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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

ARTURO CARDENAS, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

v.

HIGH END DEVELOPMENT, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. FCS054544

[Assigned to the Hon. Stephen Gizzi, Dept. 3]

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

Date: May 13, 2022
Time: 9:30 a.m.
Dept.: 3

Complaint Filed: March 16, 2020
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 13, 2022, at 9:30 a.m., or as soon thereafter as
the matter may be heard, before the Honorable Stephen Gizzi, Judge presiding, in Department 3

1 of the above-referenced Court located at 580 Texas Street, Fairfield, California 94533, Plaintiff
2 Arturo Cardenas (“Plaintiff”) will seek an Order:

3 1. Preliminarily approving the Joint Stipulation of Class Action Settlement
4 (“Agreement” or “Settlement”);

5 2. Provisionally certifying the Settlement Class, which is defined as: all current and
6 former California employees who received a wage statement from Defendant at any time during
7 the period of time from March 16, 2019, through May 29, 2020;

8 3. Appointing William L. Marder of Polaris Law Group, and Dennis S. Hyun of
9 Hyun Legal, APC as Class Counsel;

10 4. Approving the proposed “Notice of Class Action Settlement,” which is attached
11 to the Joint Stipulation of Class Action Settlement (“Agreement”) as Exhibit “A”;

12 5. Approving ILYM, Inc. as the settlement administrator (“Administrator”) jointly
13 selected by the Parties for the purposes of this settlement, and approving and directing
14 distribution to the Notice of Class Action Settlement; and

15 6. Setting a final fairness and approval hearing.

16 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
17 provides for court approval of the settlement of a purported class action.

18 The basis for this Motion, filed without any opposition from Defendant High End
19 Development, Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and
20 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
21 class members to participate in, opt out of, or object to the settlement.

22 This Motion will be based on the Memorandum of Points and Authorities included
23 herein, the Joint Stipulation for a Class Action Settlement and Release (hereinafter referred to as
24 “Stipulation” or “Settlement Agreement”) and the proposed Notice of Pendency of Class Action,
25 Proposed Settlement and Hearing Date, and the supporting Declarations of William L. Marder,
26 Dennis S. Hyun, and Plaintiff, upon the oral arguments of counsel (should there be any) and on
27 the complete records and file herein.
28

1 DATED: April 12, 2022

POLARIS LAW GROUP, LLP

2 By: William L. Marder
3 William L. Marder
4 Attorneys for Plaintiff and the Class
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TABLE OF CONTENTS

I.	INTRODUCTION	6
II.	BACKGROUND OF THE SETTLEMENT	7
A.	Investigative Background.....	7
B.	Summary of the Current Settlement.....	7
C.	The Settlement is Fair, Reasonable, and Adequate.....	8
III.	LEGAL ANALYSIS.....	9
A.	The Class At Issue Can Be Certified by the Court Pursuant to the Parties’ Stipulation	9
B.	Two-Step Approval Process.....	10
C.	The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion	11
D.	The Proposed Class Settlement Meets the <i>Kullar</i> Factors	14
1.	Plaintiff’s Counsel Conducted Adequate Investigation	14
2.	Strengths and Weaknesses of Plaintiff’s Claims.....	14
E.	The Proposed Class Representative Enhancement and Attorneys’ Fees and Costs Should be Preliminarily Approved	15
IV.	CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal. App. 3d 1341, 1347 (1987)	11
<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015)	15
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	17
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	15
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 66 n.11 (2008)	18
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1803 (1996)	10
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008)	17
<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998)	17
<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475, 478 (S.D.N.Y. 1984)	10
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) ..	17
<i>In re Paine Webber Ltd. P'ships Litig.</i> , 171 F.R.D. 104, 125 (S.D.N.Y. 1997)	13
<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal. App. 4th 1286, 1305-1307 (2010)	11
<i>Jordan v. L.A. County</i> , 669 F.2d 1311, 1320 (9th Cir.)	11
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 130, 133 (2008)	15
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	17
<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> , 834 F.2d 677, 682 (7th Cir. 1987)	13
<i>McKenzie v. Federal Exp. Corp.</i> , 275 F.R.D. 290 (C.D. Cal. 2011)	11
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000)	14
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004)	13
<i>Patrick v. Marshall</i> , 460 F. Supp. 23, 26 (N.D. Cal. 1978)	11
<i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989)	13
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	17
<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	13
<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014).15	
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	16
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 240 (2001)	10, 17

Statutes

Labor Code § 226(a)(7)	7, 11
Labor Code § 226(e)	15

Other Authorities

Brickman, <i>Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees</i> (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11	17
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Treatises

4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , §§ 11.24 11.26, 11.47 (4th ed. 2002)	10, 12, 13
Manual for Complex Litigation (Third) § 30.41	12

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Named Plaintiff Arturo Cardenas (“Named Plaintiff” or “Plaintiff”) seeks preliminary
6 approval of this class action settlement. As set forth in the Joint Stipulation of Class Action
7 Settlement (“Joint Stipulation” or “Settlement Agreement”), the Settlement provides for a gross
8 fund of \$125,000.00, and, more importantly, is **non-reversionary**, such that no funds will revert
9 back to Defendant High End Development, Inc. (“Defendant”) (Defendant and Plaintiff
10 collectively, the “Parties”). Moreover, the Settlement does not require class members to
11 complete claim forms to participate. Rather, the class members will simply receive checks so
12 long as they do not opt-out.

13 This case arises from Defendant’s wage statement practices. Specifically, Plaintiff
14 alleges that the wage statements issued to Defendant’s employees purportedly did not specify the
15 last four digits of the employee’s social security number or employee identification number in
16 violation of Labor Code § 226(a)(7).

17 Defendant denies these allegations and denies that Plaintiff and the class are entitled to
18 any relief whatsoever. While Defendant contests liability, as of the pay period after May 29,
19 2020, Defendant began issuing wage statements which contained this information. Defendant
20 would have also argued that it did not act knowingly, nor intentionally to support any penalties
21 under Labor Code § 226(e) and that because this is a technical violation, that any penalties under
22 the Private Attorneys General Act (the “PAGA”) should be reduced by this Court. Thus, without
23 this settlement, there is a significant risk to the class in recovering zero monies.

24 The Parties engaged in an exchange of information, including data regarding the size of
25 the putative class and number of wage statements at issue. The Parties then attended a mediation
26 before highly experienced litigator and mediator, Todd Smith, Esq. After a full day of mediation
27 on February 3, 2022, the Parties agreed to settle this case. The settlement release is narrowly
28 tailored to the following:

“Released Class Claims” means any and all class claims contained in the
Complaint for violation of Labor Code § 226, including any penalties and/or
damages, under Labor Code § 226(e), that arose during the Class Period.

1 “Released PAGA Claims” means all representative claims under the Private
2 Attorneys General Act (the “PAGA”) based on such violations of Labor Code §
3 226, including any penalties under Labor Code § 226.3, that arose during the
4 PAGA Period.

5 (Settlement Agreement at §§ 26-27).

6 Based on their own independent investigation and evaluation, the Parties and their
7 respective counsel are of the opinion that settlement for the consideration and on the terms set
8 forth in the Joint Stipulation is fair, reasonable, and adequate and is in the best interests of the
9 Class and Defendants in light of all known facts and circumstances and the expenses and risks
10 inherent in litigation. (Hyun Decl. ¶¶ 8-9). Therefore, the Parties respectfully request that the
11 Court grant this Motion for Preliminary Approval of Class Action Settlement.

12 **II. BACKGROUND OF THE SETTLEMENT**

13 **A. Investigative Background**

14 The Parties engaged in an exchange of information, including data regarding the size of
15 the putative class and number of wage statements at issue. (Hyun Decl. ¶ 7). The Parties also
16 engaged in formal discovery, including Plaintiff propounding Special Interrogatories and
17 Requests for Production, as well as engaging in a discovery meet and confer. (*Id.*) The Parties
18 then attended a mediation before highly experienced litigator and mediator, Todd Smith, Esq.
19 (*Id.*) After a full day of mediation on February 3, 2022, the Parties agreed to settle this case.
20 (*Id.*) Defendant estimates there are approximately 117 Class Members who received 1,310
21 wage statements and 164 Aggrieved Employees who received 1,867 wage statements. (*Id.*)
22 Significantly, subsequent to this lawsuit, as of the pay period following May 29, 2020,
23 Defendant modified its wage statements to specify the employees’ identification number. (*Id.*)

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

25 The Stipulation provides for \$125,000.00 as the Gross Settlement Amount. This amount
26 is completely non-reversionary (*i.e.*, every single dollar will be paid out without any money
27 reverting back to Defendants). Individual Settlement Payments will be calculated and
28 apportioned from the Gross Settlement Amount based on the number of wage statements
received by each Settlement Class Member during the Class Period in proportion to the total
number of wage statements issued to Settlement Class Members during the Class Period.

1 (Settlement Agreement at § 45). Similarly, each Aggrieved Employee's PAGA Payment shall
2 be based on the similar formula. (*Id.*) As set forth in the Agreement, 100% of the Individual
3 Settlement Payments shall constitute payments for alleged penalties. (Settlement Agreement at §
4 62).

5 Additionally, the Settlement Agreement provides for an appropriately tailored release.
6 The Settlement Agreement provides a release only for claims arising out of or related to the
7 factual allegations set forth in the Action for non-compliant wage statements:

8 "Released Class Claims" means any and all class claims contained in the
9 Complaint for violation of Labor Code § 226, including any penalties and/or
10 damages, under Labor Code § 226(e), that arose during the Class Period.

11 "Released PAGA Claims" means all representative claims under the Private
12 Attorneys General Act (the "PAGA") based on such violations of Labor Code §
13 226, including any penalties under Labor Code § 226.3, that arose during the
14 PAGA Period.

15 (Settlement Agreement at §§ 26-27).

16 Class Members may opt-out of the Settlement if they so choose. In agreeing to the
17 Settlement, Plaintiff took into consideration the number of Class Members and the total number
18 of wage statements. This enabled Plaintiff to calculate the potential damages and negotiate the
19 settlement sum based on a clear understanding of the exposure in this case.

20 As part of the Stipulation, Defendant does not object to Plaintiffs' Counsel's request for
21 attorney's fees up to one-third (1/3) of the total settlement sum, or \$41,666.67, plus up to
22 \$25,000.00 for reimbursement of litigation costs. Also, as part of the Settlement Agreement,
23 Defendant does not object to Named Plaintiff's request for an enhancement of \$7,500.00.
24 Additionally, the Settlement Agreement calls for a \$12,500.00 payment for PAGA penalties -
25 75% of which is payable to the California Labor and Workforce Development Agency
26 ("LWDA") (\$9,375.00) and 25% of which will be included in the settlement pool to be paid to
27 the Class Members (\$3,125.00). Finally, the Settlement Agreement also provides for the
28 payment of the settlement administrator for the administration of this current settlement, which
is estimated to be \$5,225.25.

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

30 Based on their own respective independent investigations and evaluations, the Parties and
31 their respective counsel are of the opinion that settlement for the consideration and on the terms

1 set forth in their Agreement is fair, reasonable, and adequate and is in the best interests of the
2 Class and the Defendants in light of all known facts and circumstances and the expenses and
3 risks inherent in litigation. (Hyun Decl. at ¶¶ 8-9). Defendants deny any liability or wrongdoing
4 of any kind associated with the claims alleged by Plaintiff.

5 Based on a class size of approximately 117 Class Members and the \$125,000.00
6 recovery, Class Members will each get a raw average of approximately \$282.98, after deducting
7 the PAGA payment to the LWDA, Plaintiff's enhancement, attorneys' fees and costs, and
8 administration costs. This amount will be greater or lower based on the number of exclusions,
9 *i.e.*, the amounts allocated to the class members who exclude themselves will be reallocated to
10 the net settlement fund available to participating class members.

11 **III. LEGAL ANALYSIS**

12 **A. The Class At Issue Can Be Certified by the Court Pursuant to the Parties'** 13 **Stipulation**

14 The parties also may, at the preliminary approval stage, request that the court
15 provisionally approve certification of the class – conditional upon final approval of the
16 settlement. “[P]re-certification settlements are routinely approved if found to be fair and
17 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk*
18 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached
19 before any “adversary certification,” the court was satisfied that it was “fair, adequate and
20 reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984). As further
21 explained by Professor Newberg:

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

25 4 Newberg on Class Actions, at §11.26.

26 In addition to such terms as class identification, settlement amount and payment
27 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
28

1 to which the Parties stipulate to the Court’s provisional certification of the Class, but do so for
2 the purposes of this settlement only.

3 Moreover, Plaintiff believes that this wage statement class can be certified by the Court,
4 as it involves the same company policy and practice. Specifically, Plaintiff asserts that for a
5 limited group of employees who received pre-cure wage statements, these statements did not
6 adequately delineate the employees’ last four digits of their identification numbers in violation of
7 Labor Code § 226(a)(7).

8 Courts have held that wage statement cases are aptly suited for class treatment because
9 common questions of fact and law predominate based on the legality of an employer’s wage
10 statements. *Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1305-1307 (2010); *McKenzie*
11 *v. Federal Exp. Corp.*, 275 F.R.D. 290 (C.D. Cal. 2011).

12 Plaintiff received the same wage statements as other class members which did not label
13 the employee identification number. (Declaration of Arturo Cardenas (“Cardenas Decl.”) ¶ 2).
14 Thus, Plaintiff’s claims are typical of other class members. *B.W.I. Custom Kitchen v. Owens-*
15 *Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987).

16 Further, Plaintiff and her counsel are adequate representatives in that they have no
17 conflicts with the class and will adequately represent the class. (Declaration of Arturo Cardenas
18 (“Cardenas Decl.”) ¶¶ 4-6; Declaration of William Marder (“Marder Decl.”) ¶ 6; Declaration of
19 Dennis Hyun (“Hyun Decl.”) ¶ 10). Plaintiff’s counsel has also been certified in a number of
20 class actions, including for purposes of class certification and settlement. (Marder Decl. ¶¶ 13-
21 14; Hyun Decl. ¶ 6).

22 Lastly, the class is numerous, as indicated by the approximately 117 class members. *See*,
23 *e.g.*, *Patrick v. Marshall*, 460 F. Supp. 23, 26 (N.D. Cal. 1978); *Jordan v. L.A. County*, 669 F.2d
24 1311, 1320 (9th Cir.) (noting, in dicta, that the court “would be inclined to find the numerosity
25 requirement ... satisfied solely on the basis of [39] ascertained class members”), *vacated on other*
26 *grounds*, 459 U.S. 810 (1982).

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

28 Any settlement of class litigation must be reviewed and approved by the Court. This is

1 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
2 notice has been distributed to the class members for their comment or objections. The Manual
3 for Complex Litigation (Third) § 30.41 states:

4 Approval of class action settlements involves a two-step process. First, counsel
5 submits the proposed terms of settlement and the court makes a preliminary
6 fairness evaluation. If the preliminary evaluation of the proposed settlement does
7 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
8 unduly preferential treatment of class representatives or of segments of the class,
or excessive compensation for attorneys, and appears to fall within the range of
possible approval, the court should direct that notice ... be given to the class
members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.

9 Thus, the preliminary approval by the trial court is simply a conditional finding that the
10 settlement appears to be within the range of acceptable settlements. As Professor Newberg
11 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
12 concerning a tentative settlement proposal may vary. The court may find that the settlement
13 proposal contains some merit, is within the range of reasonableness required for a settlement
14 offer, or is presumptively valid subject only to any objections that may be raised at a final
15 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
2002).

16 The procedures for the parties’ submission of a proposed settlement for preliminary
17 approval by the court also are discussed in 4 Newberg on Class Actions:

18 When the parties to an action reach a monetary settlement, they will usually
19 prepare and execute a joint stipulation of settlement, which is submitted to the
20 court for preliminary approval. The stipulation should set forth the central terms
21 of the agreement, including but not limited to, the amount of settlement, form of
payment, manner of determining the effective date of settlement and any
recapture clause.

22 *Id.* at § 11.24. Here, the Parties have reached such an agreement and have submitted to this
23 Court in connection with this Motion a copy of the Joint Stipulation fully setting forth the
24 agreement reached among the Parties. The Joint Stipulation sets forth all terms of the agreement
25 reached by the Parties, which include, among other things, the method for calculating the Class
Members' individual settlements.

26 **C. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
27 **Collusion**

1 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
2 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
3 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir.
4 1987)**Error! Bookmark not defined.** Courts do not substitute their judgment for that of the
5 proponents, particularly where, as here, settlement has been reached with the participation of
6 experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV,*
7 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y.
8 1979).

9 While the recommendations of counsel proposing the settlement are not conclusive, the
10 Court can properly take them into account, particularly where, as here, they have been involved
11 in significant discovery and negotiations for some period of time, appear to be competent, have
12 experience with this type of litigation, and have exchanged substantial evidence from the
13 opposing party. *See Newberg on Class Actions, supra*, §11.47; *Nat'l Rural Telecomms. Coop.*,
14 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125
15 (S.D.N.Y. 1997) (“[s]o long as the integrity of the arm's length negotiation process is preserved,
16 however, a strong initial presumption of fairness attaches to the proposed settlement . . .
17 [citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most
18 closely acquainted with the facts of the underlying litigation”)).

19 Here, Plaintiff's attorneys have a great deal of experience in wage and hour class action
20 litigation. (Hyun Decl. at ¶¶ 3-6; Marder Decl. ¶¶ 8-14). Plaintiff's counsel has been approved
21 as class counsel in a number of wage and hour class actions. (Hyun Decl. at ¶ 6; Marder Decl.
22 ¶¶ 13-14). Moreover, Plaintiff's counsel conducted an extensive investigation of the factual
23 allegations involved in this case since the inception. (Hyun Decl. at ¶ 7). Each side has apprised
24 the other of their respective factual contentions, legal theories and defenses, resulting in
25 extensive arms-length negotiations taking place among the Parties.

26 Plaintiff obtained data for the entire class from which Plaintiff's counsel was able to
27 perform a damage analysis. (*Id.*) Further, this settlement was reached only after a full day of
28 mediation with Todd Smith. (*Id.*)

The settlement for each participating Class Member is fair, reasonable and adequate,

1 given the inherent risk of litigation, the risk relative to class certification and the costs of
2 pursuing such litigation. It is the result of extensive arms' length negotiations between counsel
3 for the Parties.

4 Plaintiff believes that he could prevail on the merits; however, Plaintiff also believes in
5 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
6 involved in not prevailing on class certification and/or one or more of the causes of action or
7 theories alleged in the Complaint and in the possibility of losing at trial or on summary
8 judgment. (Hyun Decl. at ¶¶ 8-9). Defendant adamantly disputes liability as well.

9 The settlement is a compromise for the alleged damages of Class Members for the claims
10 asserted in the Complaint. The settlement also compensates the Named Plaintiff for his claims
11 and provides Plaintiff with an additional incentive payment for her involvement in this Action,
12 as well as executing a general release. This incentive payment also takes into consideration the
13 risks, time, effort and expenses incurred by said Named Plaintiff in coming forward to provide
14 invaluable information, negotiate and litigate this matter on behalf of all Class Members.

15 Despite the asserted fairness of the settlement terms, should any potential Class Member,
16 upon reviewing the Notice of Pendency of Class Action, Proposed Settlement and Hearing Date,
17 object to the terms of the settlement as set forth in the Stipulation, each has the right to submit a
18 request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member
19 would retain any claim he or she may have against Defendant. Moreover, potential Class
20 Members, upon providing proper notice to the Parties and the Court, may attend the final
21 fairness and approval hearing for the purpose of objecting to one or more of the settlement terms
22 set forth in the Stipulation.

23 Further, the settlement provides a fair amount. Plaintiff's counsel estimated the total
24 exposure of Labor Code § 226(e) and PAGA penalties at \$591,000.00, based on 117 Class
25 Members who received 1,310 wage statements and 164 Aggrieved Employees who received
26 1,867 wage statements during their respective periods. (Hyun Decl. ¶ 7). Thus, the gross
27 settlement recovers 21% of the total exposure. This amount meets the recovery approved by
28 numerous courts in other class action settlements. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*,
213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of

1 potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
2 amounting to only a fraction of the potential recovery does not per se render the settlement
3 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
4 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
5 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
6 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015)
7 (holding that class action settlement recovering between 8.5% and 25% of the defendant’s
8 potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-
9 cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class
10 settlement which obtained **only 9.1%** of projected damages, given the risks of continued
11 litigation).

12 **D. The Proposed Class Settlement Meets the *Kullar* Factors**

13 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
14 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
15 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
16 plaintiff’s claims. As discussed herein, Plaintiff’s counsel has conducted sufficient discovery
17 and investigation and, in light of the strength and weaknesses of Plaintiff’s claims, Plaintiff’s
18 attorneys submit that this settlement is fair pursuant to *Kullar*.

19 **1. Plaintiff’s Counsel Conducted Adequate Investigation**

20 Plaintiff’s counsel propounded formal discovery and engaged in the meet and confer
21 process with Defendant’s counsel. (Hyun Decl. ¶ 7). Plaintiff’s counsel reviewed Defendant’s
22 wage statements and obtained data from which he could perform a damage analysis. (*Id.*) Thus,
23 the settlement was reached only after engaging in formal litigation.

24 **2. Strengths and Weaknesses of Plaintiff’s Claims**

25 Here, Defendant may have prevailed on class certification and on liability as well,
26 including as to the knowing and intentional requirement of Labor Code § 226(e). Defendant
27 would have also argued that it did not act knowingly, nor intentionally to support any penalties
28 under Labor Code § 226(e) and that because this is a technical violation, that any penalties under
the PAGA should be reduced by this Court. The Court of Appeal’s recent decision in

1 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), is instructive. In *Carrington*, while
2 the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum
3 PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the
4 law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at
5 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then,
6 the PAGA penalties were reduced by 90%. In light of this uncertainty, Plaintiff and her counsel
7 have obtained a concrete monetary remedy to Class Members.

8 **E. The Proposed Class Representative Enhancement and Attorneys' Fees and**
9 **Costs Should be Preliminarily Approved**

10 While Named Plaintiff and Class Counsel will submit detailed records and declarations
11 in connection with the final approval motion, the proposed class representative enhancement and
12 attorneys' fees should be preliminarily approved. With respect to the class representative
13 enhancement, Named Plaintiff asserts that this amount is particularly justified in this case given
14 the amount of time the Named Plaintiff has expended. Specifically, the Named Plaintiff has
15 invested approximately 20 hours into the prosecution of this matter. In particular, Plaintiff has
16 met and/or conferred with counsel in connection with the assistance of the class claims, such as
17 providing information and various documents, and reviewed pleadings in this case. (Cardenas
18 Decl. ¶ 3). In addition to the above, the risks and consequences involved in the filing of this
19 lawsuit further justify the requested enhancement amount. Indeed, the filing of a class action
20 lawsuit against a former employer can result in unintended consequences of retaliation by future
21 potential employers.

22 Moreover, while other class members will be reaping the benefits of the current
23 settlement, such individuals did not have to put up their personal stakes in the prosecution of this
24 case. Indeed, had Plaintiff failed to prevail on the wage/hour class claims, Plaintiff may have
25 been solely responsible for the costs incurred by his counsel, as well as those of Defendant.
26 Nevertheless, Plaintiff agreed to take upon such burdens and risks for the benefit of the various
27 class members.

28 Notably, courts have routinely granted approval of representative enhancements for far
greater amounts. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300

1 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer*
2 *Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three
3 incentive awards of \$ 35,000). Here, Plaintiff simply requests a modest enhancement of \$7,500
4 for Plaintiff's extensive services and investment of time and efforts into this case.

5 With respect to the provision for attorneys' fees, California state and federal courts have
6 recognized that an appropriate method for determining award of attorneys' fees is based on a
7 percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple*
8 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977)
9 ("Serrano III"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of this
10 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
11 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
12 burden alone." *Vincent*, 557 F. 2d at 769.

13 Under California law, the award of attorneys' fees in common fund wage and hour class
14 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1
15 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in
16 holding that when class action litigation establishes a monetary fund for the benefit of the class
17 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
18 the court may determine the amount of a reasonable fee by choosing an appropriate percentage
19 of the fund created."). Under the percentage of the fund method, the Court's objective remains to
20 "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th
21 Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it
22 at a level that will approximate what the market will set... The judge, in other words, is trying to
23 mimic the market in legal services.").

24 An award of 33% of the fund in attorneys' fees mimics the marketplace as it "is
25 supported by the fact that typical contingency fee agreements provide that class counsel will
26 recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*
27 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
28 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
Competitive Fees (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, "empirical studies [that]

1 show that . . . fee awards in class actions average around one-third of the recovery.” *Chavez v.*
2 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

3 Here, Plaintiff’s counsel respectfully requests a modest 33 1/3% of the Gross Settlement
4 Amount, or \$41,666.67 for attorneys’ fees, and reimbursement for actual litigation costs up to
5 \$25,000.00. Plaintiff’s counsel’s lodestar far exceeds this fee requested. Plaintiff’s counsel will
6 submit their time records in support of their motion for final approval. Thus, based on the
7 foregoing, Named Plaintiff respectfully requests that this Court preliminarily approve the request
8 for class representative enhancement and attorneys’ fees and costs.

9 **IV. CONCLUSION**

10 Based on the foregoing, Plaintiff respectfully requests that the Court grant preliminary
11 approval of the class action settlement.

12 Dated: April 12, 2022

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14 William L. Marder
15 Attorneys for Plaintiff and the Class
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