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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

VAN WALKER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

WFS EXPRESS, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 34-2020-00285301-CU-OE-GDS

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

Date: November 9, 2021

Time: 1:30 p.m.

Dept.: 53

Reservation No.: 2592774

Complaint Filed: August 5, 2020

Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 9, 2021, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Shama H. Mesiwala, judge presiding, in Department 53 of the above referenced Court, located at 720 9th Street, Sacramento, California 95814, Plaintiff Van Walker (“Plaintiff”) will and hereby does move this Court for the following relief with respect to the Joint Stipulation for Class Action Settlement (the “Stipulation” or “Settlement Agreement”) entered into by Plaintiff and Defendant WFS Express, Inc. (“Defendant”) (together with Plaintiff, the “Parties”):

1. That the Court approve the Stipulation referenced above;
2. That the Court conditionally certify the following Class for settlement purposes only: All persons who worked for WFS Express, Inc. in California as a non-exempt employee at any time during the period of January 1, 2017, through July 31, 2021 (the “Settlement Class Period”).
3. That Plaintiff Van Walker be appointed as the Class Representative and Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. be appointed as Class Counsel;
4. That the Court preliminarily approve the Stipulation and the Total Settlement Amount of Nine Hundred Fifty Thousand Dollars (\$950,000.00);
5. That the Court find on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, allocation of payments to participating Settlement Class Members, representative service award to Plaintiff, Class Counsel’s fees and costs, and the settlement administration costs, that could ultimately be given final approval by this Court;
6. That the Court approve the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) to be sent to Class Members;
7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and
8. That the Court schedule the matter for a Final Approval Hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which

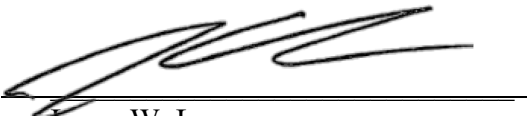
1 provides for court approval of the settlement of a purported class action and allows the Court to
2 preliminarily certify a class for settlement purposes.

3 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
4 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
5 Settlement Class Members to participate in, opt-out of, or object to the settlement.

6 This Motion will be based on the attached Memorandum of Points and Authorities, the
7 Stipulation, the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Mai
8 Tulyathan and Plaintiff Van Walker, upon the oral arguments of counsel (should there be any),
9 and on the complete records and file herein.

10
11 DATED: October 18, 2021

DIVERSITY LAW GROUP, P.C.

12
13 By: 

Larry W. Lee

Mai Tulyathan

14 Attorneys for Plaintiff, the Class, and Aggrieved
15 Employees
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TABLE OF CONTENTS

	<u>Pages</u>
I. INTRODUCTION	8
II. BACKGROUND.....	10
A. The Allegations in this Lawsuit.	10
B. The Parties Participate in Private Mediation.	11
III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.	11
A. Proposed Settlement Class.....	13
B. Settlement Terms and Evaluation.....	13
1. Amount and Manner of Distribution of the Compensation to be Provided to Settlement Class Members Including the Amount, or an Estimate, of What Each Settlement Class Member Will Receive.	19
2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Settlement Class Members or Might Revert to the Defendant.....	20
3. Scope of the Release Under the Settlement.	20
4. Tax Treatment of Settlement Amounts Paid to Participating Settlement Class Members.....	20
5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations.	21
C. Notice to Class Members.....	21
D. Class Certification	22
1. Class Representative's Claims are Typical of the Class.	22
2. Class Counsel Has Adequately Represented the Class and Has Experience with Wage and Hour Class Actions.	23
3. The Proposed Class Settlement Meets the <i>Kullar</i> Factors.	23
E. Costs and Fees.....	24
1. Attorneys' Fees and Costs.....	24
2. Proposed Payment to the Class Representative.....	26
3. Settlement Administration Fees	27

IV. LWDA HAS BEEN PROVIDED WITH CLASS NOTICE OF THIS MOTION27

**V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR
PRELIMINARY APPROVAL27**

TABLE OF AUTHORITIES

Pages

State

<i>City and County of San Francisco v. Sweet</i> , 12 Cal.4th 105, 110 (1995)	25
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447, 460 (1974)	22
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1803 (1996)	13
<i>Duran v. U.S. Bank Nat'l Ass'n</i> (2014) 59 Cal. 4th 1	17
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 130, 133 (2008)	23
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	25
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981)	22
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	24
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411, 421 (1987)	22
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971)	22
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 240 (2001)	13, 24

Federal

<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015)	18
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	24
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	27
<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	27
<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)	27
<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)	27
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	14
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998)	22
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	14
<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475, 478 (S.D.N.Y. 1984)	13
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957, 962 (N.D. Ga. 1980)	13
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) ..	26
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000)	17
<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> , 834 F.2d 677, 682 (7th Cir. 1987)	13
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004)	14
<i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989)	13
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</i> , 79 F.R.D. 571 (E.D. Pa. 1978)	14
<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	14
<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) ..	18
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	26
<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012)	18
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	24

Statutes

Civil Code § 1542	26
Labor Code § 2699.3	10

Other Authorities

4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) ...11, 12,
13
Manual for Complex Litigation (Third) § 30.4110

1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act (“PAGA”)
3 action. Plaintiff Van Walker (“Plaintiff”) alleges that Defendant WFS Express, Inc.
4 (“Defendant”) violated the California Labor Code and the California Business & Professions
5 Code by (1) failing to provide off-duty rest breaks or pay rest period premium compensation in
6 violation of Labor Code § 226.7; (2) failing to pay meal period premium at the regular rate of pay
7 in violation of Labor Code §§ 226.7 and 512; (3) failing to pay all earned wages in violation of
8 Labor Code §§ 201-204, 510, 558, 1174, 1194, 1198, and 1199; (4) failing to provide accurate
9 itemized wage statements in violation of Labor Code § 226(a); and (5) failing to reimburse
10 business-related expenses in violation of Labor Code § 2802. Plaintiff brings class and PAGA
11 claims based on these violations. The Parties have reached a class and PAGA action settlement,
12 the terms of which are reflected in the Parties’ Joint Stipulation for Class Action Settlement
13 (“Stipulation” or “Settlement Agreement”).¹

14 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
15 to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of the legal
16 principles applicable to the claims asserted against Defendant. Through the exchange of informal
17 discovery in advance of mediation, Defendant provided necessary data pertaining to the number
18 of class members, the number of pay periods at issue, time and payroll records for the class
19 members, as well as information pertaining to Defendant’s policies, practices, and procedures
20 pertaining to shift premiums and shift differentials, the payment of overtime wages and meal
21 period premiums, its wage statement practices, and use of personal cell phones for mobile
22 applications to be used for work-related purposes. Plaintiff then retained an expert witness to
23 review and analyze the data to calculate potential exposure. Thereafter, the Parties participated in
24 a full-day mediation with Michael Loeb, Esq., and after further extended negotiations facilitated
25 by Mr. Loeb, the Parties ultimately reached the current settlement. The following represents the

26
27

28 ¹ The Parties’ Joint Stipulation of Class Action Settlement is attached to the Declaration of Mai Tulyathan
 (“Tulyathan Decl.”) as **Exhibit B**.

key terms of the settlement:

- Total Settlement Amount of \$950,000.00, which will be paid by Defendant on a **non-reversionary basis, such that no remaining monies will revert back to Defendant** (*See* Stipulation §§ 2.26, 5.1);
- Estimated Settlement Class or no more than 2,400 individuals (*Id.* at § 2.21);
- Settlement Class Members **do not need to submit claim forms** to participate in the settlement;
- Enhancement award to the Class Representative of up to \$10,000.00 (*Id.* at § 5.1.2);
- Class Counsel’s attorneys’ fees of up to 35 percent of the Total Settlement Amount, or up to \$332,500.00 (*Id.* at § 5.1.3);
- Class Counsel’s litigation expenses of up to \$20,000.00 (*Id.*);
- Settlement Administration Costs of up to \$20,000.00 (*Id.* at § 5.1.6);
- \$40,000.00 attributable to the satisfaction of the PAGA claims, of which 75%, or \$30,000.00, will go to the California Labor & Workforce Development Agency (“LWDA”), and 25%, or \$10,000.00, will become part of the Net Settlement Amount to be allocated to Settlement Class Members (*Id.* at § 5.1.5);
- Net Settlement Amount of approximately **\$537,500.00** to be allocated to Settlement Class Members on a pro rata basis based on the number of pay periods each Settlement Class Member worked while actively employed by Defendant by during the Settlement Class Period (*Id.* at §§ 2.9, 5.1.1.1); and
- Raw average of at least **\$223.96** to each Participating Settlement Class Member.

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Stipulation 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 a class might not be certified and/or that Plaintiff could fail to establish liability.

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

3 **II. BACKGROUND**

4 **A. The Allegations in this Lawsuit.**

5 On June 5 and August 3, 2020, Plaintiff submitted his written notices under Labor Code §
6 2699.3 (the “PAGA Notices”) to the LWDA and Defendant. (Tulyathan Decl. at ¶ 2.) On August
7 5, 2020, Plaintiff filed his Complaint against Defendant in the Sacramento County Superior
8 Court, alleging causes of action for (1) violation of Labor Code § 226.7; (2) violation of Labor
9 Code §§ 226.7 and 512; (3) failure to pay wages; (4) violation of Labor Code § 226(a); (5)
10 violation of Labor Code § 2802; (6) violation of Business & Professions Code § 17200, *et seq.*;
11 and (7) violation of the PAGA, Labor Code § 2698, *et seq.* (*Id.* at ¶ 3.) On October 30, 2020,
12 Defendant removed this case to the Eastern District of California. (*Id.* at ¶ 5.) After meet and
13 confer discussions, on August 18, 2021, the Parties stipulated to remand this action back to the
14 Sacramento County Superior Court. (*Id.*)

15 Plaintiff’s class and PAGA claims are predicated upon the following allegations. Plaintiff
16 alleges that Defendant failed to provide off-duty rest breaks or pay rest period premium
17 compensation in violation of Labor Code § 226.7. In this regard, Plaintiff alleges that employees
18 were required to remain on-duty and continue working through their rest breaks and thus were not
19 provided with compliant rest periods. Plaintiff also alleges that Defendant failed to correctly pay
20 overtime wages and meal period premiums at the regular rate of pay in violation of Labor Code
21 §§ 226.7, 510, 512, 558, 1194. In this regard, Plaintiff asserts that Defendant failed to factor in
22 non-discretionary incentives, such as shift premiums and shift differentials, into the calculation of
23 the regular rate of pay for overtime wages and premium compensation. Additionally, Plaintiff
24 alleges that Defendant failed to pay all wages owed to its employees, including minimum, regular,
25 overtime, and reporting time pay. Plaintiff also alleges that Defendant violated Labor Code §
26 2802 as Defendant required employees to use their personal cell phones for work-related
27 purposes, including to utilize the “Discord” mobile application for work communication purposes,
28 without proper reimbursement for said usage. Lastly, Plaintiff alleges that Defendant violated

1 Labor Code § 226(a) by failing to provide accurate itemized wage statements. More specifically,
2 in addition to derivative wage statement violations, Plaintiff alleges that whenever shift premiums
3 and/or shift differential wages were paid, Defendant's wage statements identified the wrong total
4 hours worked. As a result of the alleged violations above, Plaintiff seeks damages and penalties
5 under the California Labor Code, the California Business & Professions Code, the PAGA, as well
6 as attorneys' fees and costs. (Tulyathan Decl. at ¶ 4.)

7 **B. The Parties Participate in Private Mediation.**

8 After removal of the lawsuit, the Parties participated in their Fed. R. Civ. P. 26(f)
9 discovery conference, during which the Parties agreed to participate in private mediation. (*Id.* at ¶
10 6.) In connection with mediation, Defendant has informally provided data and documents to
11 facilitate and effective mediation, including data pertaining to the number of class members, the
12 number of pay periods at issue, time and payroll records for the class members, as well as
13 information pertaining to Defendant's policies, practices, and procedures pertaining to shift
14 premiums and shift differentials, the payment of overtime wages and meal period premiums, its
15 wage statement practices, and use of personal cell phones for mobile applications to be used for
16 work-related purposes. (*Id.* at ¶ 7.) Plaintiff then retained an expert witness to review and
17 analyze the data and records provided by Defendant to calculate potential exposure for the claims
18 involved. (*Id.* at ¶ 8.)

19 On May 12, 2021, the Parties participated in a full-day mediation with mediator Michael
20 Loeb, Esq. (Tulyathan Decl. at ¶ 9.) Thereafter, the Parties continued settlement negotiations
21 facilitated by Mr. Loeb and between counsel for a period of several months, and were able to
22 reach the current settlement. (*Id.*)

23 **III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED.**

24 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
25 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
26 review after notice has been distributed to the class members for their comment or objections.
27 The Manual for Complex Litigation (Third) § 30.41 states:
28

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

11 Thus, the preliminary approval by the trial court is simply a conditional finding that the
12 settlement appears to be within the range of acceptable settlements. As Professor Newberg
13 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
14 concerning a tentative settlement proposal may vary. The court may find that the settlement
15 proposal contains some merit, is within the range of reasonableness required for a settlement
16 offer, or is presumptively valid subject only to any objections that may be raised at a final
17 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed.
18 2002).

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

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

27 *Id.* at § 11.24.

28 Here, the Parties have reached such an agreement and have submitted to this Court in
connection with this Motion a copy of the Stipulation fully setting forth the agreement reached
among the Parties. The Stipulation sets forth all terms of the agreement reached by the Parties,
which include, among other things, the method for calculating the Settlement Class Members’
individual settlement payments. (*See* Stipulation at § 5.1.1.)

The parties also may, at the preliminary approval stage, request that the court
provisionally approve certification of the class—conditional upon final approval of the settlement.
“[P]re-certification settlements are routinely approved if found to be fair and reasonable.”

1 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); accord *Dunk v. Ford Motor*
2 *Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any
3 “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re*
4 *Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this
5 practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement
6 proposals”). As further explained by Professor Newberg:

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

14 4 *Newberg on Class Actions*, at § 11.26.

15 In addition to such terms as settlement class identification, settlement amount, and
16 payment procedures, the Settlement Agreement reached among the Parties contains a provision
17 pursuant to which the Parties stipulate to the Court’s provisional certification of the Settlement
18 Class, but do so for the purposes of this settlement only. (*See* Stipulation at § 4.1.)

19 **A. Proposed Settlement Class**

20 The current settlement is being settled on behalf of the Settlement Class Members. The
21 Settlement Class Members include “all persons who worked for WFS Express, Inc. in California
22 as a non-exempt employee at any time during the Settlement Class Period.” (Stipulation at §
23 2.21.) The Settlement Class Period is defined as the time period from January 1, 2017 through
24 July 31, 2021. (*Id.* at § 2.23.)

25 Pursuant to the Stipulation, there are no more than 2,400 unique individuals that comprise
26 this Settlement Class. (*Id.* at § 2.21.)

27 **B. Settlement Terms and Evaluation**

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

1 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
2 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
3 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
4 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. &*
5 *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 in
8 formal and informal discovery and negotiations for some period of time, appear to be competent,
9 have 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. Coop.*,
11 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is preserved,
12 however, a strong initial presumption of fairness attaches to the proposed settlement...[citations]
13 and ‘great weight’ is accorded to the recommendations of counsel, who are most closely
14 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 and
16 hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of
17 wage and hour class actions and have extensive litigation experience. (Declaration of Larry W.
18 Lee (“Lee Decl.”) at ¶¶ 7-8; Tulyathan Decl. at ¶¶ 28-30.) Each side has apprised the other of
19 their respective factual contentions, legal theories and defenses, resulting in negotiations taking
20 place between the Parties. (Tulyathan Decl. at ¶ 11.)

21 Moreover, Plaintiff conducted extensive investigation and analysis into his claims. Prior
22 to the mediation, Plaintiff was provided with informal discovery from Defendant in order to fully
23 evaluate exposure and liability, including data pertaining to the number of class members, the
24 number of pay periods at issue, and time and payroll records for the class members. (Tulyathan
25 Decl. at ¶ 7.) Defendant also provided information pertaining to its policies, practices, and
26 procedures pertaining to shift premiums and shift differentials, the payment of overtime wages
27 and meal period premiums, its wage statement practices, and use of personal cell phones for
28 mobile applications to be used for work-related purposes. (*Id.*) Plaintiff subsequently retained an
expert witness to calculate potential maximum exposure of the claims. (Tulyathan Decl. at ¶ 8).

1 Based on the data and records provided by Defendant, Plaintiff's expert has calculated the
2 potential exposure for class claims at \$7,949,797.50. The following represents a breakdown of
3 the class-wide damages/penalties calculated by Plaintiff's expert based on data and records
4 provided by Defendant:

- 5 • \$2,387,258.50 in unpaid rest period premiums (calculated based on 311,291 shifts
6 and a 100% violation rate);
- 7 • \$15,805 in underpaid overtime wages and meal period premiums as a result of the
8 miscalculation of the regular rate of pay (based on time and payroll records
9 analyzed);
- 10 • \$208,545 for the unpaid business reimbursement claim (calculated based on
11 assumption that class members are owed \$5 per pay period);
- 12 • \$52,623 in unpaid reporting time pay (based on time and payroll records
13 analyzed);
- 14 • \$5,106,266 in waiting time penalties under Labor Code § 203 (calculated based
15 1,412 number of former employees and their average hourly rate of pay); and
- 16 • \$179,300 for Labor Code § 226(e) penalties for the independent wage statement
17 violations (calculated on 2,056 pay periods with payment for shift differential
18 wages).

(Tulyathan Decl. at ¶ 12.)

19 Defendant raised several defenses that presented risk, including that a class cannot be
20 certified due to individualized inquiries presented from each of the different claims. With respect
21 to the rest break violations, Defendant claims that its rest break policy is fully compliant with the
22 law, and to the extent there were any violations, such violations were sporadic and isolated.
23 Furthermore, Defendant has indicated that it has conducted an investigation into the procedures
24 for taking rest breaks and maintains that there are no rest break violations and/or deviation from
25 the rest break policy. With respect to the regular rate claims, Defendant maintains that it pays
26 meal period premiums properly and that it correctly calculates the regular rate of pay when paying
27 overtime. With respect to the wage statement violations, Defendant maintains that its wage
28 statement practices are compliant with Labor Code § 226 and that all hours worked are correctly

1 accounted for on its wage statements, such that Plaintiff's independent wage statement claims
2 would fail. With respect to the Labor Code § 2802 claim, Defendant has asserted as a defense
3 that employees had the option to use their personal cell phones to use the Discord mobile
4 application, but were not required to do so. Based on that, individualized inquiries would
5 predominate such that Plaintiff would not be able to certify the 2802 claims. Specifically, it is
6 also Defendant's position that a significant amount of employees part of the Settlement Class (an
7 estimated two-third or 66.66%) have signed arbitration agreements that Defendant maintains
8 would be enforceable in Court. Finally, Defendant contended that to the extent there were any
9 violations, such violations were not willful or intentional. Based on that, Defendant claims that
10 Plaintiff's waiting time penalties should be significantly lowered. If Plaintiff were to reduce the
11 amount of waiting time penalties by 66.66% based on this argument, Plaintiff would expect a
12 more modest waiting time penalties amount of approximately \$1,702,429².

13 With respect to potential liability of Plaintiff's PAGA claim, Plaintiff's expert has
14 calculated that Defendant could face civil penalties of up to approximately \$4,800,250 if Plaintiff
15 were successful at trial. (Tulyathan Decl. at ¶ 15.) The following represents a breakdown of the
16 PAGA penalties by claim:

- 17 • \$1,231,150 in PAGA penalties for rest period violations;
- 18 • \$164,500 in PAGA penalties for regular rate overtime violations;
- 19 • \$174,000 in PAGA penalties for meal period premium violations;
- 20 • \$169,200 in PAGA penalties for reporting time pay violations;
- 21 • \$2,462,300 in PAGA penalties for 2802 violations;
- 22 • \$85,100 in PAGA penalties for untimely payment of wages; and
- 23 • \$514,000 in PAGA penalties for independent wage statement violations.

24 (*Id.*) As this Court knows, PAGA penalties are not guaranteed and are often reduced as the Court
25 has discretion to do so. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award

26
27 ² The total class-wide damages and penalties amounts to \$4,545,960.50 if Plaintiff were to account for the
28 reduction in waiting time penalties, based on the argument that an estimated two-third or 66.66% of
employees part of the Settlement Class signed purportedly enforceable arbitration agreements. (Tulyathan
Decl. at ¶ 18.)

1 PAGA penalties where “if, based on the facts and circumstances of the particular case, to do
2 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
3 Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks* (2018) 30 Cal.
4 App. 5th 504, 529, while the plaintiff prevailed on his PAGA claim upon trial, the trial court
5 reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at
6 complying with the law. (*Id.* at p. 517.) Upon review, the Court of Appeal found such reduction
7 to be proper. (*Id.* at p. 539.)

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

16 Thus, the settlement for each Settlement Class Member is fair, reasonable, and adequate,
17 given the inherent risks of litigation, including the substantial risks relative to class certification
18 and the merits of the case, and the costs of pursuing such litigation. The settlement is the result of
19 extensive arms’ length negotiations between the Parties and their counsel and was facilitated by
20 an experienced and neutral mediator. (*See* Tulyathan Decl. at ¶¶ 7-9.)

21 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
22 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
23 involved in not prevailing on one or more of the causes of action or theories alleged in the
24 lawsuit, the possibility of non-certification, and the potential for any appeals. (Tulyathan Decl. at
25 ¶ 17.) These risks on class certification are compounded by the California Supreme Court’s
26 holding in *Duran v. U.S. Bank Nat’l Ass’n* (2014) 59 Cal. 4th 1.

27 Indeed, numerous courts have held that **gross** settlements approximating between only 8%
28 and 25% of the Defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
Corp. Secs. Litig., 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement

1 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
2 settlement amounting to only a fraction of the potential recovery does not per se render the
3 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
4 assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
5 settlement is fair and adequate depends on the “the difficulties in proving the case”);
6 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal.
7 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
8 Defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
9 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
10 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
11 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
12 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
13 approximately 15% of the potential recovery was fair and reasonable).

14 Here, the total amount of class and PAGA penalties amount would realistically range
15 anywhere between \$12,750,047 to \$9,346,210.50, without discounting for potentially losing an
16 any of the causes of action or discounting for reduction of PAGA penalties. (Tulyathan Decl. at ¶
17 18.) The Total Settlement Amount is \$950,000, which is approximately 8.6% of the average of
18 the potential amount of damages/penalties. (*Id.* at ¶ 19.) If the PAGA penalties were reduced by
19 90% such as in *Carrington*, the settlement would be approximately 14% of the average potential
20 exposure. (*Id.*)

21 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice,
22 should any Settlement Class Member wish to pursue his or her own case for the claims being
23 released herein, each Settlement Class Member has the right to submit a request for exclusion
24 (*i.e.*, opt-out) from the settlement. (See Class Notice at ¶ 9, attached as **Exhibit C** to Tulyathan
25 Decl.) Settlement Class Members are also provided with instructions on how to submit an
26 objection to the settlement or its terms. (*Id.* at ¶ 10.) Moreover, as set forth in the Class Notice,
27 Settlement Class Members are advised of their right to attend the final approval hearing. (*Id.* at ¶
28 12.)

///

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

4 The Stipulation provides for \$950,000 as the Total Settlement Amount. (Stipulation at §§
5 2.26, 5.1.) Attorneys' fees will be no more than 35% of the Gross Settlement Sum, which
6 amounts to \$332,500.00. (*Id.* at § 5.1.3.) Class Counsel's costs will be no more than \$20,000.00.
7 (*Id.*) The Settlement Administrator's fees to administer this settlement will be no more than
8 \$20,000.00. (*Id.* at § 5.1.6.) The enhancement award Plaintiff for prosecuting this case on behalf
9 of the Settlement Class and for providing a general release of all claims, including a California
10 Civil Code § 1542 waiver, will be no more than \$10,000.00. (*Id.* at § 5.1.2.) Finally, \$40,000.00
11 of the Total Settlement Amount will be allocated to penalties under the PAGA, of which 75
12 percent, or \$30,000.00, will be paid to the LWDA as a beneficiary. (*Id.* at § 5.1.5.) The
13 remaining 25 percent, or \$10,000.00, will become part of the Net Settlement Amount to be
14 allocated among Settlement Class Members. (*Id.*)

15 The Net Settlement Amount, calculated after deduction of attorneys' fees (up to
16 \$332,500.00), litigation costs (up to \$20,000.00), the representative enhancement award to
17 Plaintiff (up to \$10,000.00), PAGA payment to the LWDA (\$30,000.00), and Settlement
18 Administration Costs (up to \$20,000.00), is estimated to be approximately \$537,500.00.
19 (Stipulation at § 2.9.) Each Participating Settlement Class Member who does not opt-out of the
20 Settlement will be awarded a portion of the Net Class Settlement Amount on a pro rata basis,
21 based on the number of pay period each Settlement Class Member worked while actively
22 employed by Defendant during the Settlement Class Period. (*Id.* at § 5.1.1.1.)

23 Based thereon, each Participating Settlement Class Member will recover on average
24 approximately **\$223.96**. (Tulyathan Decl. at ¶ 21.) The amount actually paid to each
25 Participating Settlement Class Member may increase or decrease depending on the number of opt-
26 outs and the number of pay periods each Settlement Class Member worked during the Settlement
27 Class Period. (*Id.*)

28 Finally, the terms of the Settlement provide that uncashed checks (upon the expiration
date) shall be distributed to State Bar of California's Justice Gap Fund in accordance with Code
of Civil Procedure § 384. (Stipulation at § 5.1.11.)

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

4 This Settlement is non-reversionary, meaning that none of the settlement funds will revert
5 to Defendant. (Stipulation at §§ 2.26, 5.1.)

6 **3. Scope of the Release Under the Settlement.**

7 The scope of the release applicable to Settlement Class Members, as listed below, is
8 identified in the Stipulation at Section 8.1. Section 8.1 provides as follows:

9 If finally approved by the Court, each Settlement Class Member who does
10 not request exclusion from the Settlement will be bound by all the terms of
11 the Settlement, including a release of all claims that were or reasonably
12 could have been asserted or alleged in the Litigation that accrued during the
13 Settlement Class Period based on the facts pleaded in the operative
14 complaint on file, including: any and all claims and damages arising from
15 any of the facts alleged in Plaintiff's operative complaints for damages,
16 including Defendant's alleged violation of the California Business and
17 Professions Code sections 17200, *et seq.* for, *inter alia*, failure to pay
18 overtime and minimum wages, provide meal and rest periods and
19 associated premium payments, timely pay wages during employment and
20 upon termination, provide compliant wage statements, maintain complete
21 and accurate payroll records, and reimburse necessary business-related
22 expenses, as well as all claims for failure to pay minimum wage, failure to
23 pay overtime wages, failure to provide meal and rest periods, failure to
24 issue accurate itemized wage statements, and Defendant's alleged unfair
25 business practices stemming from these alleged Labor Code violations.
26 ("Released Claims").

27 (Stipulation at § 8.1.)

28 As shown above, the release for Settlement Class Members is tailored to only claims that
are part of the lawsuit that accrued during the Settlement Class Period, and as such, the release is
appropriately limited. Further, the scope of the release does not include any waiver under
California Civil Code § 1542 for Settlement Class Members.

4. Tax Treatment of Settlement Amounts Paid to Participating Settlement
 Class Members.

 Each individual settlement payment paid to Participating Settlement Class Members will
be allocated as follows for tax purposes: 33 1/3% as wages, as to which IRS Forms W-2 will
issue, and 66 2/3% as penalties and interest, as to which IRS Forms 1099 will issue. (Stipulation
at § 5.1.8.)

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

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

9 If a Settlement Class Member does not wish to take part in this settlement and be bound
10 by the release, the Settlement Class Member must submit a request for exclusion. (Stipulation at
11 § 7.7.)

12 **C. Notice to Class Members**

13 Within fifteen (15) calendar days after the Court grants preliminary approval of this
14 settlement, Defendant will transmit to the Settlement Administrator the Class List, which will
15 contain the following information for each Settlement Class Member: the full name, last known
16 mailing address and telephone number, Social Security number, dates of employment in a non-
17 exempt position, and the applicable number of pay periods worked by each Settlement Class
18 Member during the Settlement Class Period in order to calculate each Settlement Class Member's
19 respect settlement share. (Stipulation at § 6.1.)

20 Upon receipt of the information and prior to mailing the Class Notices, the Settlement
21 Administrator shall perform reasonable verification addresses search for information to update
22 and correct any known or identifiable address changes. In this regard, the Settlement
23 Administrator will process the Class List against the National Change of Address database
24 maintained by the United States Postal Service. (Stipulation at § 6.5.) Within ten (10) calendar
25 days of receiving the Class List from Defendant, the Settlement Administrator shall mail out
26 Class Notices to all Settlement Class Members using the most current addresses identified. (*Id.* at
27 § 6.4.) For any notices that are returned to the Settlement Administrator with a forwarding
28 address, the Settlement Administrator will re-mail the Class Notice to the forwarding address
 affixed thereto within three business days. (*Id.* at § 6.6.) For any notices that are returned as

1 undeliverable without a forwarding address and/or lost, the Settlement Administrator will
2 promptly perform a skip-trace, or equivalent search, to obtain alternative addresses for re-mailing.
3 (*Id.*) The Settlement Administrator will perform ski-tracing periodically throughout the notice
4 dissemination and opt-out period. (*Id.*) The Settlement Administrator will then re-mail the Class
5 Notice to any alternative addresses. (*Id.*)

6 As set forth in the Class Notice, Settlement Class Members will be allowed to opt out of
7 the settlement, or object to the settlement in writing, by a certain deadline. (Stipulation at §§
8 2.17, 7.7, 7.8.) Settlement Class Members who have had their Class Notices re-mailed will have
9 their deadlines extended by fifteen (15) calendar days from the original deadline. (*Id.* at § 2.17.)

10 **D. Class Certification**

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

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

22 In the present case, Plaintiff alleges that Defendant is liable to the class for failure to
23 provide off-duty rest breaks or pay rest period premium compensation in violation of Labor Code
24 § 226.7, failure to pay meal period premium at the regular rate of pay in violation of Labor Code
25 §§ 226.7 and 512; failure to pay all wages owed in violation of Labor Code §§ 201-204, 510, 558,
26 1174, 1194, 1198, and 1199, failure to provide accurate itemized wage statements in violation of
27 Labor Code § 226(a); and failure to reimburse business-related expenses in violation of Labor
28 Code § 2802. Like all Settlement Class Members, Plaintiff was subjected to these same policies

1 and practices. (*See* Declaration of Van Walker (“Walker Decl.”) at ¶¶ 3-6.) In particular,
2 Plaintiff did not receive off-duty rest periods, or received rest period premium compensation for
3 the non-compliant rest periods. (*Id.* at ¶ 3.) Plaintiff was also not paid all wages owed, including
4 overtime wages, meal period premium compensation, and reporting time pay. With respect to
5 overtime wages and meal period premium compensation, Plaintiff was underpaid said wages and
6 Defendant did not factor in non-discretionary incentives, including shift premiums and shift
7 differentials, into the regular rate of pay. (*Id.* at ¶ 4.) Plaintiff also received inaccurate wage
8 statements that did not comply with Labor Code § 226(a). (*Id.* at ¶ 5.) Lastly, Plaintiff was also
9 required to use his personal cellphone for work communication purposes, but were not
10 compensated and/or reimbursed for the charges she incurred for such work usage. (*Id.* at ¶ 6.) In
11 other words, Plaintiff was subjected to the same policies and practices as other Settlement Class
12 Members and thus, her claims are typical to those of the Settlement Class.

13 Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor have
14 any such issues been raised or presented. (Walker Decl. at ¶ 7.) Plaintiff has taken all necessary
15 steps to represent the interests of the Class, including by providing information and documents to
16 Class Counsel and by reviewing the pleadings and documents in the lawsuit. (*Id.* at ¶¶ 8-9.) For
17 such reasons, Plaintiff has adequately represented the Settlement Class Members and will
18 continue to do so.

19 **2. Class Counsel Has Adequately Represented the Class and Has
Experience with Wage and Hour Class Actions.**

20 From the inception of the case, Class Counsel has zealously represented the interests of
21 the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual
22 Class Representative. (Tulyathan Decl. at ¶ 24.) Further, Class Counsel has been approved as
23 class counsel on a number of prior cases, have litigated numerous other class action cases, and are
24 competent to represent the class. (Lee Decl. at ¶¶ 7-8; Tulyathan Decl. at ¶¶ 28-30.)

25 **3. The Proposed Class Settlement Meets the *Kullar* Factors.**

26 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
27 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
28 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the

1 plaintiff's claims. As discussed herein and above, Plaintiff's counsel has conducted sufficient
2 discovery and investigation, including through informal discovery. In light of the strength and
3 weaknesses of Plaintiff's claims, Plaintiff's attorneys submit that this settlement is fair pursuant to
4 *Kullar*.

5 The Parties informally exchanged information, including obtaining and analyzing class
6 data, time and payroll records for the entire class for a damages analysis, Defendant's pertinent
7 wage and hour policies regarding the payment of shift premiums and shift differentials, the
8 payment of overtime wages and meal period premiums, its wage statement practices, and use of
9 personal cell phones for mobile applications to be used for work-related purposes. (Tulyathan
10 Decl. at ¶ 7.) Plaintiff also retained an expert to analyze the data and records. (*Id.* at ¶ 8.) The
11 Parties have also attended mediation, which has involved lengthy, arm's length negotiations over
12 the terms and conditions of this settlement. (*Id.* at ¶ 9.) Based on all of the data and records
13 provided by Defendant, Plaintiff's expert witness was able to perform calculations and value the
14 maximum damages and penalties at issue as discussed above. (*Id.* at ¶¶ 12, 15.)

15 **E. Costs and Fees**

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

17 California state and federal courts have recognized that an appropriate method for
18 determining award of attorneys' fees is based on a percentage of the total value of benefits to
19 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
20 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
21 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this
22 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
23 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
24 burden alone." *Vincent*, 557 F. 2d at 769.

25 The Common Fund doctrine is predicated on the principle of preventing unjust
26 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
27 he may require the passive beneficiaries to compensate those who created the fund. Both
28 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
Vincent, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.4th

1 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
2 been applied “consistently in California when an action brought by one party creates a fund in
3 which other persons are entitled to share.” The reasons for applying the common fund doctrine
4 include: “...fairness to the successful litigant, who might otherwise receive no benefit because his
5 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
6 others who are entitled to share in the fund and who should bear their share of the burden of its
7 recovery; encouragement of the attorney for the successful litigant who will be more willing to
8 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
9 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*

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

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

22 The Parties have agreed to a payment of a maximum of 35 percent of the Total Settlement
23 Amount, or \$332,500.00, for payment to Class Counsel as attorneys’ fees. (See Stipulation at §
24 5.1.3.) As the Parties have agreed to a payment of the foregoing attorney’s fees, this amount
25 should be presumed to be fair.

26 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs of up
27 to \$20,000.00. (See *id.*) Class Counsel have, at their own risk, expended costs, for example, to
28 file this instant action and other pleadings, effect service of process, advanced court costs,
advanced mediation costs, and paid for other litigation-related costs.

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

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

4 Plaintiff requests a modest enhancement of \$10,000.00. (Stipulation at § 5.1.2.) The
5 Class Representative met and conferred with Class Counsel on a number of occasions to discuss
6 the case, searched for and provided documents and information to Class Counsel, and reviewed
7 the pleadings and documents in this case, including the PAGA letters, the Settlement Agreement,
8 and his declaration. (Walker Decl. at ¶ 9.) As part of his duties as Class Representative, Plaintiff
9 provided invaluable information, evidence, and documents that resulted in this settlement. In
10 addition to the invaluable services that Plaintiff provided, he also took significant risks, both
11 professionally and monetarily, in acting as the Class Representatives and seeking benefits on
12 behalf of the class. Because the claims alleged in this lawsuit involved the payment of costs to
13 the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant in the event
14 that he does not prevail in this action.

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

21 Finally, as part of this settlement, Plaintiff has executed a general release, including as to
22 California Civil Code § 1542, which is something that class members did not have to provide.
23 Plaintiff's sacrifice for the benefit of the class further warrants the requested enhancement
24 amount.

25 Notably, courts have routinely granted approval of representative enhancements for far
26 greater amounts than the \$10,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
27 *Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
28 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*,

1 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*
2 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
3 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
4 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
5 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
6 \$25,000 incentive award to class representative in ERISA case). Here, Plaintiff requests an
7 incentive award of \$10,000.00, which is reasonable and consistent with case law.

8 **3. Settlement Administration Fees**

9 The Parties have agreed to an estimated payment of \$20,000.00 to the Settlement
10 Administrator, Phoenix Settlement Administrators, to administer this settlement. (*See* Stipulation
11 at §§ 2.20, 5.1.6.) Phoenix Settlement Administrators is a well-recognized class action settlement
12 administrator. The Parties believe that the administration fee is reasonable and should be
13 approved.

14 **IV. LWDA HAS BEEN PROVIDED WITH CLASS NOTICE OF THIS MOTION**

15 Concurrent with the filing of this Motion, on October 18, 2021, Plaintiff provided notice
16 of this Motion and the Settlement to the LWDA. (Tulyathan Decl. at ¶ 32.)

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

18 Here, the proposed settlement is fair, adequate, and reasonable. It will result in substantial
19 monetary benefits to Settlement Class Members; it is non-collusive; and it was achieved as the
20 result of informed, extensive, and arms' length negotiations conducted by counsel for respective
21 parties who are experienced in wage and hour class action litigation and facilitated by a neutral
22 and experienced mediator. For the foregoing reasons, Plaintiff respectfully requests that the Court
23 grant preliminary approval of the proposed settlement, sign the proposed Order, approve and
24 authorize mailing of the proposed Class Notice, and set a date for a final approval hearing that is
25 approximately 120 days from the Order granting this motion.

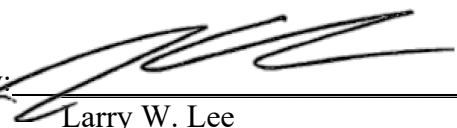
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1 DATED: October 18, 2021

DIVERSITY LAW GROUP, P.C.

2
3 By: 

Larry W. Lee

Mai Tulyathan

4 Attorneys for Plaintiff, the Class, and Aggrieved
5 Employees
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