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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NICOLA ROMANO, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SSA TERMINALS, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

DEFENDANTS.

Case No.: 20STCV29048

[Assigned for all purposes to the Hon. William F.
Highberger, Department 10]

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

Date: April 22, 2022

Time: 11:00 a.m.

Dept.: 10

Complaint Filed: July 30, 2020

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on April 22, 2022, at 11:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable William F. Highberger, judge presiding, in
4 Department 10 of the above referenced Court located at 312 N. Spring Street, Los Angeles,
5 California 90012, Plaintiff Nicola Romano (“Plaintiff”) will seek an Order: (1) approving the
6 Stipulation of Class and Representative Action Settlement and Release (“Agreement” or
7 “Settlement Agreement”) in this matter; (2) conditionally certifying the following Settlement
8 Class for settlement purposes only: “all current and former employees of Defendant represented
9 by the International Association of Machinists and Aerospace Workers (or “IAM”, either at the
10 local or national level) in California who received at least one wage statement from Defendant at
11 any time from, and including, April 6, 2019 to November 1, 2020” (the “Settlement Class”) and
12 dismissing all persons who do not fall within this settlement class but could otherwise fall within
13 the proposed class definition set forth in the operative; (3) appointing Plaintiff Nicola Romano as
14 the Class Representative and Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of
15 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel; (4)
16 preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the
17 amount of Two Hundred Fifty Thousand Dollars (\$250,000.00); (5) finding on a preliminary
18 basis that the Agreement appears to be within the range of reasonableness of a settlement,
19 including the amount of the PAGA penalties, Class Representative Enhancement Payment, Class
20 Counsel fees and costs, Settlement Administration Costs, and the allocation of payments to
21 Settlement Class Members, that could ultimately be given final approval by this Court; (6)
22 approving the Notice of Class and Representative Action Settlement to be sent to Settlement
23 Class Members; (7) appointing Phoenix Settlement Administrators as the Settlement
24 Administrator; and (8) setting the matter for a Final Fairness and Final Approval hearing.

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

28 The basis for this Motion, which Plaintiff does not anticipate Defendant SSA Terminals,

1 LLC (“Defendant”) will oppose, is that the proposed settlement is fair, adequate, and reasonable
2 and the procedures proposed by the Parties are adequate to ensure the opportunity of class
3 members to participate in, opt-out of, or object to the settlement. This Motion will be based on
4 the attached Memorandum of Points and Authorities, the Settlement Agreement and the
5 proposed Notice of Class Action Settlement, and the supporting Declarations of Larry W. Lee,
6 Kristen M. Agnew, Nicholas Rosenthal, William Marder, and Plaintiff Nicola Romano, and upon
7 the oral arguments of counsel (should there be any) and on the complete records and file herein.
8

9 Dated: March 30, 2022

DIVERSITY LAW GROUP, P.C.

10 By: 
11 Larry W. Lee
12 Kristen M. Agnew
13 Nicholas Rosenthal
14 Attorneys for Plaintiff, the Class, and Aggrieved
15 Employees
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative action seeking statutory and civil
3 penalties for wage statement violations. Plaintiff Nicola Romano (“Plaintiff”) brought claims
4 against Defendant SSA Terminals, LLC (“Defendant”) (together, Plaintiff and Defendant shall
5 be referred to as the “Parties”) on a class-wide basis, alleging that Defendant had a policy and
6 practice of issuing defective wage statements in violation of Labor Code section 226(a).
7 Defendant denies each, every, and all of the allegations of the Complaint.

8 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
9 to the claims alleged in the Complaint and engaged in a thorough study of the legal principles
10 applicable to the claims asserted against Defendant. Defendant provided information related to
11 the number of wage statements issued to the Settlement Class that Plaintiff contends violated the
12 Labor Code. Thereafter, the Parties commenced settlement negotiations through a private
13 mediator and were ultimately able to reach the current settlement. **Significantly, this entire**
14 **amount is non-reversionary, such that no monies will revert back to Defendant.**

15 Plaintiff believes this amount is fair, adequate, and reasonable, especially given the risks
16 and uncertainty of class certification and the merits of this case.

17 Although Plaintiff and his counsel believe that they can prevail on class certification, as
18 well as on the merits, Plaintiff and his counsel recognize the inherent risks in drawn-out litigation
19 and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish
20 liability. And, Plaintiff understands Defendant denies the allegations in the Complaint and
21 believes that it can prevail at trial. Overall, Plaintiff and his counsel, based on their own
22 independent investigation and evaluation, are of the opinion that the settlement for the
23 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and
24 adequate and is in the best interests of the Class and Defendant in light of all known
25 circumstances and the expenses and risks inherent in litigation.

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

1 **II. DISCUSSION**

2 On July 30, 2020, Plaintiff filed a class and representative action complaint against
3 Defendant alleging violation of California Labor Code sections 226(a) and 2698, *et seq.*, the
4 Private Attorneys General Act (“PAGA”) (the “Complaint”). Declaration of Nicholas Rosenthal
5 (“Rosenthal Decl.”) ¶ 2. Plaintiff’s Complaint alleged that the wage statements issued by
6 Defendant failed to identify the correct total hours worked in violation of Labor Code section
7 226(a)(2) and sought penalties pursuant to PAGA for the underlying violation of Labor Code
8 section 226(a). *Id.* More specifically, Plaintiff alleged that the wage statements issued to non-
9 exempt employees listed an incorrect total hours work on the right side of the wage statements
10 under the heading “Other Benefits and Information.” Thus, Plaintiff maintains that the wage
11 statements were affirmatively providing incorrect information as to the total hours worked, in
12 violation of Labor Code Section 226(a)(2).

13 Following the filing of the Complaint, the Parties subsequently agreed to attempt
14 mediation of Plaintiff’s claims. *Id.* ¶ 3. In connection therewith, Defendant produced data
15 relating to the number of wage statements issued to the putative class. This allowed Plaintiff to
16 conduct a full damage analysis. *Id.*

17 On February 3, 2021, the Parties conducted a full-day mediation with the Honorable
18 Thierry Patrick Colaw (Ret.). *Id.* ¶ 4. The Parties were unable to reach an agreement.

19 Thereafter, the Parties engaged in discovery. On or about February 9, 2021, Plaintiff
20 propounded discovery requests to Defendant, including requests for production of documents
21 and interrogatories. *Id.* ¶ 5. Defendant produced responsive documents, including Plaintiff’s
22 wage statements, and copies of Defendant’s correspondence and policies regarding the issuance
23 of wage statements. *Id.*

24 After the exchange of further information and discovery and extended negotiations, the
25 Parties reached an agreement in principle which was memorialized in a Memorandum of
26 Understanding. *Id.*

27 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
28 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final

1 review after notice has been distributed to the class members for their comment or objections.

2 The *Manual for Complex Litigation, Third* § 30.41 states:

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

9 (Fed. Jud. Ctr., 3rd ed. 1995.)

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

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

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

24 *Id.* § 11.24.

25 Here, the Parties have reached such an agreement and Plaintiff has submitted to this
26 Court in connection with this Motion a copy of the Settlement Agreement fully setting forth the
27 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
28 agreement reached by the Parties, which include, among other things, the method for calculating

1 the Class Members' individual settlements.

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

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

15 *4 Newberg on Class Actions* § 11.26.

16 In addition to such terms as class identification, settlement amount and payment
17 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
18 to which the Parties stipulate to the Court’s provisional certification of the Settlement Class for
19 the purposes of this settlement only.

20 **A. Proposed Settlement Class Definition**

21 The operative complaint sets forth the following proposed class definition: “[a]ll current
22 and former employees of Defendants in the State of California who worked at any time from
23 April 6, 2019, through the present.” [Complaint at ¶ 17.] However, through investigation and
24 discovery, Plaintiff determined the alleged violative wage statements were only issued to a
25 subset of employees; namely, those Defendant’s employees who worked during the applicable
26 period and were members of the IAM. As such, the current settlement is being settled on behalf
27 of a Settlement Class of “all current and former employees of Defendant represented by the
28 International Association of Machinists and Aerospace Workers (or “IAM”, either at the local or

1 national level) in California who received at least one wage statement from Defendant at any
2 time from, and including, April 6, 2019 to November 1, 2020.” There are approximately 326
3 individuals that comprise of the Settlement Class. *See* Settlement Agreement ¶ 3. With that,
4 Plaintiff requests the Court dismiss from this matter and at this time those persons who may fall
5 within the proposed class definition set forth in the operative complaint but do not fall within the
6 Settlement Class as defined above. However, Plaintiff requests the Court do so without
7 prejudice to Plaintiff seeking to add them back in if final approval of the settlement is not
8 granted.

9 **B. Settlement Terms and Evaluation**

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

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

1 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage
2 and hour class action litigation. Plaintiff's counsel has been approved as class counsel in a
3 number of wage and hour class actions and have extensive litigation experience. Rosenthal Decl.
4 ¶¶ 26-28; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 7-9; Declaration of Kristen M. Agnew
5 ("Agnew Decl.") ¶¶ 5-11; Declaration of William L. Marder ("Marder Decl.") ¶¶ 6-13. Each side
6 has apprised the other of their respective factual contentions, legal theories, and defenses,
7 resulting in negotiations taking place between the Parties. Rosenthal Decl. ¶¶ 13-25.

8 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
9 face potential liability of up to approximately \$2,656,900.00 for Plaintiff's class claims, pursuant
10 to Labor Code § 226(e), which provides a \$50 penalty for the initial violation, followed by \$100
11 penalties for subsequent violations, with each employee's cumulative penalties totaling no more
12 than \$4,000. Rosenthal Decl. ¶ 13. Plaintiff was able to estimate the potential damages and
13 penalties based on data provided by Defendant, including the number of employees in the
14 putative class and the number of wage statements at issue. *Id.* Specifically, the amount of Labor
15 Code § 226(e) penalties are based on approximately 26,732 allegedly deficient wage statements
16 and approximately 326 class members. *Id.*

17 With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that
18 Defendant could face civil penalties for violation of Labor Code § 226 of up to a maximum
19 \$2,673,200 if Plaintiff were successful at trial, which is premised on a \$100 penalty per wage
20 statement. *Id.* ¶ 14.

21 Thus, based on the data provided by Defendant, Plaintiff's counsel estimated total class
22 and PAGA penalties to be approximately \$5,330,100.00. *Id.* ¶ 13.

23 However, Defendant asserts it has strong arguments as to why it does not face liability in
24 this matter. As Plaintiff understands, Defendant's central argument is that the wage statements at
25 issue do in fact provide the proper hours total on them. Specifically, if an employee were to
26 simply add up the listed hours categories under the "Earnings" section of the wage statements,
27 they would come up with the correct total hours worked during the pay period. The fact that the
28 wage statements on the right side under "Other Benefits and Information" list a total hours

1 worked that is different from the actual total hours worked does not change this. For one, an
2 employee would not look in “Other Benefits and Information” for their hours worked total, but
3 instead at the “Earnings” section. Two, this number provided is a reference to the hours credited
4 to the union’s benefits plan. Further, Defendant contends not every wage statement issued to
5 IAM-represented employees during the applicable period had an hours total on the right side that
6 was more than the hours worked total on the left side. Rather, some had left/right sides that were
7 equal or a left side greater than the right side, which Defendant argues contravenes Plaintiff’s
8 arguments/theory of liability in this matter. Thus, Defendant would argue that there is no
9 liability and/or several defenses exist as to Plaintiff’s claim(s) in this case.

10 In terms of penalties, there is a \$4000 cap under Labor Code Section 226(e) per
11 individual. In this instance, where there is a relatively stable union workforce that is paid on a
12 weekly basis, it is likely that a significant portion of the wage statements at issue do not
13 contribute value to the case because the individual cap has already been met.

14 Further, even assuming Plaintiff prevailed on his PAGA claim, the Court still has
15 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
16 decline to award PAGA penalties where “if, based on the facts and circumstances of the
17 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive,
18 or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
19 *Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial,
20 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
21 faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found
22 such reduction to be proper. *Id.* at p. 539.

23 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
24 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to
25 the wage statement claims and that with respect to the reduction of PAGA penalties, it could be
26 persuasive to the Court. Rosenthal Decl. ¶ 16. Thus, even if Plaintiff was to successfully prove
27 his claims at trial, there is a possibility that the Court may only award a small percentage of
28 PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was

1 premised with this risk in mind, associated with the possibility of the Court significantly
2 reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to
3 prevail at trial. *Id.*

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

10 Although Plaintiff believe that a class can be certified, Plaintiff also believes in the
11 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
12 involved in not prevailing on one or more of the causes of action or theories alleged in the
13 operative Complaint, the possibility of non-certification, and the potential for appeals. Rosenthal
14 Decl. ¶ 24. These risks on class certification are compounded by the California Supreme Court's
15 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
16 class certification and subsequently prevailed at trial after eight years of litigation, but the
17 judgment and the certification ruling were reversed by the California Supreme Court after an
18 additional five years of litigation. The case was remanded back to superior court where class
19 certification was denied and plaintiffs' subsequent appeal also was denied.

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

Cal. Mar. 20, 2015) (holding 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). Here, the Gross Settlement Amount is fair and reasonable as it is approximately 9.4% of the potential recovery of Plaintiff's class claims if Plaintiff was to fully succeed at trial. Rosenthal Decl. ¶ 18. Obviously, the percentage is roughly halved if PAGA penalties are factored in, but in light of the fact that PAGA penalties are entirely discretionary and the uncertainty surrounding the future of PAGA, it is fairer to evaluate the settlement based on the potential class recovery for the time being.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement, should any Settlement Class Member wish to pursue his or her own case for the claims being released herein, each Settlement Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. Settlement Agreement ¶ 58. Moreover, as set forth in the Notice Packet, Settlement Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the Settlement Agreement.

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

The Settlement Agreement provides for Two Hundred Fifty Thousand Dollars (\$250,000.00) as the Gross Settlement Amount. Settlement Agreement ¶ 16. The Net Settlement Amount, calculated after deduction of attorneys' fees (up to \$83,333.33), costs (up to \$10,000.00), Class Representative Enhancement Payment (up to \$10,000.00), payment to the LWDA for PAGA penalties (\$7,500.00), and Settlement Administration Costs (up to \$10,000.00), is estimated to be approximately \$124,166.67. *Id.* ¶¶ 5, 9, 18, 21, 31. Each Settlement Class Member who does not opt-out of the Settlement will be awarded a portion of

the Net Settlement Amount based upon the number of wage statements each respective Settlement Class Member received during the Class Period. *Id.* ¶ 46.

Based thereon, on a raw average, each Settlement Class Member may potentially recover approximately \$380.87. Rosenthal Decl. ¶ 21. The amount actually paid to each Participating Settlement Class Member may increase or decrease depending on the actual number of wage statements he or she received during the Class Period and/or the number of timely Requests for Exclusion received. *Id.* ¶ 22.

Finally, the terms of the settlement provide that uncashed checks (upon the expiration date) shall be distributed to the Unclaimed Property Fund of the California State Controller in the name of the Participating Settlement Class Member. Settlement Agreement ¶ 64.

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

None of the settlement funds will revert to Defendant. Settlement Agreement ¶ 40.

3. Scope of the Release of Settlement Class Members' Claims

As a condition of participating in this settlement, Settlement Class Members shall waive and release all claims, demands, charges, rights, liabilities, and/or causes of action that were pled/made or could have been pled/made based on the factual allegations in the operative Complaint for the period from and including April 6, 2019, through November 1, 2020. Settlement Agreement ¶¶ 25, 68. This release is appropriately limited, as it only applies during the time period of April 6, 2019, through November 1, 2020.

4. Tax Treatment of Settlement Amounts

As Plaintiff's lawsuit sought statutory and civil penalties and interest, the Parties have agreed that the payments to Settlement Class Members shall be categorized as 50% unpaid civil and statutory penalties and 50% interest. The payments will be deemed as IRS Form 1099 income and not subject to withholdings and deductions. Settlement Agreement ¶ 47.

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

3 As stated above, Settlement Class Members do not need to do anything other than keep
4 their addresses current with the Settlement Administrator should they wish to receive their share
5 of the settlement funds. In other words, because this is not a claims-made settlement, Settlement
6 Class Members will not be required to make a submission to participate in the Settlement. Thus,
7 this substantially decreases the amount of burden each Settlement Class Member must bear in
8 order to receive their settlement share. If a Settlement Class Member does not wish to take part
9 in this settlement and be bound by the release, the Settlement Class Member must submit a
10 Request for Exclusion. Settlement Agreement ¶¶ 27, 58.

11 **C. Notice to Settlement Class Members**

12 Within thirty (30) calendar days of the preliminary approval of this settlement, Defendant
13 will confidentially transmit to the Settlement Administrator a spreadsheet containing each Class
14 Member's full name, last known or provided mailing address, Social Security Number, and
15 number of wage statements received from Defendant during the period of April 6, 2019, through
16 November 1, 2020 ("Settlement Class List and Data"). Settlement Agreement ¶¶ 6, 53. Upon
17 receipt of the information and prior to mailing the Notice of Class and Representative Action
18 Settlement ("Notice Packet"), the Settlement Administrator shall perform a search based on the
19 National Change of Address Database for information to update and correct for any known or
20 identifiable address changes. *Id.* ¶ 55. Within ten (10) business days of receipt of the Settlement
21 Class List and Data, the Settlement Administrator shall mail the Notice Packet to all Settlement
22 Class Members. *Id.* ¶ 54. The Settlement Administrator will re-mail the Notice Packet to
23 Settlement Class Members for whom the notice is returned with a forwarding address and
24 perform a skip-trace or other search on Settlement Class Members and re-mailing for whom a
25 Notice Packet is returned as undeliverable. *Id.* ¶ 57.

26 As set forth in the Notice Packet, Class Members will be allowed to opt out of the
27 settlement by a certain deadline, or object to the settlement in writing or by appearing at the final
28 approval hearing. Settlement Agreement ¶ 56.

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

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

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

14 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
15 violated the Labor Code by issuing inaccurate itemized wage statements. Declaration of Nicola
16 Romano (“Romano Decl.”) ¶ 3. In other words, Plaintiff was subjected to the same policy and
17 practice as other Settlement Class Members. Thus, Plaintiff’s claims are typical to those of
18 Settlement Class Members.

19 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
20 issues been raised or presented. Romano Decl. ¶ 4. Plaintiff has taken all necessary steps to
21 represent the interests of the Settlement Class, and by providing information and documents to
22 Plaintiff’s counsel. *Id.* ¶ 5. For such reasons, Plaintiff has adequately represented the Settlement
23 Class Members and will continue to do so.

24 **2. Class Counsel Has Adequately Represented the Settlement Class and**
25 **Has Experience with Wage and Hour Class Actions**

26 From the inception of the case, Class Counsel has zealously represented the interests of
27 the Settlement Class. The Settlement was obtained for the benefit of the Settlement Class, as
28 opposed to the individual Class Representative. Further, Class Counsel has been approved as

1 class counsel on a number of prior cases, have litigated numerous other class action cases, and
2 are competent to represent the class. Rosenthal Decl. ¶¶ 26-28; Lee Decl. ¶¶ 2-9 Agnew Decl. ¶¶
3 2-11; Marder Decl. ¶¶ 2-13.

4 **E. Costs and Fees**

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

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

14 The common fund doctrine is predicated on the principle of preventing unjust
15 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
16 he may require the passive beneficiaries to compensate those who created the fund. Both
17 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
18 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
19 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
20 been applied "consistently in California when an action brought by one party creates a fund in
21 which other persons are entitled to share." The reasons for applying the common fund doctrine
22 include: "fairness to the successful litigant, who might otherwise receive no benefit because his
23 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
24 the others who are entitled to share in the fund and who should bear their share of the burden of
25 its recovery; encouragement of the attorney for the successful litigant who will be more willing
26 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund
27 if he is assured that he will be properly and directly compensated should his efforts be
28 successful." *Id.*

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

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

13 The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
14 Amount (or \$83,333.33) for payment to Class Counsel as attorneys' fees. The Parties have
15 agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed
16 to be fair. Class Counsel will of course submit a thorough record of the hours expended in the
17 prosecution of this matter as part of Plaintiff's Motion for Final Approval.

18 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs in
19 an amount up to \$15,000.00. Class Counsel has expended costs at their own risk, for example, to
20 file this instant action, effect service of process, pay the mediation fee, and pay of other
21 litigation-related costs.

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

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

25 Class Representative Nicola Romano requests a modest enhancement of \$10,000.00.
26 Settlement Agreement ¶¶ 9, 43. The Class Representative met and conferred with Class Counsel
27 on a number of occasions to discuss the case, provided documents and information to Class
28 Counsel, and reviewed the Settlement Agreement. As part of his duties as the Class

1 Representative, Plaintiff provided invaluable information and documents that resulted in this
2 settlement. Romano Decl. ¶ 5. In addition to the invaluable services that Plaintiff provided, he
3 also took a significant risk, both professionally and monetarily, in acting as the Class
4 Representative and seeking benefits on behalf of the Class. Because the claims alleged by the
5 Class Representative involved the payment of costs to the prevailing party, Plaintiff could have
6 possibly faced paying the costs of Defendant had he not prevailed in this action.

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

14 Finally, as part of this settlement, Plaintiff has agreed to provide a full, complete, and
15 general release of his individual claims, something that the Settlement Class Members did not
16 have to provide. Settlement Agreement ¶ 69. This sacrifice by Plaintiff for the benefit of the
17 Settlement Class further warrants the requested enhancement amount.

18 **3. Settlement Administration Fees**

19 The Parties have agreed to an estimated payment of \$10,000.00 to the Settlement
20 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
21 settlement. Settlement Agreement ¶¶ 30-31, 44. Phoenix Settlement Administrators is a well-
22 recognized class action settlement administrator. The Parties believe that the administration fee
23 is reasonable and should be approved.

24 **III. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 25 **PRELIMINARY APPROVAL**

26 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
27 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
28 result of informed, extensive, and arm's-length negotiations conducted by counsel for respective

1 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
2 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
3 settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of
4 Class and Representative Action Settlement, and set a date for a final approval hearing.

5
6 Dated: March 30, 2022

DIVERSITY LAW GROUP, P.C.

7 By: 

8 Larry W. Lee

Kristen M. Agnew

9 Nicholas Rosenthal

10 Attorneys for Plaintiff, the Class, and Aggrieved
11 Employees
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1 **PROOF OF SERVICE**

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

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

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

10 On March 30, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **4. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. DECLARATION OF NICOLA ROMANO IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 16 **6. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 17 **7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

18 on the interested parties in this action as follows:

19 James J. McMullen Jr
20 jmcmullen@grsm.com
21 Justin M. Michitsch
22 jmichitsch@grsm.com
23

1 Gordon & Rees LLP
2 101 W. Broadway, Suite 2000
3 San Diego, CA 92101
4 *Attorneys for Defendant SSA Terminals, LLC*

5 X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a court
6 order I caused the above-entitled document(s) to be served through Case Anywhere at the
7 website www.caseanywhere.com, addressed to all parties appearing on the electronic service list
8 for the above-entitled case. The service transmission was reported as complete and a copy of the
9 Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the
10 original document(s) in this office.

11 I declare under penalty of perjury under the laws of the State of California that the
12 above is true and correct. Executed on March 30, 2022, at Los Angeles, California.

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Erika Mejia