_\_\_  
25 <sup>1</sup> All exhibits are to Curtis’s Declaration in support of the Motions for Final Approval and Fees,  
Costs, and Enhancement Award.

26 <sup>2</sup> This amount includes approximately \$3,643 in social security taxes, which directly benefits the  
27 employee. The amount of money an employer contributes to Social Security on behalf of an  
28 employee correlates with the amount of money the employee eventually receives from Social  
Security. *See*, SOCIAL SECURITY, UNDERSTANDING THE BENEFITS (2015) at 8-9  
(<http://www.ssa.gov/pubs/EN-05-10024.pdf>).

1 proceeds pursuant to the settlement agreement. Plaintiff also requests that the Court enter  
2 judgment while reserving jurisdiction to enforce the terms of the final approval order, judgment  
3 and settlement agreement.

4 Finally, Plaintiff, through a separate motion, requests that the Court grant Plaintiff's  
5 motion for attorneys' fees, costs, and an enhancement award.

## 6 **II. BRIEF STATEMENT OF FACTUAL ALLEGATIONS AND CLAIMS**

7 Plaintiff worked for OneWest as a non-exempt Systems Analyst from March 2009 to May  
8 2015. (Ex. 4, ¶ 2.) Throughout the relevant period, OneWest required its non-exempt employees  
9 to record their worktime on an internet-based timekeeping system, called eTIME. (Ex. 6, ¶ 11.)

10 In this lawsuit, Plaintiff alleges that OneWest violated numerous Labor Code sections by  
11 requiring its non-exempt employees to record their worktime on eTIME because that necessitated  
12 their performing several minutes of uncompensated work each day. (Complaint ¶¶ 1; 10.) As  
13 further detailed in the Motion for Preliminary Approval, Plaintiff claims that OneWest's  
14 timekeeping practice violated the Labor Code by failing to pay regular and overtime wages due  
15 (§§ 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198), failing to provide timely meal  
16 periods (§§ 226.7, 512, and 558), failing to provide accurate wage statements or keep accurate  
17 pay records (§§ 226(a), 1174, and 1174.5), and failing to pay all wages due at termination (§§  
18 201, 202 and 203). Plaintiff also alleges a derivative claim under Business and Professions Code  
19 section 17200.

## 20 **III. THE SETTLEMENT**

21 OneWest has agreed to pay \$420,000 plus its share of any payroll taxes into a Qualified  
22 Settlement Account. The settlement was reached through negotiations that began with a  
23 mediation with Lisa Klerman. (Ex. 6, ¶ 14.) The parties continued to negotiate with Ms.  
24 Klerman's assistance until reaching an agreement in principal on October 24, 2016. (*Id.*)

25 The Agreement permits certain deductions from this common settlement fund for  
26 attorneys' fees (no more than \$140,000), actual litigation costs (no more than \$16,000), claims  
27  
28

1 administration costs (estimated to be \$7,000 and now known to be \$6,995.32),<sup>3</sup> PAGA  
2 (\$12,000),<sup>4</sup> and an enhancement payment to Plaintiff (no more than \$10,000). Assuming the  
3 Court approves all of the deductions, a net amount of \$235,004.68 will be distributed to the 504  
4 members of the Class. That amount will be divided by the aggregate total number of workweeks  
5 worked by all Class Members, 82,179, resulting in the “Workweek Value” of \$2.8596205357,  
6 which will then be multiplied by the Class Members’ number of workweeks to determine their  
7 individual recoveries under the settlement. (Ex. 3 ¶ 6(b).) This was the procedure used in  
8 calculating the individual settlement payments that were identified in Class Notices.<sup>5</sup>

9 If the settlement is finally approved, each of the Class Members will receive a settlement  
10 award via check. Class members need not submit a claim form to receive their awards. The  
11 average award will be \$466. (*Id.* at ¶ 13.)

#### 12 **IV. PRELIMINARY APPROVAL**

13 On October 25, 2017, the Court granted preliminary approval of the Settlement. (Ex. 9.)  
14 In accordance with the Court’s Order, OneWest provided the Claims Administrator with certain  
15 contact information and the payroll data. The Claims Administrator calculated the estimated  
16 settlement awards. On November 27, 2017, the administrator sent notice to the Class consistent  
17

18  
19 <sup>3</sup> The \$4.68 that the Settlement Administrator came in under budget (Ex. 3 ¶ 15) will be  
distributed pro rata to the Class Members.

20 <sup>4</sup> The allocation to the PAGA penalties is actually \$16,000 but pursuant to ¶ 35 of the Settlement  
21 Agreement, 75% of that is sent to the LWDA with the remaining \$4,000 distributed pro rata to the  
22 class members as part of the Net Settlement Amount, so the deducted amount identified above is  
that sent to the LWDA. The \$16,000 allocation is 3.8% of the settlement sum, which is  
23 considerably more than allocations in other approved settlements. *See, e.g., Nordstrom*  
*Commission Cases* (2010) 186 Cal.App.4<sup>th</sup> 576, 581 (upholding a class action/PAGA settlement  
24 that allocated zero funds to the PAGA claims); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal.  
2011) 2011 WL 672645 (approving PAGA allocation of \$10,000 against a settlement fund of 6.9  
25 million (.1 percent)). Plaintiff has submitted a copy of this settlement to the LWDA. (Ex. 6, ¶  
35.) The LWDA has not objected to this settlement.

26 <sup>5</sup> The initial data OneWest provided Plaintiff identified 82,534, which was 355 more workweeks  
27 than the final number OneWest provided the administrator. The difference is less than one half of  
one percent. The original workweek count resulted in the same rounded “Workweek Value” of  
28 2.85, which Plaintiff used to estimate the Class Members’ recoveries at the preliminary approval  
stage. (Ex. 7, ¶ 17.) OneWest has explained the discrepancy as resulting from counting the  
period between two stints of employment by Class Members. (Curtis Decl., ¶17.)

1 with the Court’s Preliminary Approval and the Agreement.<sup>6</sup> (Ex. 3, ¶ 6.) In addition, Class  
2 Counsel developed and published a comprehensive website explaining the Settlement that  
3 included links to the important pleadings in the case. (See Ex. 8 or  
4 <http://www.bakerlp.com/onewest-bank-class-action/>) The Class has received the best notice  
5 practicable of the Settlement.

6 After receiving notice, no Class Member objected to the Settlement or opted out of it.  
7 (Ex. 3 ¶¶ 10-11.)

## 8 **V. ARGUMENT**

### 9 **A. Certification of the Class Is Appropriate for Settlement Purposes**

10 California public policy favors the settlement of class actions. *Bell v. American Title Ins.*  
11 *Co.* (1991) 226 Cal.App.3d 1589, and this Court is authorized to certify a class for settlement  
12 purposes. CRC 3.769(d).

13 In its Preliminary Approval Order, the Court preliminarily certified the class as: “all  
14 persons who were employed in non-exempt non-branch positions for Defendant in California at  
15 any time during the period from September 18, 2014, through December 31, 2015.” (Ex. 9, p. 2.)  
16 Nothing has happened since to disturb this ruling. Accordingly, final certification of the Class for  
17 settlement purposes is appropriate. *Ching v. Siemens Industry* (N.D. Cal. 2014) 2014 WL  
18 2926210, \*2 (finding final class certification appropriate based on preliminary approval order);  
19 *Bolton v. U.S. Nursing Home Corp.* (N.D. Cal. 2013) 2013 WL 5700403, \*3 (same).

### 20 **B. The Settlement Is Adequate, Reasonable and Fair**

21 Rule 3.769(f)-(h) of the California Rules of Court authorizes the Court to conduct an  
22 inquiry into the fairness of a class action settlement and finally approve such settlements. The  
23 standard is whether the agreement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*  
24 (1996) 48 Cal.App.4<sup>th</sup> 1794, 1800-01. This determination, by necessity, represents “an amalgam  
25 of delicate balancing, gross approximations and rough justice.” *In re Microsoft I-V Cases* (2006)  
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27 <sup>6</sup> Of the 504 notices sent out, only 10 were returned by the U.S. Postal Service. (Ex. 3, ¶ 9).  
28 CAC performed an address search for those 10 Class Members and was able to find a substitute  
addresses for two of them and mail the Notice to the substitute address, so that only eight Notices  
were undeliverable (1.6%). (*Id.*)

1 135 Cal.App.4<sup>th</sup> 706, 723.

2           However, a class action settlement agreement is *presumptively* fair if the following  
3 factors are met: (1) the settlement is reached through arm’s length bargaining; (2) investigation  
4 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is  
5 experienced in similar litigation; and (4) the percentage of objectors is small. *Id.*

6           The settlement agreement in this case satisfies each of the above factors. This Court  
7 already determined that the first three factors were met at the preliminary stage, but they are  
8 briefly addressed below again, with citations to the relevant pages of the Preliminary Approval  
9 Order.

10           First, the settlement was reached through arms-length bargaining. Plaintiff and OneWest  
11 agreed to a tentative settlement only after mediation. Even after the tentative settlement, the  
12 parties engaged in lengthy and substantive negotiations over the course of five months to reach a  
13 final agreement. There was nothing collusive about this settlement. (Ex. 9, p. 6.)

14           Second, the discovery and investigation in this case were sufficient to permit both  
15 counsel and the Court to act intelligently. Class Counsel spent considerable time and resources  
16 identifying, investigating, and valuing the class claims in this case. Class Counsel’s analysis  
17 included legal research, formal discovery requests, motions to compel for the information  
18 OneWest resisted providing, and retention of a data consultant to synthesize the data provided by  
19 OneWest and to create damages and recovery models. Class Counsel located, reached out to,  
20 and interviewed other OneWest employees. In connection with the mediation, the parties further  
21 exchanged information and legal theories concerning the strengths and weaknesses of the various  
22 claims. This is sufficient information to permit an intelligent assessment as to the reasonableness  
23 of this Settlement. (Ex. 9, pp. 6-7.)

24           Third, Class Counsel is experienced in this type of litigation. (Ex. 9, p. 7.)

25           Fourth, we now know that no Class Member has objected to the Settlement. (Ex. 3, ¶  
26 11.)

27           Moreover, not only is the settlement *presumptively* fair under California law, it is also  
28 *objectively* fair. (Ex. 9, pp. 7-9.) A judge’s “duty in a class action settlement situation [is] to

1 estimate the *litigation value* [not the undiscounted, pie-in-the-sky value] of the claims of the  
2 class and determine whether the settlement is a reasonable approximation of that value.”

3 *Mirfasihi v. Fleet Mortg. Corp.* (2004) 356 F.3d 781, 786 (emphasis added). Here, the  
4 Settlement is a fair approximation of the litigation value of the case.

5 Specifically, Plaintiff values the *undiscounted* compensatory damages at \$1,339,645, or an  
6 average of \$2,658 per Class Member. (Ex. 7, ¶ 15). Assuming that the Court approves the  
7 Settlement with all deductions, the total average *net* recovery for the Class Members will be \$466.  
8 (Ex. 3, ¶ 13.) This is a recovery of 18 cents on the compensatory damages dollar. (Ex. 7, ¶ 18).  
9 And Class Members on average will receive 31 cents on the dollar based on the Gross Settlement  
10 Amount of \$420,000.<sup>7</sup> (*Id.*) This is a good settlement in light of (among other things) the  
11 significant risks associated with this case. (Ex. 6, ¶¶ 24-31).

12 In sum, given the risks and uncertainties associated with continued litigation, including  
13 the substantial possibility that class certification would be denied or subject to a later  
14 decertification motion, the anticipated settlement payment to Class Members is adequate,  
15 reasonable and fair.

#### 16 **D. Entry of Judgment**

17 Finally, in accordance with Rule 3.769(h) of the California Rules of Court, Plaintiff asks  
18 the Court to enter judgment, but reserve jurisdiction, upon entering its order approving the  
19 Settlement Agreement in this case. Both a proposed order and a proposed judgment is provided  
20 for the Court’s review.

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26 <sup>7</sup> It is appropriate to consider the gross award (*before* deductions) in comparing the litigation  
27 value against the settlement award. Among other things, it is appropriate to pay fees out of a  
28 common fund, even in a fee-shifting case, “to avoid the unjust enrichment of those who benefit  
from the fund that is created, protected, or increased by litigation and who otherwise bear none of  
the litigation costs.” *Sobel v. Hertz Corporation* (D. Nev. 2014) 2014 WL 5063397, \*5.



1 **VII. CONCLUSION**

2 Based on the foregoing, as well as Plaintiff's motion for fees, costs, and an enhancement  
3 award, Plaintiff respectfully moves this Court to enter the Proposed Order and Proposed  
4 Judgment in this case.

5  
6 Dated: February 14, 2018

BAKER CURTIS & SCHWARTZ, P.C.

7  
8 By: 

Chris Baker  
Attorneys for Plaintiff  
TINA PATEL

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