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

BRANDEN BAGGOT, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

FOTO-KEM INDUSTRIES, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV31051

[Hon. William F. Highberger]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of William L. Marder; Declaration of Branden
Baggot; [Proposed] Order]*

Date: June 4, 2021
Time: 1:30 p.m.
Department: 10

Complaint Filed: August 17, 2020

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 4, 2021, at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department 10 of the above-entitled court located at 312 N. Spring Street, Los Angeles,
4 California 90012, Plaintiff, Branden Baggot, will and hereby does seek an Order: (1) approving the Joint
5 Stipulation of Class Action and PAGA Settlement (“Agreement”) attached as Exhibit A to the
6 concurrently filed Declaration of Simon L. Yang; (2) conditionally certifying the following Class for
7 settlement purposes only: “any person whom Defendant employed in California as a non-exempt
8 employee who earned shift premium wages in the same workweek he/she took paid time off at any time
9 during the Class Period and did not execute a severance agreement at any time during the Class Period,”
10 with the “Class Period” meaning April 6, 2016, through January 18, 2021; (3) appointing Plaintiff,
11 Branden Baggot, as the Class Representative and Larry W. Lee and Simon L. Yang of Diversity Law
12 Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel; (4) preliminarily approving
13 the Agreement and the total Gross Settlement Amount in the amount of \$350,000; (5) finding on a
14 preliminary basis that the Agreement, including the amount of LWDA Payment, Class Representative
15 Award, Attorneys’ Fees and Costs Award, Settlement Administration Costs, and allocation of payments
16 to Class Members and PAGA Employees, appears to be within the range of reasonableness of a
17 settlement that could ultimately be given final approval by this Court; (6) approving the distribution of
18 the Notice of Class Action Settlement attached as Exhibit A to the Agreement; (7) appointing Phoenix
19 Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a final approval
20 hearing.

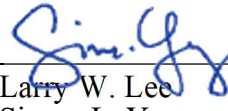
21 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
22 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
23 The basis for the Motion, filed without any opposition from Defendant, Foto-Kem Industries, Inc., is
24 that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties
25 are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the
26 settlement.

27 The Motion is based on this notice, accompanying memorandum of points and authorities, the
28 Agreement and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W.

1 Lee, Simon L. Yang, William L. Marder, and Branden Baggot, all pleadings and papers on file herein,
2 and any further oral and documentary evidence as may be presented before or at the hearing of this
3 matter.

4 DATED: May 12, 2021

DIVERSITY LAW GROUP, P.C.

5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

This wage and hour class action alleges Defendant, Foto-Kem Industries, Inc., underpays sick pay wages. Plaintiff, Branden Baggot, sued to remedy Defendant's violations of Labor Code sections 201-204 and 246 that result from Defendant's failure to pay sick pay wages at the regular rate of pay when employees earned shift premium wages in workweeks that they also took paid sick leave. He brought his claims on a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Defendant denies each and every alleged violation.

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 or that liability may not be established. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interests of the Class in light of all known circumstances and the expenses and risks inherent in litigation. Indeed, **each Class Member, on average, is estimated to receive approximately \$457.84 per person.**

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the claims alleged in the Complaint and engaged in a thorough study of the legal principles applicable to the claims Plaintiff alleged and defenses Defendant asserted. Defendant provided information related to the number of individuals that earned shift premium wages in workweeks that they also took paid sick leave, the number of pay periods impacted, the number of hours of paid time off ("PTO") the individuals used, and the average earnings for such individuals, among other things. Thereafter, the Parties commenced settlement negotiations through a well-respected mediator, Gig Kyriacou, and were ultimately able to agree to the current settlement. Significantly, the entire \$350,000 settlement amount is non-reversionary, such that no monies will revert back to Defendant.

The Parties believe that this amount is fair, adequate, and reasonable. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

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RELEVANT BACKGROUND

On August 17, 2020, Plaintiff initiated a class action against Defendant by filing the Complaint in the Superior Court of the State of California for the County of Los Angeles. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On behalf of all current and former non-exempt employees in California since April 6, 2016, who earned non-discretionary incentive wages like shift premiums in workweeks that they took paid sick leave, Plaintiff sued to remedy Defendant’s failure to pay sick pay wages at the regular rate of pay. *Id.* In the Complaint, Plaintiff also alleged representative PAGA claims. *Id.* As a proxy for the State of California, Plaintiff sued to penalize the Labor Code violations resulting from Defendant’s underpayment of sick pay wages since April 6, 2019. *Id.*

The Complaint alleges that Defendant violated the Labor Code by failing to pay sick pay wages at the regular rate of pay by no later than the payday for the next regular payroll period after sick leave was taken or upon termination of employment. Yang Decl. ¶ 3. Specifically, the Complaint alleges that Plaintiff and other employees routinely earned shift premium wages, thus increasing employees’ regular rate of pay. *Id.* It alleges that when sick leave was taken in workweeks that employees earned shift premium wages, sick pay wages were paid at employees’ base rate of pay rather than the regular rate of pay. The Complaint also alleges that Plaintiff and other employees were not paid their underpaid sick pay wages at the ends of their employments. On that basis, it alleges that Defendant violates Sections 201-204 and 246.¹

After Plaintiff filed the Complaint, the Parties agreed to attempt to resolve this matter at private mediation. Yang Decl. ¶ 4. In connection therewith, Defendant produced data relating to the number of individuals that earned shift premium wages in workweeks that they also took paid sick leave, the number of pay periods impacted, the number of hours of PTO the individuals used, and the average earnings for such individuals, among other things, which allowed Plaintiff to conduct a full damage analysis. *Id.* As a result of the mediation, the Parties were able to agree on the current settlement. *Id.* ¶ 6.

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 **LEGAL STANDARD**

2 Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is
3 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
4 has been distributed to class members for their comment or objections. As the Manual for Complex
5 Litigation (Third) explains the first step, “counsel submits the proposed terms of settlement and the court
6 makes a preliminary fairness evaluation”:

7 If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its
8 fairness or other obvious deficiencies, such as unduly preferential treatment of class
9 representatives or of segments of the class, or excessive compensation for attorneys, and appears
10 to fall within the range of possible approval, the court should direct that notice ... be given to the
11 class members of a formal fairness hearing, at which arguments and evidence may be presented
12 in support of and in opposition to the settlement.

13 Manual for Complex Litigation (Third) § 30.41.

14 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
15 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
16 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may
17 find that the settlement proposal contains some merit, is within the range of reasonableness required for
18 a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final
19 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

20 The parties also may, at the preliminary approval stage, request that the court provisionally
21 approve certification of the class—conditioned upon final approval of the settlement. As further
22 explained by Professor Newberg:

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

28 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
accord Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
and reasonable”).

1 **DISCUSSION**

2 **I. The Proposed Settlement Should Be Granted Preliminary Approval.**

3 The mediated settlement is fair, adequate, and reasonable.

4 **A. Proposed Class Definition**

5 The proposed settlement class includes “any person whom Defendant employed in California as
6 a non-exempt employee who earned shift premium wages in the same workweek he/she took paid time
7 off at any time during the Class Period and did not execute a severance agreement at any time during the
8 Class Period,” with the “Class Period” meaning April 6, 2016, through January 18, 2021 (a “Class
9 Member”). Agreement §§ 1.5, 1.7. There are approximately 419 Class Members. Agreement § 1.5.

10 The proposed settlement also involves a subset of aggrieved “PAGA Employees” defined as
11 “any Class Member employed at any time during the period from April 6, 2019 through January 18,
12 2021 (the “PAGA Period”) and who earned shift premium wages in the same workweek he/she took
13 PTO at any time during the PAGA Period.” Agreement § 1.17.

14 **B. Settlement Terms and Evaluation**

15 Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence
16 to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*
17 *Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust*
18 *Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the
19 proponents, particularly where, as here, a settlement has been reached with the participation of
20 experienced counsel familiar with the litigation. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*,
21 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990);
22 *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp.
23 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D.
24 Pa. 1978).

25 While the recommendations of counsel proposing the settlement are not conclusive, the Court
26 can properly take them into account, particularly where, as here, they have been involved in formal and
27 informal discovery and negotiations for some period of time, appear to be competent, have experience
28 with this type of litigation, and have exchanged substantial evidence from the opposing party. See

1 Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528 (“So
2 long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial
3 presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the
4 recommendations of counsel, who are most closely acquainted with the facts of the underlying
5 litigation.”) (citations omitted).

6 Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage
7 and hour class action litigation. Plaintiff’s counsel has extensive class action and litigation experience
8 and has been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
9 W. Lee (“Lee Decl.”) ¶¶ 3-9; Yang Decl. ¶¶ 10-14; Declaration of William L. Marder (“Marder Decl.”)
10 ¶¶ 11-12. Each side has apprised the other of their respective factual contentions and legal theories, and
11 each side has considered the other’s contentions and theories—resulting in negotiations taking place
12 between the Parties. Yang Decl. ¶¶ 5-6.

13 Defendant contends that they had a number of defenses to Plaintiff’s claims, including factual
14 disputes as to whether PTO was used for paid sick leave or not, whether furloughed individuals were
15 entitled to waiting-time penalties, whether a good faith defense applied, and whether discretionary
16 reductions to penalty amounts applied, among others. Yang Decl. ¶¶ 5-6.

17 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face
18 potential liability for underpaid sick pay wages and penalties in the amount of approximately
19 \$1,640,372.80. Yang Decl. ¶ 5. The vast majority of this potential liability—approximately
20 \$1,459,995.11—results from waiting time penalties under Section 203, which Defendant contended
21 were unavailable based on the facts (i.e., furloughs) or law (i.e., good faith defenses). *Id.* Setting aside
22 waiting time penalties, the remaining potential liability—approximately \$38,177.69 in damages or
23 restitution for underpaid sick pay wages and approximately \$142,200 in either statutory or civil penalties
24 under Section 210—totaled just over \$180,000. *Id.* Defendant also contended that these amounts were
25 subject to defenses. *Id.* While the Parties disagree on the law, each Party recognized in negotiations that,
26 if taken to trial, the other Party would at least have reasonable arguments, such that the Gross Settlement
27 Value to which the Parties ultimately agreed at mediation was reasonable. *Id.* ¶ 6.

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

5 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness of
6 the settlement when factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one
7 or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-
8 certification, and potential for appeals. Yang Decl. ¶¶ 8-9. Ultimately, the Gross Settlement Amount
9 secures almost two times Defendant's potential non-waiting time penalty liability. *Id.* Even when
10 factoring in waiting time penalties, the Gross Settlement Amount secures more than 21% of Defendant's
11 potential liability for the class. *Id.*

12 Indeed, numerous courts have held that gross settlement amounts of less than 20%—and as little
13 as 8%—of a defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
14 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
15 potential exposure was fair and reasonable; "It is well-settled law that a cash settlement amounting to
16 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
17 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
18 the litigation to judgment."); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
19 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
20 defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
21 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
22 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
23 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
24 action settlement of approximately 15% of the potential recovery was fair and reasonable).

25 Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her
26 own case for the claims proposed to being settled and released, each Class Member has the right to
27 submit a request for exclusion (i.e., opt out) from the settlement. Agreement § 4.3. Moreover, as set
28 forth in the Notice of Class Action Settlement ("Class Notice"), Class Members are advised of their

1 right to attend the final approval hearing and object to any of the terms contained in the Agreement.
2 Agreement Ex. A; Agreement § 4.2.

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

6 The Agreement provides for \$350,000 as the Gross Settlement Amount. Agreement § 5.1. From
7 the Gross Settlement Amount, attorneys' fees will be no more than 33⅓% of the Gross Settlement
8 Amount, which amounts to \$116,666.67. Agreement § 5.1.1. Class Counsel's costs will be no more than
9 \$15,000. Agreement § 5.1.1; Yang Decl. ¶ 7. The Class Representative Award will be no more than
10 \$10,000. Agreement § 5.1.2. Settlement Administration Costs will be no more than \$9,000. Agreement §
11 5.1.3; Yang Decl. ¶ 7. A PAGA Penalty Fund will be \$10,000.

12 The remaining Net Settlement Amount will be allocated among Settlement Class Members on a
13 pro rata basis based on the number of pay periods during the Class Period that each Settlement Class
14 Member was paid shift premium wages and took paid time off during the same pay period. Agreement §
15 5.2.1. In addition, the PAGA Penalty Fund will result in an LWDA Payment of \$7,500 and \$2,500 to be
16 allocated to PAGA Employees on a pro rata basis based on the number of pay periods during the PAGA
17 Period that each PAGA Employee was paid shift premium wages and took paid time off during the same
18 pay period. Agreement § 5.2.2.

19 Pursuant to the settlement's terms, it is estimated that no less than approximately \$192,000 will
20 be available to be distributed to Settlement Class Members and PAGA Employees. Yang Decl. ¶ 7.
21 Pursuant to the settlement's terms, **each Class Member, on average, is estimated to receive**
22 **approximately \$457.84 per person.** *Id.* The amount paid on average to each Class Member may
23 increase, depending on how many Class Members opt out of the settlement. *Id.* The amount actually
24 paid to any Class Member may increase or decrease depending on the number of pay periods during the
25 Class Period that each Settlement Class Member was paid shift premium wages and took paid time off
26 during the same pay period. *Id.*

27 Finally, the principal for any uncashed checks (upon the expiration date) shall be distributed to
28 the State Controller Unclaimed Property Fund in the name of the Settlement Class Member or
distributed in accordance with the Final Approval Order. Agreement § 5.5.

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

4 None of the settlement funds will revert to Defendant. Agreement § 5.1.

5 **3. Scope of the Release of Class Members' Claims**

6 As a condition of participating in this settlement, Settlement Class Members shall waive and
7 release any and all claims or causes of action during the Class Period that were alleged in the Action or
8 that reasonably could have been alleged based on the facts alleged in the Action, including claims for
9 failures to pay sick pay at the regular rate of pay and all penalties related thereto, violations of California
10 Labor Code §§ 201, 202, 203, 204, 246, and Business and Professions Code § 17200, et seq., including
11 all attorneys' fees and costs related thereto. Agreement § 6.1. PAGA Employees, whether requesting
12 exclusion from the settlement or not, will release any and all claims for civil penalties under PAGA that
13 are based on the facts alleged in the Action and/or Notice to the LWDA, arising during and/or with
14 respect to the PAGA Period, including all attorneys' fees and costs related thereto. *Id.*

15 The release is thus appropriately limited. *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808,
16 820 (2014) ("A general release—covering 'all claims' that were or could have been raised in the suit—is
17 common in class action settlements."). Moreover, the Settlement Class Member release applies only to
18 claims arising during the Class Period, and the PAGA Employee release applies only to claims arising
19 during the PAGA Period.

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

21 As Plaintiff's lawsuit sought underpaid sick pay wages but most of Defendant's potential
22 liability was for statutory and civil penalties, the Parties have agreed that 90% of Settlement Class
23 Member's Individual Settlement Payments shall be characterized as penalties and interest, and 10% shall
24 be characterized as wages. Agreement § 5.2.1. All other settlement payments do not consist of wages
25 and shall be characterized as IRS Form 1099 payments. Agreement § 5.6.

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

28 As stated above, Class Members do not need to do anything should they wish to receive their
share of the settlement funds. Thus, this substantially decreases the amount of burden each Class

1 Member must bear in order to receive their settlement share. If a Class Member does not wish to take
2 part in this settlement and be bound by the release, he or she must submit a Request for Exclusion.
3 Agreement § 4.3.

4 **C. Notice to Class Members**

5 Within seven calendar days of the Preliminary Approval Order, Defendant shall provide to the
6 Settlement Administrator each Class Member's name, last known mailing address, as well as data
7 sufficient for the Settlement Administrator to perform all necessary responsibilities pursuant to the
8 settlement. Agreement § 3.2. The Settlement Administrator shall send Class Notice to Class Members to
9 provide notice of settlement.

10 Before mailing the Class Notice, the Settlement Administrator shall review the national change
11 of address registry for all Class Members and/or skip trace to determine the most up-to-date addresses of
12 all Class Members. Agreement § 3.4. Within 14 calendar days of the Preliminary Approval Order, the
13 Settlement Administrator shall send Class Notice to each Class Member via First Class U.S. Mail, using
14 the last known mailing address for each Class Member, based on class data provided by Defendant or
15 the most recent address known for each Class Member as determined by the Settlement Administrator.
16 Agreement §§ 3.3, 3.4. Any Class Notice returned to the Settlement Administrator as undeliverable shall
17 be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. Agreement § 3.4. If
18 no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the
19 correct address using a skip-trace search and shall then promptly send a re-mailing. *Id.*

20 As set forth in the Class Notice, Class Members will be allowed to opt out of the settlement by a
21 certain deadline, or object to the settlement in writing or by appearing at the final approval hearing.
22 Agreement §§ 4.1-4.3.

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

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

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

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

7 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure
8 violated the Labor Code by failing to pay sick pay wages at the regular rate of pay by no later than the
9 payday for the next regular payroll period after sick leave was taken or upon termination of
10 employment. Yang Decl. ¶¶ 2-3. Plaintiff earned shift premium wages, thus increasing his regular rate of
11 pay. Declaration of Branden Baggot ("Baggot Decl.") ¶ 2. When Plaintiff took sick leave in workweeks
12 that he earned shift premium wages, sick pay wages were paid at his base rate of pay rather than his
13 regular rate of pay. *Id.* Plaintiff was not paid his underpaid sick pay wages at the end of his employment.
14 *Id.* In other words, Plaintiff was subjected to the same policy and practice as other Class Members.
15 Thus, Plaintiff's claims are typical to those of Class Members.

16 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues
17 been raised or presented. Baggot Decl. ¶ 4. Plaintiff has taken all necessary steps to represent the
18 interests of the Class, and by providing information and documents to Plaintiff's counsel. *Id.* ¶ 3. For
19 such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

20 **2. Class Counsel Has Adequately Represented the Class and Has Experience** 21 **with Wage and Hour Class Actions**

22 From the inception of the case, Class Counsel has zealously represented the interests of the
23 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
24 Representative. Further, Class Counsel has been approved as class counsel on a number of prior cases,
25 have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶
26 2-9; Yang Decl. ¶¶ 10-14; Marder Decl. ¶¶ 11-12.

1 **E. Costs and Fees**

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

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

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

23 Indeed, most recently, the California Supreme Court has also now held that the award of
24 attorneys' fees in common fund wage and hour class action settlements should start with the percentage
25 method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming
26 majority of federal and state courts in holding that when class action litigation establishes a monetary
27 fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel
28

1 a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
2 appropriate percentage of the fund created.”).

3 The California Supreme Court in *Laffitte* affirmed a fee award representing 33⅓% percent of the
4 fund. *Laffitte*, 1 Cal. 5th at 506. This was based on a lodestar amount that required a multiplier of 2.13.
5 *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or low [should] the trial
6 court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier
7 within a justifiable range.” *Id.* at 505.

8 The Parties have agreed to a payment of a maximum of 33⅓% of the settlement (\$116,666.67)
9 for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a payment of the foregoing
10 attorney’s fees and, thus, this payment should be presumed to be fair.

11 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class
12 Counsel have, at their own risk, expended costs, for example, to file this instant action, service of
13 process, mediation fee, and payment of other litigation related costs.

14 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and costs
15 being requested by the Parties.

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

17 Class Representative Branden Baggot requests a modest Class Representative Award of \$10,000.
18 Agreement § 5.1.2. The Class Representative met and conferred with Class Counsel on a number of
19 occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the
20 Agreement. As part of his duties as the Class Representative, Plaintiff provided invaluable information,
21 evidence, and documents that resulted in this settlement. Baggot Decl. ¶¶ 2–3. In addition to the
22 invaluable services that Plaintiff provided, he also took a significant risk, both professionally and
23 monetarily, once furloughed and uncertain as to whether he would be offered subsequent employment,
24 in acting as the Class Representative by seeking benefits on behalf of the class. Because the claims
25 alleged by the class representative involved the payment of costs to the prevailing party, Plaintiff could
26 have possibly faced paying the costs of Defendant had he not prevailed in this action.

27 Furthermore, given that future employers are much less likely to hire individuals who have filed
28 suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the

1 future from other potential employers. Plaintiff took this risk upon himself and the whole class benefited
2 from these risks taken by Plaintiff. Class Members did not have to file individual lawsuits and bear the
3 risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and
4 not getting future employment had they filed a public lawsuit.

5 Finally, as part of this settlement, Mr. Baggot has agreed to provide a full, complete, and general
6 release of his individual claims—something that the Class Members do not have to provide. This
7 sacrifice by Mr. Baggot for the benefit of the Class further warrants the requested enhancement amount.

8 **3. Settlement Administration Costs**

9 The Parties have agreed to Settlement Administration Costs of no more than \$9,000 to Phoenix
10 Settlement Administrators, to send notices and to administer this settlement. Agreement § 5.1.3. Phoenix
11 Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe
12 that the Settlement Administration Costs are reasonable and should be approved.

13 **II. The Actions Requested by the Motion for Preliminary Approval Should Be Granted.**

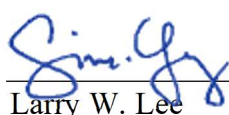
14 As discussed above, the proposed settlement will result in substantial monetary benefits to class
15 members. It was achieved as the result of informed, extensive, and arms-length negotiations conducted
16 by parties who are both represented by counsel experienced in wage and hour class action litigation. Its
17 terms appear to be fair, adequate, and reasonable. And there is no reason to believe the proposed
18 settlement is deficient or outside the range of reasonableness for such a settlement. Accordingly, the
19 Court should (i) grant preliminary approval of the settlement, (ii) approve and authorize the mailing of
20 the proposed Class Notice, and (iii) schedule a date for a final approval hearing.

21 **CONCLUSION**

22 Defendant does not oppose the motion for preliminary approval. For the foregoing reasons and
23 for the benefit of the settlement class, Plaintiff respectfully requests that the Court grant the motion.

24 DATED: May 12, 2021

DIVERSITY LAW GROUP, P.C.

25 By: 
26 Larry W. Lee
27 Simon L. Yang
28 Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

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

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

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

10 On May 12, 2021, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- 14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
18 **SETTLEMENT**
- 19 **4. DECLARATION OF BRANDEN BAGGOT IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
- 22 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
- 25 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**
26 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
27 **AUTHORITIES IN SUPPORT THEREOF**

28 on the interested parties in this action as follows:

Alfred J. Landegger
Roxana Verano
Landegger Baron Law Group
15760 Ventura Blvd., Suite 1200
Encino, CA 91436
Attorneys for Defendant Foto-Kem Industries, Inc.

X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a court order I caused the above-entitled document(s) to be served through Case Anywhere at the website www.caseanywhere.com, 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 Case Anywhere 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 May 12, 2021, at Los Angeles, California.


Erika Mejia