

Howard L. Magee (State Bar No. 185199)
Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff, the Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SAKHOEUTH “KURT” SAO, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

AUTOMATED GATE SERVICES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. RIC2001904

[Assigned for all purposes to the Hon. Sunshine
S. Sykes, Dept. 6]

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

Date: October 20, 2021
Time: 8:30 A.M.
Dept.: 6

Complaint Filed: June 1, 2020
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 20, 2021, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Sunshine S. Sykes, judge presiding, in
4 Department 6 of the above-referenced courthouse, located at 4050 Main Street, Riverside,
5 California 9250, Plaintiff Sakhoeth “Kurt” Sao (“Plaintiff”) will and hereby does move this
6 Court for the following relief with respect to the Joint Stipulation of Class Action Settlement
7 (“Settlement” or “Settlement Agreement”) entered into by Plaintiff and Automated Gate
8 Services, Inc. (“Defendant”) (together with Plaintiff, the “Parties”):

9 1. That the Court approve the Settlement referenced above;

10 2. That the Court conditionally certify the following Class for settlement purposes
11 only: All current and former non-exempt employees of Defendant in the State of California at
12 any time from April 1, 2016 through December 31, 2020 (the “Class”);

13 3. That Plaintiff be appointed as the Class Representative, and that Howard L.
14 Magee, Larry W. Lee, and Mai Tulyathan of Diversity Law Group, P.C. be appointed as Class
15 Counsel;

16 4. That the Court preliminarily approve the Settlement and the total gross
17 settlement amount of One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500.00);

18 5. That the Court finds on a preliminary basis that the Settlement appears to be
19 within the range of reasonableness of a settlement, including the amount of the PAGA penalties,
20 class representative enhancement payment, Class Counsel’s fees and costs, settlement
21 administration costs, and the allocation of payments to Class Members, that could ultimately be
22 given final approval by this Court;

23 6. That the Court approve the mailing and distribution of the proposed “Notice of
24 Class Action Settlement” (“Class Notice”) to be sent to Class Members, which will include opt-
25 out and objection forms pursuant to this Court’s Class Action Case Management Order #1;

26 7. That the Court appoint Phoenix Settlement Administrators as the Settlement
27 Administrator; and

28 8. That the Court schedule the matter for a Final Fairness and Final Approval

1 hearing.

2 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
3 provides for court approval of the settlement of a purported class action and allows the Court to
4 preliminarily certify a class for settlement purposes.

5 The basis for this Motion, filed without any opposition from Defendant, is that the
6 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the
7 Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or
8 object to the settlement.

9 This Motion will be based on the attached memorandum of points and authorities, the
10 Settlement Agreement and the proposed Class Notice, the supporting Declarations of Larry W.
11 Lee, Howard L. Magee, Mai Tulyathan, Plaintiff Sakhoeuth “Kurt” Sao, Joan Graff on behalf of
12 Legal Aid at Work, Jodey Lawrence on behalf of Phoenix Settlement Administrators, and
13 Defendant’s counsel – Mark J. Jacobs, upon the oral arguments of counsel (should there be
14 any), and on the complete records and file herein.

15
16 DATED: September 27, 2021

DIVERSITY LAW GROUP, P.C.

17
18 By: 

Larry W. Lee

Howard L. Magee

Mai Tulyathan

19
20 Attorneys for Plaintiff, the Class, and Aggrieved
21 Employees

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1 **I. INTRODUCTION**

2 Plaintiff Sakhoeth “Kurt” Sao (“Plaintiff”) brings class and representative Private
3 Attorneys General Act (“PAGA”) claims against Defendant Automated Gate Services, Inc.
4 (“Defendant”) under the California Labor Code (Plaintiff and Defendant shall be jointly referred
5 to as the “Parties”). Plaintiff alleges in this lawsuit that Defendant (1) failed to pay wages, in
6 violation of Labor Code §§ 201-204, 510, 558, and 1194; (2) failed to provide off-duty meal
7 periods in violation of Labor Code §§ 226.7 and 512; (3) failed to provide off-duty rest periods
8 in violation of Labor Code § 226.7; (4) failed to reimburse business-related expenses in
9 violation of Labor Code § 2802; and (5) failed to provide accurate itemized wage statements in
10 compliance with Labor Code § 226(a). Based on these violations, Plaintiff asserts class and
11 PAGA claims for violation of Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, and
12 2802. In addition to the class and PAGA claims, Plaintiff has also asserted individual claims
13 against Defendant for violations of the Fair Employment and Housing Act (“FEHA”). The
14 Parties have settled Plaintiff’s individual claims under a separate confidential settlement
15 agreement from the Joint Stipulation of Class Action Settlement (“Settlement,” “Stipulation,” or
16 “Settlement Agreement”)¹. For purposes of this Motion, the Settlement is solely limited to the
17 class and PAGA claims, and does not pertain to Plaintiff’s individual FEHA claims.

18 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
19 to the class and PAGA claims alleged in the Complaint and engaged in a thorough study of the
20 legal principles applicable to the claims asserted against Defendant. Through the exchange of
21 discovery, Defendant provided necessary data and documents pertaining to the class, including
22 the number of current and former class members during the class period and PAGA period at
23 issue, the number of wage statements at issue, the hourly rates of pay during the class period,
24 numerous spreadsheets containing time and payroll records for putative class members,

25
26
27
28 ¹ The Settlement Agreement is attached to the Declaration of Mai Tulyathan (“Tulyathan Decl.”) as Exhibit B.

1 Defendant's employee handbook and payroll policies pertaining to payment of overtime wages,
2 prevailing wage pay, meal and rest break, reimbursement of business expenses, and the issuance
3 of wage statements. The data provided by Defendant allowed Plaintiff to conduct a liability and
4 exposure analysis. Thereafter, the Parties engaged in numerous rounds of settlement
5 negotiations, after which the Parties were able to reach a resolution of Plaintiff's class and
6 PAGA claims. The terms of the Settlement Agreement provide that Defendant pay a Gross
7 Settlement Amount of One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500.00)
8 to resolve the class and PAGA claims. Significantly, the entire Gross Settlement Amount will
9 be distributed to the class on a **non-reversionary** basis, **such that no remaining monies will**
10 **revert back to Defendant.** Further, no claim forms are required. The following represents the
11 key terms of the Settlement:

- 12 • Gross Settlement Amount of \$162,500.00;
- 13 • Estimated Class of 48 individuals;
- 14 • Class Representative Enhancement Payment of up to \$5,000.00;
- 15 • Class Counsel's attorneys' fees of up to \$54,166.67;
- 16 • Class Counsel's litigation costs of up to \$15,000.00;
- 17 • Settlement Administration Costs of up to \$2,845.00;
- 18 • Payment to the Labor & Workforce Development Agency of \$11,250.00 (75% of
19 the total PAGA allocation of \$15,000.00) pursuant to the PAGA; and
- 20 • A Net Settlement Amount of approximately \$74,238.33.

21 The Parties and their respective counsel believe that the Settlement for the consideration
22 and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light
23 of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff
24 and his counsel are certain that they can prevail on class certification, as well as on the merits,
25 they recognize the inherent risks in drawn-out litigation and the specific risks that a class might
26 not be certified and/or that Plaintiff could fail to establish liability.

27 Therefore, the Parties respectfully request that the Court grant this Motion for
28 Preliminary Approval of Class Action Settlement.

1 **II. PROCEDURAL HISTORY**

2 On March 16, 2020, Plaintiff filed his written notice with the California Labor &
3 Workforce Development Agency (“LWDA”), alleging violations of Labor Code §§ 201-204,
4 226(a), 226.7, 510, 512, 558, 1194, and 2802. (Tulyathan Decl. at ¶ 2, Ex. A.) Thereafter, on
5 June 1, 2020, Plaintiff filed the operative Complaint in Riverside County Superior Court. (*Id.* at
6 ¶ 3.) The Complaint alleges class and PAGA claims for violations of Labor Code §§ 201-204,
7 226(a), 226.7, 510, 512, 558, 1194, 2698, 2802, and the UCL. (*Id.*) In addition to the class and
8 PAGA claims, the Complaint also asserts individual claims for violations of the FEHA. (*Id.*)

9 As alleged in the operative Complaint, Plaintiff’s class and representative claims are
10 predicated upon the following allegations. With respect to Plaintiff’s failure to pay wages
11 claim, Plaintiff alleges that Defendant underpaid overtime wages based on the incorrect
12 overtime regular rate of pay. In particular, whenever any non-discretionary incentives, such as
13 prevailing wage pay, were paid to Plaintiff and employees, Defendant does not include said
14 non-discretionary incentives into the calculation of the overtime regular rate of pay. (*Id.* at ¶ 4.)
15 With respect to Plaintiff’s meal and rest break claims, Plaintiff contends that Defendant
16 routinely denied requests to take meal and rest breaks. Notwithstanding the lack of meal breaks
17 provided to its employees, Defendant had a practice of falsely deducting time from employees’
18 work hours and claimed it as purported meal break times. As such, Plaintiff alleges that
19 additional wages are owed for the improper deduction of time, as well as unpaid meal and rest
20 premium compensation. (*Id.* at ¶ 5.) Plaintiff also alleges that Defendant failed to reimburse
21 business expenses in violation of Labor Code § 2802. In particular, Defendant failed to
22 reimburse the costs of specialized tools that Plaintiff and other employees were required to
23 purchase on their own to perform their jobs. (Tulyathan Decl. at ¶ 6.) Lastly, with respect to
24 Plaintiff’s claims under Labor Code § 226(a), Plaintiff alleges derivative wage statement
25 violations resulting from the overtime regular rate violations, and meal and rest period
26 violations. (*Id.* at ¶ 7.) As a result of the alleged violations above, Plaintiff seeks damages and
27 penalties under the California Labor Code, the California Business & Professions Code, and the
28 PAGA, as well as attorneys’ fees and costs. (*Id.* at ¶ 8.)

1 Shortly after the filing his Complaint, Plaintiff's counsel was contacted by Defendant's
2 counsel regarding informal settlement discussions. (Tulyathan Decl. at ¶ 9.) The Parties
3 subsequently engaged in informal discovery in order for Plaintiff to assess the claims, as well as
4 the maximum exposure of damages and penalties. (*Id.*) On October 6, 2020, Plaintiff
5 commenced formal discovery and propounded written discovery upon Defendant, including
6 requests for production of documents and form and special interrogatories. (*Id.* at ¶ 10.)
7 Defendant has also informally produced data and documents pertaining to the putative class
8 members, including without limitation, the number of current and former putative class
9 members during the class period and PAGA period at issue, the number of wage statements at
10 issue, the hourly rates of pay during the class period, numerous spreadsheets containing time
11 and payroll records for putative class members, Defendant's employee handbook and payroll
12 policies pertaining to payment of overtime wages, prevailing wage pay, meal and rest break,
13 reimbursement of business expenses, and the issuance of wage statements. (*Id.*) This data and
14 information produced by Defendant allowed Plaintiff to assess liability and maximum exposure
15 of class and PAGA penalties. (*Id.*)

16 The Parties continued informal settlement negotiations over the course of several
17 months. After thorough investigation and evaluation of the facts and claims, and as a result of
18 the arm's-length negotiation, the Parties and their counsel ultimately reached the current
19 settlement. (Tulyathan Decl. at ¶ 11.) In resolution of Plaintiff's class and PAGA claims, the
20 Parties entered into the Settlement Agreement, a true and correct copy of which is attached as
21 **Exhibit B** to the Declaration of Mai Tulyathan. With respect to Plaintiff's individual FEHA
22 claims, the Parties entered into a separate, confidential settlement agreement to resolve
23 Plaintiff's individual claims. (*Id.* at ¶ 13.)

24 The Parties recognize the risk, expense, and delay in continuing litigation with the class
25 and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate. (Tulyathan
26 (*Id.* at ¶ 12.) Accordingly, the Parties desire to settle, compromise, and discharge all disputes
27 and claims arising from or relating to the class and PAGA claims as set forth in the Settlement
28 Agreement.

1 **III. DISCUSSION**

2 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
3 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
4 review after notice has been distributed to the class members for their comment or objections.
5 The *Manual for Complex Litigation, Third* § 30.41 states:

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

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

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

27 When the parties to an action reach a monetary settlement, they
28 will usually prepare and execute a joint Settlement of settlement,
which is submitted to the court for preliminary approval. The
Settlement should set forth the central terms 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.

(*Id.* § 11.24.)

Here, the Parties have reached such an agreement and have submitted to this Court in
connection with this motion a copy of the Settlement Agreement fully setting forth the

1 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
2 agreement reached by the Parties as to settlement of the class and PAGA claims. Said terms in
3 the Settlement Agreement include, among other things, the method for calculating the Class
4 Members' individual portion of the settlement fund.

5 The parties also may, at the preliminary approval stage, request that the court
6 provisionally approve certification of the class for settlement purposes—conditional upon final
7 approval of the settlement. “[P]re-certification settlements are routinely approved if found to be
8 fair and reasonable.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240;
9 *accord Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1803 (although the settlement
10 was reached before any “adversary certification,” the court was satisfied that it was “fair,
11 adequate and reasonable”); *In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478
12 (“many courts have employed this practice in the name of judicial efficiency in order to
13 facilitate apparently beneficial settlement proposals”).) As further explained by Professor
14 Newberg:

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

23 (*4 Newberg on Class Actions* § 11.26.)

24 In addition to such terms as class identification, settlement amount, and payment
25 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
26 to which the Parties stipulate to the Court's provisional certification of the Class for the
27 purposes of this settlement only. (*See* Settlement Agreement at ¶ 77.)

28 **A. Proposed Class Definition**

The current settlement is being settled on behalf of “all current and former non-exempt
employees of Defendant in the State of California at any time during the Class Period.” (*See*
Settlement Agreement at ¶ 2.) The Class Period is defined as the period from “April 1, 2016

1 through December 31, 2020.” (*Id.* at ¶ 6.) The Class Period end date of December 31, 2020 is
2 based on the cut-off date of the data produced by Defendant. As part of the Settlement, the
3 Parties have agreed to cut-off the Class Members’ release period through the end of the Class
4 Period. (Tulyathan Decl. at ¶ 15.)

5 Pursuant to the Settlement Agreement, Defendant has represented that there are no more
6 than 48 individuals that comprise this Class, and that the number of workweeks worked by
7 Class Members during the Class Period does not exceed 3,217 workweeks. (Settlement
8 Agreement at ¶ 14.)

9 **B. Settlement Terms and Evaluation**

10 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
11 evidence to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
12 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In*
13 *re Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute
14 their judgment for that of the proponents, particularly where, as here, settlement has been
15 reached with the participation of experienced counsel familiar with the litigation. (*Nat’l Rural*
16 *Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry*
17 (D.D.C. 1990) 752 F. Supp. 1087; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471; *In re*
18 *Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357; *Sommers v. Abraham Lincoln*
19 *Federal Sav. & Loan Ass’n* (E.D. Pa. 1978) 79 F.R.D. 571.)

20 While the recommendations of counsel proposing the settlement are not conclusive, the
21 Court can properly take them into account, particularly where, as here, they have been involved
22 in formal and informal discovery and negotiations for some period of time, appear to be
23 competent, have experience with this type of litigation, and have exchanged substantial
24 evidence from the opposing party. (*See Newberg on Class Actions, supra*, § 11.47; *Nat’l Rural*
25 *Telecomms. Coop.*, 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length
26 negotiation process is preserved, however, a strong initial presumption of fairness attaches to
27 the proposed settlement...[citations] and ‘great weight’ is accorded to the recommendations of
28 counsel, who are most closely acquainted with the facts of the underlying litigation”).)

1 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage
2 and hour class action litigation. Plaintiff's counsel has been approved as class counsel in a
3 number of wage and hour class actions and have extensive litigation experience. (Declaration
4 of Larry W. Lee ("Lee Decl.") at ¶¶ 9-11; Declaration of Howard L. Magee ("Magee Decl.") at
5 ¶¶ 6-7; Tulyathan Decl. at ¶¶ 40-42.) Each side has apprised the other of their respective factual
6 contentions, legal theories and defenses, resulting in negotiations taking place between the
7 Parties. (Tulyathan Decl. at ¶ 12.)

8 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
9 face potential liability of up to approximately \$507,943.33 for Plaintiff's class claims if Plaintiff
10 succeeded at trial. (Tulyathan Decl. at ¶ 24.) This number is based upon an analysis of the
11 payroll records of the putative class. Specifically, the breakdown for the damages/penalties for
12 each class claim is as follows:

- 13 • \$63,824.25 for unpaid wages, calculated based on payroll data provided by
14 Defendant for all Class Members;
- 15 • \$138,578.40 in waiting time penalties for unpaid wages, calculated based on
16 payroll data provided by Defendant for approximately 28 former employees;
- 17 • \$138,395.34 of premium pay owed for missed meal periods, calculated based on
18 an average pay rate of Class Members' from 2017 to 2020 of \$21.51, over 3,217
19 workweeks at issue during the Class Period, and assuming on average 2 meal
20 period violations each workweek;
- 21 • \$138,395.34 of premium pay owed for missed rest periods, calculated based on
22 an average pay rate of Class Members' from 2017 to 2020 of \$21.51, over 3,217
23 workweeks at issue during the Class Period, and assuming on average 2 meal
24 period violations each workweek;
- 25 • \$23,950.00 for Labor Code § 226(e) penalties for derivative wage statement
26 violations; and
- 27 • \$4,800.00 for reimbursement of business expenses (assuming \$100 in unpaid
28 expenses for specialized tools per Class Member).

1 (*Id.*) This amounts to a total of approximately \$507,943.33 if Plaintiff were to prevail on the
2 class claims. (*Id.*)

3 With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that
4 Defendant could face civil penalties of up to \$312,400.00. (Tulyathan Decl. at ¶ 25.) The
5 breakdown for the calculation of Plaintiff's PAGA penalties is as follows:

- 6 • \$21,300.00 for PAGA penalties with respect to the unpaid wages violations
7 (approximately 213 pay periods with payment for overtime and non-
8 discretionary incentives during the PAGA period x \$100 initial violation per pay
9 period);
- 10 • \$64,000.00 for PAGA penalties with respect to meal period violations
11 (approximately 640 pay periods at issue during the PAGA period x \$100 initial
12 violation per pay period);
- 13 • \$64,000.00 for PAGA penalties with respect to rest period violations
14 (approximately 640 pay periods at issue during the PAGA period x \$100 initial
15 violation per pay period);
- 16 • \$3,100.00 for PAGA penalties with respect to business reimbursement violations
17 (31 aggrieved employees during the PAGA period x \$100 initial violation); and
- 18 • \$160,000.00 for PAGA penalties with respect to wage statement violations under
19 Labor Code § 226(a) (approximately 640 pay periods at issue during the PAGA
20 period x \$250 violation penalty under Labor Code § 226.3 pursuant to *Raines v.*
21 *Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th 667).

22 (*Id.*) Based thereon, the collective total amount of class and PAGA recovery is approximately
23 \$820,434.33. (*Id.* at ¶ 26.)

24 However, even assuming Plaintiff ultimately prevails on his PAGA claims, the Court
25 still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the
26 Court can decline to award PAGA penalties where "if, based on the facts and circumstances of
27 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
28 oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington*

1 *v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, while the plaintiff prevailed on his PAGA
2 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
3 employer's good faith attempt at complying with the law. (*Id.* at p. 517.) Upon review, the
4 Court of Appeal found such reduction to be proper. (*Id.* at p. 539.)

5 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
6 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to
7 the claims and further with respect to the reduction of PAGA penalties and that it could be
8 persuasive to the Court. (Tulyathan Decl. at ¶ 28.) Thus, even if Plaintiff were to successfully
9 prove his claims at trial, there is a possibility that the Court may only award a small percentage
10 of PAGA penalties, as the Court has discretion to do so. (*Id.*) The Gross Settlement Amount
11 was premised with this risk in mind, associated with the possibility of the Court significantly
12 reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to
13 prevail at trial. (*Id.* at ¶ 29.)

14 Further, Defendant denies liability as to all of Plaintiff's claims and it has raised several
15 defenses that presented risk. (Tulyathan Decl. at ¶ 27.) In this regard, Defendant asserts that it
16 has maintained lawful policies and practices in place throughout the class period in relation to
17 Plaintiff's claims, including that it has provided opportunities to take meal and rest periods and
18 that its meal and rest period policies and practices were facially compliant. Defendant also
19 argues that it correctly calculates the overtime regular rate of pay based on a weighted average
20 method. In this regard, Defendant contends that it has complied with Department of Industrial
21 Relations' guidelines in paying prevailing wage pay and incorporating such into the payment of
22 overtime wages, such that some employees actually received overpayments of overtime wages.
23 Additionally, it is also Defendant's position that Plaintiff cannot prove willfulness and thus it
24 would not be subject to waiting time penalties under Labor Code § 203. Defendant further
25 maintains that it would be unjust for the Court to award maximum PAGA penalties as it has
26 made good faith efforts to comply with the Labor Code. With respect to the 2802 claim,
27 Defendant maintains that it does not place any requirement on Plaintiff or any similarly situated
28 employees to purchase any specialized tools for jobs and/or projects. Furthermore, Defendant

1 contends that since Plaintiff would not be able to prove any of the claims above, his wage
2 statement claims, which are entirely derivative in nature, would fail. (*Id.*)

3 Thus, the Settlement for each Class Member is fair, reasonable, and adequate, given the
4 inherent risks of litigation, including the substantial risks relative to class certification and the
5 merits of the claims, the costs of pursuing such litigation, and the risks associated with the
6 Court's discretion to reduce PAGA penalties. The Settlement is the result of extensive arm's
7 length negotiations between the Parties and their counsel.

8 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
9 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
10 involved in not prevailing on one or more of the causes of action or theories alleged in the
11 operative Complaint, the possibility of non-certification, and the potential for appeals.
12 (Tulyathan Decl. at ¶ 30.) These risks on class certification are compounded by the California
13 Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal. 4th 1. There, the
14 plaintiffs obtained class certification and subsequently prevailed at trial after eight years of
15 litigation, but the judgment and the certification ruling were reversed by the California Supreme
16 Court after an additional five years of litigation. The case was remanded back to superior court
17 where class certification was denied and plaintiffs' subsequent appeal also was denied.

18 Indeed, numerous courts have held that **gross** settlements approximating between only 8
19 and 25% of the defendant's potential exposure are fair and reasonable. (*See, e.g., In re Mego*
20 *Fin. Corp. Secs. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (holding that class action settlement
21 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a
22 cash settlement amounting to only a fraction of the potential recovery does not per se render the
23 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should
24 be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
25 settlement is fair and adequate depends on the "the difficulties in proving the case");
26 *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 2015 WL 1289342, at p.*6 (holding that
27 class action settlement recovering between **8.5% and 25%** of the defendant's potential
28 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.* (C.D. Cal. 2014) U.S. Dist. Ct. Case

No. 8:12-cv-02161 (granting preliminary approval of wage and hour class settlement which obtained **only 9.1%** of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.* (N.D. Cal. 2012) 2012 WL 5878390, at p.*6 (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).) Here, the Gross Settlement Amount is fair and reasonable as it is approximately **19.8%** of the potential recovery of Plaintiff’s class and PAGA claims if Plaintiff were to fully succeed at trial. (Tulyathan Decl. at ¶ 31.)

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement (“Class Notice”), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement by using the Request for Exclusion Form. (*See* Class Notice, attached as **Exhibit C** to Tulyathan Decl., pp. 2, 5.) Moreover, as set forth in the Notice, Class Members are advised of their right to object to any of the terms contained in the Settlement either by way of the Objection Form or orally at the final approval hearing regardless of whether they submitted a written objection. (*Id.*)

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Settlement provides for One Hundred Sixty-Two Thousand Five Hundred Dollars (\$162,500.00) as the Gross Settlement Amount. (*See* Settlement Agreement at ¶ 29.) The Net Settlement Amount, calculated after deduction of attorneys’ fees (up to \$54,166.67), litigation costs (up to \$15,000.00), the Class Representative Enhancement Payment (up to \$5,000.00), payment to the LWDA pursuant to the PAGA (\$11,250.00), and settlement administration costs (up to \$2,845.00), is estimated to be approximately **\$74,238.33**. (*Id.* at ¶¶ 16, 31-34.) Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a *pro rata* basis, based upon the number of eligible workweeks each respective Participating Class Member worked during the Class Period. (*Id.* at ¶ 35.)

Based thereon, on a raw average, each Participating Class Member may potentially recover approximately **\$1,546.63**. (Tulyathan Decl. at ¶ 19.) The amount actually paid to each

1 Participating Class Member may increase or decrease depending on the actual number of
2 workweeks he or she worked during the Class Period. (*Id.*) As the amount paid to each
3 Participating Class Member will vary, Plaintiff cannot provide estimated high and low
4 individual settlement payments at this time but will do so in her final approval motion, after
5 class data has been transmitted to the Settlement Administrator. (*Id.* at ¶ 20.)

6 Finally, the terms of the Settlement provide that uncashed checks (upon the expiration
7 date) shall be distributed to the Legal Aid at Work (LAAW). (*Id.* at ¶¶ 21-22.) Plaintiff's
8 counsel proposed LAAW as the *cy pres* beneficiary for uncashed settlement funds in
9 compliance with Code of Civil Procedure § 384, which provides, in part, that the unpaid residue
10 of settlement funds shall be directed to "nonprofit organizations or foundations to support
11 projects that will benefit the class or similarly situated persons, or that promote the law
12 consistent with the objectives and purposes of the underlying cause of action, to child advocacy
13 programs, or to nonprofit organizations providing civil legal services to the indigent." (Code of
14 Civ. Proc. § 384, subd. (b); Tulyathan Decl. at ¶ 21.) LAAW is a non-profit legal services
15 organization that provides legal services and policy advocacy with a focus on protecting
16 workplace rights, for and on behalf of California low-income individuals and/or low-wage
17 earners. (*See* Settlement Agreement at ¶ 55; Declaration of Joan Graff at ¶¶ 4, 6-7.) As such,
18 this fully complies with the objectives of Code of Civil Procedure § 384.

19 **2. Whether, and Under What Circumstances, Amounts Available for**
20 **Payment in Settlement Might Not Be Paid to Class Members or**
21 **Might Revert to the Defendants**

22 This Settlement is non-reversionary, meaning that none of the settlement funds will
23 revert back to Defendant. (*See* Settlement Agreement at ¶¶ 29, 55.) Further, Class Members do
24 not need to submit claim forms to participate in the Settlement. (*Id.* at ¶ 46.)

25 **3. Scope of the Release of Class Members' Claims**

26 The scope of the release for Participating Class Members, identified below, is identified
27 in Section 23 of the Settlement Agreement as well as in the Class Notices to be sent to Class
28 Members. The Released Claims include the following:

All claims that were or could have been asserted based on the
allegations in the operative complaint, including Plaintiff's letter

1 to the Labor Workforce and Development Agency dated March
2 13, 2020, including the following claims:

- 3 a. Any and all claims for failure to pay regular,
4 minimum, and overtime wages pursuant to Labor
5 Code §§ 201-204, 510, 558, and 1194, and
6 California local and state laws relating to
7 underpayment of overtime wages as a result of
8 failure to include prevailing wages (and related
9 provisions of the Wage Orders of the California
10 Industrial Welfare Commission), including claims
11 for penalties, costs, and attorneys' fees related
12 thereto, that accrued during the Class Period;
- 13 b. Any and all claims for meal and rest period
14 violations pursuant to Labor Code §§ 226.7 and
15 512 (and related provisions of the Wage Orders of
16 the California Industrial Welfare Commission),
17 including claims for penalties, costs, and attorneys'
18 fees related thereto, that accrued during the Class
19 Period;
- 20 c. Any and all claims for unpaid business
21 reimbursements pursuant to Labor Code § 2802
22 (and related provisions of the Wage Orders of the
23 California Industrial Welfare Commission),
24 including claims for penalties, costs, and attorneys'
25 fees related thereto, that accrued during the Class
26 Period;
- 27 d. Any and all claims for inaccurate wage statements
28 pursuant to Labor Code § 226 (and related
provisions of the Wage Orders of the California
Industrial Welfare Commission), including claims
for penalties, costs, and attorneys' fees related
thereto, that accrued during the Class Period; and
- e. Any and all claims for civil penalties under the
PAGA predicated on the failure to pay regular,
minimum, and overtime wages, failure to provide
meal and rest breaks, failure to reimburse business
expenses, and failure to provide accurate wage
statements pursuant to Labor Code §§ 201-204,
226, 226.7, 510, 512, 558, 1194, and 2802 (and
related provisions of the Wage Orders of the
California Industrial Welfare Commission),
including claims for costs and attorneys' fees
related thereto, that accrued during the Class
Period.

27 (“Released Claims”). (Settlement Agreement at ¶ 23.) The Released Parties is defined to
28 include:

Defendant, as well as its predecessors, successors, and all former, current and future owners, divisions, its respective former, current and future directors, officers, employees, agents, representatives, attorneys, fiduciaries, assigns, heirs, executors, administrators, beneficiaries, insurers, trustees, and affiliates, and any person or entity which could be held jointly liable with Defendant as to any Released Claims.

(Settlement Agreement at ¶ 24.)

Given that the release is tailored to only wage and hour claims that are part of this lawsuit, and limited to claims that accrued during the Class Period, the release is appropriately limited. Participating Class Members will not be releasing any other claims outside of the wage and hour claims that are part of this lawsuit for any other time period outside of the Class Period.

4. Tax Treatment of Settlement Amounts

Given that Plaintiff's lawsuit sought unpaid wages and penalties, the Parties have agreed that the Individual Settlement Payments to Participating Class Members shall be classified 20% as wages, for which an IRS form W-2 will be distributed, and 80% as penalties and interest, for which an IRS Form 1099 will be distributed. (Settlement Agreement at ¶¶ 36-37.) The employer's share of taxes for wage payments to Participating Class Members will be paid by Defendant **separately** from and in addition to the Gross Settlement Amount. (*Id.* at ¶ 36.)

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. In other words, because this is not a claims-made settlement, Class Members will not be required to make a submission to participate in the settlement. No claim forms are required. (Settlement Agreement at ¶ 46.) Thus, this substantially decreases the amount of burden each Class Member must bear in order to receive their share of the settlement funds. If a Class Member does not wish to take part in this Settlement or be bound by the release, the Class Member must submit a request for exclusion by way of the Request for Exclusion Form contained in the Notice. (*Id.* ¶¶ 48-49.)

6. Plaintiff Unaware of Any Related Actions Alleging Similar Claims

1 The Parties are not aware of any other actions pending in this Court or in any other
2 jurisdiction that is related to or asserts claims against the Defendant that are similar to those
3 alleged in this action. (Tulyathan Decl. at ¶ 34; Declaration of Mark J. Jacobs at ¶¶ 2-3.)

4 **C. Notice to Class Members**

5 Should the Court grant the instant motion, Defendant will provide the Settlement
6 Administrator with a list containing each Class Member's full name, employee number, most
7 recent mailing address, Social Security Number, and the number of workweeks worked by each
8 Class Member during the Class Period ("Class List") within fifteen (15) calendar days of
9 preliminary approval. (Settlement Agreement at ¶¶ 5, 43.) Upon receipt of the Class List and
10 prior to mailing the Class Notice to Class Members, the Settlement Administrator shall perform
11 a search based on the National Change of Address Database for information to update and
12 correct for any known or identifiable address changes. (*Id.* at ¶ 45.)

13 Within ten (10) calendar days of receipt of the Class List from Defendant, the Settlement
14 Administrator will mail the Class Notice out to Class Members using the most current, known
15 mailing address via First-Class U.S. Mail. (*Id.* at ¶ 44.) The Class Notice will be provided to
16 Class Members in both English and Spanish. (*Id.*) Any Class Notices returned to the
17 Settlement Administrator as non-deliverable on or before the response deadline shall be re-sent
18 via regular First-Class U.S. Mail to the forwarding address affixed thereto. (*Id.* at ¶ 47.) If no
19 forwarding address is provided, the Settlement Administrator shall attempt to find the correct
20 address using a skip-trace or other search to locate the most current address to re-mail the
21 Notice. (*Id.*) Any Class Members who receive re-mailed Notices will also have their response
22 deadline extended by up to fifteen (15) days from the original response deadline. (*Id.*)

23 The Class Notice will provide: (1) information regarding the nature of the lawsuit, (2) a
24 summary of the principal terms of the Settlement and where to locate further information
25 regarding the Settlement, (3) the definition of the Settlement Class and the dates that comprise
26 the Class Period, (4) each Class Member's estimated individual settlement payment and the
27 formula for calculating said payments, (5) instructions on how to submit Request for Exclusion
28 Forms and/or Objection Forms, and the deadlines by which to do so, (6) the claims to be

1 released, (7) the date for the final approval hearing, and (8) the Court’s address and further
2 instructions regarding accessing documents in the case. (Settlement Agreement at ¶ 46.)

3 The Class Notice will also be accompanied by a Request for Exclusion Form and an
4 Objection Form that Class Members may use. (*Id.*) The deadlines for Class Members to opt out
5 of or submit written objections to the Settlement will be listed in the Class Notice. (Settlement
6 Agreement at ¶¶ 48, 50; Class Notice p. 5.)

7 **D. Typicality and Adequacy of Representation**

8 **1. Class Representative’s Claims are Typical of the Class**

9 The commonality requirement is met when there are questions of law and fact common
10 to the class. (*Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1019 (“The existence of shared
11 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
12 facts couple with disparate legal remedies within the class”).) Commonality requires only that
13 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
14 litigation are identical. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 473.)
15 Defendant’s conduct is central to the commonality inquiry. (*City of San Jose v. Superior Court*
16 (1974) 12 Cal. 3d 447, 460; *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 812-13.) Where
17 the employer’s conduct is uniformly directed at a class of employees, as Plaintiff alleges here,
18 the class-wide impact of the Defendant’s policies satisfies the commonality requirement.
19 (*Stephens v. Montgomery Ward & Co.* (1987) 193 Cal. App. 3d 411, 421.)

20 In the present case, Plaintiff alleges that Defendant violated the Labor Code by failing to
21 properly pay wages, provide off-duty meal and rest periods, reimburse business expenses, and
22 provide accurate itemized wage statements to its employees. (Declaration of Sakhoeuth “Kurt”
23 Sao (“Sao Decl.”) at ¶¶ 2-4.) In particular, Defendant failed to correctly calculate the regular
24 rate of pay that included non-discretionary incentives and thus underpaid overtime wages to
25 Plaintiff. (*Id.* at ¶ 3.) Further, Defendant also regularly denied Plaintiff’s requests to take meal
26 and rest breaks and routinely deducted purported meal break times from Plaintiff’s work time.
27 (*Id.* at ¶ 2.) Plaintiff also had to pay for specialized tools and did not receive reimbursement for
28 the costs of said tools. (*Id.* at ¶ 4.) In other words, Plaintiff contends that he was subjected to

1 the same policies and practices as other Class Members and that his claims are typical to those
2 of the Class.

3 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
4 issues been raised or presented. (Sao Decl. at ¶ 5.) Plaintiff has taken all necessary steps to
5 represent the interests of the Class, including by meeting with Class Counsel to discuss the case,
6 by providing information and documents to Plaintiff’s counsel, and reviewing pleadings and
7 documents. (*Id.* at ¶ 6.) For such reasons, Plaintiff has adequately represented the Class
8 Members and will continue to do so.

9 **2. Class Counsel Has Adequately Represented the Class and Has**
10 **Experience with Wage and Hour Class Actions**

11 From the inception of the case, Class Counsel has zealously represented the interests of
12 the Class. The Settlement was obtained for the benefit of the Class, as opposed to the individual
13 Class Representative. Further, Class Counsel has been approved as class counsel on a number
14 of prior cases, have litigated numerous other class action cases, and are competent to represent
15 the class. (Lee Decl. at ¶¶ 9-11; Magee Decl. at ¶¶ 6-7; Tulyathan Decl. at ¶¶ 40-42.)

16 **E. Costs and Fees**

17 **1. Attorneys’ Fees and Costs**

18 California state and federal courts have recognized that an appropriate method for
19 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
20 class members by the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th
21 224, 254 ; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444
22 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The
23 purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread
24 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
25 bear the entire burden alone.” (*Vincent*, 557 F.2d at p. 769.)

26 The Common Fund doctrine is predicated on the principle of preventing unjust
27 enrichment. When a litigant’s efforts create or preserve a fund from which others derive
28 benefits, she may require the passive beneficiaries to compensate those who created the fund.
Both California state and federal courts have embraced this doctrine. (*Serrano III*, 20 Cal. 3d at

1 p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of San Francisco v. Sweet*
2 (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund
3 doctrine has been applied “consistently in California when an action brought by one party
4 creates a fund in which other persons are entitled to share.” The reasons for applying the
5 common fund doctrine include:

6 Fairness to the successful litigant, who might otherwise receive no
7 benefit because his recovery might be consumed by the expenses;
8 correlative prevention of an unfair advantage to the others who are
9 entitled to share in the fund and who should bear their share of the
10 burden of its recovery; encouragement of the attorney for the
11 successful litigant who will be more willing to undertake and
12 diligently prosecute proper litigation for the protection or recovery
13 of the fund if he is assured that he will be properly and directly
14 compensated should his efforts be successful.

15 (*Id.*)

16 Indeed, in 2016, the California Supreme Court has also now held that the award of
17 attorneys’ fees in common fund wage and hour class action settlements should start with the
18 percentage method. (*See Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th 480, 503 (“We join the
19 overwhelming majority of federal and state courts in holding that when class action litigation
20 establishes a monetary fund for the benefit of the class members, and the trial court in its
21 equitable powers awards class counsel a fee out of that fund, the court may determine the
22 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).)

23 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
24 percent of the fund. (*Laffitte*, 1 Cal. 5th at p. 506.) And this was based on a lodestar amount
25 that required a multiplier of 2.13. (*Id.* at p. 487.) As the Court held, only when the multiplier is
26 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
27 should be adjusted so as to bring the imputed multiplier within a justifiable range.” (*Id.* at p.
28 505.)

29 Here, the Parties have agreed to a payment of a maximum of one-third (1/3) of the Gross
30 Settlement Amount, or \$54,166.67, for payment to Class Counsel as attorneys’ fees. (*See*
31 Settlement Agreement at ¶ 31.) The Parties have agreed to a payment of the foregoing
32 attorneys’ fees and, thus, this payment should be presumed to be fair. Further, the Parties have

1 agreed to reimbursement of Class Counsel's litigation costs up to \$15,000.00. (*Id.*) Class
2 Counsel have, at their own risk, expended costs, for example, to file this instant action and other
3 pleadings, effect service of process, and pay other litigation-related costs.

4 Based on the foregoing, the Court should preliminarily approve the attorneys' fees and
5 costs as requested by the Parties.

6 **2. Proposed Payment to the Class Representative**

7 Plaintiff requests a modest enhancement of \$5,000.00. (*See* Settlement Agreement at ¶
8 32.) Plaintiff met with Class Counsel (in person and telephonically) on a number of occasions
9 to discuss the case; searched for and provided documents and information to his counsel;
10 responded to questions from Class Counsel related to the lawsuit; and reviewed pleadings and
11 documents in the case, including his PAGA letter to the LWDA, the Complaint, and the
12 Settlement Agreement. (Sao Decl. at ¶¶ 6-7.) As part of his duties as the Class Representative,
13 Plaintiff provided invaluable information, evidence, and documents that resulted in this
14 Settlement. In addition to the invaluable services that he provided, Plaintiff also took a
15 significant risk, both professionally and monetarily, in acting as the Class Representative and
16 seeking benefits on behalf of the Class. Because the claims alleged by the Class Representative
17 involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying
18 the costs of Defendant, had he not prevailed in this action.

19 Furthermore, given that future employers are much less likely to hire individuals who
20 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
21 prejudice in the future from other potential employers. Plaintiff took this risk upon himself and
22 the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to
23 file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
24 they have to face the potential for retaliation and not getting future employment had they filed a
25 public lawsuit.

26 **3. Class Administration Fees**

27 The Parties have agreed to an estimated payment of \$2,845.00 to the Settlement
28

1 Administrator, Phoenix Settlement Administrators², to administer this settlement, including
2 without limitation, to prepare, print, translate, distribute Class Notices, to handle mailing and/or
3 re-mailing, tracking of Class Notices, process Request for Exclusion Forms and Objections
4 Forms, distribute the settlement amount and issue checks pursuant to the Settlement Agreement,
5 issue settlement payments to Class Members, and provide any necessary reports as requested by
6 the Court or the Parties. (See Settlement Agreement at ¶¶ 27, 33; Declaration of Jodey
7 Lawrence (“Lawrence Decl.”) at ¶¶ 9-10, Ex. B.) Phoenix Settlement Administrators is a well-
8 recognized class action settlement administrator. (Lawrence Decl. at ¶¶ 4, 6-8.) The Parties
9 believe that the settlement administration costs are reasonable and should be approved.

10 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
11 **PRELIMINARY APPROVAL**

12 The Settlement presented here is fair, adequate, and reasonable. The Settlement will
13 result in both substantial monetary benefits to Class Members; it is non-collusive; and it was
14 achieved as the result of informed, extensive, and arm’s length negotiations conducted by
15 counsel for the respective Parties who are experienced in wage and hour class action litigation.

16 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
17 approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of
18 the proposed Class Notice, and set a date for a final approval hearing.

19 DATED: September 27, 2021

DIVERSITY LAW GROUP, P.C.

20
21 By: 
22 Larry W. Lee
23 Howard L. Magee
24 Mai Tulyathan
25 Attorneys for Plaintiff, the Class, and Aggrieved
26 Employees

27
28 ² Plaintiff’s counsel sought bids from three different third-party settlement administrators, and Phoenix
Settlement Administrators provided the lowest bid for administration of this Settlement. (Tulyathan
Decl. at ¶ 37.)