

1 William L. Marder, Cal Bar No. 170131
2 POLARIS LAW GROUP, LLP
3 501 San Benito Street, Suite 200
4 Hollister, California 95023
5 Telephone: 831.531.4214
6 Facsimile: 831.634.0333

7 Dennis S. Hyun (State Bar No. 224240)
8 HYUN LEGAL, APC
9 515 S. Figueroa St., Suite 1250
10 Los Angeles, CA 90071
11 (213) 488-6555
12 (213) 488-6554 facsimile

13 Attorneys for Plaintiff and the Class

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

EIRON SPROUL, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

IKEA DISTRIBUTION SERVICES, INC.,
a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. BCV-20-101600

[Assigned for all purposes to the Hon. Thomas S.
Clark, Dept. 17]

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

Date: March 25, 2024
Time: 8:30 a.m.
Dept.: 17

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 25, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Thomas S. Clark, judge presiding, in Department 17 of the above referenced Court located at 1215 Truxtun Ave Bakersfield, CA 93301, Plaintiff Eiron Sproul (“Plaintiff”) will seek an Order: (1) preliminarily approving the Joint Stipulation Re: Class Action Settlement (“Settlement Agreement” or “Settlement”); (2) conditionally certifying the following Class for settlement purposes only: All current and former hourly-paid, non-exempt employees who worked for Defendant within the State of California and who were paid any shift differential, shift premium, or non-discretionary incentive wages at any time during the Class Period (July 10, 2016 through July 1, 2023); (3) appointing Plaintiff as the Class Representative, and William L. Marder of Polaris Law Group and Dennis Hyun of Hyun Legal, APC as Class Counsel; (4) preliminarily approving the Settlement Agreement and the Total Class Action Settlement Amount of \$450,000.00; (5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the Class Representative’s Enhancement Payment, Class Counsel’s fees and costs, the settlement administration fees, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to Class Members, which is attached as Exhibit 1 to the Settlement Agreement; (7) approving the distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Settlement Agreement; (8) appointing Xpand Legal as the Settlement Administrator; and (9) setting the matter for a Final Fairness and Final Approval hearing.

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

The basis for this Motion, filed without any opposition from Defendant IKEA Distribution Services, Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or object to the settlement.

1 This Motion will be based on the attached Memorandum of Points and Authorities, the
2 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of William L.
3 Marder, Dennis Hyun, and Plaintiff, and upon the oral arguments of counsel (should there be any)
4 and on the complete records and file herein.

5 DATED: January 17, 2024

POLARIS LAW GROUP

7 By: William L. Marder
8 William L. Marder
9 Attorneys for PLAINTIFF

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Eiron Sproul (“Plaintiff”) filed the instant Action entitled *Eiron Sproul vs. IKEA Distribution, Inc.*, Case no.: BCV-20-101600, on July 10, 2020, in the Superior Court for the County of Kern. On April 26, 2021, Plaintiff filed the First Amended Complaint, which alleges the following causes of action against Defendant: (1) failure to provide accurate, itemized wage statements; (2) failure to pay wages for sick leave or to pay wages timely during employment or at termination; (3) civil penalties under California’s Private Attorneys General Act; and (4) unfair, and deceptive business practices. On January 10, 2024, Plaintiff filed the operative Second Amended Complaint, which asserts the following claims: (1) failure to provide accurate, itemized wage statements; (2) failure to pay wages timely during employment or at termination including overtime, meal and rest premiums, and paid sick leave; (3) civil penalties under California’s Private Attorneys General Act; and (4) unfair, and deceptive business practices.

Since the filing of the case, the Parties engaged in informal discovery resulting in the production of data necessary for Plaintiff to calculate the potential exposure for this matter. (Declaration of Dennis Hyun (“Hyun Decl.”) at ¶ 8). The Parties engaged in arms’ length negotiations between highly experienced counsel to reach this settlement. (*Id.*).

The terms of the settlement provide that Defendant shall pay the Total Class Action Settlement Amount of Four Hundred and Fifty Thousand Dollars (\$450,000.00) which will be distributed to the class on a **non-reversionary** basis without the need to submit claim forms. (Joint Stipulation Re: Class Action Settlement (“Settlement Agreement” or “Settlement”) ¶ VI(21)). Thus, the entire settlement amount will be distributed and no remaining amounts, *i.e.*, unclaimed funds, will revert back to Defendant. (*Id.* ¶ VI(23)).

Plaintiff respectfully submits that this amount is fair, adequate, and reasonable, especially given the substantial risks and uncertainty of class certification and liability on the merits. Although Plaintiff and Plaintiff’s counsel believe that they can prevail on class certification, as well as on the merits, they recognize the inherent risk in further drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Based on their own independent investigation and evaluation, Plaintiff and Plaintiff’s counsel are

1 of the opinion that settlement for the consideration and on the terms set forth in the Settlement
2 Agreement is fair, reasonable, and adequate and is in the best interests of the Settlement Class in
3 light of all known facts and circumstances and the expenses and risks inherent in litigation.

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

6 **II. DISCUSSION**

7 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
8 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
9 review after notice has been distributed to the class members for their comment or objections.

10 The Manual for Complex Litigation (Third) § 30.41 states:

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

20 Thus, the preliminary approval by the trial court is simply a conditional finding that the
21 settlement appears to be within the range of acceptable settlements. As Professor Newberg
22 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
23 concerning a tentative settlement proposal may vary. The court may find that the settlement
24 proposal contains some merit, is within the range of reasonableness required for a settlement
25 offer, or is presumptively valid subject only to any objections that may be raised at a final
26 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
27 2002).

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

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

1 clause.

2
3 *Id.* at § 11.24.

4 Here, the Parties have reached such an agreement and Plaintiff is concurrently filing a
5 copy of the Settlement Agreement with this Motion, fully setting forth the agreement reached
6 among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by
7 the Parties, which include, among other things, the method for calculating the Class Members’
8 Individual Settlement Payments.

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

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

24 4 Newberg on Class Actions, at §11.26

25 In addition to such terms as class identification, settlement amount and payment
26 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to
27 which the Parties stipulate to the Court’s provisional certification of the Class, but do so for the
28 purposes of this settlement only. The Settlement Agreement further provides that if, for any
reason, the Settlement is not approved, the stipulation to certification will be void and Defendant
has reserved all rights to challenge certification.

A. PROPOSED CLASS DEFINITION

1 The current settlement is being settled on behalf of the following Class:

2 All current and former hourly-paid, non-exempt employees who worked
3 for Defendant within the State of California and who were paid any shift
4 differential, shift premium, or non-discretionary incentive wages at any
5 time during the Class Period (July 10, 2016 through July 1, 2023).

6 (Settlement Agreement ¶ I(1)(e)).

7 **B. NUMEROSITY**

8 Courts generally find that numerosity is satisfied if the class includes forty or more
9 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see*
10 *also Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court
11 “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39]
12 ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass’n v.*
13 *Bd. of Educ. of the Portland* (8th Cir. 1971) 446 F.2d 763, 765-66 (approving class of 20
14 members).)

15 In this case, there are approximately a total of 1,200 class members, therefore, numerosity
16 is satisfied. (Hyun Decl. ¶ 10).

17 **C. ASCERTAINABILITY**

18 Class members are ascertainable where they may be “readily identified without
19 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
20 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th
21 220, 240.)

22 Here, for settlement purposes, the identity of class members is clearly ascertainable from
23 Defendant’s employment and payroll records and have already been identified during the
24 informal discovery and mediation process.

25 **D. TYPICALITY AND ADEQUACY OF REPRESENTATION**

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

27 The commonality requirement is met when there are questions of law and fact common to
28 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
facts couple with disparate legal remedies within the class”). Commonality requires only that

1 some common legal or factual questions exist; the Plaintiff need not show that all issues in the
2 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
3 Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
4 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
5 Where the employer's conduct is uniformly directed at a class of employees, as it is here, the
6 class wide impact of the Defendant's policies satisfies the commonality requirement. *See*
7 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

8 Plaintiff alleges that Defendant violated Labor Code §201-203, 226, 226.7, 233, 256, 510,
9 512, 558, and 1194 by failing to pay sick pay, meal and rest period premium wages, and overtime
10 pay at the correct regular rate of pay. Plaintiff also asserts that Defendant failed to provide
11 accurate wage statements. Based on the foregoing, Plaintiff further seeks penalties under the
12 PAGA. Plaintiff alleges that he was subject to the foregoing policies, practices and payment
13 procedures. (Declaration of Eiron Sproul ("Sproul Decl.") ¶ 2).

14 Plaintiff does not have any interests adverse to the Class, nor has any such issues been
15 raised or presented. (Sproul Decl. ¶ 3). Plaintiff has taken all necessary steps to represent the
16 interests of the Class, by providing information and documents. (*Id.*) For such reasons, Plaintiff
17 has adequately represented the Class Members and will continue to do so.

18 **2. Class Counsel Have Adequately Represented the Class and Has**

19 **Experience with Wage and Hour Class Actions**

20 From the inception of the case, Class Counsel have solely represented the interest of the
21 Class. For example, Plaintiff's counsel conducted informal discovery on behalf of Plaintiff, the
22 Class, and towards Class issues. (Hyun Decl. ¶ 8). Class counsel also engaged in numerous meet
23 and confers with opposing counsel and obtained the Class data to calculate potential exposure and
24 engage in meaningful settlement discussions with defense counsel. (*Id.*) Finally, Class counsel
25 have been approved as class counsel on a number of prior cases and are competent to represent
26 the class. (Declaration of William L. Marder ("Marder Decl.") at ¶¶ 8-14; Hyun Decl. at ¶¶ 3-6).

27 **E. SUPERIORITY**

28 Class treatment is clearly superior to any other method of resolving Plaintiff's claims.
(*Sav-on Drug Stores, Inc.*, *supra*, 34 Cal. 4th 319 at p. 326) In employment actions, class actions

1 are in fact encouraged. (*Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308 (“In
2 light of the numerous common issues of fact and law that predominate in this lawsuit, we
3 conclude that proceeding by way of class action is the superior method of adjudication. Doing so
4 would further judicial economy by avoiding repetitious suits, would unify what would otherwise
5 be a series of small claims so as to enhance the class members' access to redress...”).)

6 Here, Plaintiff's claims are based on the alleged Class-wide policies, procedures, and
7 practices that apply to all Class Members and can be most efficiently litigated on a Class-wide
8 basis. The alternative would be the unrealistic filing of numerous individual claims. Since the
9 putative class members are employees with relatively modest individual claims and limited
10 resources, there is a strong likelihood that individual claims would never be brought. (*See Local*
11 *Joint Exec. Bd. of Culinary/Bartender Trust Fund* (9th Cir. 2001) 244 F.3d 1152, 1163
12 (superiority requirement met where class members would recover, at most, about \$1,330); *see*
13 *also Gentry v. Sup. Ct.* (2007) 42 Cal. 4th 443, 462.)

14 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY, AND**
15 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF**
16 **RECOVERY**

17 As discussed above, the Operative Complaint alleges seven causes of action for violation
18 of Labor Code § 201-203, 226, 226.7, 233, 246, 510, 512, 558, 1194 and 2698, *et seq.*

19 Specifically, Plaintiff alleges that Defendant failed to calculate and/or factor shift
20 differentials and/or premiums into the regular rate of pay for purposes of paying sick pay, meal
21 and rest period premium wages, and overtime pay. Plaintiff also asserts that Defendant failed to
22 provide accurate wage statements. As a result of these violations, Plaintiff seeks derivative
23 penalties under the Labor Code and the PAGA. Defendant denies liability was and is prepared to
24 continue to defend the action vigorously through denial of class certification, summary judgment,
and/or trial.

25 Since the filing of the case, the Parties engaged in informal discovery resulting in the
26 production of data necessary for Plaintiff to calculate the potential exposure for this matter. The
27 Parties' counsel thereafter engaged in arms' length negotiations, which resulted in this settlement.
28 (Hyun Decl. ¶ 8).

1 Based on their own independent investigations and evaluations, the Parties and their
2 respective counsel are of the opinion that settlement for the consideration and on the terms set
3 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
4 the Class and Defendant in light of all known facts and circumstances and the expenses and risks
5 inherent in litigation, and is designed so that the Parties may buy their peace and avoid continuing
6 litigation and costs. (Hyun Decl. ¶ 7).

7 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
8 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
9 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
10 plaintiff's claims. As discussed herein, Plaintiff counsel has conducted extensive investigation
11 and, in light of the strength and weaknesses of Plaintiff claims, Plaintiff attorneys submit that
12 this settlement is fair pursuant to *Kullar*.

13 Plaintiff estimated that the maximum Labor Code damages and penalties that could be
14 awarded was approximately \$2,819,500.00, which is allocated as follows:

Underpaid wages	\$42,000.00
Labor Code § 203 penalties	\$1,620,000.00
Labor Code § 226 penalties	\$140,000.00
PAGA penalties premised on Labor Code § 226	\$700,000.00
PAGA penalties premised on underpaid wages	\$280,000.00
PAGA penalties premised on Labor Code § 203	\$37,500.00
Total	\$2,819,500.00

23 (Hyun Decl. ¶ 9). Further, Plaintiff estimated the total potential PAGA penalties could amount to
24 \$2,060,350. (*Id.*).

25 Defendant contested the merits and denied it was liable at all. Defendant argued that
26 individualized issues would predominate and Plaintiff may not have been able to prevail on his
27 meal and rest break claims. With respect to waiting time penalties, Defendant contended that it
28

1 would not be subject to Section 203 penalties, based on a good faith defense since its policy was
2 compliant. With respect to wage statement liability, Defendant contended that liability under
3 Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from
4 knowing and intentional violations. Defendant would have also likely argued that there is no
5 private right of pay for sick pay violations.

6 PAGA penalties are also subject to any good faith defenses that Defendant may raise. (*Id.*
7 at ¶10). Moreover, PAGA penalties are discretionary and subject to reduction by this Court.
8 Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA
9 penalties where “...if, based on the facts and circumstances of the particular case, to do
10 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
11 Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in
12 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed
13 the trial court’s reduction of PAGA penalties by 90 percent, citing the employer’s good faith
14 attempt at complying with the law. Defendant argued that based on their compliant policies, that
15 the Court would not be inclined to impose maximum PAGA penalties based on their compliant
16 policies and good faith attempt to pay out any premiums that were due to class members. (*Id.*)
17 Even assuming 100% liability and recovery, the current settlement is 16% of the total exposure
18 (\$450,000 divided by \$2,819,500.00). (*Id.*)

19 Numerous courts have held that **gross** settlements approximating between only 8 and 25%
20 of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
21 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering
22 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
23 amounting to only a fraction of the potential recovery does not per se render the settlement
24 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
25 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
26 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
27 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding
28 that class action settlement recovering between 8.5% and 25% of the defendant’s potential
exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161

(C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained **only 9.1%** of projected damages, given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable). In the present case, 16% of the realistic total exposure is well within the range of that the court could approve.

G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT COLLUSIVE

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

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

1 Here, both Plaintiff and Defendant's counsel have a great deal of experience in wage and
2 hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number
3 of wage and hour class actions and have extensive litigation experience. (Marder Decl. ¶¶ 8-14;
4 Hyun Decl. ¶¶ 3-6). Moreover, as discussed above, Plaintiff's counsel conducted a very extensive
5 investigation of the allegations involved in this case since the inception. Each side has apprised
6 the other of their respective factual contentions, legal theories and defenses, resulting in extensive
7 arms' length negotiations taking place among the Parties.

8 The settlement for each participating Class Member is fair, reasonable and adequate,
9 given the inherent risks of litigation, including the substantial risks relative to class certification,
10 and the costs of pursuing such litigation. The settlement is the result of extensive arms' length
11 negotiations between the Parties and their counsel.

12 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
13 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff in not
14 prevailing on one or more of the causes of action or theories alleged in the Operative Complaint,
15 the possibility of non-certification, adverse disposition, and potential for appeals by one or both
16 sides. (Hyun Decl. at ¶ 7). Despite the asserted fairness of the settlement terms, as set forth in
17 the *Class Notice*, should any Class Member wish to pursue his or her own case for the claims
18 being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*,
19 Opt-Out) from the settlement. Moreover, as set forth in the *Class Notice*, Class Members are
20 advised of their right to attend the final approval hearing and object to any of the terms contained
21 in the proposed Settlement Agreement, provided that they give proper notice to the Parties and
22 the Court.

23 H. SETTLEMENT TERMS AND EVALUATION

24 1. Proposed Terms of the Settlement

25 This is a non-reversionary settlement wherein Class Members will be automatically paid
26 out of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement
27 are as follows.

28 The Settlement Agreement provides for a Total Class Action Settlement Amount of Four
Hundred and Seventy-Five Thousand Dollars (\$450,000.00). (Settlement Agreement ¶ I(1)(z)).

1 Attorney's fees of up to one-third, or \$150,000.00 will be paid to Class Counsel, along with costs
2 of up to \$15,000.00. (Settlement Agreement ¶¶ VI(22)(a), (b)). Plaintiff will seek a Class
3 Representative Enhancement Payment up to \$10,000.00. (*Id.* ¶ VI(22)(c)). The Settlement
4 Administrator will be paid an estimated amount of \$12,500.00 for costs of administering this
5 settlement. (*Id.* ¶ VI(22)(d)). After deduction of the foregoing, the remainder will be distributed
6 to Class Members who do not opt-out of the Settlement Agreement based on the number of
7 Qualified Workweeks a Class Member worked during the Class Period. (Settlement Agreement ¶
8 VI(22)(f)). Further, 25% of the PAGA Allocation (\$11,250.00), shall be paid pro to the PAGA
9 Group Members based on the Qualifying Pay Periods worked during the PAGA Period.
10 (Settlement Agreement ¶ VI(22)(g)). The reason for such allocation is so that the Class
11 Members/PAGA Group Members who suffered higher damages will be allocated greater
12 recovery. Class Members may opt-out of the Settlement if they so choose. (Settlement
13 Agreement ¶ IV(11)).

14 **2. Nature of Any Injunctive Relief**

The Settlement Agreement does not provide for any injunctive relief.

15 **3. Amount and Manner of Distribution of the Compensation to be**
16 **Provided to Class Members Including the Amount, or an Estimate, of**
17 **What Each Class Member Will Receive**

18 The Net Settlement Amount (calculated after deduction of attorneys' fees, costs, class
19 representative service payment, the PAGA portion of the settlement payable to the State and
20 Aggrieved Employees and claims administration costs) shall be paid to all Class Members who
21 do not opt out of the settlement. (Settlement Agreement ¶ VI(22)(f)). Based on the Net
22 Settlement Amount, on a pure raw average, each class member will receive approximately
23 \$190.63. (Hyun Decl. ¶ 10). Such amounts for each person could increase or decrease depending
24 on a number of factors, including the amount of Qualifying Workweeks worked by each Class
25 Member. The actual amount each person will be entitled to will not be known until the class data
26 is transferred to the Settlement Administrator for processing.

27 **4. Whether, and Under What Circumstances, Amounts May Revert to**
28 **Defendant, Disposition of Any Un-cashed Checks**

1 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
2 paid out. Settlement checks will remain valid for a period of 180 calendar days after they issue.
3 Any check not cashed within 180 calendar days will be distributed to the California State Controller
4 Unclaimed Property Fund and held in the name of the Participating Class Member. (Settlement
5 Agreement ¶ VII(24)(j)).

6 **5. Scope of the Release of Class Members and PAGA Group Members**

7 The scope of the release, as listed below, is identified in the Settlement Agreement at
8 paragraph V(16), as well as in each of the Notices that will be sent to Class Members.

9 All causes of action and factual or legal theories/allegations that were
10 alleged in the operative complaint in the Action, including but not limited
11 to all of the following claims for relief: (a) failure to provide accurate
12 itemized wage statements; (b) failure to timely pay wages during
13 employment including overtime and meal or rest premiums at the regular
14 rate of pay; (c) failure to pay employees accrued sick pay; (d) failure to
15 timely pay wages at termination; (e) unfair, and deceptive business
16 practices based on the alleged failure to pay employees accrued sick pay,
17 overtime wages, and meal and rest period premiums at the regular rate of
18 pay; (f) any other claims or penalties under the wage and hour laws
19 pleaded in the Action or primary rights associated with such laws; and (g)
all damages, penalties, interest and other amounts recoverable under said
causes of action under California and federal law, to the extent
permissible, including but not limited to the California Labor Code, the
applicable Wage Orders, and the California Unfair Competition Law as to
the facts alleged in the Action (collectively, the “Released Claims”). The
period of the Release shall extend to July 1, 2023. The res judicata effect
of the Judgment will be the same as that of the Release.

20 As shown, the scope of the release is narrow and is limited by the claims asserted in the
21 Operative Complaint. Further, the Release does not waive Civil Code §1542 for Class Members,
22 it does so only for and with regard to the named Class Representative.

23 PAGA Group Members will release the following claims:

24 All causes of action, claims, and/or factual or legal theories for civil penalties, both
25 potential and actual, that were alleged in the operative complaint in the Action,
26 including but not limited to all of the following claims for relief: (a) failure to
27 provide accurate itemized wage statements; (b) failure to timely pay wages during
28 employment including overtime and meal or rest premiums at the regular rate of
pay; (c) failure to pay employees accrued sick pay; (d) failure to timely pay wages
at termination; (e) any other claims or penalties under the wage and hour laws
pleaded in the Action or primary rights associated with such laws; and (f) all
damages, penalties, interest and other amounts recoverable under said causes of
action under California and federal law, to the extent permissible, including but

1 not limited to the California Labor Code, the applicable Wage Orders, and the
2 California Unfair Competition Law as to the facts alleged in the Action
(collectively, the “PAGA Released Claims”). The period of the Release shall
3 extend to July 1, 2023. The res judicata effect of the Judgment will be the same as
that of the Release.

4 (Agreement ¶ V(17)).

5 **6. Tax Treatment of Settlement Amounts**

6 All Individual Settlement Payments are allocated as follows: 20% wages subject to
7 withholding and reported on IRS W2 forms and 80% penalties and interest reported by IRS 1099
8 forms. (Settlement Agreement ¶ VII(24)(g)). 100% of the PAGA Group Members’ payments
9 shall be classified as penalties. (*Id.* ¶ VII(24)(i)).

10 **7. Affirmative Obligations to be Undertaken by Class Members or Class** 11 **Counsel and the Reasons for Any Such Obligations**

12 As stated above, Class Members do not need to do anything should they wish to receive
13 their share of the settlement funds. Thus, this substantially decreases the amount of burden each
14 Class Member must bear in order to receive their settlement share. If a Class Member does not
15 wish to take part in this settlement and be bound by the release, he/she must submit an exclusion
16 request. Such obligations are thoroughly identified in each class member’s Class Notices.
(Settlement Agreement Exh. 1).

17 **I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS**

18 Class Members will not be required to submit a claim form to receive compensation.
19 Instead, this is a non-reversionary Settlement Agreement. Class Members will be provided 30
20 calendar days to opt out or object to the settlement. (Settlement Agreement ¶¶ IV(10), (11),
21 (24)(d)). Any Class Member who does not opt-out of the settlement will be automatically issued
22 his/her share of the settlement proceeds. Given that this is a non-reversionary settlement, the
23 parties believe that 30 calendar days is sufficient time for class members to object or opt-out of
24 the settlement. Further, Class Members will be notified of the Fairness/Final Approval hearing
25 and will have an opportunity to appear at the Fairness hearing.

26 **J. CY PRES DISTRIBUTION**

27 Individual Settlement Payments checks remaining un-cashed for more than 180 days after
28 issuance will be tendered to California State Controller Unclaimed Property Fund and held in the

1 name of the Settlement Class Member. (Settlement Agreement ¶ VII(24)(j)). Thus, the
2 Settlement Agreement does not provide for a *cy pres* recipient.

3 **K. NOTICE TO CLASS MEMBERS**

4 No later than fourteen (14) calendar days following preliminary approval of this Settlement by the
5 Court, Defendant shall provide the Settlement Administrator with data that is within Defendant's
6 possession containing, for each Class Member and/or PAGA Group Member: (a) the Class
7 Member/PAGA Group Member's name; (b) the Class Member/PAGA Group Member's last known
8 address; (c) the Class Member/PAGA Group Member's social security number; (d) the Class
9 Member/PAGA Group Member's first date of employment in California as a non-exempt employee; and
10 (e) the Class Member/PAGA Group Members' last date of employment (if any) in California as a non-
11 exempt employee. (Settlement Agreement ¶ IX(29)). The Settlement Administrator will mail a
12 Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current,
13 known mailing addresses identified in the Class List. (*Id.* at ¶ VII(24(b)). Prior to mailing, the
14 Settlement Administrator will perform a search based on the National Change of Address
15 Database for information to update and correct for any known or identifiable address changes.
16 (*Id.*) If a Notice is returned as non-deliverable but with a forwarding address, the Settlement
17 Administrator shall resend the Notice to the forwarding address. (*Id.*) If a Notice is returned as
18 non-deliverable with no forwarding address, the Settlement Administrator shall conduct a skip
19 trace to locate the most current address of the person to whom the Notice was addressed and shall
20 resend the Notice to any updated address. (*Id.*) Each Class Notice will provide: (i) information
21 regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the
22 Settlement Class definition; (iv) the total number of Qualifying Workweeks each respective
23 Settlement Class Member worked for Defendant during the Class Period; (v) each Settlement
24 Class Member's estimated Individual Settlement Award and the formula for calculating said Award;
25 (vi) the dates which comprise the Class Period; (vii) instructions on how to submit Requests for
26 Exclusion or Notices of Objection; (viii) the deadlines by which the Settlement Class Member
27 must postmark or fax any requests for exclusions/opt-outs/objections; and (ix) the claims to be
28 released. (*Id.* at ¶ 43; Ex. A)

Based on the foregoing, the notice procedures fully comply with California Rules of Court

1 Rule 3.766 (d) & (e).

2 **L. COSTS AND FEES**

3 **1. Attorneys' Fees and Costs**

4 California state and federal courts have recognized that an appropriate method for
5 determining award of attorneys' fees is based on a percentage of the total value of benefits to
6 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
7 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,
8 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997).
9 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
10 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
11 bear the entire burden alone." *Vincent*, 557 F. 2d at 769.

12 Under California law, the award of attorneys' fees in common fund wage and hour class
13 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1
14 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state
15 courts in holding that when class action litigation establishes a monetary fund for the benefit of
16 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
17 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
18 percentage of the fund created."). Under the percentage of the fund method, the Court's objective
19 remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
20 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is
21 to set it at a level that will approximate what the market will set... The judge, in other words, is
22 trying to mimic the market in legal services.").

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

28 Moreover, in the *Laffitte* intermediate court decision, the court observed that "35 percent
of the common fund is consistent with, and in the range of, awards in other class action lawsuits."

1 *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing
2 one-third of the fund clearly falls within that range, and is consistent with other comprehensive
3 surveys of class action settlements and fee awards. *See* Fitzpatrick, *An Empirical Study of Class*
4 *Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing
5 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent
6 and 35 percent, with almost no awards more than 35 percent.”); Eisenberg & Miller, *Attorney*
7 *Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud.
8 248, 262, fn.16 (2010) (independent studies of class action litigation nationwide conclude that
9 fees representing one-third of the total recovery is consistent with market rates).

10 The results delivered by Plaintiff's Counsel also support the requested percentage of the
11 fund. Here, the Parties have agreed to a payment of a maximum of one-third of the settlement
12 (\$150,000.00) for payment to Class Counsel as attorneys' fees and costs up to \$15,000.00.
13 (Settlement Agreement ¶¶ VI(22)(a), (b)). Class counsel have, at their own risk, expended costs,
14 for example, to file this instant action, service of process, payment of mediation fees, and other
15 litigation related costs and will be submitting detailed cost sheets for the respective costs incurred
16 prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily
17 approve the attorney's fees and costs being requested by the parties.

18 **2. Proposed Payment to Class Representative**

19 Plaintiff requests a Class Representative Enhancement Payment of \$10,000.00.
20 (Settlement Agreement ¶¶ VI(22)(c)). Plaintiff conferred with Class Counsel about the case,
21 provided documents and information to Class Counsel, and reviewed and signed the Settlement
22 Agreement. (Sproul Decl. ¶ 3). Moreover, as part of Plaintiff's duties as the representative,
23 Plaintiff provided invaluable information, evidence, and documents that resulted in this
24 settlement. (*Id.*)

25 Given that future employers are much less likely to hire individuals who have filed suit
26 against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the
27 future from other potential employers. Plaintiff assumed these risks from which the whole class
28 benefited. Class members did not have to file individual lawsuits and bear the risks of payment

1 of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and
2 not getting future employment had they filed a public lawsuit.

3 Notably, courts have routinely granted approval of representative enhancements for far
4 greater amounts than the \$7,500.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
5 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
6 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)
7 (two incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v.*
8 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
9 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio
10 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068,
11 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive
12 award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.
13 1998) (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiff
14 requests an enhancement of \$10,000.00, which is “presumptively reasonable” and consistent with
15 case law.

16 3. Class Administration Fees

17 The Settlement Administration Costs are currently estimated to \$12,500.00. (Settlement
18 Agreement ¶ VI(22)(d)). The Parties have agreed to Xpand Legal, for administering this
19 Settlement, including, but not limited to, printing, distributing, and tracking documents for this
20 Settlement, tax reporting, distributing the Total Class Action Settlement Amount, and providing
21 necessary reports and declarations, as requested by the Parties. Xpand is a well-recognized class
22 action Settlement Administrator. The parties believe that the administration fee is reasonable and
should be approved.

23 III. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION

24 Plaintiff uploaded a copy of this Motion, Settlement Agreement and Proposed Order to the
25 LWDA. (Hyun Decl. ¶ 14).

26 IV. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT, 27 MOTION FOR APPROVAL, ATTORNEY’S FEES, AND FINAL ACCOUNTING

Description	Date	Details	Settlement
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Agreement

Preliminary Approval Date			
Class Member Data to Administrator		14 calendar days from preliminary approval	¶ IX(29)
Mailing of Class Notice		10 calendar days from receipt of Class Member Data	¶ VII(24)(b)
Opt Out/Objection Deadline		30 days from Notice Mailing	¶¶ IV(10), (11), (24)(d)
Final Approval	On or after 6/24/2024		

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing on or after June 24, 2024, or a later date that is convenient for the Court.

DATED: January 17, 2024

POLARIS LAW GROUP

By: William L. Marder
William L. Marder
Attorneys for PLAINTIFF