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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

DOMENIC CIARLANTI, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

PROVIDENT CREDIT UNION, a
California nonprofit corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 20-CIV-03398

(Assigned to the Honorable V. Raymond Swope,
Dept. 23)

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

Date: August 26, 2024

Time: 3:00 p.m.

Dept.: 23

Complaint Filed: August 11, 2020

FAC Filed: March 25, 2021

SAC Filed: May 20, 2022

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 26, 2024, at 3:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable V. Raymond Swope in Department 23 of the above-entitled court, located at 400 County Center, Redwood City, California 94063, Plaintiff Domenic Ciarlanti (“Plaintiff”) will and hereby does move the Court for the following relief with respect to the Joint Stipulation of Class Action Settlement (“Settlement Agreement”) entered into by Plaintiff and Defendant Provident Credit Union (“Defendant”) (together with Plaintiff, the “Parties”):

1. That the Court approve the Settlement Agreement referenced above;
2. That the Court conditionally certify the following class for settlement purposes only: All current and former non-exempt employees employed by Defendant in the State of California during the period from August 15, 2019, through January 1, 2023, who were paid non-discretionary incentives and/or different base hourly rates, and in that same workweek, either were paid overtime and/or sick pay wages (the “Class”);
3. That Plaintiff Domenic Ciarlanti be appointed as the Class Representative, and Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group, be appointed as Class Counsel;
4. That the Court preliminary approve the Settlement Agreement and the total Gross Settlement Amount in the amount of Four Hundred Thousand Dollars (\$400,000.00);
5. That the Court finds on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, the enhancement payment to the Class Representative, Class Counsel’s award of attorneys’ fees and litigation costs, settlement administration costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;
6. That the Court approve the mailing of the proposed Class Notice, along with exclusion and objection forms, to be sent to Class Members;
7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

1 8. That the Court schedule the matter for a Final Fairness and Final Approval
2 Hearing.

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

6 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
7 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
8 Class Members to participate in, opt out of, or object to the settlement. This Motion is based on
9 the Memorandum of Points and Authorities included herein, the revised Settlement Agreement
10 and the proposed revised Class Notice and opt-out and objection forms, the Supplemental
11 Declaration of Mai Tulyathan and exhibits thereto, the Declaration of Jodey Lawrence on behalf
12 of Phoenix Settlement Administrators, and upon the oral arguments of counsel (should there be
13 any), and on the complete records and file herein.

14
15 DATED: June 10, 2024

DIVERSITY LAW GROUP, P.C.

16 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

17 Attorneys for Plaintiff, the Class, and Aggrieved
18 Employees
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action under the California Labor Code. Plaintiff Domenic Ciarlanti (“Plaintiff”)
4 alleges that Defendant Provident Credit Union (“Defendant”) failed to pay overtime wages at the
5 correct regular rate of pay in violation of Labor Code §§ 510, 558, and 1194, failed to pay sick
6 pay at the correct regular rate of pay in violation of Labor Code §§ 201-203 and 246, failed to
7 provide accurate itemized wage statements in violation of Labor Code § 226(a), and engaged in
8 unfair business practices in violation of Business and Professions Code § 17200, *et seq.*, the
9 California Labor Code, and the applicable IWC Wage Orders. Based on these violations,
10 Plaintiff asserts class and PAGA claims pursuant to Labor Code § 2698, *et seq.* for violation of
11 Labor Code §§ 201-203, 226(a), 246, 510, 558, and 1194. Defendant denied all material
12 allegations. The Parties have reached a class and PAGA action settlement, the terms of which
13 are reflected in the Parties’ amended version of the Joint Stipulation of Class Action Settlement
14 (“Stipulation” or “Settlement Agreement”).¹

15 By way of background, Plaintiff previously filed his Motion for Preliminary Approval of
16 Class Action Settlement on August 7, 2023. (Supplemental Declaration of Mai Tulyathan
17 (“Supp. Tulyathan Decl.”) at ¶ 2.) On December 14, 2023, the Court issued its Order on the
18 Motion for Preliminary Approval (hereinafter referred to as the “Order”). (*Id.*, Exh. A.) In the
19 Order, the Court directed the Parties to make modifications to the settlement, which include (1)
20 addressing and defining who is subject to the settling of PAGA claims, (2) revising the definition
21 of the “Released Claims” to cite to specific Labor Code sections, (3) extending the deadline for
22 class members to opt-out or object to the settlement to 60 days, and (4) providing opt-out and
23 objection forms with the class notice. (*Id.*) The Court also requested that the Parties file a
24 declaration of its qualifications to administer the settlement. (*Id.*) With respect to the class
25 notice, the Court instructed the Parties to revise the language in the class notice primarily to
26 identify the settling of the PAGA claims. (*Id.*) The Court denied Plaintiff’s initial Motion for

27
28 ¹ The Parties’ amended version of the Joint Stipulation of Class Action Settlement is attached to
the Supplemental Declaration of Mai Tulyathan as **Exhibit B**.

1 Preliminary Approval, without prejudice, and allowed Plaintiff to re-file his Motion to address
2 the Court's requests in the Order. (*Id.*) The Parties have complied with the Court's instructions
3 in the Order and further addresses these issues below.

4 In connection with addressing the issues identified by the Court, the Parties have
5 executed an amended version of the Settlement Agreement on about June 7, 2024, and further
6 revised the Class Notice as well as included opt-out and objection forms. Significantly, the
7 Settlement Agreement has been amended to define who is subject to the settling of the PAGA
8 claims. The following documents are being submitted concurrently herewith as Exhibits to the
9 Supplemental Declaration of Mai Tulyathan, as follows:

- 10 • Attached as **Exhibit B** to Supp. Tulyathan Decl. is the amended version of the
11 Joint Stipulation of Class Action Settlement; and
- 12 • Attached as **Exhibit C** to Supp. Tulyathan Decl. is the amended version of the
13 Class Notice, along with the Request for Exclusion Form and the Objection Form.

14 For purposes of this Renewed Motion, Plaintiffs provide a brief background and
15 summary of the key terms of the settlement that was previously briefed in the prior Motion for
16 Preliminary Approval:

- 17 • Gross Settlement Amount of \$400,000.00, the entirety of which is **non-**
18 **reversionary** meaning that no remaining monies will revert back to Defendant;
- 19 • The Parties exchanged formal and informal discovery in connection with
20 mediation, including an exchange of data pertaining to the number of putative
21 class members, number of pay periods at issue, sample time and payroll records,
22 and information regarding Defendant's relevant policies and practices (*See*
23 Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 10)²;
- 24 • The Parties participated in two mediation sessions: On January 19, 2022, the
25 Parties attended a full day of mediation with the Honorable Ronald M. Sabraw

26
27 ² The Declarations of Mai Tulyathan, Larry W. Lee, Max W. Gavron, William L. Marder, and Plaintiff
28 Domenic Ciarlanti referenced herein were previously submitted with Plaintiff's prior Motion for
Preliminary Approval of Class Action Settlement on August 7, 2023. The citations to these declarations
herein refer to those declarations that were previously submitted.

(Ret.), but the Parties did not reach an agreement and thus resumed litigation. The Parties agreed to participate in a second mediation session on January 25, 2023, after which the Parties were able to reach the current settlement (*See* Tulyathan Decl. at ¶¶ 11-13);

- The class will not exceed 324 individuals;
- Enhancement payment to the Class Representative of up to \$10,000.00;
- Class Counsel’s attorneys’ fees of one-third of the Gross Settlement Amount, or up to \$133,333.33;
- Class Counsel’s litigation costs of up to \$20,000.00;
- Settlement administration costs of up to \$8,500.00;
- PAGA penalties of \$50,000.00, of which 75 percent, or \$37,500.00, will be paid to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25 percent, or \$12,500.00, will be distributed to PAGA Aggrieved Employees³;
- Assuming the Court approves the amounts above in full, the Net Settlement Amount is estimated at approximately \$178,166.67 to be distributed to Class Members on a *pro rata* basis, based on the number of pay periods worked by Class Members during the Class Period; and
- Raw average of approximately **\$549.90** to be paid to each Participating Class Member.

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that the Class

³ The term “PAGA Aggrieved Employees” is defined as all current and former non-exempt employees employed by Defendant in the State of California during the PAGA Period, who were paid non-discretionary incentives and/or different base hourly rates, and in that same workweek, either were paid overtime and/or sick pay wages. (*See* Stipulation at ¶ 21.) The “PAGA Period” is defined as the period from August 15, 2019, through January 1, 2023. (*See id.* at ¶ 23.)

might not be certified and/or that Plaintiff could fail to establish liability.

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

II. PROCEDURAL HISTORY

On June 17, 2020, Plaintiff submitted his written notice to the LWDA, alleging violations of Labor Code §§ 201-203, 226(a), 246, 510, 558, and 1194, pursuant to the PAGA, Labor Code § 2699. (Tulyathan Decl. at ¶ 2, Exhs. A & B.) Thereafter, on August 11, 2020, Plaintiff filed a class and PAGA complaint against Defendant in the San Mateo County Superior Court, alleging five causes of action for: (1) violation of Labor Code §§ 510, 558, and 1194; (2) violation of Labor Code §§ 201-203; (3) violation of Labor Code § 226(a); (4) violation of Business & Professions Code § 17200, *et seq.*; and (5) violation of the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.* (the “Action”). (*Id.* at ¶ 3.) Defendant filed its Answer on or about November 12, 2020. (*Id.* at ¶ 5.)

On March 11, 2021, the Court granted Plaintiff leave to file a First Amended Complaint (“FAC”) pursuant to the Parties’ stipulation. (*Id.* at ¶ 6.) The FAC modified the time period of Plaintiff’s overtime regular rate class and PAGA claims so as not to overlap with the time period that was released as part of a prior class action settlement in the matter of *Ray Wilkerson v. Provident Credit Union*, San Mateo County Superior Court Case No. 19CIV00916 (the “Wilkerson” settlement). (*Id.*) As the *Wilkerson* settlement purports to release Plaintiff’s overtime regular rate class and PAGA claims up to and including August 14, 2019, Plaintiff modified the FAC so that the applicable class and PAGA periods begin from August 15, 2019, to the present. (*Id.*) The FAC was filed with the Court on March 25, 2021. (*Id.*)

On April 25, 2022, the Court granted Plaintiff leave to file a Second Amended Complaint (“SAC”) pursuant to the Parties’ stipulation, to add additional claims regarding overtime and sick pay allegations and to broaden the class definitions to include individuals who were paid non-discretionary remunerations. (Tulyathan Decl. at ¶ 7.) The SAC was filed with the Court on May 20, 2022, and is the operative complaint. (*Id.*)

Plaintiff’s class and PAGA claims as pled in the SAC are predicated upon the following

1 allegations. With respect to Plaintiff's overtime and sick pay regular rate claims, Plaintiff
2 contends that Defendant failed to pay overtime wages and sick pay wages at the correct regular
3 rate of pay. In this regard, Plaintiff alleges that the regular rate of pay that Defendant used to pay
4 overtime and sick pay wages to Plaintiff and other employees was not calculated based on a
5 combination of all hourly rates paid in the workweek. Rather, the regular rate of pay for
6 overtime and sick pay was calculated based only on the lowest hourly rate of pay. As another
7 theory of liability, Plaintiff also alleges that Defendant failed to correctly calculate the regular
8 rate of pay for paying overtime and sick pay wages whenever Plaintiff and other employees
9 earned non-discretionary incentives. In this regard, said non-discretionary incentives were not
10 included in the regular rate of pay when paying overtime and sick pay wages. Thus, Plaintiff
11 alleges that he and other employees were underpaid overtime and sick pay wages. (Tulyathan
12 Decl. at ¶ 8.)

13 In addition to the claims above, Plaintiff also alleges derivative wage statement claims
14 under Labor Code § 226(a). Specifically, as a result of the regular rate claims, Plaintiff asserts
15 that the corresponding wage statements issued to Plaintiff and other employees failed to identify
16 the required information under Labor Code § 226(a). (Tulyathan Decl. at ¶ 9.) As a result of
17 these alleged violations, Plaintiff seeks unpaid wages, waiting time penalties, statutory penalties,
18 and civil penalties under the California Labor Code and PAGA, as well as attorneys' fees and
19 costs. (*Id.*)

20 After Plaintiff initiated the Action, the Parties began initial settlement discussions but
21 were not able to reach a resolution. (*Id.* at ¶ 10.) The Parties then engaged in formal discovery,
22 including written requests for production of documents and special interrogatories. (*Id.*) During
23 discovery meet and confer discussions and after further investigation of the Action, the Parties
24 agreed to participate in private mediation with Judge Ronald M. Sabraw (Ret.). (*Id.* at ¶ 11.) On
25 January 19, 2022, the Parties participated in the first session of mediation with Judge Sabraw, but
26 did not reach a resolution. (*Id.* at ¶ 12.) The Parties subsequently resumed litigation and formal
27 discovery. (*Id.*) As the Parties continued to meet and confer on further production of discovery,
28 the Parties agreed to participate in a second session of mediation with Judge Sabraw on January

25, 2023. (Tulyathan Decl. at ¶ 13.)

In connection with mediation, the Parties agreed to conduct informal discovery to allow Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of damages and penalties. (Tulyathan Decl. at ¶ 14.) Defendant produced class data, including the number of putative class members, number of pay periods at issue, sample time and payroll records, and information regarding Defendant's relevant policies and practices. (*Id.*) Defendant also produced a 25 percent sample of putative class members' time and payroll records. (*Id.*) Plaintiff subsequently analyzed said data to calculate the maximum class and PAGA penalties available in this case. (*Id.*)

On January 25, 2022, the Parties participated in the second session of mediation with Judge Sabraw. (Tulyathan Decl. at ¶ 15.) After thorough investigation and evaluation of the facts and claims, the Parties and their counsel ultimately reached the current settlement. (*Id.*)

The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. (*Id.* at ¶ 17.) Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the class and PAGA claims as set forth in the Settlement Agreement.

III. DISCUSSION

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

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

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

2 Thus, the preliminary approval by the trial court is simply a conditional finding that the
3 settlement appears to be within the range of acceptable settlements. As Professor Newberg
4 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
5 concerning a tentative settlement proposal may vary. The court may find that the settlement
6 proposal contains some merit, is within the range of reasonableness required for a settlement
7 offer, or is presumptively valid subject only to any objections that may be raised at a final
8 hearing.” (Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed.
9 2002).)

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

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

17 (*Id.* § 11.24.)

18 Here, the Parties have reached such an agreement and have submitted to this Court in
19 connection with this Motion a copy of the Settlement Agreement fully setting forth all terms of
20 the agreement reached by the Parties as to settlement of the class and PAGA claims. Said terms
21 in the Settlement Agreement include, among other things, the method for calculating the Class
22 Members’ individual portions of the settlement payment.

23 The parties also may, at the preliminary approval stage, request that the court
24 provisionally approve certification of the class for settlement purposes—conditional upon final
25 approval of the settlement. “[P]re-certification settlements are routinely approved if found to be
26 fair and reasonable.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240;
27 *accord Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1803 (although the settlement
28 was reached before any “adversary certification,” the court was satisfied that it was “fair,

adequate and reasonable”); *In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).) As further explained by Professor Newberg:

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal...may be set out in conditional orders granting tentative approval to the various items submitted to 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.

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

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to which the Parties stipulate to the Court’s provisional certification of the Class for the purposes of this settlement only. (*See* Settlement Agreement at ¶ 37.)

A. Proposed Class Definition

The current settlement is being settled on behalf of the following Class: All current and former non-exempt employees employed by Defendant in the State of California during the Class Period, who were paid non-discretionary incentives and/or different base hourly rates, and in that same workweek, either were paid overtime and/or sick pay wages (the “Class” or “Class Members”). (Stipulation at ¶ 6.) The Class Period means the period from August 15, 2019, through January 1, 2023. (*Id.* at ¶ 7.)

Pursuant to the Settlement Agreement, Defendant has represented that there are no more than 324 individuals that comprise the Class. (Stipulation at ¶ 6.)

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been

1 reached with the participation of experienced counsel familiar with the litigation. (*Nat'l Rural*
2 *Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry*
3 (D.D.C. 1990) 752 F. Supp. 1087; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471; *In re*
4 *Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357; *Sommers v. Abraham Lincoln*
5 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571.)

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

15 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
16 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a
17 number of wage and hour class actions and have extensive litigation experience. (Declaration of
18 Larry W. Lee (“Lee Decl.”) at ¶¶ 6-7; Declaration of Max W. Gavron (“Gavron Decl.”) at ¶¶ 8-
19 9; Tulyathan Decl. at ¶¶ 38-42; Declaration of William L. Marder (“Marder Decl.”) at ¶¶ 8-9.)
20 Each side has apprised the other of their respective factual contentions, legal theories, and
21 defenses, resulting in negotiations taking place between the Parties. (Tulyathan Decl. at ¶ 18.)

22 Plaintiff has already provided estimates of the potential maximum exposure of the class
23 and PAGA claims in the prior Motion for Preliminary Approval. Nonetheless, for purposes of
24 this Renewed Motion, Plaintiff re-explains the estimated damages and penalties expected to be
25 awarded at trial below. Based on the class data provided by Defendant, Plaintiff’s counsel
26 estimated the potential exposure for class claims to be at least \$1,423,094.40 if Plaintiff
27 succeeded at trial. (Tulyathan Decl. at ¶ 19.) Plaintiff was able to estimate the potential class
28 penalties based on class data provided by Defendant. (*Id.*) The following represents a

breakdown of the estimated class-wide damages/penalties based on data and records provided by Defendant:

- \$547,310.40 in waiting time penalties for Plaintiff's overtime regular rate claims⁴ (calculated based on 91 former employees in the putative class and an average hourly rate of pay of \$25.06 based on sample payroll records produced by Defendant);
- \$661,584 in waiting time penalties for Plaintiff's sick pay regular rate claims (calculated based on 110 formers and an average hourly rate of pay of \$25.06 based on sample payroll records produced by Defendant);
- \$214,200 for Labor Code § 226(e) penalties resulting from deficient wage statements as a result of the underpaid wages (calculated based on 2,226 pay periods).

(*Id.*)

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff's counsel estimated that Defendant could face civil penalties of at least \$790,100 if Plaintiff were successful at trial on all claims. (Tulyathan Decl. at ¶ 20.) However, even assuming Plaintiff ultimately prevails on his PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. (*Id.* at p. 517.) Upon review, the Court of Appeal found such reduction to be proper. (*Id.* at p. 539.)

⁴ For Plaintiff's overtime regular rate claims, the main claim and/or damages to be recovered are waiting time penalties under Labor Code § 203. The amount of underpaid overtime wages for regular rate overtime claims is typically minimal.

1 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
2 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to
3 the claims and further with respect to the reduction of PAGA penalties and that it could be
4 persuasive to the Court. (Tulyathan Decl. at ¶ 21.) Thus, even if Plaintiff were to successfully
5 prove his claims at trial, there is a possibility that the Court may only award a small percentage
6 of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
7 premised with this risk in mind, associated with the possibility of the Court significantly
8 reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to
9 prevail at trial. (*Id.*)

10 Further, Defendant raised several defenses that presented risk as to liability and damages
11 on the claims. (Tulyathan Decl. at ¶ 22.) With respect to the overtime regular rate claims,
12 Defendant has indicated that it has unilaterally issued payments to some of the underpaid
13 employees, which also includes payments for penalties under Section 203 and 226. (*Id.*)
14 Defendant also argues that it corrected its practices in September 2020 as to how it pays out
15 overtime. Based on that, it is Defendant's position that a portion of the employees that are part
16 of the putative class are not even owed any underpaid overtime as Defendant has corrected its
17 practices. (*Id.*) With respect to the sick pay regular rate claim, Defendant contends that its sick
18 pay policy is compliant with the law, as it has indicated that it pays sick pay based on the 90-day
19 rule for sick leave. (*Id.*) Given these defenses, it is Defendant's position that Plaintiff will not
20 prevail on liability on the regular rate claims. As another risk to prevailing on class certification,
21 there is essentially no precedent from any California courts granting class certification of a sick
22 pay regular rate claim. Thus, while Plaintiff believes that a class can be certified, there is a
23 possibility that the Court will not grant class certification on Plaintiff's sick pay regular rate
24 claim here. (*Id.*)

25 In light of the above, the settlement for each Class Member is fair, reasonable, and
26 adequate, given the inherent risks of litigation, including the substantial risks relative to class
27 certification and the merits of the claims, the costs of pursuing such litigation, and the risks
28 associated with the Court's discretion to reduce PAGA penalties. The settlement is the result of

1 extensive arm's length negotiations between the Parties and their counsel and was facilitated by
2 an experienced and neutral mediator.

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

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

1 Here, Plaintiff's counsel estimated total class and PAGA penalties to be approximately
2 \$2,213,194.40, without discounting for potentially losing on any of the causes of action.
3 (Tulyathan Decl. at ¶ 23.) The Gross Settlement Amount is \$400,000.00, which is
4 approximately **18.07%** of the maximum class and PAGA penalties. (*Id.*) Thus, the settlement
5 was negotiated at arms' length and the high settlement percentage-to-recovery further supports
6 that the settlement is fair and reasonable.

7 Despite the asserted fairness of the settlement terms, as set forth in the revised Class
8 Notice, should any Class Member wish to pursue his or her own case for the claims being
9 released herein, each Class Member has the right to submit a Request for Exclusion Form (*i.e.*,
10 opt-out form) from the settlement with respect to the class claims. (*See* Revised Class Notice
11 and Forms, attached as **Exhibit C** to Supp. Tulyathan Decl.) Moreover, as set forth in the
12 revised Class Notice, Class Members are advised of their right to submit an Objection Form to
13 object to any of the terms contained in the Settlement Agreement and attend the final approval
14 hearing. (*Id.*) Pursuant to the Court's Order, the Parties will provide both Request for Exclusion
15 Forms and Objection Forms in the Notice Packet. (Supp. Tulyathan Decl. at ¶ 9; Settlement
16 Agreement at ¶¶ 19, 31.)

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

20 The Settlement Agreement provides for Four Hundred Thousand Dollars (\$400,000.00)
21 as the Gross Settlement Amount. (*See* Stipulation at ¶ 10.) The Net Settlement Amount,
22 calculated after deduction of Plaintiff's counsel's attorneys' fees (up to \$133,333.33) and
23 litigation costs (up to \$20,000.00), an enhancement payment to the Class Representative (up to
24 \$10,000.00), the portion of PAGA penalties to be paid to the LWDA and PAGA Aggrieved
25 Employees (\$50,000.00), and Settlement Administration costs (up to \$8,500.00), is estimated to
26 be approximately **\$178,166.67**. (*Id.* at ¶¶ 3, 9, 18, 22, 34; Supp. Tulyathan Decl. at ¶ 11.)

27 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned
28 among Participating Class Members on a *pro rata* basis, based on the number of pay periods
worked by each respective Participating Class Member during the Class Period, as compared to

1 the total number of pay periods worked by all Participating Class Members during the Class
2 Period. (*See* Stipulation at ¶ 46.) Based thereon, on a raw average, each Participating Class
3 Member may potentially recover approximately **\$549.90**. (Supp. Tulyathan Decl. at ¶ 12.) The
4 amount actually paid to each Participating Class Member may increase or decrease depending on
5 the actual number of pay periods he or she worked during the Class Period and the number of
6 opt-outs received. (*Id.*)

7 Finally, the terms of the settlement provide that uncashed checks (upon the expiration
8 date) shall be distributed to the California State Bar’s Justice Gap Fund, a source of funding for
9 about 100 legal aid organizations across the State of California, in accordance with California
10 Civil Procedure § 384. (*See* Stipulation at ¶ 61; *see* Tulyathan Decl. at ¶ 30.)

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

14 This settlement is non-reversionary, meaning that none of the settlement funds will revert
15 back to Defendant. (*See* Stipulation at ¶¶ 40, 46.)

16 **3. Scope of the Release of Class Members’ Claims**

17 As directed by the Court’s Order, the Parties have revised the definition of the Released
18 Claims to cite specific Labor Code sections for the enumerated statutory violations. (Supp.
19 Tulyathan Decl. at ¶ 7.) Class Members who do not opt out of the settlement (“Participating
20 Class Members”) will provide a limited release of the following claims against the Released
21 Parties (“Released Claims”):

22 [A]ny and all claims that were alleged in the operative Second
23 Amended Complaint, arising from the facts set forth therein, that
24 arose during the Class Period, including without limitation claims
25 under the California Labor Code §§ 201-203, 226, 246, 510, 558,
26 and 1194, the California Industrial Welfare Commission’s (“IWC”) Wage Orders, and the California Unfair Competition Law (the
27 “UCL”), California Business & Professions Code § 17200, et seq.,
28 based on failure to pay overtime wages at the regular rate of pay, failure to pay sick pay at the regular rate of pay, failure to timely pay wages upon separation of employment, and failure to provide compliant wage statements. In addition, upon the Effective Date, the Class Representative and the Class Members, and each member of the Class who has not submitted a valid Request for Exclusion Form,

1 is forever barred and enjoined from instituting or accepting damages
2 or obtaining relief against the Released Parties relating to the
Released Claims.

3 (See Stipulation at ¶ 28.) Given that the release above is tailored to only claims pled in the SAC
4 and Plaintiff's PAGA notice, and that accrued during the Class Period, the release is
5 appropriately limited.

6 The Parties have also modified the Settlement Agreement to add a specific release for the
7 PAGA settlement which will cover only the PAGA Aggrieved Employees. (Supp. Tulyathan
8 Decl. at ¶ 6.) PAGA Aggrieved Employees will be providing the following limited release of the
9 following claims against the Released Parties ("Released PAGA Claims"):

10 [A]ll claims that accrued during the PAGA Period that were alleged
11 in Plaintiff's PAGA notice to the LWDA, as well as all claims that
12 could have been pled arising out of the same operative facts, for civil
13 penalties under the California Private Attorneys' General Act
predicated on violations of Labor Code §§ 201-203, 226, 246, 510,
558, and 1194.

14 (See Stipulation at ¶ 29.) This is appropriately limited because PAGA Aggrieved Employees are
15 not releasing violations of any predicate statutes other than PAGA. The release for PAGA
16 Aggrieved Employees is expressly limited to claims for civil penalties under the PAGA
17 pertaining to the Labor Code violations raised in this lawsuit that accrued during the PAGA
18 Period. (*Id.*)

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

20 The Parties have agreed that the individual settlement payment to Class Members shall be
21 allocated as follows: thirty percent (30%) as payment for wages, less withholdings and
22 deductions, for which an IRS Form W-2 shall issue, and seventy percent (70%) as payment of
23 penalties and interest, for which an IRS Form 1099 shall issue. (See Stipulation at ¶ 64.) All
24 individual PAGA payments to the PAGA Aggrieved Employees will be allocated as 100%
25 penalties, for which an IRS Form 1099 shall issue. (*Id.*)

26 Pursuant to the Settlement Agreement, employer-side payroll taxes on the wage portion of
27 the individual settlement payments paid to Class Members shall be paid by Defendant *separate*
28 from and in addition to the Gross Settlement Amount. (See *id.* at ¶ 40.)

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

3 As stated above, Class Members do **not** need to do anything should they wish to receive
4 their share of the settlement funds. In other words, because this is not a claims-made settlement,
5 Class Members will not be required to make a submission to participate in the settlement. No
6 claim forms are required. Thus, this substantially decreases the amount of burden each Class
7 Member must bear in order to receive their share of the settlement funds. If a Class Member
8 does not wish to take part in this Settlement or be bound by the Released Claims (with the
9 exception of PAGA Aggrieved Employees who cannot opt out of the PAGA portion of the
10 Settlement), the Class Member must submit a Request for Exclusion form to be excluded from
11 the class portion of the Settlement. (*See* Stipulation at ¶¶ 31, 55; *see also* Revised Class Notice.)

12 **C. The PAGA Settlement**

13 The Parties also seek approval of the PAGA Payment, distribution plan of the PAGA
14 Payment, and the release of the Released PAGA Claims as set forth in the Settlement Agreement.
15 California Labor Code § 2699(1)(2) provides that the court shall review and approve any settlement
16 of any civil action filed pursuant to PAGA. The California Supreme Court has held that an
17 employee who sues an employer under PAGA need not satisfy class action requirements. (*Arias*
18 *v. Superior Court* (2009) 46 Cal. 4th 969, 974.)

19 To comply with the Court’s Order, the Parties have revised the Settlement Agreement to
20 define who is subject to the settling of the PAGA claims. (Supp. Tulyathan Decl. at ¶ 5.) The
21 Settlement allocates \$50,000.00 of the Gross Settlement Amount as PAGA Payment sought as part
22 of the proposed PAGA settlement. (*See* Stipulation at ¶¶ 22, 45.) Pursuant to Labor Code §
23 2699(i), 75% of these penalties are to be paid to the LWDA. Accordingly, the Settlement provides
24 for \$37,500.00 to be paid to the State of California from the Gross Settlement Amount. (*Id.*) The
25 Parties have agreed that the remaining \$12,500.00 of the PAGA Payment will be distributed to all
26 “PAGA Aggrieved Employees,” which encompasses all current and former non-exempt
27 employees employed by Defendant in the State of California during the PAGA Period, who were
28 paid non-discretionary incentives and/or different base hourly rates, and in that same workweek,

1 either were paid overtime and/or sick pay wages. (*Id.* at ¶¶ 21, 22, 45.) PAGA Aggrieved
2 Employees will be paid a pro rata portion of the 25% portion of the PAGA Payment, calculated
3 based on the number of pay periods worked by each PAGA Aggrieved Employee during the PAGA
4 Period, as compared to the total number of pay periods worked by all PAGA Aggrieved Employees
5 during the PAGA Period. (*Id.* at ¶ 47.)

6 PAGA Aggrieved Employees will not have the opportunity to opt out of the release of the
7 Released PAGA Claims. (*Id.* at ¶ 66.) The proposed PAGA Payment is fair, reasonable, and
8 adequate to all concerned, and not the product of fraud, collusion, or overreaching. The proposed
9 PAGA Payment is the product of informed negotiations. As described above, Plaintiff's counsel
10 performed significant work to investigate, research, and analyze the claims, defenses, legal and
11 factual issues, and potential recovery in this case. The Settlement was the result of arm's length
12 settlement negotiations facilitated by a well-respected mediator and represents a fair resolution in
13 light of the risks associated with further litigating the claims. Plaintiff respectfully requests the
14 Court approve the PAGA Payment, distribution plan of the PAGA Payment, and the release of the
15 Released PAGA Claims.

16 **D. Notice to Class Members**

17 Should the Court grant the instant motion, Defendant will provide the Settlement
18 Administrator with a list containing each Class Member's full name, employee number, most
19 recent mailing address, Social Security number, and number of pay periods worked during the
20 Class Period ("Class List and Data"). (*See* Stipulation at ¶ 5.) Pursuant to the Settlement
21 Agreement, Defendant will provide said Class List and Data within fourteen (14) calendar days
22 of preliminary approval. (*Id.* at ¶ 50.) Upon receipt of the information and prior to mailing the
23 Class Notice to Class Members, the Settlement Administrator shall perform a search based on
24 the National Change of Address Database for information to update and correct for any known or
25 identifiable address changes. (*Id.* at ¶ 52.)

26 Within seven (7) calendar days of receipt of the Class List and Data from Defendant, the
27 Settlement Administrator will mail the Class Notice out to Class Members using the most
28 current, known mailing address via First-Class U.S. mail. (*See* Stipulation at ¶ 51.) Any Class

1 Notices returned to the Settlement Administrator as non-deliverable on or before the response
2 deadline shall be re-sent via regular First-Class U.S. mail to the forwarding address affixed
3 thereto. (*Id.* ¶ 54.) If no forwarding address is provided, the Settlement Administrator will
4 attempt to find the correct address using a skip-trace or other comparable search to locate the
5 most current address to re-mail the Notice. (*Id.*)

6 The Class Notice will advise Class Members of what the litigation is about, their rights
7 under the settlement, a summary of the principal terms and the monetary terms of the settlement,
8 their expected settlement payment share, their opportunity to and procedures to opt out or to
9 object to the settlement along with the attached forms, and the release of claims. (*See Revised*
10 *Class Notice.*) As set forth in the revised Class Notice, Class Members will be allowed to opt out
11 of or object to the Settlement by a certain deadline, which has been extended from 45 calendar
12 days to 60 calendar days after the initial mailing or re-mailing of the Notice Packet as directed by
13 the Court’s Order. (*See Stipulation at ¶ 32; Supp. Tulyathan Decl. at ¶ 8.*) With respect to
14 objections, Class Members are also informed in the revised Class Notice that should they wish to
15 submit an objection, they can do so with the Objection Form included in the Notice Packet.
16 (*Stipulation at ¶ 57; see Revised Class Notice.*)

17 The Parties have revised the Class Notice to include language as directed by the Court in
18 the Court’s Order, as well as included the use of Request for Exclusion and Objection Forms.
19 (*Supp. Tulyathan Decl. at ¶ 9; see Revised Class Notice.*)

20 If Class Members need further information about the settlement and/or the lawsuit, Class
21 Counsel’s contact information and the Settlement Administrator’s contact information are
22 provided in the Notice Packet. (*See Revised Class Notice, at p. 7.*)

23 **E. Typicality and Adequacy of Representation**

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

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

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

8 In the present case, Plaintiff alleges that Defendant is liable to the Class for (i) failure to
9 pay employees overtime wages at the correct regular rate of pay, in violation of Labor Code §§
10 510, 558, and 1194; (ii) failure to pay sick pay at the correct regular rate of pay, in violation of
11 Labor Code §§ 201-203 and 246; and (iii) failure to provide accurate itemized wage statements,
12 in violation of Labor Code § 226(a). Like all Class Members, Plaintiff was subjected to these
13 same policies and practices. (Declaration of Domenic Ciarlanti ("Ciarlanti Decl.") at ¶¶ 3-5.)
14 More specifically, Plaintiff alleges that Defendant miscalculated the regular rate of pay when
15 paying overtime and sick pay wages to Plaintiff during workweeks when differently hourly rates
16 of pay and/or non-discretionary incentive pay were paid to Plaintiff. (*Id.* at ¶¶ 3-4.) Plaintiff
17 also claims that he was issued inaccurate wage statements that did not comply with Labor Code §
18 226(a). (*Id.* at ¶ 5.) In other words, Plaintiff contends that he was subjected to the same policies
19 and practices as other Class Members and thus, the typicality requirement is met.

20 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
21 issues been raised or presented. (*Id.* at ¶ 6.) Plaintiff has taken all necessary steps to represent
22 the interests of the Class, including by providing information and documents to Plaintiff's
23 counsel. (*Id.* at ¶¶ 7-8.) For such reasons, Plaintiff has adequately represented the Class
24 Members and will continue to do so.

25 **2. Class Counsel Have Adequately Represented the Class and Have Experience**
26 **with Wage and Hour Class Action**

27 From the inception of the case, Class Counsel have zealously represented the interests of
28 the Class. Class Counsel have engaged in formal discovery as well as significant meet and

1 confer discussions with opposing counsel to obtain informal data and documents and to discuss
2 the merits of the claims on behalf of the Class. (Tulyathan Decl. at ¶¶ 10-16.) The settlement
3 was obtained for the benefit of the Class, as opposed to the individual Class Representative.
4 Further, Class Counsel have been approved as class counsel on a number of prior cases, have
5 litigated numerous other class action cases, and are competent to represent the class. (Lee Decl.
6 at ¶¶ 6-7; Gavron Decl. at ¶¶ 8-9; Tulyathan Decl. at ¶¶ 39-42; Marder Decl. at ¶¶ 8-9.)

7 **F. Costs and Fees**

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

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

17 The Common Fund doctrine is predicated on the principle of preventing unjust
18 enrichment. When a litigant's efforts create or preserve a fund from which others derive
19 benefits, she may require the passive beneficiaries to compensate those who created the fund.
20 Both California state and federal courts have embraced this doctrine. (*Serrano III*, 20 Cal. 3d at
21 p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of San Francisco v. Sweet*
22 (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund
23 doctrine has been applied "consistently in California when an action brought by one party creates
24 a fund in which other persons are entitled to share." The reasons for applying the common fund
25 doctrine include:

26 Fairness to the successful litigant, who might otherwise receive no
27 benefit because his recovery might be consumed by the expenses;
28 correlative prevention of an unfair advantage to the others who are
entitled to share in the fund and who should bear their share of the
burden of its recovery; encouragement of the attorney for the

1 successful litigant who will be more willing to undertake and
2 diligently prosecute proper litigation for the protection or recovery
3 of the fund if he is assured that he will be properly and directly
compensated should his efforts be successful.

4 (*Id.*)

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

12 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
13 percent of the fund. (*Laffitte*, 1 Cal. 5th at p. 506.) And this was based on a lodestar amount
14 that required a multiplier of 2.13. (*Id.* at p. 487.) As the Court held, only when the multiplier is
15 "extraordinarily high or low [should] the trial court [] consider whether the percentage method
16 should be adjusted so as to bring the imputed multiplier within a justifiable range." (*Id.* at p.
17 505.)

18 The Parties have agreed to a payment of a maximum of one-third of the Gross
19 Settlement Amount, or \$133,333.33, for payment to Class Counsel as attorneys' fees. (*See*
20 Stipulation at ¶¶ 4, 42.) The Parties have agreed to a payment of the foregoing attorneys' fees
21 and, thus, this payment should be presumed to be fair. Further, the Parties have agreed to
22 reimbursement of Class Counsel's litigation costs up to \$20,000.00. (*Id.*) Class Counsel has, at
23 their own risk, expended costs, for example, to file this instant action and other pleadings in the
24 case, effect service of process, participate in mediation, and advance other litigation-related
25 costs. If Class Counsel's actual costs are less than \$20,000.00, the remainder will go to the
26 Class for distribution.

27 Based on the foregoing, the Court should preliminarily approve the attorney's fees and
28 costs as requested by the Parties.

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

2 Class Representative Domenic Ciarlanti requests a modest enhancement of \$10,000.00.
3 (*See* Stipulation at ¶¶ 9, 43.) The Class Representative met and conferred with his counsel on a
4 number of occasions to discuss the case, provided documents and information to his counsel, and
5 reviewed pleadings and documents, including the Settlement Agreement. (Ciarlanti Decl. at ¶¶
6 7-8.) As part of his duties as the Class Representative, Plaintiff provided invaluable information,
7 evidence, and documents that resulted in this settlement. Furthermore, in consideration for his
8 service payment, Plaintiff also executed an individual general release of all claims including a
9 California Civil Code § 1542 waiver, which other members of the Class did not have to do. (*See*
10 Stipulation at ¶ 67; Ciarlanti Decl. at ¶ 10.)

11 In addition to the invaluable services that he provided, Plaintiff also took a significant
12 risk, both professionally and monetarily, in acting as the Class Representative and seeking
13 benefits on behalf of the Class. Because the claims alleged by the Class Representative involved
14 the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs
15 of Defendant, had he not prevailed in this action.

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

23 **3. Settlement Administration Costs**

24 The Parties have agreed to an estimated payment not to exceed \$8,500.00 to the
25 Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer
26 this settlement. (*See* Stipulation at ¶¶ 34-35; Tulyathan Decl. at ¶ 31.) Phoenix Settlement
27 Administrators is a well-recognized class action settlement administrator. Concurrent with the
28 filing of this Renewed Motion, the Parties are submitting a declaration from Phoenix Settlement

Administrators regarding its qualifications to administer the Settlement, pursuant to the Court's Order. (*See* Declaration of Jodey Lawrence on behalf of Phoenix Settlement Administrators.) The Parties believe that the administration fee is reasonable and should be approved.

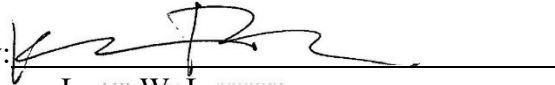
IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE RENEWED MOTION FOR PRELIMINARY APPROVAL

The settlement presented here is fair, adequate, and reasonable. The settlement 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 arm's length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation and facilitated by an experienced and neutral mediator.

For the foregoing reasons, Plaintiff respectfully requests 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 the Final Approval hearing.

DATED: June 10, 2024

DIVERSITY LAW GROUP, P.C.

By: 

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