DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiffs Adams and Tatum

[*Additional Counsel Listed on Following Page*]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF MERCED**

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| JASON ADAMS, RAUL ALVARADO, EMMA SARWAR, SERGIO RODRIGUEZ, and SHENITA TATUM, as private attorneys general and as an individual and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>SCHOLLE IPN PACKAGING, INC., a Nevada corporation; SCHOLLE PACKAGING, INC., a Nevada corporation; and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No. 20CV-02350<br><br>**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**<br><br>Date: January 9, 2025<br>Time: 8:15 a.m.<br>Courtroom: 8<br><br>Complaint Filed: August 17, 2020<br>FAC Filed: August 30, 2024 |

Edwin Aiwazian (SBN 232943), edwin@calljustice.com
Joanna Ghosh (SBN 272479), joanna@calljustice.com
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Facsimile: (818) 265-1021

Graham B. LippSmith (SBN 221984), g@lippsmith.com
MaryBeth LippSmith (SBN 223573), mb@lippsmith.com
Celene Chan Andrews (SBN 260267), cca@lippsmith.com
Jaclyn L. Anderson (SBN 258609), jla@lippsmith.com
LIPPSMITH LLP
555 S. Flower Street, Suite 3000
Los Angeles, California 90071
Tel: (213) 344-1820 / Fax: (213) 513-2495

Attorneys for Plaintiffs Alvarado, Sarwar, and Rodriguez

**TO THE COURT, DEFENDANTS, AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on January 9, 2025, at 8:15 a.m., or as soon thereafter as the matter may be heard in Courtroom 8 of the above-entitled court located at 627 West 21st Street Merced, California 95340, Plaintiffs Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum 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. conditionally certifying the following Class for settlement purposes only: all current or former hourly-paid non-exempt employees who worked for SIG Packaging LLC, Scholle IPN Packaging, Inc., or Scholle Packaging, Inc. in the State of California at any time from October 24, 2015, through September 28, 2024.
3. appointing Plaintiffs as the Class Representative and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C.; William L. Marder of Polaris Law Group; Edwin Aiwazian of Lawyers for Justice, P.C.; and Graham B. LippSmith, MaryBeth LippSmith, Celene Chan Andrews, and Jaclyn L. Anderson of LippSmith LLP as Class Counsel;
4. approving the Agreement on a preliminary basis and finding that it, the total Gross Settlement Amount in the amount of $1,957,410.00, 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 Phoenix Settlement Administrators as the Administrator;
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 of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L. Yang, William L. Marder, Joanna Ghosh, Graham B. LippSmith, Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum, 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: December 12, 2024

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 proxies for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Plaintiffs Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum sues Defendants Scholle Packaging, Inc. and Scholle IPN Packaging, Inc. (now known as SIG Packaging LLC) for (1) unpaid minimum wages and overtime; (2) failure to provide meal and rest periods; (3) unpaid sick pay wages; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; and (6) failure to reimburse business expenses.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. 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 Defendants to pay $1,957,410.00 for the classwide settlement of claims through September 28, 2024. Plaintiffs and their counsel believe the settlement is an exceptional result for the Class. Each of approximately 675 Class Members will receive, on average, around $1,613.99 (*after* all requested payments from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendants.

Although Plaintiffs and their counsel are confident that litigation of the claims would result in a classwide judgment against Defendants, 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. 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 3, 2020, and dates thereafter, Plaintiff Adams sent notices to the Labor & Workforce Development Agency ("LWDA") and Defendants regarding violations of the Labor Code. Declaration of Simon L. Yang ("Yang Decl.") ¶ 2. On August 17, 2020, Plaintiff Adams filed the original complaint in this matter pursuing class action claims on behalf of a putative class of current and former non-exempt employees of Defendants in the State of California and claims under the Labor Code Private

Attorneys General Act of 2004 ("PAGA"). *Id.* On October 24, 2019, Plaintiffs Alvarado, Sarwar, and Rodriguez (the "*Alvarado* Plaintiffs") separately filed a class action lawsuit against Defendants that also alleged Labor Code violations. *Id.*

Upon the filing of the complaints, Plaintiff Adams, the *Alvarado* Plaintiffs, and Defendants met and conferred about the alleged claims. Yang Decl. ¶ 3. On numerous dates, Plaintiffs and Defendants exchanged information and documents that Plaintiffs contended supported the claims and that Defendants contended supported their defenses. *Id.* The Parties also propounded and responded to formal discovery requests. *Id.* Class Counsel continued investigating the alleged claims and analyzing any defenses raised by Defendants. *Id.* Plaintiff Adams, the *Alvarado* Plaintiffs, and Defendants agreed to schedule a mediation to potentially resolve the claims. *Id.*

On January 24, 2023, Plaintiff Adams and the *Alvarado* Plaintiffs agreed with Defendants to attend a global mediation with Michael D. Young, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang Decl. ¶ 4. Despite their best efforts at mediation, Plaintiff Adams and the *Alvarado* Plaintiffs were unable to agree with Defendants to any resolutions of their respective matters. *Id.* Plaintiff Adams and the *Alvarado* Plaintiffs continued litigating their respective matters while simultaneously continuing settlement discussions with the mediator. *Id.* Meanwhile, on August 25, 2023, Plaintiff Tatum separately filed a class action lawsuit against Defendants that also alleged Labor Code violations. *Id.*

Ultimately, on June 10, 2024, 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 of the respective matters, the risks of significant delay, and numerous potential appellate issues. Yang Decl. ¶ 5. The settlement terms were memorialized in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1 (the "Agreement"). The Agreement resolves all pending matters. *Id.* Pursuant to the settlement terms, the *Alvarado* Plaintiffs and Plaintiff Tatum join Plaintiff Adams in alleging their claims in the First Amended Complaint that was filed on August 30, 2024.[1] *Id.*

[1] The *Alvarado* matter (Case No. 19CV0-04613) is currently stayed. If the Court grants final approval of this settlement, the *Alvarado* matter will be dismissed. The *Alvarado* and *Tatum* claims were added to

## SUMMARY OF PROPOSED SETTLEMENT

### I. Class Definition

The proposed settlement class of "Class Members" includes all current or former hourly-paid non-exempt employees who worked for SIG Packaging LLC, Scholle IPN Packaging, Inc., or Scholle Packaging, Inc. in the State of California at any time from October 24, 2015, through September 28, 2024. Agreement § 1.5. There are approximately 675 Class Members. *Id.*[2]

### II. Settlement Payments

The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of $1,957,410.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve payments for a PAGA Penalty Fund and LWDA Payment, Administration Costs, Attorneys' Fees and Costs Award, and Class Representative Awards. *Id.* § 5.1.1-4. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* § 5.2. It is expected that, on average, each Class Member would be allocated $1,613.99 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8.

### III. Released Claims

Plaintiffs are subject to general releases. Agreement § 6.3. Settlement Class Members are subject to limited releases of "any and all claims that were alleged, or reasonably could have been alleged, based on the Class Period, in the operative complaint … or those which could have been pled in the operative complaint in the Action based on the factual allegations therein." *Id.* § 6.1. The LWDA is subject to a limited release of "any and all PAGA claims arising during the PAGA Period [from April 19, 2020, through September 28, 2024] that are based on the Labor Code violations pled in the operative complaint." *Id.* § 6.2; *see also id.* § 1.19.

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the *Adams* complaint for settlement purposes only. In the event that the settlement is not approved or is otherwise null and void, Plaintiffs will withdraw the amended PAGA notice and First Amended Complaint and the *Adams* and *Alvarado* actions will revert to their separate status. Plaintiff Tatum has dismissed her complaint.

[2] The settlement also defines a group of PAGA Employees, which includes all Class Members who worked in the State of California from April 19, 2020, through September 28, 2024. Agreement §§ 1.17, 1.19. There are approximately 521 PAGA Employees. *Id.* § 1.17.

## 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*, § 11.47; *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("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.*, 221 F.R.D. at 528; *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 Defendants' 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. ¶¶ 10-14; Declaration of William L. Marder ("Marder Decl.") ¶¶ 4-11; Declaration of Graham B. LippSmith ("LippSmith Decl.") ¶¶ 3-18; Declaration of Joanna Ghosh ("Ghosh Decl.") ¶ 6. 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. The Parties engaged in years of litigation, engaged in formal discovery, and participated in mediated settlement discussions, all of which resulted in Defendants providing their 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 $1,957,410.00—or approximately $2,899.87 gross, on average, per Class Member. Yang Decl. ¶ 6. This amounts to approximately 10.73% of Defendants' potential liability and is an excellent result for Class Members. *Id.*

Plaintiffs contend that class claims under Labor Code section 226(e) result in a $50 penalty for the first non-compliant wage statement to each Class Member and a $100 penalty for each additional non-compliant wage statement to the Class Member, up to a maximum of $4,000 per Class Member. Yang Decl. ¶ 6.[3] With respect to meal and rest break violations, Plaintiffs contend that Defendants would be liable for an additional hour of regular rate wages under Section 226.7. *Id.* Plaintiffs also contend that Defendants would owe underpaid minimum wages, overtime, and sick pay wages—as well as Section 203 penalties of up to 30 days wages. *Id.* Plaintiffs additionally contend that Defendants would be liable for actual Class Member expenses under Section 2802. *Id.* Moreover, under PAGA, Plaintiffs contend that Defendants also would be liable for an additional $100 per pay period under Section 2699(f). *Id.*

Defendants contest the merits and deny they are liable at all. Yang Decl. ¶ 7. Moreover, even if Plaintiffs prevail on the merits, Defendants contest the extent of liability. *Id.* For example, with respect

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

to liability for underpaid wages, overtime, and additional hours of regular rate wages, Defendants contend that there is little evidence of widespread failure to pay wages or overtime and that the violation rate for meal breaks was extremely low. *Id.* Defendants further contend that they would not be subject to Section 203 penalties, based on good-faith defenses. *Id.* Likewise, with respect to wage statement liability, Defendants contend that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations. *Id.* Defendants similarly assert numerous other defenses against each of Plaintiffs' claims. *Id.* Finally, with respect to PAGA penalties, Defendants contend that the circumstances are such that PAGA penalties would be subject to discretionary reductions. *Id.*

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. ¶ 8. Ultimately, based on an expert's analysis of classwide data at the time of mediation, Plaintiffs argued that the potential total recovery amounted to approximately $18,249,333.50—which included approximately (i) $3,707,336.15 as a result of meal break violations, (ii) $3,487,875.53 as a result of rest break violations, (iii) $2,820,375.55 as a result of off-the-clock work, (iv) $614,233.23 as a result of rounding practices, (v) $1,288,125.04 as a result of unreimbursed expenses, (vi) $1,659,280.00 in wage statement penalties, (vii) $1,486,008.00 in waiting time penalties, and (viii) $3,186,100.00 in PAGA penalties. *Id.* Plaintiffs contend that the Gross Settlement Amount of $1,957,410.00—approximately 10.73% of the potential total recovery of $18,249,333.50—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 Defendants, 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. ¶ 9. The settlement for each participating Class Member is fair, 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 of class action claims.

**2. The Settlement Releases Are Appropriate.**

As discussed above, only Plaintiffs are subject to a general release. Agreement § 6.3. Settlement Class Members are only subject to a release of "claims that were alleged, or reasonably could have been alleged, based on the Class Period, in the operative complaint … or those which could have been pled in the operative complaint in the Action based on the factual allegations therein." *Id.* § 6.1. The LWDA is only subject to a release of "PAGA claims arising during the PAGA Period that are based on the Labor Code violations pled in the operative complaint." *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 Defendants to provide to the Administrator each Class Member's last known address, among other information (the "Class Data"), within 14 days of a Preliminary Approval Order. Agreement § 3.2. Within 28 days of 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, using the last known address for each Class Member, based on the Class List. *Id.* §§ 3.3-3.4. 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 $1,957,410.00. Agreement § 5.1. From the Gross Settlement Amount, attorneys' fees will be no more than 33⅓% of the Gross Settlement Amount (or $652,470.00) and litigation costs of up to $35,000.00. *Id.* § 5.1.1. The Class Representative Awards will be no more than $10,000.00 for each Plaintiff. *Id.* § 5.1.2. Administration Costs will be no more than $10,500.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be $120,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or $90,000.00) would constitute the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Employees on a pro rata basis. *Id.* §§ 5.1.4, 5.3.1.[4]

[4] Plaintiffs file this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 15.

### 1. Each Class Member, on Average, Will Receive More Than $1,600.

It is expected that, on average, each Class Member will be allocated approximately $1,613.99 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8. 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 relevant workweeks during the Class Period. *Id.*

To wit, after deducting any approved payments for an Attorneys' Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis, based on the number of relevant workweeks they worked. Agreement § 5.3.2. 10% of these allocations shall be classified for tax reporting purposes as wages. *Id.*

None of the settlement funds will revert to Defendants. 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 Awards Are Reasonable.**

Proposed Class Representatives Jason Adams, Raul Alvarado, Emma Sarwar, Sergio Rodriguez, and Shenita Tatum request modest Class Representative Awards of $10,000.00. The requests are reasonable in light of the general releases that the Agreement requires of Plaintiffs but not of any other Class Members. Independently, the requests are appropriate in recognition of Plaintiffs' efforts on behalf of the Class. Declaration of Jason Adams ("Adams Decl.") ¶¶ 3-4; Declaration of Raul Alvarado ("Alvarado Decl.") ¶¶ 3-4; Declaration of Emma Sarwar ("Sarwar Decl.") ¶¶ 3-4; Declaration of Sergio Rodriguez ("Rodriguez Decl.") ¶¶ 3-4; Declaration of Shenita Tatum ("Tatum Decl.") ¶¶ 3-4.

As part of their duties as the Class Representatives, Plaintiffs provided all necessary information and evidence that resulted in this settlement. Adams Decl. ¶¶ 3-4; Alvarado Decl. ¶¶ 3-4; Sarwar Decl. ¶¶ 3-4; Rodriguez Decl. ¶¶ 3-4; Tatum Decl. ¶¶ 3-4. Plaintiffs met and conferred with Class Counsel on numerous occasions to discuss the case. *Id.* 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, they also took significant risks, both professionally and monetarily. Adams Decl. ¶ 5; Alvarado Decl. ¶ 5; Sarwar Decl. ¶ 5; Rodriguez Decl. ¶ 5; Tatum Decl. ¶ 5. Because the alleged claims involve the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying Defendants' costs had Defendants 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 these risks 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.

Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has quoted Administration Costs not to exceed $10,500.00 to send notices and administer the settlement. Agreement §§ 3.1, 5.1.3. The Administration Costs are reasonable and should be approved.

## II. The Class Meets All Requirements for Certification.[5]

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

[5] Defendants expressly reserve their objections to class certification outside of the settlement context.

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).

Even under the standard applicable to litigation classes, the allegations in this lawsuit present paradigmatic class action claims that satisfy the elements of class certification.

**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, there are approximately 675 Class Members. 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 alleges that Defendants, as a matter of their corporate policy, practice, or procedure, (1) failed to pay minimum wages and overtime; (2) failed to provide meal and rest periods; (3) failed to pay sick pay wages; (4) failed to timely pay wages; (5) failed to provide accurate itemized wage statements; and (6) failed to reimburse business expenses. With respect to typicality, Plaintiffs were victims of the alleged Labor Code violations. Adams Decl. ¶ 2; Alvarado Decl. ¶ 2; Sarwar Decl. ¶ 2; Rodriguez Decl. ¶ 2; Tatum Decl. ¶ 2. In sum, Plaintiffs were employed under the same policies as others.

### 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). Defendants' 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 Defendants' policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

### 3. Plaintiffs and Their Counsel Adequately Represent the Class.

With respect to adequate representation, Plaintiffs do not have any interests adverse to the Class, and no such issues have been raised or presented. Adams Decl. ¶ 4; Alvarado Decl. ¶ 4; Sarwar Decl. ¶ 4; Rodriguez Decl. ¶ 4; Tatum Decl. ¶ 4. 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, and answering any questions. *Id*. Moreover, Plaintiffs are willing to devote their time to the lawsuit for the benefit of the Class and to act as fiduciaries for the Class. *Id.* For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

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. ¶¶ 13-14; Marder Decl. ¶¶ 4-11; LippSmith Decl. ¶¶ 26-40; Ghosh Decl. ¶¶ 6-12.

## 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: December 12, 2024

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiffs