

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 4/14/2021 4:29 PM
Reviewed By: R. Walker
Case #20CV368917
Envelope: 6243279**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARK WARD, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SEAGATE US LLC, a Delaware limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CV368917

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

Date: May 6, 2021
Time: 1:30 P.M.
Dept.: 1

Complaint Filed: August 9, 2019
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on May 6, 2021, at 1:30 p.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Sunil R. Kulkarni, judge presiding, in Department
4 1 of the above referenced Court located at 191 North First Street, San Jose, California 95113,
5 Plaintiff Mark Ward (“Plaintiff”) will and hereby does move this Court for the following relief
6 with respect to the Joint Stipulation of Class Action and PAGA Settlement and Release
7 (“Stipulation” or “Settlement Agreement”) entered into by Plaintiff and Seagate US LLC.
8 (“Defendant”) (together with Plaintiff, the “Parties”):

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

10 2. That the Court conditionally certify the following classes for settlement purposes
11 only: (1) all current and former non-exempt employees employed by Defendant in California
12 who were paid Shift Premium wages and/or Shift OT wages between April 6, 2019 and August
13 7, 2020 (“the Wage Statement Class”); and (2) all non-exempt employees employed by
14 Defendant in California who received Shift Premium and sick pay in the same workweek, and
15 whose employment ended (either voluntarily or involuntarily) at any time from April 6, 2017
16 through August 7, 2020 (“the Sick Pay Class”);

17 3. That Plaintiff Mark Ward be appointed as the Class Representative and Larry W.
18 Lee and Mai Tulyathan of Diversity Law Group, P.C., and William L. Marder of Polaris Law
19 Group, be appointed as Class Counsel;

20 4. That the Court preliminarily approve the Stipulation and the total Maximum
21 Settlement Amount in the amount of Three Hundred and Thirty Thousand Dollars and Zero
22 Cents (\$330,000.00);

23 5. That the Court finds on a preliminary basis that the Stipulation appears to be
24 within the range of reasonableness of a settlement, including the amount of the PAGA penalties,
25 the service payment to the Class Representative, Class Counsel award of attorneys’ fees,
26 settlement administration costs, and the allocation of individual payments to Class Members, that
27 could ultimately be given final approval by this Court;

28 6. That the Court approve the mailing of the proposed Notice of Pendency of Class

1 Action Settlement and Final Hearing (“Class Notice”) to be sent to Class Members;

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

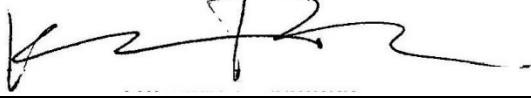
4 8. That the Court schedule the matter for a Final Fairness and Final Approval
5 hearing.

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

9 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
10 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
11 Class Members to participate in, opt-out of, or object to the settlement. This Motion is based on
12 the attached Memorandum of Points and Authorities, the Stipulation and the proposed Class
13 Notice, and the supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder,
14 and Plaintiff Mark Ward, upon the oral arguments of counsel (should there be any), and on the
15 complete records and file herein.

16
17 DATED: April 14, 2021

DIVERSITY LAW GROUP, P.C.

18
19 By: 

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

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code. Plaintiff
4 Mark Ward (“Plaintiff”) alleges that Defendant Seagate US LLC (“Defendant”) failed to provide
5 accurate itemized wage statements to its employees in violation of Labor Code § 226(a), and
6 failed to timely and properly pay sick pay based on the correct regular rate of pay in violation of
7 Labor Code §§ 201-203 and 246. Based on these violations, Plaintiff asserts class and PAGA
8 claims for violation of Labor Code §§ 201-203, 226, and 246. The Parties have reached a class
9 and PAGA action settlement, the terms of which are reflected in the Parties’ Joint Stipulation of
10 Class Action and PAGA Settlement and Release (“Stipulation” or “Settlement Agreement”).¹

11 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
12 to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the legal
13 principles applicable to the claims asserted against Defendant. Through the exchange of
14 informal discovery in connection with mediation, Defendant provided necessary data pertaining
15 to the number of putative class members, the number of wage statements at issue, the hourly
16 rates of pay, as well as information pertaining to Defendant’s sick pay, shift premium pay, and
17 wage statement policies and practices. The information provided by Defendant allowed Plaintiff
18 to review and analyze the liability and potential exposure. Thereafter, the Parties attended a full
19 day of mediation with experienced mediator Michael J. Loeb, Esq., after which the Parties were
20 able to reach the current settlement.

21 The terms of the Settlement Agreement provide that Defendant pay a Maximum
22 Settlement Amount of Three Hundred and Thirty Thousand Dollars (\$330,000.00) to resolve the
23 class and PAGA claims. Significantly, the entire Maximum Settlement Amount will be
24 distributed to the class on a **non-reversionary** basis, such that no remaining monies will
25 **revert to Defendant.** Further, no claim forms are required. The following represents the key
26

27
28 ¹ The Parties’ Joint Stipulation of Class Action and PAGA Settlement and Release is attached to the
Declaration of Mai Tulyathan as **Exhibit A.**

terms of the Settlement:

- Maximum Settlement Amount of \$330,000.00;
- Estimated class size of 97 individuals in the Wage Statement Class, and an estimated class size of 34 individuals in the Sick Pay Class;²
- Service payment to the Class Representative of up to \$10,000.00;
- Class Counsel’s attorneys’ fees of one-third of the Maximum Settlement Amount, up to \$110,000.00;
- Class Counsel’s costs of up to \$15,000.00;
- Settlement Administration costs of up to \$6,000.00;
- Payment to the Labor & Workforce Development Agency (LWDA) of \$7,500.00, representing 75% of the total PAGA allocation of \$10,000.00;
- Net Settlement Amount of approximately \$181,500.00, of which 80 percent will be apportioned among the Wage Statement Class Members on a pro rata basis, and 20 percent will be apportioned among the Sick Pay Class Members on a per capita basis; and
- Raw average of at least **\$1,496.91** to each Participating Wage Statement Class Member, and at least **\$1,067.65** to each Participating Sick Pay 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 classes might not be certified and/or that Plaintiff could fail to establish liability.

² Class Members shall consist of members of two settlement classes. The Wage Statement Class consists of all current and former non-exempt employees employed by Defendant in California who were paid Shift Premium wages and/or Shift OT wages between April 6, 2019 and August 7, 2020 (the “Wage Statement Class”). The Sick Pay Class consists of all non-exempt employees employed by Defendant in California who received Shift Premium and sick pay in the same workweek, and whose employment ended (either voluntarily or involuntarily) at any time from April 6, 2017 through August 7, 2020 (the “Sick Pay Class”). These two classes, collectively, shall be referred to as the “Class.”

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

3 **II. PROCEDURAL HISTORY**

4 On June 10, 2020, Plaintiff filed his written notice with the California Labor &
5 Workforce Development Agency (“LWDA”), alleging violations of Labor Code §§ 201-203,
6 226, and 246 and pursuant to the PAGA, Labor Code § 2699. (Declaration of Mai Tulyathan
7 (“Tulyathan Decl.”) at ¶ 2.) Thereafter, on August 5, 2020, Plaintiff filed his class and PAGA
8 Complaint against Defendant in Santa Clara County Superior Court. (*Id.*) The Complaint
9 alleges causes of action for (1) violation of Labor Code § 226(a), (2) violation of Labor Code §§
10 201-203, and (3) violation of the PAGA, Labor Code § 2698, *et seq.* (*Id.*)

11 Plaintiff’s class and PAGA claims as pled in the Complaint are predicated upon the
12 following allegations. With respect to Plaintiff’s wage statement claim, Plaintiff contends that
13 Defendant issued deficient wage statements whenever Shift OT and/or Shift Premium wages
14 were paid. In this regard, Plaintiff contends that said wage statements do not correctly identify
15 the hourly rates of pay and number of hours worked used to calculate said Shift OT and/or Shift
16 Premium wages. With respect to Plaintiff’s sick pay regular rate claim, Plaintiff contends that
17 Defendant failed to factor non-discretionary incentives, such as Shift Premium wages, into the
18 calculation of the regular rate for purposes of paying sick pay wages, and thus Plaintiff and
19 employees were underpaid sick pay. As a result of the alleged violations, Plaintiff seeks
20 statutory and civil penalties under the California Labor Code and the PAGA, as well as
21 attorneys’ fees and costs. (Tulyathan Decl. at ¶ 3.)

22 After the filing of the Complaint, the Parties met and conferred and agreed to participate
23 in private mediation. (Tulyathan Decl. at ¶ 4.) In connection with mediation, the Parties
24 engaged in informal discovery to allow Plaintiff to assess the claims and liability, as well as
25 analyze the maximum exposure of damages and penalties. (*Id.*) Defendant provided Plaintiff’s
26 counsel with informal data and information pertaining to the number of putative class members,
27 the number of wage statements at issue, the hourly rates of pay, as well as information pertaining
28 to Defendant’s sick pay, shift premium pay, and wage statement policies and practices. (*Id.*)

1 The information provided by Defendant allowed Plaintiff to review and analyze the liability and
2 potential exposure. (*Id.*)

3 On January 14, 2021, the Parties engaged in a full-day mediation with mediator Michael
4 J. Loeb, Esq. (Tulyathan Decl. at ¶ 5.) After thorough investigation and evaluation of the facts
5 and claims, and as a result of the arm's-length negotiations facilitated by Mr. Loeb, the Parties
6 and their counsel ultimately reached the current settlement. (*Id.*) In resolution of Plaintiff's
7 class and PAGA claims, the Parties entered into Settlement Agreement, a true and correct copy
8 of which is attached as **Exhibit A** to the Declaration of Mai Tulyathan. (*Id.*)

9 The Parties recognize the risk, expense, and delay in continuing litigation with the class
10 and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate. (Tulyathan
11 Decl. at ¶ 6.) Accordingly, the Parties desire to settle, compromise, and discharge all disputes
12 and claims arising from or relating to the class and PAGA claims as set forth in the Settlement
13 Agreement.

14 **III. DISCUSSION**

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

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

26 Thus, the preliminary approval by the trial court is simply a conditional finding that the
27 settlement appears to be within the range of acceptable settlements. As Professor Newberg
28 comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference

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

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

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

13 (*Id.* at § 11.24.)

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

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

1 The strength of the findings made by a judge at a preliminary
2 hearing or conference concerning a tentative settlement
3 proposal...may be set out in conditional orders granting tentative
4 approval to the various items submitted to the court. Three basic
5 rulings are often conditionally entered at this preliminary hearing.
6 These conditional rulings may approve a temporary settlement
7 class, the proposed settlement, and the class counsel's application
8 for fees and expenses.

9 (4 *Newberg on Class Actions*, at § 11.26.)

10 In addition to such terms as class identification, settlement amount, and payment
11 procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to
12 which the Parties stipulate to the Court's provisional certification of the Class for the purposes of
13 this settlement only. (*See* Stipulation at ¶ B.11.)

14 **A. Proposed Class Definition**

15 The current settlement is being settled on behalf of two settlement classes—the Wage
16 Statement Class and the Sick Pay Class. The Wage Statement Class consists of “all current and
17 former non-exempt employees employed by Defendant in California who were paid Shift
18 Premium wages and/or Shift OT wages between April 6, 2019 and August 7, 2020.” (*See*
19 Stipulation at ¶ A.4.) The Sick Pay Class consists of “all non-exempt employees employed by
20 Defendant in California who received Shift Premium and sick pay in the same workweek, and
21 whose employment ended (either voluntarily or involuntarily) at any time from April 6, 2017
22 through August 7, 2020.” (*Id.*)

23 Pursuant to the Settlement Agreement, Defendant has represented that there are no more
24 than 97 individuals that comprise the Wage Statement Class, and that there are no more than 34
25 individuals that comprise the Sick Pay Class. (*See* Stipulation at ¶ H.32.)

26 **B. Settlement Terms and Evaluation**

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

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

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 informal discovery and negotiations for some period of time, appear to be competent, have
9 experience with this type of litigation, and have exchanged substantial evidence from the
10 opposing party. (*See Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural Telecomms.*
11 *Coop.*, 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length negotiation process is
12 preserved, however, a strong initial presumption of fairness attaches to the proposed
13 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
14 are most closely acquainted 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 ¶¶ 8-9; Tulyathan Decl. at ¶¶ 21-24; Declaration of William L.
19 Marder (“Marder Decl.”) at ¶¶ 7-13.) Each side has apprised the other of their respective factual
20 contentions, legal theories and defenses, resulting in negotiations taking place between the
21 Parties. (Tulyathan Decl. at ¶ 7.)

22 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
23 face potential liability of up to approximately \$484,116.00 for Plaintiff’s wage statement and
24 sick pay regular rate class claims if Plaintiff succeeded at trial. (Tulyathan Decl. at ¶ 8.)
25 Plaintiff was able to estimate the potential class penalties based on data provided by Defendant,
26 including the number of employees in the putative classes, the number of wage statements at
27 issue, and the hourly rates of pay applicable to the putative class members. (*Id.* at ¶ 4.)
28 Specifically, Plaintiff calculated the amount of Labor Code § 226(e) penalties based on 2,857

1 deficient wage statements with payment for Shift OT and/or Shift Premium wages during the
2 relevant class period. (*Id.* at ¶ 8.) With respect to Plaintiff’s sick pay regular rate claim, Plaintiff
3 calculated waiting time penalties under Labor Code § 203 based on 34 putative class members
4 and their average hourly rates of pay. (*Id.*)

5 With respect to potential liability of Plaintiff’s PAGA claim, Plaintiff estimated that
6 Defendant could face civil penalties of up to a maximum \$717,650.00 if Plaintiff were successful
7 at trial. (Tulyathan Decl. at ¶ 9.) However, even assuming Plaintiff ultimately prevails on his
8 PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor
9 Code § 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts
10 and circumstances of the particular case, to do otherwise, would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in
12 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, while the plaintiff prevailed on his
13 PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,
14 citing the employer’s good faith attempt at complying with the law. (*Id.* at p. 517.) Upon
15 review, the Court of Appeal found such reduction to be proper. (*Id.* at p. 539.)

16 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
17 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to
18 the claims and further with respect to the reduction of PAGA penalties and that it could be
19 persuasive to the Court. (Tulyathan Decl. at ¶ 11.) Thus, even if Plaintiff were to successfully
20 prove his claims at trial, there is a possibility that the Court may only award a small percentage
21 of PAGA penalties, as the Court has discretion to do so. The Maximum Settlement Amount was
22 premised with this risk in mind, associated with the possibility of the Court significantly
23 reducing Plaintiff’s PAGA penalties, along with other attendant risks, even if Plaintiff was to
24 prevail at trial. (*Id.*)

25 Further, Defendant raised several defenses that presented risk on both the wage statement
26 and sick pay regular rate theories of liability. With respect to the wage statement claim, it is
27 Defendant’s position that its wage statements complied with the law, and that employees did not
28 suffer any injury as defined by Labor Code § 226(e). Moreover, Defendant has indicated that it

1 has revised its wage statement practices as of August 7, 2020. With respect to the sick pay
2 regular rate claim, Defendant has also raised several defenses, including that its sick pay policy
3 is compliant with Labor Code § 246 as it follows the 90-day rule, and that it falls under the
4 FLSA exemption under 29 C.F.R. § 778.210. As another risk to prevailing on class certification,
5 there is essentially no precedent from any California courts granting class certification of a sick
6 pay regular rate claim. Thus, while Plaintiff believes that a class can be certified, there is a
7 possibility that the Court will not grant class certification on Plaintiff's sick pay regular rate
8 claim here.

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

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

25 Indeed, numerous courts have held that **gross** settlements approximating between only 8
26 and 25% of the defendant's potential exposure are fair and reasonable. (See, e.g., *In re Mego*
27 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
28 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash

1 settlement amounting to only a fraction of the potential recovery does not per se render the
2 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should
3 be assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
4 settlement is fair and adequate depends on the “the difficulties in proving the case”);
5 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D.
6 Cal. Mar. 20, 2015) (holding that class action settlement recovering between **8.5% and 25%** of
7 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
8 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class
9 settlement which obtained **only 9.1%** of projected damages, given the risks of continued
10 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
11 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
12 approximately 15% of the potential recovery was fair and reasonable).)

13 Here, the total amount of class and PAGA penalties amount to approximately \$1,201,766,
14 without discounting for potentially losing on any of the causes of action. (Tulyathan Decl. at
15 ¶ 10.) The Maximum Settlement Amount is \$330,000, which is approximately **27.46%** of the
16 maximum class and PAGA penalties. (*Id.*) Thus, the settlement was negotiated at arms’ length
17 and the high settlement percentage-to-recovery further supports that the settlement is fair and
18 reasonable.

19 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
20 Pendency of Class Action Settlement and Final Hearing (“Class Notice”), should any Class
21 Member wish to pursue his or her own case for the claims being released herein, each Class
22 Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. (*See*
23 Class Notice, attached as **Exhibit B** to Tulyathan Decl.) Moreover, as set forth in the Notice,
24 Class Members are advised of their right to object to any of the terms contained in the
25 Stipulation and attend the final approval hearing. (*Id.*)

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

The Stipulation provides for Three Hundred Thirty Thousand Dollars and Zero Cents

1 (\$330,000.00) as the Maximum Settlement Amount. (*See* Stipulation at ¶ C.12.(a).) The Net
2 Settlement Amount, calculated after deduction of attorneys' fees (up to \$110,000.00), litigation
3 costs (up to \$15,000.00), the service payment to the Class Representative (up to \$10,000.00),
4 payment to the LWDA (\$7,500.00), and Settlement Administration costs (up to \$6,000.00), is
5 estimated to be approximately **\$181,500.00**. (*Id.* at ¶¶ C.12(a)-(h).)

6 Pursuant to the Stipulation, 80 percent of the Net Settlement Amount, or approximately
7 \$145,200.00, will be apportioned among the Wage Statement Class Members on a pro rata basis,
8 based on the number of wage statements reflecting payments for Shift Premium and/or Shift OT
9 wages issued to each class member between April 6, 2019 and August 7, 2020. (*See* Stipulation
10 at ¶ C.12(c).) The remaining 20 percent of the Net Settlement Amount, or \$36,300.00, will be
11 apportioned proportionally among the Sick Pay Class Members who do not opt out on a per
12 capita basis. (*Id.*)

13 Based thereon, on a raw average, each Wage Statement Class Member may potentially
14 recover approximately \$1,496.91. (Tulyathan Decl. at ¶ 13.) The amount actually paid to each
15 Wage Statement Class Member may increase or decrease depending on the actual number of
16 wage statements each class member received between April 6, 2019 and August 7, 2020 with
17 payment for Shift Premium and/or Shift OT wages. (*Id.*) On a raw average, each Sick Pay Class
18 Member may potentially recover approximately \$1,067.65. (Tulyathan Decl. at ¶ 14.) The
19 amount actually paid to each Sick Pay Class Member may fluctuate depending on the number of
20 opt-outs received. (*Id.*)

21 Finally, the terms of the Settlement provide that uncashed checks (upon the expiration
22 date) shall be distributed to Child Advocates of Silicon Valley, a court-appointed child advocacy
23 program, in accordance with California Civil Procedure § 384. (*See* Stipulation at ¶ E.28; *see*
24 Tulyathan Decl. at ¶ 15.)

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

28 This Settlement is non-reversionary, meaning that none of the settlement funds will revert
back to Defendant. (*See* Stipulation at ¶¶ C.12(a), (i).)

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

2 As a condition of participating in this Settlement, Wage Statement Class Members who
3 do not opt out of the Settlement (“Participating Wage Statement Class Members”) will provide
4 the following limited release:

5 Participating Wage Statement Class Members will release the
6 Released Parties from any and all claims, rights, demands,
7 liabilities, and causes of action of every nature and description,
8 whether known or unknown, arising from April 6, 2019 through
9 August 7, 2020, arising out of any violation of Labor Code section
10 226, including (1) any and all claims for failure to furnish accurate
11 itemized wage statements; (2) all derivative claims for statutory
penalties and/or civil penalties under the Private Attorneys General
Act of 2004 (“PAGA”) premised on Labor Code section 226; (3)
pre-judgment interest; and (4) any and all claims for attorneys’ fees
and costs.

12 (See Stipulation at ¶ D.13(a).)

13 Sick Pay Class Members who do not opt out of the Settlement (“Participating Sick Pay
14 Class Members”) will provide the following limited release:

15 Participating Sick Pay Class Members will release the Released
16 Parties from any and all claims, rights, demands, liabilities, and
17 causes of action of every nature and description, whether known or
18 unknown, arising from April 6, 2017 through August 7, 2020,
19 arising out of any violation for failure to pay sick pay, including
20 (1) any and all claims for waiting time penalties under Labor Code
21 section 203; (2) all derivative claims for statutory penalties and/or
civil penalties under PAGA premised on Labor Code sections 201-
203 and 246; (3) pre-judgment interest; and (4) any and all claims
for attorneys’ fees and costs.

22 (See Stipulation at ¶ D.13(b).)

23 Given that the releases are tailored to only claims pled in the operative Complaint that
24 pertain to each respective settlement class, the releases are appropriately limited.

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

26 As this lawsuit seeks statutory and civil penalties as recovery, the Parties have agreed that
27 the entirety of each individual settlement payment to Class Members shall be treated as a
28 payment in settlement of claims for penalties and interest sought in the Action and shall be

1 deemed IRS Form 1099 income. (*See* Stipulation at ¶ C.12(c).)

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

4 As stated above, Class Members do **not** need to do anything should they wish to receive
5 their share of the settlement funds. In other words, because this is not a claims-made settlement,
6 Class Members will not be required to make a submission to participate in the settlement. No
7 claim forms are required. Thus, this substantially decreases the amount of burden each Class
8 Member must bear in order to receive their share of the settlement funds.

9 If a Class Member does not wish to take part in this Settlement or be bound by the
10 releases, the Class Member must submit a request for exclusion. (*See* Stipulation at ¶¶ E.21, 23.)

11 **C. Notice to Class Members**

12 Should the Court grant the instant motion, Defendant will provide the Settlement
13 Administrator with a list containing all Class Members' full names, last known addresses,
14 telephone numbers, and social security numbers ("Settlement Class Information"). (*See*
15 Stipulation at ¶¶ E.15.) For the members of the Wage Statement Class, Defendant will provide
16 the number of wage statements containing Shift Premium and/or Shift OT wages during the
17 April 6, 2019 through August 7, 2020. (*Id.*) Pursuant to the Stipulation, Defendant will provide
18 said Settlement Class Information within fifteen (15) business days of preliminary approval.
19 (*Id.*) Upon receipt of the information and prior to mailing the Class Notice to Class Members,
20 the Settlement Administrator shall perform a search based on the National Change of Address
21 Database for information to update and correct for any known or identifiable address changes.
22 (*Id.* at ¶ E.17.)

23 Within ten (10) calendar days of receipt of the Settlement Class Information from
24 Defendant, the Settlement Administrator will mail the Class Notice out to Class Members using
25 the most current, known mailing address, via first class mail. (*See* Stipulation at ¶ E.16.) Any
26 Class Notices returned to the Settlement Administrator as non-deliverable on or before the
27 response deadline shall be re-sent via regular first class mail to the forwarding address affixed
28 thereto. (*Id.*) If no forwarding address is provided, the Settlement Administrator will attempt to

1 find the correct address using a skip-trace or other comparable search to locate the most current
2 address to re-mail the Notice. (*Id.*)

3 The Class Notice will advise Class Members of what the litigation is about, their rights
4 under the settlement, the total settlement amount and other terms of the settlement, their expected
5 settlement payment share, their opportunity to and procedures to opt out or to object to the
6 settlement, and the release of claims. (*See* Class Notice.) As set forth in the Class Notice, Class
7 Members will be allowed to opt out of or object to the Settlement by a certain deadline, which is
8 45 calendar days after the initial mailing of the Class Notice. (*See* Stipulation at ¶¶ E.22.) Class
9 Members who received a re-mailed Class Notice will have that deadline extended by 15 calendar
10 days from the original response deadline. (*Id.* at ¶ E.18.) With respect to objections, Class
11 Members are also informed in the Class Notice that they may object in writing or appear at the
12 final approval hearing to present their objections to the Court. (*Id.* at ¶ 24; *see* Class Notice.)

13 If Class Members need further information about the settlement and/or the lawsuit, Class
14 Counsel's contact information is provided in the Class Notice. (*See* Class Notice, at p.7.) Class
15 Members are also provided with the URL to the Court's website and the website maintained by
16 the Settlement Administrator containing the Settlement Agreement and other documents in this
17 case. (*Id.*)

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

19 **1. Class Representative's Claims are Typical of the Class.**

20 The commonality requirement is met when there are questions of law and fact common to
21 the class. (*See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
22 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
23 facts couple with disparate legal remedies within the class").) Commonality requires only that
24 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
25 litigation are identical. (*See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 473 (1981).)
26 Defendant's conduct is central to the commonality inquiry. (*See City of San Jose v. Superior*
27 *Court*, 12 Cal.3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal.3d 800, 812-13 (1971).)
28 Where the employer's conduct is uniformly directed at a class of employees, as Plaintiff alleges

here, the classwide impact of the Defendant’s policies satisfies the commonality requirement. (*See Stephens v. Montgomery Ward & Co.*, 193 Cal.App.3d 411, 421 (1987).)

In the present case, Plaintiff alleges that Defendant is liable to the Class for failure to pay sick pay based on the correct regular rate of pay in violation of Labor Code §§ 201-203 and 246, and for failure to provide accurate itemized wage statements in violation of Labor Code § 226(a). Like all Class Members, Plaintiff was subjected to these same policies and practices. (Declaration of Mark Ward (“Ward Decl.”) at ¶¶ 3-4.) In particular, Defendant miscalculated the regular rate of pay when paying sick pay to Plaintiff whenever non-discretionary incentives, such as Shift Premium wages, were paid to Plaintiff. (*Id.* at ¶ 4.) Plaintiff was also issued inaccurate wage statements that did not comply with Labor Code § 226(a). (*Id.* at ¶ 3.) In other words, Plaintiff contends that he was subjected to the same policies and practices as other Class Members and thus, the typicality requirement is met.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. (*Id.* at ¶ 5.) Plaintiff has taken all necessary steps to represent the interests of the Class, including by providing information and documents to Plaintiff’s counsel. (*Id.* at ¶¶ 5-7.) For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Has Adequately Represented the Class and Has Experience with Wage and Hour Class Action.

From the inception of the case, Class Counsel has zealously represented the interests of the Class. Class Counsel has engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents on behalf of the Class. (Tulyathan Decl. at ¶ 15.) The Settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Further, Class Counsel has been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the class. (Lee Decl. at ¶¶ 8-9; Tulyathan Decl. at ¶¶ 21-24; Marder Decl. at ¶¶ 7-13.)

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1 **E. Costs and Fees**

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

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

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

20 Fairness to the successful litigant, who might otherwise receive no
21 benefit because his recovery might be consumed by the expenses;
22 correlative prevention of an unfair advantage to the others who are
23 entitled to share in the fund and who should bear their share of the
24 burden of its recovery; encouragement of the attorney for the
25 successful litigant who will be more willing to undertake and
26 diligently prosecute proper litigation for the protection or recovery
27 of the fund if he is assured that he will be properly and directly
28 compensated should his efforts be successful.

(*Id.*)

 Indeed, in 2016, the California Supreme Court has also now held that the award of
attorneys' fees in common fund wage and hour class action settlements should start with the

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

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

The Parties have agreed to a payment of a maximum of one-third of the Maximum Settlement Amount, or \$110,000.00, for payment to Class Counsel as attorneys’ fees. (*See* Stipulation at ¶ C.12(f).) The Parties have agreed to a payment of the foregoing attorneys’ fees and, thus, this payment should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs up to \$15,000.00. (*Id.* at ¶ C.12(g).) Class Counsel have, at their own risk, expended costs, for example, to file this instant action and other pleadings in the case, effect service of process, participate in mediation, and advance other litigation-related costs. If Class Counsel’s actual costs are less than \$15,000.00, the remainder will go to the Class for distribution.

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

2. Proposed Payment to the Class Representative.

Class Representative Mark Ward requests a modest enhancement of \$10,000.00. (*See* Stipulation at ¶ C.12(e).) The Class Representative met and conferred with his counsel on a number of occasions to discuss the case, provided documents and information to his counsel, and reviewed pleadings and documents, including the Settlement Agreement. (Ward Decl. at ¶¶ 6-8.) As part of his duties as the Class Representative, Plaintiff provided invaluable information,

evidence, and documents that resulted in this Settlement. Furthermore, in consideration for his service payment, Plaintiff also executed an individual general release of all claims under California Civil Code § 1542, which other members of the Class did not have to do. (See Stipulation at ¶ D.14.)

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

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

3. Class Administration Fees

The Parties have agreed to an estimated payment of no more than \$6,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. (See Stipulation ¶ C.12(h).) Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

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

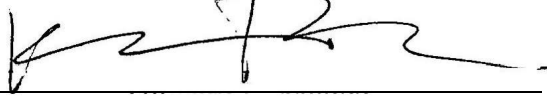
The Settlement presented here is fair, adequate, and reasonable. The Settlement will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation

1 and facilitated by an experienced and neutral mediator.

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of
4 the proposed Class Notice, and set a date for a final approval hearing.

5
6 DATED: April 14, 2021

DIVERSITY LAW GROUP, P.C.

7
8 By: 

9 Larry W. Lee
10 Mai Tulyathan
11 Attorneys for Plaintiff, the Class, and Aggrieved
12 Employees
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28

1 **PROOF OF SERVICE**

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

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

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

9 On April 14, 2021, I served the following document(s) described as:

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

16 on the interested parties in this action as follows:

17 Thomas E. Geidt
18 tomgeidt@gbgllp.com
19 Jennifer Svanfeldt
20 jensvanfeldt@gbgllp.com
21 Aaron A. Hayes
22 aaronhayes@gbgllp.com
23 Grube Brown & Geidt LLP
24 601 Montgomery St., Suite 1150
25 San Francisco, California 94111
26 *Attorneys for Defendant Seagate US LLC*
27
28

X BY ELECTRONIC SERVICE: I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 14, 2021, at Los Angeles, California.


Erika Mejia