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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES SIMS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

QG PRINTING II LLC, a Connecticut
limited liability company; 74 QG
PRINTING II LLC, business
organization, form unknown; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 5:20-cv-01632-DMG-KK

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

Date: December 15, 2023

Time: 9:30 A.M.

Courtroom: 8C

Judge: Hon. Dolly M. Gee

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 15, 2023, at 9:30 A.M., or as soon thereafter as the matter can be heard in Courtroom 8C of the United States District Court, Central District of California, located at 350 West 1st Street, Los Angeles, California, 90012, before the Honorable Dolly M. Gee, Plaintiff James Sims (“Plaintiff”) will and hereby does move this Court for an Order preliminarily approving the proposed class action settlement. Specifically, Plaintiff respectfully requests that the Court order as follows:

1. Grant preliminary approval of the proposed class action settlement;
2. Grant conditional certification of the proposed settlement class;
3. Authorize the mailing of the proposed notice to the class of the settlement;
- and
4. Schedule a “fairness hearing,” *i.e.*, a hearing on the final approval of the settlement.

Plaintiff makes this motion on the grounds that the proposed settlement is fair and within the range of possible final approval. This Motion is based upon this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, the attached Memorandum of Points and Authorities in Support, the accompanying Declarations of Larry W. Lee, Kwanporn “Mai” Tulyathan, William L. Marder, and James Sims, the accompanying Joint Stipulation of Class Action Settlement, any oral argument of counsel, the complete files and records in the above-captioned matter, and such additional matters as the Court may consider.

DATED: November 9, 2023

DIVERSITY LAW GROUP, P.C.

By: /s/ Kwanporn “Mai” Tulyathan
Larry W. Lee
Kwanporn “Mai” Tulyathan
Attorneys for Plaintiff and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff James Sims (“Plaintiff” or “Named Plaintiff”) seeks preliminary approval
4 of the Joint Stipulation of Class Action Settlement (“Settlement Agreement” or
5 “Stipulation”)¹ that has been reached in the above-captioned matter with Defendant QG
6 Printing II, LLC (“Defendant”) (Defendant and Plaintiff are collectively referred to as the
7 “Parties”).

8 Specifically, the Parties reached a class-wide resolution of the claims alleged in
9 this lawsuit. The proposed Settlement Class² includes the following:

- 10 • All current and former non-exempt press production employees at the
11 Merced and Riverside California plants who used Defendant’s scheduling
12 hotline or Inside Quad for purposes of checking their schedule during the
13 period of April 6, 2016, through Preliminary Approval” (“Group 1”); and
14 • All other current and former non-exempt employees in California (who are
15 not part of Group 1) and who were issued wages during the period of July
16 20, 2022, through Preliminary Approval” (“Group 2”).

17 *See* Settlement Agreement § 1.2. The terms of the settlement provide that Defendant
18 shall pay a Gross Settlement Amount of One Million One Hundred Fifty Thousand
19 Dollars (\$1,150,000.00), which is inclusive of payments to Class Members, a service
20 award to the Class Representative, attorneys’ fees and costs, payment of PAGA penalties,
21 and settlement administration costs. Settlement Agreement § 1.13. The Parties currently
22 estimate and project that after deduction for settlement administration costs, attorneys’
23 fees, litigation costs, PAGA penalties, and a service award to the Plaintiff, the Net
24 Settlement Amount of approximately \$593,416.67 will be distributed between an

25 _____
26 ¹ The Joint Stipulation of Class Action Settlement is attached as **Exhibit A** to the
27 Declaration of Mai Tulyathan (“Tulyathan Decl.”).

28 ² Group 1 and Group 2 are collectively referred to herein as the “Class” or “Settlement
Class.”

1 estimated 975 Class Members. Settlement Agreement §§ 1.13, 1.18, 1.21, 1.34, 5, 6, and
2 4.1.1; Tulyathan Decl. at ¶¶ 32, 34. The Net Settlement Amount will be divided among
3 participating Class Members on a pro rata basis, based upon the number of pay periods
4 each Class Member performed work for Defendant in California. Moreover, this is a
5 **non-reversionary settlement**, such that the entire settlement amount will be distributed,
6 and no funds will revert to Defendant in any instance. Settlement Agreement §§ 1.13,
7 3.1. Finally, no claim forms will be necessary for any Class Member to participate in the
8 settlement. Settlement Agreement § 3.1. Thus, any Class Member who does not opt-out
9 from this Settlement will automatically be issued their share of the settlement proceeds.

10 Accordingly, through this Motion, the Parties respectfully request preliminary
11 approval of the class action settlement.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. Summary of the Litigation**

14 On June 1, 2020, Plaintiff filed the operative class and representative action
15 complaint against Defendants QG Printing II, LLC and 74 QG Printing II LLC³, in the
16 Superior Court of California, County of Riverside. Dkt. No. 1-2. On August 14, 2020,
17 Defendant removed the action to federal court. Dkt. No. 1.

18 The operative Complaint alleges the following causes of action: (1) failure to pay
19 wages; (2) violation of Labor Code § 2802; (3) violation of Labor Code § 226(a); (4)
20 violation of Business and Professions Code § 17200, *et seq.*; and (5) violation of Labor
21 Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). Plaintiff brings
22 claims for (1) failure to pay minimum, regular, overtime, and reporting time wages based
23 on an alleged “call-in” practice of having class members confirm their scheduled shifts
24 off-the-clock prior to their shifts, (2) failure to reimburse business expenses to class
25 members for use of personal cell and/or home phones to check their schedules, (3)

26
27 ³ On February 19, 2021, the Court dismissed 74 QG Printing II LLC, without prejudice,
28 from the Action pursuant to the Parties’ stipulation to dismiss that entity from this
Action.

1 failure to provide accurate itemized wage statements to class members (derivative and
2 standalone wage statement violations), and (4) unfair business practices in violation of
3 the California Unfair Competition Law. Specifically, Plaintiff alleges that during his off
4 hours, he was required to use his personal telephone to call a designated telephone
5 number and/or log in via an online website before his scheduled work shift to confirm
6 whether he will in fact be working that particular shift. Plaintiff alleges that he was not
7 paid for the time “calling in” to check his schedule off-the-clock and that he was not
8 reimbursed for the costs incurred in connection therewith. Plaintiff alleges that he was
9 not paid reporting time pay on occasions when he reported to work but was not permitted
10 to work and/or worked less than half of the scheduled shift. Plaintiff also alleges
11 derivative wage statement violations based on the above violations. In addition, Plaintiff
12 asserts independent wage statement violations, alleging that the wage statements
13 identified inaccurate hourly rates of pay for overtime and double time wages, as well as
14 an incorrect legal name of the employer.

15 On August 21, 2020, Defendant filed a Motion to Dismiss Or, In the Alternative,
16 Discretionary Stay Pursuant to First-To-File Rule, based on two prior filed actions
17 alleging similar claims. Dkt. No. 10. On January 14, 2021, the Court issued its Order
18 denying Defendant’s Motion, in part, finding that the First-To-File-Rule did not prevent
19 Plaintiff from proceeding with his off-the-clock, reporting time pay, and expense
20 reimbursement claims. Dkt. No. 19. The Court ordered a stay on Plaintiff’s independent
21 Labor Code § 226(a) claim, and his related PAGA claim based on the same violation,
22 pending resolution of that claim in the prior actions. *Id.*

23 On September 7, 2021, the Parties participated in a mediation session with the
24 Honorable Kevin Murphy (Ret.). Despite good faith, arm’s length negotiations, the
25 Parties were unable to reach an agreement at the mediation and resumed litigation.
26 Tulyathan Decl. at ¶ 8.

27 On December 17, 2021, Plaintiff filed his Motion for Class Certification, seeking
28 certification of his off-the-clock, reporting time pay, and unpaid reimbursement claims.

1 Dkt. No. 35. On March 4, 2022, the Court issued its Order granting Plaintiff's Motion in
2 part and certified Plaintiff's call-in and reporting time pay claims. In particular, the Court
3 certified a class of "[a]ll current and former non-exempt press production employees of
4 Defendant QG Printing II LLC who worked at Defendant's Riverside and/or Merced
5 facility in the State of California at any time between April 6, 2016 through the present."
6 Dkt. No. 47, p. 31.

7 Defendant moved for reconsideration of the Court's Order granting class
8 certification on March 18, 2022. Dkt. No. 50. On March 22, 2023, the Court issued its
9 Order Denying Defendant's Motion for Reconsideration of the Order Granting Plaintiff's
10 Motion for Class Certification. Dkt. No. 66.

11 On April 5, 2023, Defendant filed a Petition for Permission to Appeal Order
12 Granting Class Certification under Fed. R. Civ. P. 23(f) in the Ninth Circuit. 9th Cir.
13 Dkt. No. 1. The Ninth Circuit issued its Order denying the Petition on June 1, 2023. 9th
14 Cir. Dkt. No. 3.

15 On June 28, 2023, the Parties attempted a second mediation session with
16 experienced neutral Michael J. Loeb, Esq. Tulyathan Decl. at ¶ 12. While the Parties did
17 not reach a settlement on that date, the Parties engaged in negotiations post-mediation
18 facilitated by the mediator. After months of continued post-mediation negotiations
19 facilitated by Mr. Loeb, on September 19, 2023, the Parties reached the basic terms of a
20 settlement, signed a binding Memorandum of Understanding, and agreed to prepare this
21 formal settlement agreement, subject to Court approval. *Id.*

22 **B. Summary of Investigation and Discovery**

23 The Parties have engaged in extensive formal and informal discovery in this
24 Action. Tulyathan Decl. at ¶¶ 18-19. As part of formal discovery, Plaintiff has taken
25 numerous depositions, including various Defendant's FRCP 30(b)(6) witnesses on a
26 myriad of topics, class members, and Defendant's expert witness. Plaintiff's counsel has
27 also defended Plaintiff's deposition. Defendant has also produced class data, thousands
28 of pages of call logs, and documents pertaining to the relevant policies and practices at

1 issue. The Parties also engaged in expert discovery. As part of informal discovery,
2 Defendant provided information regarding the size and scope of the class for mediation.
3 *Id.*

4 Class Counsel have engaged in intensive arm's-length negotiations with counsel
5 for Defendant with a view toward achieving substantial benefits for the Class while
6 avoiding the cost, delay, and uncertainty of further litigation, trial, and appellate review.
7 *Id.* at ¶ 21.

8 **C. Summary of the Current Settlement**

9 The Settlement Agreement provides for a total settlement sum of One Million One
10 Hundred Fifty Thousand Dollars (\$1,150,000.00), inclusive of payments to Class
11 Members, a service award to the Class Representative, attorneys' fees and costs, payment
12 of PAGA penalties, and settlement administration costs. Settlement Agreement § 1.13.

13 Pursuant to the terms of the Settlement Agreement, the Net Settlement Amount
14 (after deduction of attorneys' fees in the amount of up to Three Hundred Eighty-Three
15 Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$383,333.33),
16 litigation costs of up to Fifty Thousand Dollars (\$50,000.00), the Class Representative
17 Enhancement Payment in the amount of up to Ten Thousand Dollars (\$10,000.00),
18 PAGA Penalties to the LWDA and PAGA Employees in the amount of One Hundred
19 Thousand Dollars (\$100,000.00), and costs of settlement administration in the amount of
20 approximately Thirteen Thousand Two Hundred Fifty Dollars (\$13,250.00) is
21 approximately \$593,416.67. Settlement Agreement §§ 1.13, 4-8; Tulyathan Decl. ¶ 34.

22 As provided in the Settlement Agreement, individual settlement payments to Class
23 Members shall be treated as follows: 1/3 as wages, 1/3 as interest, and 1/3 as penalties.
24 The wage payments shall be reported on IRS Forms W-2, and the interest and penalties
25 payments shall be reported on IRS Forms 1099. Settlement Agreement § 10.1.
26 Defendant will pay employer's share of payroll taxes separate from and in addition to the
27 Gross Settlement Amount. Settlement Agreement § 3.1. Individual payments to the
28 PAGA Employees from the PAGA Penalties shall be treated as one hundred percent

(100%) penalties and shall be reported on IRS Forms 1099. Settlement Agreement § 10.1.

Significantly, this Settlement is non-reversionary and does not involve the use of claim forms. Settlement Agreement § 3.1. In other words, none of the unclaimed settlement funds will revert back to Defendant and Class Members need not do anything to receive their share. Instead, the Class Members will automatically receive their share of the settlement funds so long as they do not opt-out from the Settlement. Moreover, as the Settlement is non-reversionary, the Net Settlement Amount available to Class Members will proportionately increase as the result of any opt-outs. *Id.*

Additionally, the remaining monies from uncashed checks shall be paid to the cy pres beneficiary of the Settlement, Legal Aid Association of California. Settlement Agreement § 9.7. Legal Aid Association of California is a nonprofit statewide membership organization consisting of hundreds of nonprofit legal services organizations that provide legal assistance to low-income Californians. Tulyathan Decl. at ¶ 38. The Parties and their respective counsel do not have any relationship with Legal Aid Association of California. *Id.*; Declaration of Larry W. Lee (“Lee Decl.”) at ¶ 9; Declaration of William L. Marder (“Marder Decl.”) at ¶ 13.

The Class consists of two settlement groups:

- All current and former non-exempt press production employees at the Merced and Riverside California plants who used Defendant’s scheduling hotline or Inside Quad for purposes of checking their schedule during the period of April 6, 2016, through Preliminary Approval” (“Group 1”); and
- All other current and former non-exempt employees in California (who are not part of Group 1) and who were issued wages during the period of July 20, 2022, through Preliminary Approval” (“Group 2”).

See Settlement Agreement § 1.2. As will be further explained below, Group 1 Class Members represents the class as certified by the Court at class certification, while Group 2 Class Members represents the settlement class for the independent Labor Code § 226(a)

claims alleged in this Action that was stayed based on two prior filed actions. The identities of Class Members can be ascertained from Defendant's payroll records. Based upon Defendant's records, the estimated number of unique Class Members is approximately 975. Tulyathan Decl. at ¶ 32.

D. The Settlement is Fair, Reasonable, and Adequate

Based on their own respective independent investigations and evaluations, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in their Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and the Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation. Lee Decl. ¶ 3; Tulyathan Decl. ¶ 31; Marder Decl. ¶ 3.

Based on the approximately 975 Class Members, each Class Member will receive a raw average of approximately \$608.63 from the Net Settlement Amount. Tulyathan Decl. ¶ 36. Each Class Member who does not opt out ("Participating Class Member") may receive a settlement amount that is more or less than this raw average, depending on each respective class member's number of pay periods worked for Defendant in California during the Class Period, and the number of opt-outs received. *Id.*; Settlement Agreement § 4.1. Each Participating Class Member will be paid a pro rata share calculated based on the number of pay periods each Class Member performed work for Defendant in California, as compared to the total number of pay periods all Class Members performed work for Defendant in California during the Class Period. Settlement Agreement § 4.1.

Furthermore, PAGA Employees will receive a portion of the PAGA Penalties on a pro rata basis, based on the number of pay periods each PAGA Employee performed work for Defendant in California during the PAGA Period, as compared to the total number of pay periods all PAGA Employees performed work for Defendant in California during the PAGA Period. Settlement Agreement § 7.

///

1 **III. DISCUSSION**

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

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

14 *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004).

15 Thus, the preliminary approval by the trial court is simply a conditional finding
16 that the settlement appears to be within the range of acceptable settlements. As Professor
17 Newberg comments, “[t]he strength of the findings made by a judge at a preliminary
18 hearing or conference concerning a tentative settlement proposal may vary. The court
19 may find that the settlement proposal contains some merit, is within the range of
20 reasonableness required for a settlement offer, or is presumptively valid subject only to
21 any objections that may be raised at a final hearing.” Alba Conte & Herbert B. Newberg,
22 *4 Newberg on Class Actions* § 11.26 (4th ed. 2002). Accordingly, a court should grant
23 preliminary approval of a class action settlement where it is within the “range of
24 reasonableness.” Here, the Parties have reached such an agreement and have submitted it
25 to the Court in connection with this filing.

26 As a matter of public policy, settlement is a strongly favored method for resolving
27 disputes. *Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir.
28 1989). This is especially true in complex class actions such as this case. *Officers for*

1 *Justice v. Civil Serv. Comm’n of City & County of San Francisco*, 688 F.2d 615, 625 (9th
2 Cir. 1982). One factor that courts consider in evaluating settlements is the settling
3 defendant’s financial condition. *See Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370,
4 1376 (9th Cir. 1993) (“One factor predominates to make clear that the district court acted
5 within its discretion. That factor is [the defendant’s] financial condition.”).

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

17 Here, the proposed settlement falls within the range of reasonableness and should
18 be preliminarily approved. The Parties were represented by experienced counsel, and the
19 settlement was the result of mediation and negotiations facilitated by an experienced
20 wage and hour class action mediator. As discussed above and in the attached
21 declarations, the Parties engaged in substantial investigation and analysis related to the
22 claims and defenses alleged in this case. Further, the proposed settlement was reached
23 after the Parties utilized the assistance of experienced mediators and after substantial
24 arm’s length negotiations between the Parties.

25 As detailed herein, the proposed settlement satisfies the standard for preliminary
26 approval as it is well within the range of possible approval and there are no grounds to
27 doubt its fairness. Counsel for Plaintiff and Defendant have extensive experience in
28 employment law, particularly in wage and hour litigation, and reached a settlement only

1 after mediation and extensive arm's length negotiations. *See In re Bluetooth Headset*
2 *Prods. Liab. Litig. (In re Bluetooth)*, 654 F.3d 935, 948 (9th Cir. 2011) (noting the
3 presence of a neutral mediator is a factor weighing in favor of approval, although not
4 dispositive).

5 **A. The Proposed Settlement Class Satisfies The Elements For Class**
6 **Certification.**

7 Certification of a settlement class is “a two-step process.” *In re: Volkswagen*
8 *“Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2016
9 WL 4010049, at *10 (N.D. Cal. July 26, 2016) (citing *Amchem Prods., Inc. v. Windsor*,
10 521 U.S. 591, 613 (1997)). First, the Court must find that the proposed settlement class
11 satisfies Rule 23(a)’s four requirements. *Id.* (citing Fed. R. Civ. P. 23(a). Second, the
12 Court must find that “a class action may be maintained under either Rule 23(b)(1), (2), or
13 (3).” *Id.* (citing *Amchem Prods.*, 521 U.S. at 613). Here, the Class readily satisfies all
14 Rule 23(a)(1)-(4) and (b)(3) certification requirements, and certification should be
15 granted for settlement purposes. When “[c]onfronted with a request for settlement only
16 class certification, a district court need not inquire whether the case, if tried, would
17 present intractable management problems...for the proposal is that there will be no trial.”
18 *Amchem Prods.*, 521 U.S. at 620.

19 **1. The Court Has Already Certified The Class and Therefore Should**
20 **Certify the Class As Defined In The Settlement Agreement.**

21 As explained above, on March 4, 2022, the Court granted Plaintiff’s Motion for
22 Class Certification, in part, and certified Plaintiff’s call-in and reporting time pay claims.
23 As stated in the Court’s Order, the Court certified a class of “[a]ll current and former
24 non-exempt press production employees of Defendant QG Printing II LLC who worked
25 at Defendant’s Riverside and/or Merced facility in the State of California at any time
26 between April 6, 2016 through the present.” Dkt. No. 47, p. 31.

27 The Settlement Class as defined in the Settlement Agreement includes two groups.
28 The main class, Group 1, represents the class definition above as certified by the Court,

1 with the sole difference being that the class as certified by the Court runs through the date
2 of class certification, i.e., March 4, 2022, while the class period end date of Group 1 will
3 run through the date of Preliminary Approval. Settlement Agreement § 1.2. Here, the
4 same class members, class data, legal arguments, and investigation are implicated by the
5 class that is already certified by the Court and Group 1, except that the latter will
6 encompass class members through the date of Preliminary Approval. Thus, for purposes
7 of this Motion, the Court need not re-engage in an analysis of whether this class can be
8 certified for settlement purposes as this Court has already found that the elements of Rule
9 23 of the Federal Rules of Civil Procedure have been met, even under the rigorous, non-
10 settlement, context. Thus, Plaintiff will not repeat any arguments in this Motion as to
11 why this class should be certified.

12 Additionally, in addition to the certified claims, this Action also involves
13 independent Labor Code § 226(a) claims, which were stayed by the Court pending
14 resolution of that claim in the prior actions. *See* Dkt. No. 19. As the Labor Code §
15 226(a) claims are no longer at issue in the prior actions⁴, the Parties have also agreed to
16 resolve the remaining Labor Code § 226(a) claims through the proposed Settlement. As
17 such, the proposed Settlement Class includes a separate class of Group 2, which
18 encompasses current and former non-exempt employees in California (who are not part
19 of Group 1) and who were issued wages during the period of July 20, 2022, through
20 Preliminary Approval. Settlement Agreement § 1.2.

21 **2. Numerosity**

22 The numerosity requirement is satisfied if the proposed class is “so numerous that
23 joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Impracticable does not
24

25 ⁴ Pursuant to the Court’s Order, Dkt. No. 19, the Court stayed the Labor Code § 226(a)
26 claims in this Action in light of the prior actions *Clark v. QG Printing II, LLC, et al.*, CV
27 18-0899-AWI (EPGx) (E.D. Cal.) (“*Clark*”) and *Ramos v. QG Printing II LLC, et al.*, CV
28 18-4837 (Cal. Super. Ct.) (“*Ramos*”). The *Clark* court has since denied class certification
for the *Clark* wage statement claim under Labor Code § 226(a). The *Ramos* matter has
since been dismissed with prejudice. Tulyathan Decl. at ¶ 7.

mean impossible, only that it would be difficult or inconvenient to join all members of the class. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). Numerosity is generally satisfied when the class exceeds forty members. *See, e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

Here, the Class Members can be ascertained from Defendant's records. Tulyathan Decl. at ¶ 32. As of the date of Preliminary Approval, Defendant has represented that the Class consists of an estimated 975 individuals. *Id.* Accordingly, here, the Class is sufficiently numerous.

3. Ascertainability

As stated, above, Defendant has already ascertained the Class Members through Defendant's own records. Tulyathan Decl. at ¶ 32.

4. Typicality

Typicality under Rule 23(a)(3) is satisfied if the representative plaintiff's claims share a common element with the class: *i.e.*, those claims arise from the same course of conduct that gave rise to the claims of other settlement class members. *In re United Energy Corp. Solar Power Modules Tax Shelter Invs. Sec. Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988). "Like the commonality requirement, the typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Here, Plaintiff's claims are typical of Class Members because he alleges that he suffered injury from the same specific actions that he alleges harmed other members of the Class. Specifically, Plaintiff alleged that he was required to use his personal cellphone and/or home phone to call a designated telephone number prior to his scheduled work shift to confirm whether he was to report to that scheduled shift. Plaintiff alleges that said calls were made off-the-clock, and that he was not paid for the time he spent calling in to the scheduling hotline. *See* Declaration of James Sims ("Sims Decl.")

1 at ¶ 3. In connection with that, Plaintiff also alleges that he was not reimbursed for the
2 costs incurred in connection with the use of his personal cell phone and home phone.
3 Furthermore, Plaintiff alleges that he did not receive reporting time pay on occasions
4 when he reported to work but was not put to work and/or worked less than half of the
5 scheduled shift. *Id.* In addition, Plaintiff also alleges that he was not issued accurate
6 wage statements. *Id.* at ¶ 4.

7 Defendant utilized the same scheduling policies and practices, and payroll system
8 for Class Members and Plaintiff. Thus, Plaintiff's claims are typical. Plaintiff's claims
9 are typical of the class as a whole because they arise from the same factual basis and are
10 based on the same legal theories as those applicable to the Class Members. Sims Decl. at
11 ¶¶ 3-4; see *Parsons*, 754 F.3d at 685; see also *Evon v. Law Offices of Sidney Mickell*, 688
12 F.3d 1015, 1030 (9th Cir. 2012) ("The test of typicality is whether other members have
13 the same or similar injury, whether the action is based on conduct which is not unique to
14 the named plaintiffs, and whether other class members have been injured by the same
15 course of conduct.").

16 **5. Commonality**

17 Commonality relates to whether there are "questions of law or fact common to the
18 class." Fed. R. Civ. P. 23(a)(2). Commonality is satisfied if there is one issue common to
19 class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).
20 Commonality "does not turn on the number of common questions, but on their relevance
21 to the factual and legal issues at the core of the purported class' claims." *Jimenez v.*
22 *Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). Indeed, "[e]ven a single question
23 of law or fact common to the members of the class will satisfy the commonality
24 requirement." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011).

25 Here, the Court has already certified Plaintiff's call-in and reporting time pay
26 claims. For Group 2, Plaintiff contends the common issues include, among other things,
27 whether Defendant failed to provide accurate itemized wage statements. Courts have
28 routinely certified Labor Code § 226(a) class actions, including in *Stafford v. Brink's*,

1 *Inc.*, C.D. Cal. Case No. CV-14-01352-MWF (PLAx) and *Magadia v. Wal-Mart*, 2018
2 WL 339139 (N.D. Cal. Jan. 9, 2018). *See also McKenzie v. Fed. Express Corp.*, 275
3 F.R.D. 290, 299 (C.D. Cal. 2011); *see also Ortega v. J.B. Hunt Transp., Inc.*, 258 F.R.D.
4 361, 374 (C.D. Cal. 2009); *Alonzo v. Maximus, Inc.*, 275 F.R.D. 513, 521 (C.D. Cal.
5 2011).

6 **6. Adequacy**

7 Adequacy under Rule 23(a)(4) is satisfied if the named plaintiffs have no disabling
8 conflicts of interest with other members of the class and class counsel are competent and
9 well qualified to undertake the litigation. *Lerwill v. Inflight Motion Pictures, Inc.*, 582
10 F.2d 507, 512 (9th Cir. 1978); *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1165
11 (9th Cir. 2013).

12 Plaintiff submits that no conflict exists between Plaintiff and the Class because
13 Plaintiff has been damaged by the same alleged policies and practices as all Class
14 Members and has the incentive to fairly represent all Class Members' claims to achieve
15 the maximum possible recovery. Sims Decl. at ¶¶ 3-5. Despite the settlement, Plaintiff
16 remains willing to vigorously prosecute this action to the benefit of the Class.

17 Furthermore, Plaintiff is represented by attorneys who have extensive experience
18 in complex wage and hour litigation as is detailed in each of their declarations supported
19 herewith. Lee Decl. at ¶¶ 5-7; Tulyathan Decl. at ¶¶ 41-45; Marder Decl. at ¶¶ 8-11.

20 **7. Common Questions of Law and Fact Predominate**

21 Plaintiff contends that common questions of law or fact predominate over
22 individual questions pursuant to Rule 23(b)(3). These issues of fact and law raised in this
23 action are common to all members of the classes and predominate in this case. Here, the
24 Court has already certified the call-in and reporting time pay claims, and thus
25 predominance is met. For the wage statement claims, Defendant's procedures for
26 processing payroll and distributing wage statements to its employees are uniform, and
27 thus the issues of whether employees were issued accurate wage statements predominates
28 across the Class.

1 **8. Superiority of Class Action**

2 In this case, a class action is superior to other methods of adjudication and thus
3 satisfies Rule 23(b)(3). Courts have recognized that the class action device is superior to
4 other available methods for the fair and efficient adjudication of controversies involving
5 large number of employees in wage and hour disputes. *See, e.g., Hanlon*, 150 F.3d at
6 1022. “The purpose of the superiority requirement is to assure that the class action is the
7 most efficient and effective means of resolving the controversy.” *Wolin v. Jaguar Land*
8 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Charles Wright, Arthur
9 Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1779 at 174 (3d ed. 2005)).
10 Without class-wide relief in this action, the Class Members would be forced to litigate
11 numerous cases on a piecemeal basis for relatively low potential damages. *See Smith v.*
12 *Cardinal Logistics Mgmt. Corp.*, No. 07-2104 SC, 2008 WL 4156364, at *11 (N.D. Cal.
13 Sept. 5, 2008) (small interest in individual litigation where damages averaged \$25,000-
14 \$30,000 per year of work).

15 **B. Arm’s Length Negotiations and Discovery Prior to Settlement Warrant**
16 **Approval**

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

27 While the recommendations of counsel proposing the settlement are not
28 conclusive, the Court can properly take them into account, particularly where, as here,

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

8 **1. Experience of Class Counsel**

9 Here, both counsel for Plaintiff and Defendant have a great deal of experience in
10 wage and hour class action litigation. Plaintiff’s attorneys have been approved as class
11 counsel in a number of other wage and hour class actions and have litigated class action
12 cases. Tulyathan Decl. at ¶¶ 42-45; Lee Decl. at ¶¶ 6-7; Marder Decl. at ¶ 11. Moreover,
13 Plaintiff’s counsel conducted an extensive investigation of the factual allegations
14 involved in this case. Tulyathan Decl. at ¶ 18; Lee Decl. at ¶ 2. Thus, based upon such
15 experience and knowledge of the current case, Plaintiff’s counsel believe that the current
16 settlement is fair, reasonable, and adequate. *See id.* Accordingly, this factor weighs in
17 favor of granting preliminary approval. *Karam v. Corinthian Colleges Inc.*, Case No. 10-
18 cv-06523-RGK-PJW, 2017 WL 4070889, at *3 (C.D. Cal. July 7, 2017) (Klausner, J.)
19 (granting preliminary approval, and noting lead counsel’s experience as supporting
20 preliminary approval).

21 **2. Investigation and Discovery Prior to Settlement**

22 Plaintiff’s counsel conducted significant discovery, research, and investigation in
23 furtherance of the prosecution of this Action. This discovery, investigation, and research
24 included, among other things: (a) multiple conferences with Plaintiff and Defendant’s
25 counsel; (b) inspection and analysis of thousands of pages of documents and information
26 produced by Defendant, including call logs of the scheduling hotline; (c) numerous
27 depositions taken including of Plaintiff, Defendant’s Rule 30(b)(6) witnesses—Ken
28 Eazell, Aaron Hess, Frank Nofuentes, Angelo Ortiz, and Kevin Brassier, several class

1 member declarants, and Defendant’s expert witness—Elaine Reardon, Ph.D.; (d) analysis
2 of the legal positions taken by Defendant; (e) analysis of potential class-wide damages,
3 including reviewing class records and data provided by Defendant formally as well as for
4 purposes of mediation; and (f) research of the applicable law with respect to the claims
5 and theories of liability asserted in the Complaint. Tulyathan Decl. at ¶ 18.

6 In addition to the formal discovery conducted and in advance of mediation, the
7 Parties engaged in informal discovery. Defendant provided information as to the size and
8 scope of the putative class, including the number of putative class members at each
9 facility, number of former employees, hourly rates of pay, number of workweeks, and
10 number of pay periods. *Id.* at ¶ 19. Defendant provided data up to March 2022. Plaintiff
11 then hired an expert to process and analyze the data, and extrapolate total maximum
12 potential liability to the entire putative class for the entire relevant time period. *Id.* at ¶
13 20. Thus, Plaintiff has obtained and analyzed information sufficient to assess liability
14 and damages. Based thereon, the following represents Plaintiff’s analysis of Defendant’s
15 potential liability.

16 • Off-the-clock claim: Plaintiff’s expert extrapolated the data and calculated
17 the unpaid wages for this claim to be approximately \$159,475.00. This amount was
18 calculated based on an assumption that employees spent 5 minutes off-the-clock per
19 weekly pay period checking their schedules via the scheduling hotline and/or Inside
20 Quad.

21 • Reporting time pay claim: Plaintiff’s expert extrapolated and calculated the
22 reporting time pay owed to the class at approximately \$6,755,813.33. This amount was
23 calculated based on an assumption that one shift was cancelled per pay period, at four
24 hours of reporting time pay per cancelled shift.

25 • Waiting time penalties: Plaintiff’s expert extrapolated and calculated
26 waiting time penalties for unpaid wages at approximately \$2,288,426.40, based upon
27 class data provided by Defendant.

28 • Expense reimbursement claim: Plaintiff’s expert calculated the unpaid

1 expense reimbursement at approximately \$381,725.00, based on an assumption of \$5.00
2 of reimbursement per weekly pay period.

3 • Wage statement claim: Plaintiff's expert calculated penalties under Labor
4 Code § 226(e) at \$1,550,400.00.

5 Tulyathan Decl. at ¶ 23. Based on these amounts, the total class-wide damages and
6 penalties amount to approximately \$11,135,839.73. *Id.*

7 With respect to Defendant's exposure under the PAGA, based on 36,491 pay
8 periods at issue during the relevant PAGA period, Plaintiff's counsel calculated PAGA
9 penalties of at least \$3,649,100.00. Tulyathan Decl. at ¶ 24. This amount was calculated
10 based on the \$100 initial violation penalty under the PAGA, which assumes that the
11 Court would not "stack" PAGA penalties for distinct violations of the Labor Code.
12 Courts have recently been hesitant to award a higher PAGA penalty for "subsequent"
13 violations where there is no prior citation by the Labor Commissioner, which renders the
14 evaluation of the potential PAGA penalties without "stacking" reasonable. *C.f. Bernstein*
15 *v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) ("Virgin was not notified by the
16 Labor Commissioner or any court that it was subject to the California Labor Code until
17 the district court partially granted Plaintiffs' motion for summary judgment. On this
18 basis, we reverse the district court's holding that Virgin is subject to heightened penalties
19 for any labor code violation that occurred prior to that point."). While *Bernstein*
20 addresses whether the higher subsequent penalty should be applied, defendants often
21 argue that this decision supports their position that the court should not award multiple
22 penalties for different predicate violations of the Labor Code during the same pay period.
23 Accordingly, evaluating the Settlement compared to a potential penalty of \$100 per pay
24 period is fair, adequate, and reasonable. Additionally, the Court also retains discretion to
25 reduce PAGA penalties. For example, in the Court of Appeal's decision in *Carrington v.*
26 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA
27 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,
28

1 citing the employer’s good faith attempt at complying with the law. *Id.* at 517. Upon
2 review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

3 With respect to defenses, Defendant contends that there is no liability to the class,
4 that the class should not be certified, and that it would have prevailed had the matter
5 proceeded forward to summary judgment. Plaintiff would have also been faced with
6 “good faith” defenses regarding the imposition of waiting time penalties and wage
7 statement penalties. In *Naranjo v. Spectrum Security Services, Inc.*, __ Cal. Rptr. 3d __,
8 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023 WL 3745105 (May 31, 2023),
9 the court upheld an employer’s good faith defense to the plaintiff’s claim for waiting time
10 penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal
11 defense, which precluded the imposition of waiting time penalties because its acts were
12 not “willful” within the meaning of the statute. *Naranjo* also permitted a good faith
13 defense to rebut the plaintiff’s claim for penalties, pursuant to Labor Code § 226. Here,
14 Defendant would have argued that it was not liable for waiting time or wage statement
15 penalties because it acted in good faith. As an additional defense Labor Code § 226,
16 Defendant would likely raise that employees did not suffer any “injury” or that the
17 violations were “knowing and intentional” as defined under Labor Code § 226(e).
18 Should Defendant succeed on these defenses, class members would recover \$0 for
19 waiting time penalties under Labor Code § 203 and statutory penalties under Labor Code
20 § 226. Taking these risks into account, Plaintiff’s total exposure for class claims is
21 estimated at a realistic \$7,297,013.33. Tulyathan Decl. at ¶ 26.

22 Additionally, there was significant risk that Defendant would prevail on the merits
23 at summary judgment in light of the new evidence it presented after class certification.
24 Indeed, the Court commented in the Order on Defendant’s Motion for Reconsideration,
25 Dkt. No. 66, that Defendant presented new evidence from its expert witness indicating
26 that a significant portion of class members may not have been subjected to the call-in
27 practice at issue, which would undermine the existence of a class-wide call-in practice
28 that was certified. The Court also commented that it would address this new evidence on

1 the merits at summary judgment. Given the Court’s indication and the risk that
2 Defendant would prevail on the merits at summary judgment and/or at trial in light of this
3 new evidence, Plaintiff’s counsel is of the opinion that the Settlement is fair, reasonable,
4 and adequate, and is in the best interest of Class Members in light of all known facts and
5 circumstances and risks inherent in litigation. Tulyathan Decl. at ¶ 27; Lee Decl. at ¶ 3.
6 Additionally, Defendant has also represented that it has closed its Merced facility as of
7 June 2023, which would effectively cut off any liability with respect to the Merced
8 facility as of the closure date. Tulyathan Decl. at ¶ 28.

9 Based on the potential exposure discussed above, the total amount of class
10 exposure ranges from \$7,297,013.33 to \$11,135,839.73. *Id.* at ¶ 29.

11 **3. Risk of Continued Litigation**

12 To assess the fairness, adequacy, and reasonableness of a class action settlement,
13 the Court must weigh the immediacy and certainty of substantial settlement proceeds
14 against the risks inherent in continued litigation. *In re General Motors Corp.*, 55 F.3d
15 768, 806 (3d Cir. 1995) (“present value of the damages plaintiffs would likely recover if
16 successful, appropriately discounted for the risk of not prevailing, should be compared
17 with the amount of the proposed settlement.”); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
18 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979); *Manual*
19 *for Complex Litigation, Fourth* § 21.62 at 316.

20 Here, the settlement affords fair relief to the Class, given that it avoids significant
21 legal and factual battles that otherwise may have prevented the Class from obtaining any
22 recovery at all. While Plaintiff’s counsel believe that the class claims are meritorious,
23 they are experienced and realistic, and understand that the outcome of a trial, and the
24 outcome of any appeals that would inevitably follow if Plaintiff prevailed, are inherently
25 uncertain in terms of both outcome and duration. Tulyathan Decl. at ¶ 30.

26 As evidenced by the record in this case, litigation has been lengthy and
27 contentious, and has already led to several attempts to appeal by Defendant. Had
28 litigation continued, it is likely that further appeals will be filed by the Parties. Given

1 these uncertainties through this settlement, the risks of continued litigation have been
2 eliminated while providing a substantial benefit to the Class.

3 **4. The Complexity, Expense, and Likely Duration of Continued**
4 **Litigation Against the Settling Defendant Favors Approval**

5 Another factor considered by courts in approving a settlement is the complexity,
6 expense, and likely duration of the litigation. *Officers of Justice*, 688 F.2d at 625; *Girsh*,
7 521 F.2d at 157. In applying this factor, the Court must weigh the benefits of the
8 settlement against the expense and delay involved in achieving an equivalent or more
9 favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

10 The idea of balancing a fair recovery now, with settlement dollars being paid out
11 now, as opposed to a years-long litigation and appeals process regarding various potential
12 issues, is a significant factor in favor of approval of the class settlement. *DIRECTV*, 221
13 F.R.D. at 526-27 (“Avoiding such a trial and the subsequent appeals in this complex case
14 strongly militates in favor of settlement rather than further protracted and uncertain
15 litigation.”).

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

20 **5. Non-Admission of Liability by Defendant**

21 Finally, Defendant denies any liability or wrongdoing of any kind associated with
22 the claims alleged in this lawsuit. Defendant maintains that it has complied with all
23 California wage and hour laws. Because of such denial, if this case is not resolved, it will
24 likely continue to be a long and protracted litigation, which will involve multiple appeals.

25 **6. Settlement Was the Result of Negotiations Facilitated By a**
26 **Neutral and With Approval of the Class Representative**

27 As stated above, the Parties participated in a second mediation session with
28 Michael J. Loeb, Esq., and continued settlement negotiations thereafter with the

1 assistance of Mr. Loeb. It was only after months of continued post-mediation
2 negotiations facilitated by Mr. Loeb that the Parties were able to reach a settlement.
3 Tulyathan Decl. at ¶ 12. The Class Representative further authorized entering into the
4 settlement, which resulted in the memorandum of understanding and formal settlement
5 agreement being signed. Sims Decl. at ¶ 6.

6 **C. Enhancement Payment to the Class Representative**

7 Pursuant to the terms of the Agreement, Plaintiff will also request an enhancement
8 payment, up to a maximum of Ten Thousand Dollars (\$10,000.00), which is to
9 compensate the Plaintiff for the actions the Plaintiff has taken to protect the interests of
10 the class, the degree to which the class has benefited from those actions, and the amount
11 of time and effort he expended in pursuing the litigation, as well as for executing a
12 general release and a California Civil Code § 1542 waiver. Settlement Agreement § 6;
13 *see Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Van Vranken v. Atlantic*
14 *Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995). As will be fully detailed in
15 Plaintiff's Motion for Final Approval, Plaintiff's request for an enhancement award meets
16 the standard set forth in *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157 (9th Cir.
17 2013).

18 Here, Plaintiff met and conferred with Class Counsel on a number of occasions to
19 discuss the case, including providing substantive information regarding Defendant's
20 practices. Sims Decl. at ¶ 7. As part of his duties as the Class Representative, Plaintiff
21 provided invaluable information regarding Defendant's wage and hour practices, and the
22 procedures that he followed during his employment with Defendant. *Id.* at ¶ 8. Plaintiff
23 also prepared for and sat for his deposition. Plaintiff brought this action as a class action
24 instead of an individual action so that the Class would be able to benefit from this case.
25 *Id.* at ¶ 9. Because the claims alleged by Plaintiff involved the payment of fees and costs
26 to the prevailing party, Plaintiff could have possibly faced paying the fees and costs of
27 Defendant, had Plaintiff not prevailed in this action. *Id.* at ¶ 10. Plaintiff's name was
28 listed on the class action complaint. He understood that this case would be in the public

1 record and there was a possibility that a class action would receive more notoriety than an
2 individual action and undertook such notoriety. *Id.* at ¶ 11. Plaintiff has made himself
3 available throughout this litigation, including searching for and gathering documents,
4 reviewing his employment documents, reviewing the pleadings in this case including the
5 PAGA letter, the Complaint, his declarations, and the Settlement Agreement, and
6 preparing for and sitting for his deposition. *Id.* at ¶ 12.

7 Finally, as part of the Settlement, Plaintiff has executed a full and general release
8 of all claims, including a California Civil Code § 1542 waiver, which other class
9 members did not have to provide. Sims Decl. at ¶ 13. Plaintiff understands that the
10 incentive payment is conditioned on final approval of the settlement. *Id.* at ¶ 14.

11 **D. The PAGA Settlement is Fair, Reasonable, and Adequate**

12 The Parties also seek approval of the PAGA Penalties, distribution plan of the
13 PAGA Penalties, and the release of the Released PAGA Claims as set forth in the
14 Settlement Agreement. California Labor Code § 2699(1)(2) provides that the court shall
15 review and approve any settlement of any civil action filed pursuant to PAGA. The
16 California Supreme Court has held that an employee who sues an employer under PAGA
17 need not satisfy class action requirements. *Arias v. Superior Court*, 46 Cal. 4th 969, 974
18 (2009). For example, “PAGA has no notice requirements for unnamed aggrieved
19 employees, nor may such employees opt out of a PAGA action.” *Baumann v. Chase Inv.*
20 *Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. Cal. 2014).

21 The Settlement allocates \$100,000.00 of the Gross Settlement Amount as PAGA
22 Penalties sought as part of the proposed PAGA settlement. Settlement Agreement §§
23 1.20, 1.21, 7. Pursuant to Labor Code § 2699(i), 75% of these penalties are to be paid to
24 the LWDA. Accordingly, the Settlement provides for \$75,000.00 to be paid to the State
25 of California from the Gross Settlement Amount. *Id.* The remaining \$25,000 will be
26 distributed to all PAGA Employees, which encompasses Class Members who worked for
27 Defendant at any time from April 6, 2019, through Preliminary Approval. *Id.* PAGA
28 Employees will be paid a pro rata portion of the PAGA Penalties, calculated based on the

1 number of pay periods each PAGA Employee performed work for Defendant in
2 California during the PAGA Period, as compared to the total number of pay periods all
3 PAGA Employees performed work for Defendant in California during the PAGA Period.
4 Settlement Agreement § 7.

5 The PAGA Employees will not be required to submit a claim form in order to be
6 issued a check for their share of the PAGA Penalties. PAGA Employees will not have
7 the opportunity to opt out of the release of the Released PAGA Claims. Settlement
8 Agreement §§ 1.28, 15.3.

9 This proposed PAGA Penalties is fair, reasonable, and adequate to all concerned,
10 and not the product of fraud, collusion, or overreaching. The proposed PAGA Penalties is
11 the product of informed negotiations. As described above, prior to reaching the proposed
12 settlement in this case, Plaintiff's counsel performed significant work to investigate,
13 research, and analyze the claims, defenses, legal and factual issues, and potential
14 recovery in this case.

15 Additionally, as noted above, there is risk that Plaintiff would not prevail on the
16 merits of his Labor Code claims at summary judgment or at trial in light of the new
17 evidence presented by Defendant. Thus, the PAGA claims, which are derivative in
18 nature, is also potentially in jeopardy. The settlement was the result of arm's length
19 settlement negotiations facilitated by a well-known mediator and represents a fair
20 resolution in light of the risks associated with further litigating the claims.

21 Accordingly, based on the terms set forth in the Parties' Settlement Agreement,
22 Plaintiff respectfully requests the Court approve the PAGA Penalties, distribution plan of
23 the PAGA Penalties, and the release of the Released PAGA Claims.

24 **E. Adequacy of Class Notice**

25 "Notice is satisfactory if it 'generally describes the terms of the settlement in
26 sufficient detail to alert those with adverse viewpoints to investigate and come forward
27 and be heard.'" *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)
28 (citation omitted). For a Rule 23(b)(3) Settlement class, the Court must "direct to class

1 members the best notice that is practicable under the circumstances, including individual
2 notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P.
3 23(c)(2)(B). The best practicable notice is that which is “reasonably calculated, under all
4 the circumstances, to apprise interested parties of the pendency of the action and afford
5 them an opportunity to present their objections.” *Mullane v. Central Hanover Bank &*
6 *Trust Co.*, 339 U.S. 306, 314 (1950).

7 Here, Defendant will provide the addresses of the Class Members from its records,
8 and the Settlement Administrator will perform skip tracing for those individuals whose
9 addresses are no longer accurate. Settlement Agreement §§ 13.2.1, 13.2.4. Subject to
10 Court approval, the Settlement Administrator shall send the Class Notice to Class
11 Members in the form attached as Exhibit A to the Settlement Agreement. Settlement
12 Agreement § 13.3.1. Any Class Member who wishes to object to the settlement may do
13 so by submitting an objection with the Court. Settlement Agreement § 14.

14 **F. Administration of the Settlement**

15 The Parties have agreed to utilize Phoenix Settlement Administrators to administer
16 the settlement. Settlement Agreement § 1.35; Tulyathan Decl. at ¶ 39. Counsel for the
17 Parties obtained several settlement administration bids. Given that Phoenix Settlement
18 Administrators provided the lowest quote, the Parties agreed to use Phoenix Settlement
19 Administrators. Tulyathan Decl. at ¶ 39. The Settlement Administrator’s duties are as
20 follows:

21 This administration duty shall include without limitation, setting
22 up an escrow account for funding of the Settlement, accepting
23 payments pursuant to the Payment Procedure described herein,
24 obtaining tax identification number(s) for Defendant applicable
25 to the Settlement, calculating the Class Member Payments,
26 performing an initial National Change of Address (“NCOA”) search upon receipt of the Class Member mailing addresses,
27 mailing and translating the Class Notices, performing skip
28 tracing on Class Notices returned as undeliverable, establishing
a hotline telephone number to communicate with Class Members

about the Settlement, reviewing and processing requests for exclusion, mailing the Class Members Payments and tax forms to the Participating Class Members and PAGA Employees, and making all required distributions. The Settlement Administrator will report payment of the individual Class Member Payments to all required taxing and other authorities and issue Internal Revenue Service Form W-2, 1099s, or other tax reporting forms. The Settlement Administrator will establish a Qualified Settlement Fund ("QSF"), pursuant to Section 468B(g) of the Internal Revenue Service, for the purposes of administering the Settlement. Subject to Court approval, all Settlement Administration Costs shall be taken from the Gross Settlement Amount. The Parties expect Settlement Administration Costs to not exceed Thirteen Thousand Two Hundred Fifty Dollars (\$13,250.00). Any unapproved amount of Settlement Administration Costs shall be allocated to the NSA and apportioned to the Participating Class Members as described in Paragraph 4 of this Settlement Agreement.

Settlement Agreement § 8.

G. The Scope of the Releases Are Appropriately Limited

Here, Class Members will only release claims that were alleged in the operative Complaint specific to their Group. The Released Claims for Group 1 Class Members is as follows:

Upon the Effective Date and Defendant's funding of the QSF, Group 1 Class Members (other than those who submit a valid opt-out/Request for Exclusion) shall release Defendant from all causes of action and factual or legal theories arising during the Group 1 Class Period that were alleged in the operative Complaint (or LWDA notice) or arise from facts alleged in the operative Complaint (or LWDA notice), including all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief, based on failure to pay wages (including overtime and minimum wages), failure to provide accurate wage statements, failure to timely pay all final wages, unfair business practices, alleged violations of Labor Code sections 201-204, 218.5, 226(a), 226.3, 510, 558,

1 1174, 1194, 1198, 1199, 2699, Business and Professions Code
2 section 17200 et seq., and the applicable IWC Wage Orders.
3 Class Members shall not waive section 1542 of the California
Civil Code.

4 Settlement Agreement § 12.3.1. In other words, Group 1 Class Members will only be
5 providing a release for the certified class claims. Given that the expense reimbursement
6 claim under Labor Code section 2802 was not certified by the Court at class certification,
7 Group 1 Class Members will not be providing a release of that claim.

8 Group 2 Class Members will provide the following release:

9
10 Upon the Effective Date and Defendant's funding of the QSF,
11 Group 2 Class Members (other than those who submit a valid
12 opt-out/Request for Exclusion) shall release Defendant from all
13 causes of action and factual or legal theories arising during the
14 Group 2 Class Period for violation of Labor Code sections 226(a)
15 that were alleged in the operative Complaint (or LWDA notice)
16 or arise from facts alleged in the operative Complaint (or LWDA
17 notice), including all damages, penalties, interest and other
amounts recoverable under said claims, causes of action or legal
theories of relief. Class Members shall not waive section 1542 of
the California Civil Code.

18 Settlement Agreement § 12.3.2. As the Court can see, Group 2 Class Members will only
19 be releasing claims under Labor Code section 226(a).

20 Further, regardless of whether a valid Request for Exclusion is submitted, PAGA
21 Employees will release the following claims under the PAGA:

22 PAGA Employees shall release Defendant from any liability for
23 civil penalties recoverable under PAGA for violations during the
24 PAGA Period under PAGA based on any factual or legal theories
25 that were alleged in the operative complaint and the LWDA
26 notice or arise from facts alleged in the operative complaint and
27 the LWDA notice, including for the following California Labor
28 Code sections: 201-204, 226(a), 510, 558, 1174, 1198, 1199,
2802, and 2699. PAGA Employees shall not waive section 1542
of the California Civil Code.

1 Settlement Agreement §§ 12.4, 15.3.

2 As detailed above, Class Members will be releasing only those claims specific to
3 their group during their specific class period that were alleged in the operative Complaint,
4 and will not be providing a general release or waiver pursuant to California Civil Code §
5 1542.

6 **H. Attorneys' Fees and Costs**

7 Under California law, the award of attorneys' fees in common fund wage and hour
8 class action settlements is proper under the percentage method. *See Laffitte v. Robert Half*
9 *Int'l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal
10 and state courts in holding that when class action litigation establishes a monetary fund
11 for the benefit of the class members, and the trial court in its equitable powers awards
12 class counsel a fee out of that fund, the court may determine the amount of a reasonable
13 fee by choosing an appropriate percentage of the fund created."). Under the percentage of
14 the fund method, the Court's objective remains to "mimic the market" in fixing a
15 reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner)
16 ("When a fee is set by a court rather than by contract, the object is to set it at a level that
17 will approximate what the market will set... The judge, in other words, is trying to mimic
18 the market in legal services.").

19 Pursuant to the terms of the Agreement, and without opposition from Defendant,
20 Class Counsel will move for attorneys' fees and costs contemporaneous with the Motion
21 for the Final Approval. Plaintiff's counsel will seek an award of attorneys' fees of p to
22 Three Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-
23 Three Cents (\$383,333.33), which is approximately one-third of the Gross Settlement
24 Amount, and reimbursement of actual costs of up to Fifty Thousand Dollars
25 (\$50,000.00). Settlement Agreement § 5.

26 **IV. CONCLUSION**

27 Based on the foregoing, Plaintiff respectfully requests that the Court grant
28 preliminary approval for the proposed class action settlement and schedule a "fairness

1 hearing,” *i.e.*, a hearing on the final approval of the settlement.
2

3 DATED: November 9, 2023

DIVERSITY LAW GROUP, P.C.

4 By: /s/ Kwanporn “Mai” Tulyathan
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Larry W. Lee

6 Kwanporn “Mai” Tulyathan

7 Attorneys for Plaintiff and the Class
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