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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DAEMIAN MARTIN and ROGER JOHNSON, as individuals and on behalf of all others similarly situated, and as private attorneys general,

Plaintiff,

vs.

LOMA LINDA UNIVERSITY MEDICAL CENTER, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVDS2017184

[Assigned to Hon. Nicole Quintana Winter]

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

[*Filed concurrently with Declaration of Larry W. Lee; Declaration of Simon L. Yang; Declaration of William L. Marder; Declaration of Daemian Martin; Declaration of Roger Johnson; [Proposed] Order*]

Date:	June 30, 2025
Time:	9:00 a.m.
Department:	S29
Complaint Filed:	August 17, 2020
FAC Filed:	February 5, 2021

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

PLEASE TAKE NOTICE that on June 30, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department S29 of the above-entitled court located at 247 West Third Street, San Bernardino, California 92415, Plaintiffs Daemian Martin and Roger Johnson will and hereby do move for an Order:

1. approving the Joint Stipulation of Class Action and PAGA Settlement (the "Agreement") attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
2. amending the definition of the certified Class: all current and former non-exempt employees of Defendant in the State of California who since April 6, 2016, were paid under the pay code SCK or PLS in a workweek in which they also earned non-discretionary differentials (the "Class");[1]
3. appointing Plaintiffs as the Class Representative and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
4. approving the Agreement on a preliminary basis and finding that it, the total Gross Settlement Amount in the amount of $4,500,000.00, the amounts requested for the Administration Costs, Attorneys' Fees and Costs Award, Class Representative Awards, PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within the range of reasonableness for a settlement that could ultimately be given final approval;
5. appointing CPT Group, Inc. as the Administrator;

[1] Non-discretionary differentials include the following pay codes through approximately January 31, 2023: BN2 (Critical Staff Ex Sft Bon Differential), CST (CCST Supplemental Pay), ECD (ECMO/CRRT Supplemental Pay), ECS (Extra Shift Diff Critical Need), ESD (Extra Shift Differential), F01 (FIT Supplemental Pay 1), F02 (FIT Supplemental Pay 2), F03 (FIT Supplemental Pay 3), F04 (FIT Supplemental Pay 4), F05 (FIT Supplemental Pay 5), F06 (FIT Supplemental Pay 6), HOL (Holiday Differential), MCN (MICN Differential), NTD (Night Differential), OCD (On Call Differential), PC1 (Preceptor Level 1 Differential), PC2 (Preceptor Level 2 Differential), SFC (Shift Coordinator Differential), TSD (Transport Differential), TMS (Trauma Site Differential), TPT (Transport Time), TSD (Transport Differential), and WEK (Weekend Differential). Non-discretionary differentials include the following pay codes from approximately January 1, 2024 through the end of the Class Period: CCST Supplemental Pay, Critical Staff Ex Sft Bon, ECMO CRRT Supplemental Pay, Extra Shift Differential, Holiday Differential, MICN Differential, Night Differential, On Call Differential, Preceptor Level 1 Differential, Preceptor Level 2 Differential, Shift Coordinator Differential, Trauma Site Differential, Weekend Differential, Transport Differential and Transport Time.

6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to the Agreement; and
7. scheduling a Final Approval Hearing.

The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the Court to preliminarily certify a class for settlement purposes and to approve a class action settlement. The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt out of, or object to the settlement.

The Motion is based on this notice, the memorandum of points and authorities, the Agreement and proposed Notice to Class Members re: Pendency of a Class Action and Notice of Hearing on Proposed Settlement, the supporting Declarations of Larry W. Lee, Simon L. Yang, William L. Marder, Daemian Martin, and Roger Johnson, all pleadings and papers on file herein, and any further oral and documentary evidence as may be presented before or at the hearing of this matter.

DATED: May 28, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

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"), Plaintiffs Daemian Martin and Roger Johnson sued Defendant, Loma Linda University Medical Center, for allegedly underpaying sick pay wages. Specifically, Plaintiffs allege that when they and others earned shift differentials in workweeks in which they were paid sick pay wages, Defendant underpaid those sick pay wages. Defendant denies that it violated the law.

The Parties were unable to resolve this matter at a mediation on December 6, 2022. The Court granted class certification on January 5, 2024. After more than four years of litigation, the Parties finally agreed to a classwide resolution following a second mediation on August 16, 2024. The Joint Stipulation of Class Action and PAGA Settlement ("Agreement"), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least **$4,500,000.00 for the classwide settlement of claims**. Plaintiffs and their counsel believe the settlement is an exceptional result for the Class; based on data available at mediation, **it is estimated that Defendant will pay approximately $618.90, on average, per Class Member**. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiffs and their counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that the certified class could be decertified, liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On August 17, 2020, Plaintiff Martin filed the original complaint initiating the Action on behalf of a putative class of current and former employees of Defendant in the State of California. Declaration of Simon L. Yang ("Yang Decl.") ¶ 2. The Action pursued class action claims for Defendant's alleged underpayments of sick pay wages. *Id.* On February 5, 2021, Plaintiffs filed a first amended complaint that also pursued representative PAGA action claims. *Id.* Upon the initiation of the Action, Plaintiffs and Defendant met and conferred about the alleged claims. *Id.* Defendant also provided Plaintiffs with information about various defenses, including those that disputed both the accuracy of Plaintiffs' factual allegations and the viability of the legal theories asserted. *Id.* After Defendant filed a demurrer to the operative complaint, on May 18, 2021, the Court denied Defendant's demurrer. *Id.*

Class Counsel continued investigating the alleged claims and also analyzed any defenses raised by Defendant. Yang Decl. ¶ 3. The Parties continued to exchange information and documentation pursuant to both informal methods and formal discovery to assist them in exploring the possibility of a mediated resolution. *Id.* Defendant provided the relevant numbers of individuals and workweeks in which Plaintiffs alleged sick pay was underpaid, for example, among other things. *Id.* Defendant's willingness to provide this information on a classwide basis enabled Plaintiffs to evaluate the full scope of Defendant's potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

On December 6, 2022, the Parties attended mediation with Judge Brian C. Walsh. Yang Decl. ¶ 4. Despite the Parties' good-faith efforts, the Parties strongly disagreed about both the merits of the claims and the certifiability of the putative class, and the Parties were unable to come to an agreement to resolve the matter. *Id.*

On January 5, 2024, the Court granted Plaintiffs' motion for class certification. Yang Decl. ¶ 5. On August 16, 2024, the Parties attended a mediation with David A. Rotman, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue in the Action. *Id.* With the mediator's assistance and based upon a mediator's proposal, the Parties were able to agree to settlement terms, which were negotiated in light of all known facts and circumstances—including the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. *Id.* The settlement terms were memorialized in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1 (the "Agreement").

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class of "Class Members" includes all current and former non-exempt employees of Defendant in the State of California who since April 6, 2016, were paid under the pay code SCK or PLS in a workweek in which they also earned non-discretionary differentials.[1] Agreement §§ 1.5. The Class Period is from April 6, 2016, through the date the Court grants preliminary approval of the settlement. *Id.* § 1.7. Based on data available at mediation, there were approximately 7,271 Class Members. *Id.* § 1.5.[2]

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of $4,500,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Administration Costs, an Attorneys' Fees and Costs Award, and Class Representative Awards. *Id.* § 1.13. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* §§ 1.13, 1.16. Based on data available at mediation, *after* all requested payments from the Gross Settlement Amount, it is expected that, on average, each Class Member will be allocated approximately $357.58 in settlement payments. Yang Decl. ¶ 7.[3]

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[1] Non-discretionary differentials include the following pay codes through approximately January 31, 2023: BN2 (Critical Staff Ex Sft Bon Differential), CST (CCST Supplemental Pay), ECD (ECMO/CRRT Supplemental Pay), ECS (Extra Shift Diff Critical Need), ESD (Extra Shift Differential), F01 (FIT Supplemental Pay 1), F02 (FIT Supplemental Pay 2), F03 (FIT Supplemental Pay 3), F04 (FIT Supplemental Pay 4), F05 (FIT Supplemental Pay 5), F06 (FIT Supplemental Pay 6), HOL (Holiday Differential), MCN (MICN Differential), NTD (Night Differential), OCD (On Call Differential), PC1 (Preceptor Level 1 Differential), PC2 (Preceptor Level 2 Differential), SFC (Shift Coordinator Differential), TSD (Transport Differential), TMS (Trauma Site Differential), TPT (Transport Time), TSD (Transport Differential), and WEK (Weekend Differential). Non-discretionary differentials include the following pay codes from approximately January 1, 2024 through the end of the Class Period: CCST Supplemental Pay, Critical Staff Ex Sft Bon, ECMO CRRT Supplemental Pay, Extra Shift Differential, Holiday Differential, MICN Differential, Night Differential, On Call Differential, Preceptor Level 1 Differential, Preceptor Level 2 Differential, Shift Coordinator Differential, Trauma Site Differential, Weekend Differential, Transport Differential and Transport Time.

[2] The settlement also defines a group of PAGA Employees, which includes all current and former non-exempt employees of Defendant in the State of California who from April 6, 2019, through the date the Court grants preliminary approval were paid under the pay code SCK or PLS in a workweek in which they also earned non-discretionary differentials set forth in footnote 1 above. Agreement § 1.17, 1.18. There are approximately 6,336 PAGA Employees. *Id.*

[3] It is also expected that, on average, each PAGA Employee will be allocated an additional $10.31. Yang Decl. ¶ 7.

III. Released Claims

Only Plaintiffs are subject to general releases. Agreement § 6.3. Settlement Class Members release only any and all claims during the Class Period that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein. *Id.* § 6.1. The LWDA releases any and all PAGA claims during the PAGA Period that are based on the Labor Code violations pled in the operative complaint in the Action. *Id.* § 6.2.

LEGAL STANDARD

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

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

Manual for Complex Litigation (Third) § 30.41.

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

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

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal … may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at

> this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.

4 Newberg on Class Actions, 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").

DISCUSSION

I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

A. The Settlement Is Entitled to a Presumption of Fairness.

A trial court must determine and approve a class action settlement is fair to "prevent fraud, collusion or unfairness to the class" through settlement and dismissal of the class action." *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary. *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). Indeed, a presumption of fairness exists where (i) the settlement is reached through arm's length bargaining; (ii) investigation is sufficient to allow counsel and the court to act intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where counsel have conducted thorough investigation, are experienced with this type of litigation, and agreed to a resolution through arm's length negotiation. See Newberg on Class Actions, supra, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528 ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement … and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.") (citations omitted). In such circumstances, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

Here, both Plaintiffs' counsel and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiffs' counsel have extensive class action and litigation experience and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of William L. Marder ("Marder Decl.") ¶¶ 4-11. Each side has apprised the other of their respective factual contentions and legal theories, and each side has considered the other's contentions and theories. Defendant provided its written policies and classwide data, among other things—enabling Plaintiffs to assess the value of Class Members' claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm's length negotiations between the Parties and their counsel. *Id.* ¶ 9.

B. The Settlement Obtains an Excellent Result for Class Members.

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendant to pay $4,500,000.00—or approximately $618.90, on average, per Class Member. Yang Decl. ¶ 6. This amounts to approximately 13.66% of Defendant's potential liability and is an excellent result for Class Members. *Id.*

To wit, Plaintiffs allege that Defendant underpaid sick pay wages to Class Members. Yang Decl. ¶ 6. With respect to Defendant's potential liability, Plaintiffs contend that such underpayments result in Section 203 penalties of up to 30 days wages. *Id.*[4] Plaintiffs also contend that such underpayments result in a $100 penalty per pay period under Section 210. *Id*. On the other hand, Defendant contests the merits and denies it is liable at all. *Id.* Moreover, even if Plaintiffs prevail on the merits, Defendant contests the extent of liability. *Id.* For example, with respect to liability for underpaid sick pay wages, Defendant contends that it would not be subject to Section 203 penalties, based on a good faith defense. *Id.*

[4] Except as otherwise noted, all "Section" references are to the Labor Code.

While the Parties disagree on the application of the law to the facts, each Party recognized in negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7. Ultimately, based on classwide data available at mediation, Plaintiffs argued that the potential total recovery amounted to approximately $32,943,388.80—which included approximately $28,604,788.80 under Section 203[5] and approximately $4,338,600.00 under Section 210.[6] *Id.* Plaintiffs contend that the Gross Settlement Amount of $4,500,000.00—approximately 13.66% of the potential total recovery of $32,943,388.80—is an excellent result. *Id.*

Numerous courts have held that gross settlement amounts of less than 20%—and as little as 8%—of a 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 recovering 16% of potential exposure was fair and reasonable; "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment."); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

Although Plaintiffs and their counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair,

[5] $28,604,788.80 = 3,626 relevant formerly employed Class Members x $32.87 average final hourly rate of pay x 8 hours per day x 30 days.

[6] $4,338,600.00 = 43,386 pay periods with alleged underpayments x $100 per pay period.

reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. *Id.*

Class Members would not need to do anything to receive their share of settlement funds. This eliminates any burden to Class Members who wish to participate in the class action settlement. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the claims proposed to be settled and released, each Class Member has the right to object or to submit a request for exclusion (i.e., opt out) from the settlement.

2. The Settlement Releases Are Appropriate.

As discussed above, only Plaintiffs are subject to general releases. Agreement § 6.3. Settlement Class Members are only subject to a release of any and all claims during the Class Period that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein. *Id.* § 6.1. The LWDA releases any and all PAGA claims during the PAGA Period that are based on the Labor Code violations pled in the operative complaint in the Action. *Id.* § 6.2.

In sum, Plaintiffs alleged targeted claims in the Action, and any settlement releases also are specifically tailored to the targeted allegations. The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) ("A general release—covering 'all claims' that were or could have been raised in the suit—is common in class action settlements.").

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to provide to the Administrator each Class Member's last known address, among other information (the "Class Data"), within 15 business days of a Preliminary Approval Order. Agreement § 3.2. No later than 25 business days after a Preliminary Approval Order, the Administrator would mail the Notice of Class Action Settlement ("Class Notice") to each Class Member to provide notice of settlement via First Class U.S. Mail, after updating Class Member addresses using the National Change of Address database. *Id.* § 3.3. Any Class Notice returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* If no forwarding address is provided, the

Administrator would promptly attempt to determine the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The Class Notice is adequate as it "present[s] a fair recital of the subject matter and proposed terms" of the settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

C. The Requested Payments and Allocations Are Reasonable.

The Agreement provides for a Gross Settlement Amount of $4,500,000.00. Agreement § 5.1. From the Gross Settlement Amount, attorneys' fees will be no more than 33⅓% of the Gross Settlement Amount (or $1,500,000.00) and litigation costs will not exceed $35,000.00. *Id.* The Class Representative Awards will be no more than $10,000.00 to each Plaintiff. *Id.* § 5.1.2. Administration Costs will be no more than $45,000.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be $300,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or $225,000.00) would constitute the LWDA Payment. Agreement §§ 1.15, 5.1.4.[7]

1. Each Class Member, on Average, Would Receive More than $350.

It is expected that, on average, each Class Member would be allocated approximately $357.78 in Settlement Payments (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of workweeks in which the employee was paid SCK or PLS in the same workweek in which the employee was paid a shift differential identified in the definition of Class Member. *Id.* After deducting any approved payments for an Attorneys' Fees and Costs Award, Class Representative Awards, Administration Costs, and LWDA Payment from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members.

The Net Settlement Amount generally shall be paid to each Settlement Class Member based on the number of workweeks in which the employee was paid SCK or PLS in the same workweek in which

[7] Plaintiffs file this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

the employee was paid a shift differential identified in the definition of Class Member, and a formula that considers both when relevant workweeks were worked and whether Class Members are former employees. Agreement § 5.3.2. 5.0% of these allocations shall be classified for tax reporting purposes as wages. *Id.*.

None of the settlement funds will revert to Defendant. Agreement § 5.1. The principal for any uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property Fund in the name of the Class Member. *Id.* § 5.6.

2. The Requested Attorneys' Fees and Costs Award Is Reasonable.

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

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, a court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set … . The judge, in other words, is trying to mimic the market in legal services.").

Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal services. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent"). An attorneys' fees award of 35% of the fund mimics the market and "is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys' fees award of 35% of the fund is consistent with "empirical studies [that] show that … fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc*., 162 Cal. App. 4th 43, 66 n.11 (2008).

Here, Plaintiffs will request an attorneys' fees award of 33⅓% of the Gross Settlement Amount. Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs.

3. The Proposed Class Representative Award Is Reasonable.

Plaintiffs and Class Representatives Daemian Martin and Roger Johnson request modest Class Representative Awards of $10,000.00 each. The request is reasonable in light of the general release that the Agreement requires of Plaintiffs but not of any other Class Member. Independently, the request is appropriate in recognition of Plaintiffs' efforts on behalf of the Class. Declaration of Daemian Martin ("Martin Decl.") ¶¶ 2-3; Declaration of Roger Johnson ("Johnson Decl.") ¶¶ 2-3.

As part of their duties as the Class Representatives, Plaintiffs provided all necessary information and evidence that resulted in this settlement. Martin Decl. ¶¶ 2-3; Johnson Decl. ¶¶ 2-3. Plaintiffs met and conferred with Class Counsel on a number of occasions to discuss the case. Martin Decl. ¶ 3; Johnson Decl. ¶ 3. Plaintiffs provided information and documents to Class Counsel and made themselves available to answer any questions during litigation. *Id.* Ultimately, Plaintiffs' efforts secured an exceptional result for the Class.

In addition to the invaluable services that Plaintiffs provided, Plaintiffs also took a significant risk, both professionally and monetarily. Martin Decl. ¶ 4; Johnson Decl. ¶ 4. Because the alleged claims involve the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying Defendant's costs had Defendant prevailed in the action. Furthermore, Plaintiffs risk prejudice in the future from other potential employers that may be less willing to hire an individual who has filed suit against a prior employer. Plaintiffs took this risk upon themselves and the whole class benefited. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face potential prejudice in future employment.

4. The Administration Costs Are Reasonable.

CPT Group, Inc., a well-recognized class action settlement administrator, has quoted Administration Costs not to exceed $45,000.00 to send notices and administer the settlement. Yang Decl. ¶ 7. The Administration Costs are reasonable and should be approved.

II. The Class Meets All Requirements for Certification.

For purposes of settlement approval, a detailed analysis of the elements required for class certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal. App. 4th at 240 (explaining there is no "ironclad requirement" to conduct an evidentiary hearing to satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003) ("[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.") (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

Here, the Court has actually already granted class certification outside of the settlement context. Nonetheless, as discussed below, the allegations in this lawsuit present paradigmatic class action claims that satisfy the elements of class certification.[8]

A. The Class Is Ascertainable and Sufficiently Numerous.

Class Members are identifiable from Defendant's records. The class definition "is precise, objective and presently ascertainable." *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Indeed, based on data available at mediation, there were approximately 7,271 Class Members.

[8] The Agreement slightly modifies the certified class definition based on Defendant's actual pay codes.

Agreement § 1.5. Numerosity thus is sufficiently established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that "[n]o set number is required as a matter of law for the maintenance of a class action" and citing examples in which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

B. The Class Establishes a Community of Interest.

"The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

1. Plaintiffs' Claims Are Typical of Those of the Class.

Plaintiffs allege that Defendant, as a matter of their corporate policy, practice, or procedure, underpaid sick pay wages based on Defendant's failures to pay such remuneration at the regular rate of pay. With respect to typicality, Plaintiffs—exactly like other members of the Class—were compensated based on Defendant's common payroll practices. Martin Decl. ¶ 2; Johnson Decl. ¶ 2.

2. Plaintiffs' Claims Raise Common Questions of Law and Fact.

The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987). Here, Plaintiffs allege Defendant's common payroll practices and calculations resulted in underpayments of sick pay wages. Common proof of those practices predominate on a classwide basis.

3. Plaintiffs and Their Counsel Adequately Represent the Class.

With respect to adequate representation, Plaintiff do not have any interests adverse to the Class, and no such issues have been raised or presented. Martin Decl. ¶ 3; Johnson Decl. ¶ 3. Plaintiffs have taken all necessary steps to represent the interests of the Class, including by providing information and documents to Class Counsel, making themselves available to discuss the claims, providing wage statements that they were issued, and answering questions about how they were paid or what their wage statements show or meant. *Id*. Plaintiffs understand that they are responsible to the Class with respect to trying the case, appearing in court, and working with Class Counsel. *Id.* They are willing to act as a fiduciary for the Class and remains willing to devote their time to this lawsuit for the benefit of the Class. *Id.* For such reasons, Plaintiffs have adequately represented the Class Members.

From the inception of the case, Class Counsel has zealously represented the interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representatives. Class Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9; Yang Decl. ¶¶ 9-13; Marder Decl. ¶¶ 2-12.

CONCLUSION

The proposed settlement would result in substantial monetary benefits to class members. It was the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the benefit of the Class, Plaintiffs respectfully request that the Court (i) grant preliminary approval of the settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final Approval Hearing.

DATED: May 28, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________

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