

Larry W. Lee (State Bar No. 228175)
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

SONDRA HERNANDEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

BENEFIT COSMETICS LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 34-2020-00278210

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

Date: April 27, 2021

Time: 9:00 a.m

Dept.: 32

Reservation No.: 2555930

Complaint Filed: April 10, 2020

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on April 27, 2021, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Emily Vasquez, judge presiding, in Department
4 32 of the above referenced Court located at 720 9th Street, Sacramento, California 95814,
5 Plaintiff Sondra Hernandez (“Plaintiff”) will and does hereby move this Court for the following
6 relief with respect to the Joint Stipulation of Class and Representative Action Settlement and
7 Release (“Stipulation” or “Settlement Agreement”) entered into by Plaintiff and Defendant
8 Benefit Cosmetics LLC (“Defendant”) (collectively with Plaintiff, the “Parties”):

9 1. That the Court preliminarily approve the Stipulation referenced above;

10 2. That the Court conditionally certifying the following class for settlement purposes
11 only: All of Defendant’s non-exempt employees in the State of California who: (1) were paid
12 both sick pay and non-discretionary incentive wages, including monthly sales bonuses, quarterly
13 sales bonuses, and/or commissions, in the same pay period and (2) whose employment ended
14 (either voluntarily or involuntarily) during the period of May 6, 2017, through October 19, 2020
15 (the “Class Period”);

16 3. That the Court appoint Plaintiff Sondra Hernandez as the Class Representative,
17 and appoint Larry W. Lee, and Mai Tulyathan of Diversity Law Group, P.C., and William L.
18 Marder of Polaris Law Group as Class Counsel;

19 4. That the Court preliminarily approve the Stipulation and the Gross Settlement
20 Amount in the amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00);

21 5. That the Court find on a preliminary basis that the Stipulation appears to be within
22 the range of reasonableness of a settlement, including the amount of the PAGA penalties,
23 Representative Service Award, Class Counsel’s fees and costs, the settlement administration
24 costs, and the allocation of payments to class members, that could ultimately be given final
25 approval by this Court;

26 6. That the Court approve the mailing of the proposed “Notice of Settlement of
27 Class and Representative Action Settlement” (“Class Notice”) to be sent to class members,
28 which is attached as Exhibit A to the Settlement Agreement;

1 7. That the Court appoint Phoenix Settlement Administrators as the Settlement
2 Administrator; and

3 8. That the Court schedule the matter for a Final Fairness and Final Approval
4 hearing.

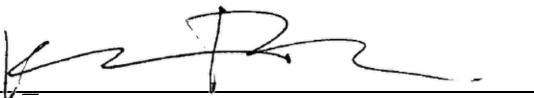
5 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
6 provides for court approval of the settlement of a purported class action and allows the Court to
7 preliminarily certify a class for settlement purposes.

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

12 This Motion will be based on the attached Memorandum of Points and Authorities, the
13 Stipulation, the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Mai
14 Tulyathan, William Marder, and Plaintiff Sondra Hernandez, and upon the oral arguments of
15 counsel (should there be any) and on the complete records and file herein.

16
17 DATED: April 5, 2021

DIVERSITY LAW GROUP, P.C.

18
19 By: 

20 Larry W. Lee
21 Mai Tulyathan
22 Attorneys for Plaintiff, the Class, and Aggrieved
23 Employees
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action. Plaintiff Sondra Hernandez (“Hernandez”) filed her Complaint against
4 Defendant Benefit Cosmetics LLC (“Defendant”) alleging the following causes of action: (1)
5 violation of California Labor Code §§ 201-203; and (2) violation of the PAGA, California Labor
6 Code §§ 2698, *et seq.* Specifically, Plaintiff’s class and PAGA claims are based on Defendant’s
7 failure to pay sick pay wages at the correct regular rate of pay. In particular, Plaintiff and other
8 employees earned non-discretionary incentives, including without limitation, monthly sales
9 bonuses, quarterly sales bonuses, and/or commissions, which increased their regular rates of pay
10 to amounts higher than the base hourly rates of pay. However, Plaintiff alleges that whenever
11 said non-discretionary incentives and sick pay wages were paid in the same pay period,
12 Defendant only paid sick pay wages at the base rates of pay, in violation of Labor Code §§ 201-
13 203 and 246. Plaintiff brings class and representative PAGA claims based on these violations.
14 The Parties have now reached a class and PAGA action settlement as a result of private
15 mediation. The terms of Parties’ settlement are reflected in the Parties’ Joint Stipulation of Class
16 and Representative Action Settlement and Release (“Stipulation” or “Settlement Agreement”).¹
17 Plaintiff now seeks the Court’s approval of the Stipulation.

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 lawsuit and engaged in a thorough study of legal
20 principles applicable to the claims asserted against Defendant. Through the exchange of
21 informal discovery in connection with mediation, Defendant provided necessary data including
22 the number of individuals in the class, the number of individuals in the PAGA group, the number
23 of pay periods at issue, average rates of pay, Defendant’s policies, practices, and procedures
24 regarding the payment of monthly and quarterly sales bonuses, and Defendant’s policies,
25 practices, and procedures in calculating and paying sick pay leave. Based on the data provided
26 by Defendant, Plaintiff’s counsel conducted an analysis of the potential maximum exposure for
27

28 ¹ The Parties’ Joint Stipulation of Class and Representative Action Settlement and Release is attached to
the Declaration of Mai Tulyathan as **Exhibit A**.

1 class and PAGA penalties. Thereafter, the Parties attended a full-day of mediation with
2 experienced wage-and-hour mediator, Michael Loeb, after which the Parties were able to reach
3 the current settlement of Plaintiff's class and PAGA claims. The following represents the key
4 terms of the settlement:

- 5 • Gross Settlement Amount of \$175,000.00, which will be paid by Defendant on a
6 **non-reversionary basis, such that no monies will revert back to Defendant**
7 (*See* Stipulation § II(14));
- 8 • Defendant will pay employer's share of payroll taxes on the wage portions of the
9 individual settlement payments separate and in addition to the Gross Settlement
10 Amount (*Id.*);
- 11 • Estimated Settlement Class of 172 individuals (*Id.* at § II(36));
- 12 • Settlement Class Members **do not need to submit claim forms** to participate in
13 the settlement;
- 14 • Representative Enhancement Award of up to \$10,000.00 (*Id.* at § II(31));
- 15 • Class Counsel's attorneys' fees of up to 35 percent of the Gross Settlement
16 Amount, or up to \$61,250.00 (*Id.* at § II(5));
- 17 • Class Counsel's litigation expenses of up to \$15,000.00 (*Id.* at § II(4));
- 18 • Settlement Administration Costs of up to \$7,000.00 (*Id.* at § III(5));
- 19 • \$20,000.00 attributable to the satisfaction of the PAGA claims, of which 75%, or
20 \$15,000.00, will go to the LWDA, and 25%, or \$5,000.00, will be allocated
21 proportionally amongst PAGA Representative Action Members (*Id.* at §§ II(23)
22 and III(3));
- 23 • Net Class Settlement Amount of approximately \$61,750.00 to be allocated to
24 Settlement Class Members (*Id.* at §§ II(18) and III(13)); and
- 25 • Raw average of at least **\$359.01** to each Participating Settlement Class Member.

26 The Parties believe that the settlement for the consideration and on the terms set forth in
27 the Stipulation is fair, adequate, and reasonable, in light of all known circumstances and the
28 expenses and risks inherent in litigation. Although Plaintiff and her counsel are confident that

1 they can prevail on class certification, as well as on the merits, they recognize the inherent risks
2 in drawn-out litigation and the specific risks that a class might not be certified and/or that
3 Plaintiff could fail to establish liability.

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

6 **II. BACKGROUND**

7 On or about March 9, 2020, Plaintiff sent written notice to the LWDA of Defendant's
8 violations of the Labor Code §§ 201-203 and 246 as described herein, pursuant to the PAGA,
9 Labor Code § 2699.3. (Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 2.) On April 10,
10 2020, Plaintiff filed her Complaint against Defendant in Sacramento County Superior Court,
11 alleging causes of action for: (1) violation of California Labor Code §§ 201-203; and (2)
12 violation of Labor Code § 2698, *et seq.* (*Id.*)

13 Plaintiff's class and PAGA claims are predicated upon the following allegations.
14 Plaintiff asserts that Defendant failed to factor non-discretionary incentive wages, including
15 without limitation, monthly sales bonuses, into the calculation of the regular rate of pay for
16 purposes of paying sick pay wages, in violation of Labor Code § 246. As a result, Plaintiff and
17 other employees were underpaid sick pay wages. Based thereon, Plaintiff seeks waiting time
18 penalties and PAGA civil penalties, as well as attorneys' fees and costs. (Tulyathan Decl. at ¶
19 3.)

20 After the filing of the lawsuit, Defendant's counsel informed Plaintiff about the existence
21 of an arbitration agreement executed by the Parties. The Parties then engaged in substantive
22 meet and confer discussions regarding the enforceability of the arbitration agreement. (*Id.* at ¶
23 4.) Plaintiff's position is that Defendant's arbitration agreement is not enforceable because it
24 contains (1) an invalid waiver of PAGA actions, and (2) an exception to the severability clause
25 which does not allow severance of the invalid PAGA waiver, based on two California Court of
26 Appeal decisions—*Securitas Security Services USA, Inc. v. Sup. Ct.* (2015) 234 Cal. App. 4th
27 1109 ("*Securitas*") and *Kec v. Sup. Ct.* (2020) 2020 WL 3394545 ("*Kec*"). On the other hand,
28 Defendant disputes the existence of an invalid PAGA waiver and disputes the applicability of

1 *Securitas* and *Kec*. During the Parties' meet and confer discussions regarding arbitrability, the
2 Parties agreed to participate in private mediation. (Tulyathan Decl. at ¶ 4.)

3 On October 26, 2020, the Parties attended a full-day mediation with experienced wage-
4 and-hour mediator, Michael Loeb. (*Id.* at ¶ 6.) In connection with mediation, the Parties agreed
5 to exchange informal discovery to facilitate an effective mediation. (*Id.* at ¶ 5.) Through the
6 exchange of informal discovery, Defendant provided necessary data including the number of
7 individuals in the class, the number of individuals in the PAGA group, the number of pay periods
8 at issue, average rates of pay, Defendant's policies, practices, and procedures regarding the
9 payment of monthly and quarterly sales bonuses, and Defendant's policies, practices, and
10 procedures in calculating and paying sick pay leave. (*Id.*) Based on the data provided by
11 Defendant, Plaintiff's counsel conducted an analysis of potential maximum exposure for class
12 and PAGA penalties. (*Id.*)

13 After arms-length negotiation at mediation facilitated by Mr. Loeb, the Parties reached a
14 resolution of the class and PAGA claims for a non-reversionary fund of \$175,000.00.
15 (Tulyathan Decl. at ¶ 6.)

16 **III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.**

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

21 Approval of class action settlements involves a two-step process. First, counsel
22 submits the proposed terms of settlement and the court makes a preliminary
23 fairness evaluation. If the preliminary evaluation of the proposed settlement does
24 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
25 unduly preferential treatment of class representatives or of segments of the class,
26 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.

27 Thus, the preliminary approval by the trial court is simply a conditional finding that the
28 settlement appears to be within the range of acceptable settlements. As Professor Newberg

1 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
2 concerning a tentative settlement proposal may vary. The court may find that the settlement
3 proposal contains some merit, is within the range of reasonableness required for a settlement
4 offer, or is presumptively valid subject only to any objections that may be raised at a final
5 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
6 2002).

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

9 When the parties to an action reach a monetary settlement, they will usually
10 prepare and execute a joint stipulation of settlement, which is submitted to the
11 court for preliminary approval. The stipulation should set forth the central terms
12 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.

13 *Id.* at § 11.24.

14 Here, the Parties have reached such an agreement and have submitted to this Court in
15 connection with this Motion a copy of the Stipulation fully setting forth the agreement reached
16 among the Parties. The Stipulation sets forth all terms of the agreement reached by the Parties,
17 which include, among other things, the method for calculating the Class Members’ individual
18 settlement payments. (*See* Stipulation at § III(13).)

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

28 The strength of the findings made by a judge at a preliminary hearing or
conference concerning a tentative settlement proposal...may be set out in

1 conditional orders granting tentative approval to the various items submitted to
2 the court. Three basic rulings are often conditionally entered at this preliminary
3 hearing. These conditional rulings may approve a temporary settlement class, the
4 proposed settlement, and the class counsel's application for fees and expenses.

4 *Newberg on Class Actions*, at § 11.26.

5 In addition to such terms as settlement class identification, settlement amount, and
6 payment procedures, the Settlement Agreement reached among the Parties contains a provision
7 pursuant to which the Parties stipulate to the Court's provisional certification of the Settlement
8 Class, but do so for the purposes of this settlement only. (*See* Stipulation at § III(1).)

9 **A. Proposed Settlement Class**

10 The current settlement is being settled on behalf of the Settlement Class Members. The
11 Settlement Class Members include "all of Defendant's non-exempt employees in the State of
12 California who: (1) were paid both sick pay and non-discretionary incentive wages, including
13 monthly sales bonuses, quarterly sales bonuses, and/or commissions, in the same pay period and
14 (2) whose employment ended (either voluntarily or involuntarily) during the Class Period."
15 (Stipulation at § II(36).) There are approximately 172 individuals that comprised this Settlement
16 Class as of October 19, 2020. (*Id.*)

17 **B. Settlement Terms and Evaluation**

18 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
19 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
20 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
21 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
22 judgment for that of the proponents, particularly where, as here, settlement has been reached
23 with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
24 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
25 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
26 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
27 *& Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

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

10 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
11 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a
12 number of wage and hour class actions and have extensive litigation experience. (Declaration of
13 Larry W. Lee (“Lee Decl.”) at ¶¶ 9-10; Tulyathan Decl. at ¶¶ 19-22; Declaration of William
14 Marder (“Marder Decl.”) at ¶¶ 6-13.) Each side has apprised the other of their respective factual
15 contentions, legal theories and defenses, resulting in negotiations taking place between the
16 Parties. (Tulyathan Decl. at ¶ 7.)

17 Moreover, Plaintiff conducted extensive investigation and analysis into her claims. Prior
18 to the mediation, Plaintiff was provided with informal discovery from Defendant in order to fully
19 evaluate exposure and liability. (Tulyathan Decl. at ¶ 5.) Plaintiff was able to estimate the
20 potential class and PAGA penalties based on data provided by Defendant, including the number
21 of individuals in the class, the number of individuals in the PAGA group, the number of pay
22 periods at issue, average rates of pay, Defendant’s policies, practices, and procedures regarding
23 the payment of monthly and quarterly sales bonuses, and Defendant’s policies, practices, and
24 procedures in calculating and paying sick pay leave. (*Id.*)

25 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
26 face potential class-wide waiting time penalties under Labor Code § 203 in the amount of
27 approximately \$731,069. (Tulyathan Decl. at ¶ 8.) Specifically, Plaintiff estimated the
28 maximum exposure of waiting time penalties due to all class members resulting from the unpaid

1 shorted sick pay wages. (*Id.*) Given that Plaintiff’s sick pay regular rate claim is brought under
2 Labor Code §§ 201-203, Plaintiff and class members would be entitled to recover waiting time
3 penalties if they prevail on liability. However, Plaintiff would have faced significant risks in
4 terms of proving full liability on this theory, given that Defendant disputes that sick pay
5 constitutes “wages” subject to waiting time penalties under Labor Code § 203, and that a class
6 cannot be certified under this theory of liability due to individualized inquiries. Further, as there
7 is no precedent from any California courts granting class certification of a sick pay regular rate
8 claim, there is a possibility that the Court will not grant class certification on Plaintiff’s claim
9 here. Moreover, as another obstacle to proving liability, Defendant has also indicated that it has
10 updated its sick pay policy as of June 2020. Given the risks presented and the defenses raised by
11 Defendant, there is a likelihood that Plaintiff will not prevail at class certification and/or at trial,
12 and recover the maximum available waiting time penalties.

13 With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated that
14 Defendant could face civil penalties of up to approximately \$87,200 if Plaintiff were successful
15 at trial. (Tulyathan Decl. at ¶ 9.) As this Court knows, PAGA penalties are not guaranteed and
16 are often reduced as the Court has discretion to do so. Pursuant to Labor Code § 2699(e)(2), the
17 Court can decline to award PAGA penalties where “if, based on the facts and circumstances of
18 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
19 oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington*
20 *v. Starbucks* (2018) 30 Cal. App. 5th 504, 529, while the plaintiff prevailed on his PAGA claim
21 upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
22 employer’s good faith attempt at complying with the law. (*Id.* at p. 517.) Upon review, the court
23 of Appeal found such reduction to be proper. (*Id.* at p. 539.) Therefore, the potential PAGA
24 penalties are purely theoretical and there is a good possibility the Court would have significantly
25 reduced, or even awarded no, PAGA penalties.

26 The settlement for each participating Settlement Class Member is fair, reasonable, and
27 adequate, given the inherent risks of litigation, including the substantial risks relative to class
28 certification, and the costs of pursuing such litigation. The settlement is the result of extensive

1 arms' length negotiations between the Parties and their counsel.

2 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
3 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
4 involved in not prevailing on one or more of the causes of action or theories alleged in the
5 operative Complaint, the possibility of non-certification and potential for appeals. (Lee Decl. at
6 ¶ 5; Tulyathan Decl. at ¶ 11; Marder Decl. at ¶ 4.) These risks on class certification are
7 compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*
8 (2014) 59 Cal. 4th 1.

9 Indeed, numerous courts have held that **gross** settlements approximating between only
10 8% and 25% of the Defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego*
11 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
12 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
13 settlement amounting to only a fraction of the potential recovery does not per se render the
14 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
15 assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
16 settlement is fair and adequate depends on the "the difficulties in proving the case");
17 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
18 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
19 the Defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
20 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
21 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
22 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
23 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
24 approximately 15% of the potential recovery was fair and reasonable).

25 Here, the total amount of class and PAGA penalties amount to approximately \$818,269,
26 without discounting for potentially losing any of the causes of action. (Tulyathan Decl. at ¶
27 10.) The Gross Settlement Amount is \$175,000, which is approximately **21.39%** of the
28 maximum class and PAGA penalties. (*Id.*) Thus, the settlement was negotiated at arms' length

1 and the high settlement percentage-to-recovery further supports that the settlement is fair and
2 reasonable.

3 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
4 Settlement of Class and Representative Action Settlement (“Class Notice”), should any
5 Settlement Class Member wish to pursue his or her own case for the claims being released
6 herein, each Settlement Class Member has the right to submit a request for exclusion (*i.e.*, opt-
7 out) from the settlement.² (*See* Class Notice, p. 4, attached as Exhibit B to Tulyathan Decl.)
8 Moreover, as set forth in the Notice of Settlement, Settlement Class Members are advised of
9 their right to attend the final approval hearing and object to any of the terms contained in the
10 Stipulation. (*Id.* at pp. 5-6.)

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

14 The Stipulation provides for \$175,000 as the Gross Settlement Sum. (Stipulation at §
15 II(14).) Attorneys’ fees will be no more than 35% of the Gross Settlement Sum, which amounts
16 to \$61,250. (Stipulation at § II(5).) Class Counsel’s costs will be no more than \$15,000. (*Id.* at
17 § II(4).) The Settlement Administrator’s fees will be no more than \$7,000. (Stipulation at §
18 III(5).) The Representative Service Award to Plaintiff will be no more than \$10,000. (*Id.* at §
19 III(4).) Finally, \$20,000 of the Gross Settlement Amount will be allocated to penalties under the
20 PAGA, of which 75 percent, or \$15,000, will be paid to the LWDA. (*Id.* at § III (3).) The
21 remaining 25 percent, or \$5,000, will be allocated among PAGA Representative Action
22 Members, which includes “all current and former non-exempt employees of Defendant in the
23 State of California who were paid sick pay in the same pay period as any non-discretionary
24 incentive wages, including without limitation, monthly sales bonuses, quarterly sales bonuses,
25 and/or commissions, during the PAGA period.” (*Id.* at §§ II(23) and III(13)(b).) The \$5,000

26
27 ² PAGA Representative Action Members cannot submit requests for exclusions from the settlement. As indicated
28 on the Class Notice, no PAGA Representative Action Member may opt out of or be excluded from participating in
the settlement of the PAGA claims. Upon final approval of the settlement, all PAGA Representative Action
Members will be bound by the settlement and release of PAGA Claims pursuant to *Arias v. Superior Court* (2009)
46 Cal. 4th 969.

PAGA payment will be allocated proportionally to PAGA Representative Action Members on a per capita basis. (*Id.*)

The Net Class Settlement Amount, calculated after deduction of attorneys' fees (up to \$61,250), litigation costs (up to \$15,000), the representative service award to Plaintiff (up to \$10,000), PAGA payment to the LWDA and PAGA Representative Action Members (\$20,000), and Settlement Administration Costs (up to \$7,000), is estimated to be approximately \$61,750.00. (Stipulation at §§ II(18) and III(13).) Each Participating Settlement Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Class Settlement Amount proportionally, on a per capita basis. (*Id.* at § III(13).)

Based thereon, each Participating Settlement Class Member will recover on average approximately **\$359.01**. (Tulyathan Decl. at ¶ 12.) The amount actually paid to each Participating Settlement Class Member may increase or decrease depending on the number of opt-outs, since that may result in a higher Net Class Settlement Amount to be divided proportionally among Participating Settlement Class Members. (*Id.*)

Finally, the terms of the Settlement provide that uncashed checks (upon the expiration date) shall be distributed to Legal Aid at Work, a non-profit legal services organization that assists and provides legal services to California low-income individuals and/or low-wage earners. (Stipulation at § III(17).)

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

This Settlement is non-reversionary, meaning that none of the settlement funds will revert to Defendant. (Stipulation at § II(14).)

3. Scope of the Releases Under the Settlement.

The scope of the release applicable to Settlement Class Members, as listed below, is identified in the Stipulation at Sections II (29) and III (19). Section III (19) provides as follows:

Upon the date Defendant transfer the Gross Settlement Amount to the Settlement Administrator, and except as to such rights or claims as may be created by the Settlement Agreement, each and every Participating Settlement Class Member, on behalf of themselves and their heirs and assigns, shall release the Released Parties from the Released Class Claims.

(Stipulation at § III(19).) The “Released Class Claims,” as defined in Section II (29) of the Stipulation, includes:

[A]ny and all claims, known or unknown, that were asserted in any complaint in the Action and/or Plaintiff’s letter(s) to the LWDA; and/or any and all claims, known or unknown, that could have been asserted in any complaint in the Action or Plaintiff’s letter to the LWDA based on the facts and/or allegations alleged in any complaint in the Action or Plaintiff’s letter to the LWDA. This release includes, but is not limited to, claims for or related to: the rate of payment for sick leave; underpayment of sick leave; timeliness of payment of wages; payment of unpaid sick leave pay at termination; waiting time penalties; any unpaid wages or compensation related to any or all of the foregoing; any premium payments related to any or all of the foregoing; restitution for any of the foregoing; any penalties, including statutory and civil penalties, related to any or all of the foregoing; attorneys’ fees or costs related to any or all of the foregoing; and/or any other damages (including general and/or compensatory damages) or amounts related to any or all of the foregoing. The Released Class Claims includes, but is not limited to, any and all claims pursuant to: California Labor Code sections 201-203, 245-249 (Healthy Workplace, Healthy Families Act) and the California IWC Wage Orders relating to sick leave pay. The release shall include all the above claims through Preliminary Approval.

(Stipulation at § II(29).) As shown above, the release for Settlement Class Members is tailored to only claims that are part of the lawsuit, and as such, the release is appropriately limited.

Further, the Stipulation contemplates a different release for PAGA Representative Action Members. (Stipulation at §§ II(22) and III(20).) Section III (20) provides as follows:

Upon the date Defendant transfer the Gross Settlement Amount to the Settlement Administrator, and except as to such rights or claims as may be created by the Settlement Agreement, each and every PAGA Representative Action Member, on behalf of themselves and their heirs and assigns, shall release the Released Parties from the Released Class Claims.

(Stipulation at § III(20).) The “PAGA Released Claims,” as defined in Section II (22) of the Stipulation, includes:

[A]ny and all claims, known or unknown, for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, that were asserted in any complaint in the Action and/or Plaintiff’s letter(s) to the LWDA, and/or that could have been asserted in any complaint in the Action or Plaintiff’s letter to the LWDA based on the facts and/or allegations alleged in any complaint in the

1 Action and/or Plaintiff's letter to the LWDA. The PAGA Released Claims
2 includes, but is not limited to, claims for PAGA civil penalties premised
3 on California Labor Code sections 201-203 and 245-249; the rate of
4 payment for sick leave, underpayment of sick leave pay; timeliness of
5 payment of wages; and/or payment of unpaid sick leave pay at
6 termination. The release shall include all the above claims through
7 Preliminary Approval.

8 (Stipulation at § II(22).) The release applicable to PAGA Representative Action Members does
9 not release Defendant from any statutes other than the PAGA, and is limited to claims for civil
10 penalties under the PAGA predicated on the theories and/or Labor Code sections that are the
11 subject of this action.

12 Further, the scope of the releases do not include any waiver under California Civil Code §
13 1542 for both Settlement Class Members and PAGA Representative Action Members.

14 **4. Tax Treatment of Settlement Amounts.**

15 Each individual class settlement payment will be allocated as follows for tax purposes:
16 ten (10) percent as wages, as to which IRS Forms W-2 will issue, and ninety (90) percent as
17 penalties and interest, as to which IRS Forms 1099 will issue. (Stipulation at § III(14).)

18 Furthermore, the Stipulation provides that Defendant will pay for its employer's share of payroll
19 taxes on the wage portions of the individual settlement payments separate to, and in addition to,
20 the Gross Settlement Amount. (*Id.* at §§ III(2), (28).)

21 Each individual PAGA payment made to PAGA Representative Action Members will be
22 allocated one hundred (100) percent as penalties as to which IRS Forms 1099 will issue. (*Id.* at §
23 III(14).)

24 **5. Affirmative Obligations to be Undertaken by Class Members or Class 25 Counsel and the Reasons for Any Such Obligations.**

26 Settlement Class Members and PAGA Representative Action Members do not need to do
27 anything should they wish to receive their share of the settlement funds. In other words, because
28 this is not a claims-made settlement, class members will not be required to make a submission to
participate in the settlement or to receive their share of the settlement funds. No claim forms are
required. Thus, this substantially decreases the amount of burden each class member must bear
in order to receive their settlement share.

1 If a Settlement Class Member does not wish to take part in this settlement and be bound
2 by the release, the Settlement Class Member must submit a request for exclusion. (Stipulation at
3 § III (8).) PAGA Representative Action Members cannot opt out of the Settlement and will be
4 bound by the judgment entered by the Court at the time of final approval. (*Id.* at § III(11).)

5 **C. Notice to Class Members**

6 Within fifteen (15) calendar days of the preliminary approval of this settlement,
7 Defendant will transmit to the Settlement Administrator the Class List, which will contain the
8 following information for each Settlement Class Member and PAGA Representative Action
9 Member: the full name, last known address and phone number, employee ID number, and Social
10 Security number. (Stipulation at § III (7).) The Class List will be formatted in an electronically
11 usable format. (*Id.*)

12 Upon receipt of the information and prior to mailing the Class Notices, the Settlement
13 Administrator shall perform reasonable verification addresses search for information to update
14 and correct any known or identifiable address changes. (Stipulation at § III(7)(b).) Within ten
15 (10) calendar days of receiving the Class List, the Settlement Administrator shall mail out Class
16 Notices to all Settlement Class Members and PAGA Representative Action Members using the
17 most current addresses identified. (*Id.*) For any notices that are returned to the Settlement
18 Administrator with a forwarding address, the Settlement Administrator will re-mail the Class
19 Notice to the forwarding address affixed thereto. (*Id.* at § III(7)(c).) For any notices that are
20 returned as undeliverable and/or lost, the Settlement Administrator will promptly perform a skip-
21 trace, or equivalent search, to obtain alternative addresses for re-mailing. (*Id.*) The Settlement
22 Administrator will then re-mail the Class Notice to any alternative addresses. (*Id.*)

23 As set forth in the Class Notice, Settlement Class Members will be allowed to opt out of
24 the settlement, or object to the settlement in writing, by a certain deadline. (Stipulation at §
25 III(8)-(9).) Settlement Class Members who have had their Class Notices re-mailed will have
26 their deadlines extended by fifteen (15) calendar days from the original deadline. (*Id.* at §
27 (III)(7)(c).)

28 //

1 **D. Class Certification**

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

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

14 In the present case, Plaintiff alleges that Defendant, as a matter of its corporate policy,
15 practice, or procedure violated the Labor Code by failing to timely and properly pay sick pay
16 wages based on the correct regular rate of pay in violation of Labor Code §§ 201-203 and 246.
17 Like all class members, Plaintiff was subjected to this same policy and practice. (*See*
18 Declaration of Sondra Hernandez (“Hernandez Decl.”) at ¶ 3.) In particular, Defendant
19 miscalculated the regular rate of pay when paying sick pay wages to Plaintiff whenever non-
20 discretionary incentives, such as monthly sales bonuses, were paid to Plaintiff. (*Id.*) Thus,
21 Plaintiff’s claims are typical to those of class members.

22 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
23 issues been raised or presented. (Hernandez Decl. at ¶ 4.) Plaintiff has taken all necessary steps
24 to represent the interests of the Class, including by providing information and documents to
25 Plaintiff’s counsel. (Hernandez Decl. at ¶¶ 4-6.) For such reasons, Plaintiff has adequately
26 represented the Class Members and will continue to do so.

27 //

28 //

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

3 From the inception of the case, Class Counsel has zealously represented the interests of
4 the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual
5 Class Representative. Further, Class Counsel has been approved as class counsel on a number of
6 prior cases, have litigated numerous other class action cases, and are competent to represent the
7 class. (Lee Decl. at ¶¶ 9-10; Tulyathan Decl. at ¶¶ 19-22; Marder Decl. at ¶¶ 6-13.)

8 **3. The Proposed Class Settlement Meets the *Kullar* Factors.**

9 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
10 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
11 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
12 plaintiff's claims. As discussed herein, Plaintiff's counsel has conducted sufficient discovery
13 and investigation, including through informal discovery. In light of the strength and weaknesses
14 of Plaintiff's claims, Plaintiff's attorneys submit that this settlement is fair pursuant to *Kullar*.

15 **4. Plaintiff's Counsel Conducted Sufficient Discovery and Investigation.**

16 The Parties informally exchanged information, including obtaining and analyzing class
17 data for a damages analysis, Defendant's pertinent wage and hour policies regarding the payment
18 of bonuses and sick pay leave, as well as attended mediation, which has involved lengthy, arm's
19 length negotiations over the terms and conditions of this settlement. (Tulyathan Decl. at ¶ 5.)
20 Based on all of the evidence and data, Plaintiff's counsel was able to perform calculations based
21 on the allegations and value the maximum damages and penalties at issue. (*Id.*)

22 **5. The Potential Value of the Class Claims.**

23 As stated above, in preparation for mediation, Plaintiff obtained various data points in
24 order to formulate an estimated damage analysis. The maximum potential exposure for the class
25 and PAGA claims is approximately \$818,269. (Tulyathan Decl. at ¶ 10.) Thus, a \$175,000
26 gross settlement represents **21.39%** of the potential exposure, which is in line with numerous
27 court decisions finding settlements within this range to be fair and reasonable. *See, e.g., In re*
28 *Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000); *Bellinghausen v. Tractor Supply*

Co., No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015).

E. Costs and Fees

1. Attorneys' Fees and Costs

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

The Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, he 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 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id.*

Indeed, more recently, the California Supreme Court has also now held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the

percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

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

The Parties have agreed to a payment of a maximum of 35 percent of the gross settlement amount, or \$61,250, for payment to Class Counsel as attorneys’ fees. (*See* Stipulation at § II(5).) As the Parties have agreed to a payment of the foregoing attorney’s fees, this amount should be presumed to be fair.

Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs of up to \$15,000. (*See* Stipulation at § II(4).) Class Counsel have, at their own risk, expended costs, for example, to file this instant action and other pleadings, service of process, mediation costs, and payment of other litigation-related costs.

Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and costs being requested by the Parties.

2. Proposed Payment to the Class Representative

Plaintiff requests a modest enhancement of \$10,000. (Stipulation at § III(4).) The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the pleadings in the case, including the Stipulation. As part of her duties as Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. (Hernandez Decl. at ¶¶ 5-6.) In addition to the invaluable services that Plaintiff provided, she also took significant risks, both professionally and monetarily, in acting as the Class Representatives and

1 seeking benefits on behalf of the class. Because the claims alleged in this lawsuit involved the
2 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
3 Defendant in the event that she does not prevail in this action.

4 Furthermore, given that future employers are much less likely to hire individuals who
5 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
6 prejudice in the future from other potential employers. Plaintiff assumed these risks and the
7 whole class benefited from these risks taken by Plaintiff. Class members did not have to file
8 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
9 have to face the potential for retaliation and not getting future employment had they filed a
10 public lawsuit.

11 Finally, as part of this settlement, Plaintiff has executed a general release, including as to
12 California Civil Code § 1542, which is something that class members did not have to provide.
13 Plaintiff's sacrifice for the benefit of the class further warrants the requested enhancement
14 amount.

15 **3. Settlement Administration Fees**

16 The Parties have agreed to an estimated payment of \$7,000 to the Settlement
17 Administrator, Phoenix Settlement Administrators, to administer this settlement. (*See*
18 *Stipulation at § III(5).*) Phoenix Settlement Administrators is a well-recognized class action
19 settlement administrator. The Parties believe that the administration fee is reasonable and should
20 be approved.

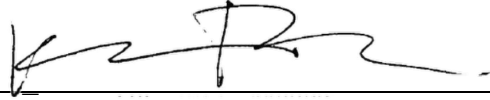
21 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 22 **PRELIMINARY APPROVAL**

23 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
24 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
25 result of informed, extensive, and arms' length negotiations conducted by counsel for respective
26 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
27 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
28 settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of

1 Settlement, and set a date for a final approval hearing that is approximately 120 days from the
2 Order granting this motion.

3
4 DATED: April 5, 2021

DIVERSITY LAW GROUP, P.C.

5
6 By: 

Larry W. Lee

Mai Tulyathan

7 Attorneys for Plaintiff, the Class, and Aggrieved
8 Employees
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On April 5, 2021, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 14 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **5. DECLARATION OF SONDR A HERNANDEZ IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 16 **6. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

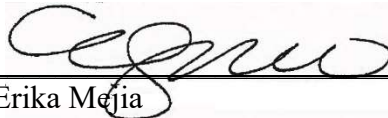
17 on the interested parties in this action as follows:

18 Emilie C. Woodhead
19 ewoodhead@winston.com
20 Jason S. Campbell
21 jscampbell@winston.com
22 Caitlin W. Tran
23 cwtran@winston.com
24 Laura Petroff
25 LPetroff@winston.com
26
27
28

1 Winston & Strawn LLP
2 333 S. Grand Avenue
3 Los Angeles, California 90071
4 *Attorneys for Defendant Benefit Cosmetics LLC*

5 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
6 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
7 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
8 indicated above or on the attached mailing list. I certify that said electronic transmission was
9 completed and that all pages were received by the party(ies) identified herein or on the attached
10 mailing list.

11 I declare under penalty of perjury under the laws of the State of California that the
12 above is true and correct. Executed on April 5, 2021, at Los Angeles, California.

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Erika Mejia