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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

MARTIN MORENO, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

MEDLINE INDUSTRIES, L.P., an Illinois
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-7446

(Assigned to the Hon. Erin Guy Castillo, Dept.
10B)

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

Date: May 11, 2022, May 12, 2022, or
May 13, 2022

Time: 9:00 a.m.

Dept.: 10B

Complaint Filed: September 8, 2020

FAC Filed: January 14, 2022

Trial: Not Set

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

2 **PLEASE TAKE NOTICE** that on May 11, 2022, May 12, 2022, or May 13, 2022, at 9:00
3 a.m., or as soon thereafter as the matter may be heard, before the Honorable Erin Guy Castillo,
4 judge presiding, in Department 10B of the above referenced Court, located at 180 E. Weber Ave.,
5 Stockton, California 95202, Plaintiff Martin Moreno (“Plaintiff”) will and hereby does move this
6 Court for the following relief with respect to the Class Action Settlement Agreement (“Settlement
7 Agreement”) entered into by Plaintiff and Defendant Medline Industries, L.P. (“Defendant”)
8 (together with Plaintiff, the “Parties”):

9 1. That the Court approve the Settlement Agreement referenced above;

10 2. That the Court conditionally certify the following Class for settlement purposes
11 only: All non-exempt persons who have been employed by Defendant in the State of California at
12 any time during the Class Period, who received one or more wage statements during the Class
13 Period (the “Class”);

14 3. That Plaintiff Martin Moreno be appointed as the Class Representative, and Larry
15 W. Lee and Mai Tulyathan of Diversity Law Group, P.C., and William L. Marder of Polaris Law
16 Group be appointed as Class Counsel;

17 4. That the Court preliminarily approve the Settlement Agreement and the total Gross
18 Settlement Amount of One Million Six Hundred Thousand Dollars (\$1,600,000.00);

19 5. That the Court finds on a preliminary basis that the Settlement Agreement appears
20 to be within the range of reasonableness of a settlement, including the amount of the PAGA
21 penalties, allocation of payments to Class Members, Service Award to Plaintiff, Class Counsel’s
22 fees and litigation costs, and settlement administration costs, that could ultimately be given final
23 approval by this Court;

24 6. That the Court approve the mailing of the proposed Notice of Proposed Settlement
25 of Class PAGA Action and Hearing Date for Final Court Approval (“Class Notice” or “Class
26 Notice Packet”) to be sent to Class Members;

27 7. That the Court appoint ILYM Group, Inc. as the Settlement Administrator; and

28 8. That the Court schedule the matter for a Final Fairness and Final Approval Hearing.

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

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

7 This Motion will be based on the attached Memorandum of Points and Authorities, the
8 Settlement Agreement and the proposed Notice, and the supporting Declarations of Larry W. Lee,
9 Mai Tulyathan, William L. Marder, and Plaintiff Martin Moreno, upon the oral arguments of
10 counsel (should there be any), and on the complete records and file herein.

11
12 DATED: April 11, 2022

DIVERSITY LAW GROUP, P.C.

13
14 By: 
15 Larry W. Lee
16 Mai Tulyathan
17 Attorneys for Plaintiff, the Class, and Aggrieved
18 Employees
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1 **I. INTRODUCTION**

2 Plaintiff Martin Moreno (“Plaintiff”) brings class and representative Private Attorneys
3 General Act (“PAGA”) claims against Defendant Medline Industries, L.P. (“Defendant”) under the
4 California Labor Code (Plaintiff and Defendant shall collectively be referred to as the “Parties”).
5 Plaintiff alleges in this lawsuit that Defendant failed to provide accurate itemized wage statements
6 to its employees. Specifically, Plaintiff contends that whenever Defendant pays shift differential
7 wages to its employees, Defendant failed to specify the correct total hours worked on
8 corresponding wage statements issued to its employees. Plaintiff also contends that whenever
9 Defendant pays overtime wages to its employees, Defendant failed to specify the correct overtime
10 rates of pay and total hours worked on corresponding wage statements issued to its employees.
11 Based on these wage statement violations, Plaintiff asserts class and PAGA claims for violations of
12 Labor Code § 226(a).

13 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to
14 the class and PAGA claims alleged in the complaint and engaged in a thorough study of the legal
15 principles applicable to the claims asserted against Defendant. Through the exchange of
16 information in advance of mediation, Defendant provided necessary data pertaining to the number
17 of putative class members and the number of pay periods at issue during the relevant time period,
18 as well as information pertaining to Defendant’s wage statement policies and practices.
19 Thereafter, the Parties attended a full day of private mediation with Michael Loeb, Esq., after
20 which the Parties reached the current settlement, the terms of which are memorialized in the Class
21 Action Settlement Agreement (“Settlement Agreement”)¹.

22 The terms of the Settlement Agreement provide that Defendant pay a Gross Settlement
23 Amount of One Million and Six Hundred Thousand Dollars (\$1,600,000.00) to resolve the class
24 and PAGA claims. Significantly, the entire Gross Settlement Amount will be distributed to the
25 class on a **non-reversionary basis, such that no remaining monies will revert to Defendant.**
26 Further, no claim forms are required. The following represents the key terms of the Settlement:

27 _____

28 ¹ The Settlement Agreement is attached as Exhibit A to the Declaration of Mai Tulyathan.

- Gross Settlement Amount of \$1,600,000.00;
- Estimated class size of 3,077 individuals in the Class;
- Service payment to the Class Representative of up to \$20,000.00;
- Class Counsel’s attorneys’ fees of 35 percent of the Gross Settlement Amount, up to \$560,000.00;
- Class Counsel’s litigation costs of up to \$25,000.00;
- Settlement Administration costs of up to \$17,500.00;
- Payment to the Labor & Workforce Development Agency (LWDA) of \$30,000.00, representing 75% of the total PAGA allocation of \$40,000.00;
- Net Settlement Amount of approximately \$947,500.00, which will be apportioned among Class Members on a pro rata basis; and
- Raw average of at least **\$307.93** to each Participating Class Member.

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability.

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

II. PROCEDURAL HISTORY

A. The Allegations Set Forth in the PAGA Notices and Complaint.

On August 4, 2020, Plaintiff submitted his written notice under Labor Code § 2699.3 to the California Labor & Workforce Development Agency (“LWDA”) and Defendant. (Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶ 3) On September 2, 2020, Plaintiff submitted his supplemental written notice under Labor Code § 2699.3 to the LWDA and Defendant. (*Id.*) As set forth in the PAGA notices, Plaintiff alleges that Defendant failed to provide accurate itemized wage statements under Labor Code § 226(a). Specifically, Plaintiff alleges that whenever

1 Defendant paid overtime wages to its employees, the corresponding wage statements failed to
2 identify the correct overtime rates of pay and the total hours worked. Additionally, Plaintiff
3 alleges that whenever Defendant paid shift differential wages to its employees, the corresponding
4 wage statements failed to identify the correct total hours worked. (*Id.* at ¶ 4.)

5 On September 8, 2020, Plaintiff filed his complaint against Defendant in the San Joaquin
6 County Superior Court. (*Id.* at 5.) On January 14, 2022, Plaintiff filed the operative First
7 Amended Complaint. (*Id.* at ¶ 6.) The operative First Amended Complaint alleges class and
8 representative PAGA claims for violations of Labor Code § 226(a), based on the facts and theories
9 alleged in Plaintiff's PAGA notices to the LWDA. (*Id.*)

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

11 The Parties began formal discovery in the case after the filing of the lawsuit. Plaintiff
12 propounded his first set of written discovery, including Requests for Production of Documents and
13 Special Interrogatories. (Tulyathan Decl. at ¶ 7.) Defendant served its objections to written
14 discovery on March 23, 2021. (*Id.*)

15 In light of the then-pending related case – *Russell v. Medline Industries, Inc.*, United States
16 District Court, Eastern District of California, Case No. 2:020-cv-00459-TLN-JDP (the “*Russell*”
17 action), Defendant subsequently filed a motion to stay this action pending final resolution of the
18 *Russell* action. On March 25, 2021, the Court granted Defendant's motion and stayed this action
19 pending conclusion of the *Russell* action. (*Id.* at ¶ 8.) The *Russell* action was dismissed by the
20 Court on May 11, 2021, and thus lifting the stay in this action. (*Id.*)

21 Thereafter, the Parties resumed formal discovery and continued to meet and confer
22 regarding supplemental discovery responses and documents. (Tulyathan Decl. at ¶ 9.) In
23 connection with meet and confer discussions, the Parties agreed to attempt to resolve this matter
24 through private mediation. (*Id.*) In advance of the mediation, the Parties engaged in informal
25 discovery, which allowed Plaintiff to conduct a full damage analysis. (*Id.* at ¶ 10.) Defendant
26 provided informal data and information pertaining to the putative class size and aggrieved
27 employees and the number of pay periods at issue, as well and information pertaining to
28 Defendant's wage statement policies and practices. (*Id.*)

1 On September 23, 2021, the Parties participated in an all-day mediation session with
2 mediator Michael Loeb, Esq. (*Id.* at ¶ 11.) After a full day of negotiations, the Parties were able to
3 reach an agreement for settlement and the key terms, which was memorialized in a memorandum
4 of understanding. (*Id.*) The Parties subsequently formalized and executed the Settlement
5 Agreement on February 11, 2022. (*Id.* at ¶ 12)

6 **C. Summary of the Proposed Settlement.**

7 The material terms of the settlement are memorialized in the Settlement Agreement. The
8 proposed Class consists of “all non-exempt persons who have been employed by Defendant in the
9 State of California at any time during the Class Period, who received one or more wage statements
10 during the Class Period.” (Settlement Agreement at ¶ I.C.) The Class Period is defined as “the
11 period of time from January 19, 2020, through December 31, 2021.” (Settlement Agreement at ¶
12 I.H.) Defendant represents that there are approximately 3,077 individuals that comprise the Class
13 during the Class Period. (Settlement Agreement at ¶ I.C.)

14 The Settlement Agreement provides for the Gross Settlement Amount of One Million and
15 Six Hundred Thousand Dollars (\$1,600,000.00). (Settlement Agreement at ¶ I.Q.) The amount
16 allocated to each Class Member will be based on each Participating Class Member’s Pay Period
17 Count, as compared to the total Pay Period Count for all Participating Class Members.
18 (Settlement Agreement at ¶ III.D.2.) The Participating Class Member Pay Period Count is
19 comprised of the number of pay periods worked during the Class Period, plus the number of pay
20 periods worked during the Class Period were Participating Class Members were paid shift
21 differential and/or overtime wages. (*Id.*) This is a fair method of allocation, as it allocates
22 recovery on a pro rata basis, and it directly provides greater recovery to individual Class
23 Members who have allegedly suffered greater harm. (Tulyathan Decl. at ¶ 14.)

24 Additionally, the Settlement Agreement allocates Forty Thousand Dollars (\$40,000.00) of
25 the Gross Settlement Amount to PAGA penalties. (Settlement Agreement at ¶ III.C.3.) Pursuant
26 to the PAGA, 75% of this amount, *i.e.*, the sum of Thirty Thousand Dollars (\$30,000.00), shall
27 be paid to the LWDA. (*Id.*) The remaining 25%, *i.e.*, the sum of Ten Thousand Dollars
28 (\$10,000.00), will become part of the Net Settlement Amount to be distributed to Aggrieved

1 Employees based on the number of pay periods they worked during the PAGA Period. (*Id.*)
2 Aggrieved Employees consist of “all current and former non-exempt hourly employees employed
3 in the State of California by Defendant during the PAGA Period, who received one or more wage
4 statements during the PAGA Period.” (Settlement Agreement at ¶ I.B.)

5 As part of the Settlement Agreement, Defendant does not object to Plaintiff’s Counsel’s
6 request for attorneys’ fees of up to thirty-five percent (35%) of the Gross Settlement Amount,
7 *i.e.*, the sum of Five Hundred Sixty Thousand Dollars (\$560,000.00). (Settlement Agreement at ¶
8 III.C.2.) Defendant also does not object to Plaintiff’s Counsel’s request for reimbursement of
9 actual litigation costs of up to Twenty-Five Thousand Dollars (\$25,000.00), subject to the Court
10 finally approving this Settlement. (*Id.*) Also, as part of the Settlement Agreement, Defendant
11 does not object to Plaintiff’s request for a Service Award of Twenty Thousand Dollars
12 (\$20,000.00), to compensate Plaintiff for prosecuting this action on behalf of other employees
13 and for executing a general release of all claims, including a waiver under Section 1542.
14 (Settlement Agreement at ¶ III.C.1.) Both Plaintiff and Class Counsel expressly acknowledge
15 that the Court has final discretion in any fee award or Class Representative Service Award. (*See*
16 Settlement Agreement at ¶¶ III.C.1, III.C.2.)

17 Finally, the Settlement Agreement provides for the payment of the fees and expenses
18 reasonably incurred by the Settlement Administrator. (Settlement Agreement at ¶ III.C.4.) The
19 Parties have received a quote from ILYM Group, Inc. for a fee of approximately Seventeen
20 Thousand Five Hundred Dollars (\$17,500.00) to administer the settlement. (*Id.* at ¶¶ I.Z, III.C.4,
21 III.E.) Should the Court approve a lesser amount or the actual settlement costs incurred falls
22 below \$17,500.00, any excess amount shall be added to the Net Settlement Amount to be
23 distributed to Participating Class Members. (*Id.*)

24 **III. THE PROPOSED SETTLEMENT WARRANTS COURT APPROVAL**

25 **A. Two-Step Approval Process**

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

1 *Complex Litigation, Third* § 30.41 states:

2 Approval of class action settlements involves a two-step process. First, counsel
3 submits the proposed terms of settlement and the court makes a preliminary fairness
4 evaluation. If the preliminary evaluation of the proposed settlement does not
5 disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly
6 preferential treatment of class representatives or of segments of the class, or
7 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.

8 (Fed. Jud. Ctr., 3rd ed. 1995). Thus, the preliminary approval by the trial court is simply a
9 conditional finding that the settlement appears to be within the range of acceptable settlements. As
10 Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary
11 hearing or conference concerning a tentative settlement proposal may vary. The court may find
12 that the settlement proposal contains some merit, is within the range of reasonableness required for
13 a settlement offer, or is presumptively valid subject only to any objections that may be raised at a
14 final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed.
15 2002).

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

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

22 *Id.* § 11.24.

23 Here, the Parties have reached such an agreement and have submitted to this Court in
24 connection with this Motion a copy of the Settlement Agreement fully setting forth all terms of the
25 agreement reached by the Parties, which include, among other things, the method for calculating
26 the Class Members’ individual settlement shares. (See Settlement Agreement at ¶ III.D.2.)

27 **B. The Settlement is Fair and Reasonable and Not the Result of Fraud or**
28 **Collusion**

Courts presume the absence of fraud or collusion in the negotiation of settlement unless

evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *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).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in significant discovery and negotiations, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions*, *supra*, § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o 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...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”)).

Here, both Class Counsel and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. (Tulyathan Decl. at ¶¶ 33-36; Declaration of Larry W. Lee (“Lee Decl.”) at ¶¶ 6-8; Declaration of William L. Marder (“Marder Decl.”) at ¶¶ 4-11.) Class Counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. (Tulyathan Decl. at ¶¶ 33-36; Lee Decl. at ¶¶ 6-8; Marder Decl. at ¶¶ 4-11.) Moreover, as discussed above, Class Counsel conducted extensive investigation of the allegations involved in this case since its inception, as well as exchanging data pertaining to the class and aggrieved employees in connection with mediation. (Tulyathan Decl. at ¶ 31.) Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting

1 in extensive arm's length negotiations taking place among the Parties. (*Id.* at ¶ 11.)

2 The settlement for each Class Member is fair, reasonable, and adequate, given the inherent
3 risks of litigation, including the substantial risks relative to class certification, and the costs of
4 pursuing such litigation. (*See* Section III-C, *infra.*) Despite the asserted fairness of the settlement
5 terms, as set forth in the Notice of Proposed Settlement of Class PAGA Action and Hearing Date
6 for Final Court Approval ("Class Notice"), should any Class Member wish to pursue his or her
7 own case for the claims being released herein, each Class Member has the right to submit a request
8 for exclusion (*i.e.*, opt-out) from the settlement. (*See* Class Notice, attached as Exhibit A to the
9 Settlement Agreement.) Moreover, as set forth in the Class Notice, Class Members are advised of
10 their right to attend the final approval hearing and object to any of the terms contained in the
11 proposed Settlement Agreement. (*See id.*)

12 **C. The Settlement Meets the *Kullar* Factors**

13 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, a class action
14 settlement should be approved when the plaintiff has conducted sufficient discovery and the
15 settlement is reasonable in light of the strengths of the plaintiff's claims. 168 Cal. App. 4th 116,
16 130, 133 (2008). As discussed herein, Class Counsel have conducted meaningful investigation
17 and, in light of the strength and weaknesses of the Class claims, counsel submits that this
18 settlement is fair pursuant to *Kullar*.

19 **1. Strengths and Weaknesses of Plaintiff's Claims Under Labor Code §** 20 **226(a)**

21 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
22 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved
23 in not prevailing on one or more of the theories alleged in the operative First Amended Complaint,
24 the possibility of non-certification, and the potential for appeals. (Tulyathan Decl. at ¶ 25; Lee
25 Decl. at ¶ 4; Marder Decl. at ¶ 3.)

26 Among other things, Defendant has argued that any alleged omission of information from
27 the wage statements was not a "knowing and intentional failure" by Defendant to comply with
28 Labor Code § 226(a), and penalties are therefore unwarranted. (Tulyathan Decl. at ¶ 26; *see*
Harris v. Vector Mktg. Corp., 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (summary

1 adjudication warranted on Section 226(e) claim where record lacked evidence that conduct was
2 knowing or willful); *Woods v. Vector Mktg. Corp.*, 2015 U.S. Dist. LEXIS 67303, at *8-9, *12-14
3 (N.D. Cal. May 22, 2015) (finding that when the defendant made a good faith claim that the
4 employee was properly classified as exempt its failure to provide accurate wage statements was
5 not knowing and intentional).) Significantly, Defendant also indicated that it has revised its wage
6 statements as of August 1, 2021, to correct the wage statement deficiencies alleged in this lawsuit.
7 As such, any liability that Plaintiff could seek in this lawsuit would be limited. Defendant also
8 argued that Plaintiff could not establish “injury” under Section 226(e), as (1) employees have
9 access to Defendant’s online portal where they could obtain accurate information regarding their
10 pay, and (2) employees can determine total hours worked on certain wage statements. (Tulyathan
11 Decl. at ¶ 26.)

12 For the purpose of PAGA liability, a plaintiff need not establish the “knowing and
13 intentional” and “injury” elements of Labor Code § 226(e) to prevail. *See Lopez v. Friant &*
14 *Associates, LLC*, 15 Cal. App. 5th 773, 784-85 (2017). Nonetheless, the trial court has the
15 discretion to reduce PAGA civil penalties “if, based on the facts and circumstances of the
16 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
17 confiscatory.” *See* Cal. Labor Code § 2699(e)(2); *Delgado v. New Albertson’s, Inc.*, 2010 WL
18 11507599 at *7 (C.D. Cal. Mar. 15, 2010) (explaining that court’s discretion to reduce penalties
19 under PAGA protects defendants from unconstitutionally excessive penalties); *Carrington*, 30 Cal.
20 App. 5th at 529 (affirming reduction of PAGA penalties where the trial court found the reduction
21 was warranted based on the employer’s “good faith attempts” to comply with the Labor Code and
22 “because the court found the violations were minimal”).²

23 Plaintiff further recognizes that Defendant could make a persuasive argument at trial that
24 the PAGA penalties here should be substantially reduced. (Tulyathan Decl. at ¶ 27.) As an

25
26 ² As the California Supreme Court and Court of Appeal have held, the purpose of PAGA is not to
27 seek wages or recovery for the individual employees. *Arias v. Superior Court*, 46 Cal. 4th 969,
28 986 (2009) (holding that an action to recover civil penalties “is fundamentally a law enforcement
action designed to protect the public and **not** to benefit private parties”) (emphasis added); *Brown*
v. Ralphs Grocery Co., 197 Cal. App. 4th 489, 1499 (2011).

1 example, in *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011),
2 while plaintiff ultimately prevailed in a PAGA trial predicated on a violation of Labor Code §
3 226(a), the Court assessed only 17% of the maximum penalties. (Tulyathan Decl. at ¶ 27.) Thus,
4 the possibility of a reduction or complete reversal of PAGA penalties is real and substantial.
5 Taking those defenses into account on the class and PAGA claims, Plaintiff believes that the
6 settlement for the amount stated herein is fair, reasonable, and adequate.

7 **2. The Maximum Penalties**

8 Based on the data provided by Defendant pertaining to the class and aggrieved employees,
9 Plaintiff estimated that Defendant would face potential liability of up to approximately \$7,058,250
10 for Plaintiff's class claims, pursuant to Labor Code § 226(e) if Plaintiff succeeded at trial.
11 (Tulyathan Decl. at ¶ 22.) Plaintiff was able to estimate the potential damages and penalties based
12 on data provided by Defendant, including the number of employees in the putative class (3,077)
13 and the number of pay periods at issue during the relevant time period (approximately 72,121 pay
14 periods). (*Id.*)

15 With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated that
16 Defendant could face civil penalties of up to a maximum of \$7,212,100 if Plaintiff were successful
17 at trial. This amount is calculated based on the PAGA's initial \$100 penalty for each aggrieved
18 employee per pay period, based on the *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334
19 (2021) decision, in which the Court held that the \$100 penalty applies to PAGA claims. (*Id.* at ¶
20 23.) However, even assuming Plaintiff ultimately prevailed on his PAGA claim, the Court still
21 has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
22 decline to award PAGA penalties where "if, based on the facts and circumstances of the particular
23 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
24 confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks*
25 *Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
26 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying
27 with the law. 30 Cal. App. 5th 504 (2018). Upon review, the Court of Appeal found such
28 reduction to be proper. *Id.* at 539; *see also Magadia*, 999 F.3d at 680 (entirely reversing award of

1 PAGA penalties on appeal).

2 Thus, based on the data provided by Defendant, Plaintiff’s counsel estimated total penalties
3 to be approximately \$14,270,350, if the Court awarded full penalties on both Plaintiff’s PAGA and
4 class claims. (Tulyathan Decl. at ¶ 24.) Therefore, Plaintiff’s settlement of \$1,600,000.00 is
5 approximately **11.2%** of the total estimated liability. If the Court were to reduce the maximum
6 PAGA penalties by 90%, as was done in *Carrington*, the settlement value is an even higher
7 percentage of the potentially available recovery. *Id.*

8 Numerous courts have held that **gross** settlements approximating between only 8 and 25%
9 of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
10 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16%
11 of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
12 amounting to only a fraction of the potential recovery does not per se render the settlement
13 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
14 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
15 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
16 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding
17 that class action settlement recovering between 8.5% and 25% of the defendant’s potential
18 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161
19 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which
20 obtained only 9.1% of projected damages, given the risks of continued litigation); *Villegas v. J.P.*
21 *Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21,
22 2012) (holding that gross class action settlement of approximately 15% of the potential recovery
23 was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at
24 *5 (N.D. Cal. Apr. 26, 2013) (24% was reasonable). Here, the settlement was negotiated at arms’
25 length, and the settlement’s percentage-to-recovery falls within the range that warrants approval by
26 the Court.

27 //

28 //

1 **D. An Analysis of the Terms of the Settlement Agreement**

2 **1. Nature of Any Injunctive Relief**

3 The Settlement Agreement does not provide for any injunctive relief.

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

7 The Settlement Agreement provides for a Gross Settlement Amount of \$1,600,000.00. The
8 Net Settlement Amount (calculated after deduction of the approved Class Representative Service
9 Award Payment, LWDA's portion of the PAGA Penalties, Settlement Administration Expenses,
10 and Class Counsel Fees and Litigation Expenses Payment) will be paid to all Class Members who
11 do not opt out of the settlement. (Settlement Agreement at ¶¶ I.S, III.D.1.) Class Counsel
12 estimates that the Net Settlement Amount will be approximately \$947,500.00. (Tulyathan Decl. at
13 ¶ 19.)

14 Based on the anticipated Net Settlement Amount, on a pure raw average, each Participating
15 Class Member will receive approximately \$307.93 each. (*Id.* at ¶ 20.) The amount allocated to
16 each Participating Class Member will be based on his or her Pay Period Count. (*See* Settlement
17 Agreement at ¶ III.D.2.) The amount any particular Participating Class Member will be entitled to
18 recover will be greater or lower than this average, depending on his or her Pay Period Count and
19 the number of opt-outs received. (Tulyathan Decl. at ¶ 20.)

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

23 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
24 paid out. (*See* Settlement Agreement at ¶ III.B.) Any Settlement Shares to Participating Class
25 Members that remain un-cashed within one hundred eighty (180) days of the mailing of settlement
26 payment checks by the Settlement Administrator will be sent to the designated *cy pres* recipient,
27 Legal Aid at Work. (*See* Settlement Agreement at ¶ III.F.9.)

28 **4. Scope of the Release of Class Members' Claims**

 The scope of the release, as listed below, is identified in the Settlement Agreement at
Paragraphs III.G.1 and III.G.2, as well as in the Notice that will be sent to Class Members. Class

Members will release the following claims:

[A]ll claims for penalties and damages, including interest, costs and attorneys' fees related thereto, predicated on claims alleged or could have been alleged based on the facts as alleged in the Complaint, First Amended Complaint, and/or LWDA Letters in the Action, including but not limited to any and all known or unknown claims related in any way to defective or inaccurate wage statements under any theory of law including California Labor Code sections 226(a) and 226.3, that accrued from January 19, 2020, through December 31, 2021, against Defendant and the Released Parties (the "Released Class Claims")

(Settlement Agreement at ¶ III.G.1.) Aggrieved Employees will release the following claims:

[A]ll claims for penalties, including costs and attorneys' fees related thereto, predicated on PAGA claims alleged or could have been alleged based on the facts as alleged in the Complaint, First Amended Complaint, and/or LWDA Letters, including but not limited to from any and all known or unknown claims related in any way to defective or inaccurate wage statements under any theory of law that accrued from January 19, 2020, through December 31, 2021, against Defendant and the Released Parties (the "Settled PAGA Claims").

(Settlement Agreement at ¶ III.G.2.) As shown, the scope of the release is narrow and is limited to the claims asserted in the operative Complaint.

5. Tax Treatment of Settlement Amounts

The Settlement Agreement provides that all settlement payments to Class Members shall be treated as 100% penalties. (*See* Settlement Agreement at ¶ III.D.3.) The Settlement Administrator will issue distribute appropriate IRS tax forms. (*Id.*)

6. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

Class Members do not need to do anything should they wish to receive their share of the Net Settlement Amount. (Settlement Agreement at ¶ III.B.) Thus, this substantially decreases the burden each Class Member must bear to receive his/her settlement share. If a Class Member does not wish to take part in this settlement and be bound by the release, he/she must submit a Request for Exclusion. (Settlement Agreement at ¶ III.F.3.c.) Such obligations are also thoroughly identified in the Class Notice. (*See* Class Notice, pp. 5-6.)

//

1 **7. Notice to Class Members**

2 Within ten (10) business days of preliminary approval of this Settlement by the Court,
3 Defendant will transmit to the Settlement Administrator for each Class Member (i) full name; (ii)
4 last known mailing address; (iii) Social Security Number; (iv) email address (if known); and (v)
5 dates of employment and/or number of pay periods worked during the Class Period and/or PAGA
6 Period (“Employee List). (See Settlement Agreement at ¶¶ I.O, III.F.2.) After receipt of the
7 Employee List, the Settlement Administrator shall perform a search based on the National Change
8 of Address List or other similar service for information to update and correct for any known or
9 identifiable address changes. (*Id.* at ¶ III.F.2.b.) Within ten (10) calendar days after receiving the
10 Employee List, the Settlement Administrator shall mail the Class Notice Packet to all Class
11 Members via regular first-class U.S. mail. (*Id.*) Class Members will be provided forty-five (45)
12 calendar days to opt out or object to the settlement. (Settlement Agreement at ¶¶ III.F.3.a,
13 III.F.3.b.)

14 **E. Attorneys’ Fees and Litigation Costs**

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

23 The Common Fund doctrine is predicated on the principle of preventing unjust enrichment.
24 When a litigant’s efforts create or preserve a fund from which others derive benefits, he may
25 require the passive beneficiaries to compensate those who created the fund. Both California state
26 and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at
27 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995), the
28 California Supreme Court recognized that the common fund doctrine has been applied

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

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

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

21 Here, the Parties have agreed to a payment of a maximum of 35 percent of the Gross
22 Settlement Amount, or \$560,000.00, for payment to Class Counsel as attorneys’ fees. As the
23 Parties have agreed to a payment of the foregoing attorney’s fees, this amount should be presumed
24 to be fair.

25 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs of up
26 to \$25,000.00. Class Counsel have, at their own risk, expended costs, for example, to file this
27 instant action and other pleadings, effect service of process, mediation costs, and pay other
28 litigation related costs. (Tulyathan Decl. at ¶ 16.)

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

3 **F. The Settlement Administration Fees**

4 The Parties have agreed to payment of \$17,500.00 to the Settlement Administrator, ILYM
5 Group, Inc., to send notices to Class Members and to administer this settlement. (Settlement
6 Agreement at ¶¶ III.C.4, III.E; Tulyathan Decl. at ¶ 18.) ILYM Group, Inc. is a well-recognized
7 class action settlement administrator. The Parties believe that the administration fee is reasonable
8 and should be approved. (Tulyathan Decl. at ¶ 18.)

9 **G. Proposed Payment to Class Representative**

10 Plaintiff requests a service award of \$20,000.00. (*See* Settlement Agreement at ¶ III.C.1.)
11 Plaintiff discussed the case with Class Counsel on a number of occasions, searched for and
12 provided documents and information to Class Counsel, and reviewed the pleadings in this case,
13 including his PAGA letters, declaration, and Settlement Agreement. (*See* Declaration of Martin
14 Moreno ("Moreno Decl.") at ¶ 5.) In addition to the invaluable services that he provided, Plaintiff
15 also took significant risks, both professionally and monetarily, in acting as the Class
16 Representative and seeking benefits on behalf of the Class. Furthermore, because the claims
17 alleged by the class representative involved the payment of costs to the prevailing party, Plaintiff
18 could have possibly faced paying the fees and costs of Defendant, had he not prevailed in this
19 action.

20 Further, given that future employers are much less likely to hire individuals who have filed
21 suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in
22 the future from other potential employers. Plaintiff took this risk upon himself and the whole
23 Class benefited from these risks taken by Plaintiff. Class Members did not have to file individual
24 lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to
25 face the potential for retaliation and not getting future employment had they filed a public lawsuit.
26 Plaintiff also agreed to a general release of claims, which is an additional benefit conferred to
27 Defendant.
28

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

5 Notably, courts have routinely granted approval of representative enhancements for far
6 greater amounts than the \$20,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
7 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
8 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
9 incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141
10 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*
11 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
12 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
13 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
14 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
15 \$25,000 incentive award to class representative in ERISA case). Here, Plaintiff requests an
16 incentive award of \$20,000.00, which is reasonable and consistent with case law.

17 **IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASS**

18 **A. Procedures for Settlement Before Class Certification**

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

the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).³

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 Members, the proposed settlement, and the class counsel’s application for fees and expenses.

4 Newberg on Class Actions § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties stipulate to the Court’s provisional certification of the Class for the purposes of this settlement only. (Settlement Agreement at ¶ B.47.)

B. The Proposed Class Meets all Certification Requirements

1. The Class is Ascertainable and Sufficiently Numerous

The Class that Plaintiff seeks to conditionally certify is ascertainable. “Class members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008); *see also Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 240 (2013) (same). Here, members of the Class are readily identifiable. Defendant has determined that there are approximately 3,077 individuals that comprise the Class. (Settlement Agreement at ¶ I.C.) Furthermore, the Class is sufficiently numerous. Courts generally find that numerosity is satisfied if the class includes forty or more members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir.) (noting, in dicta, that the court “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

2. There are Common Questions of Law and Plaintiff’s Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to

³ In determining the fairness and reasonableness of a proposed settlement, California courts may look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
2 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
3 facts couple with disparate legal remedies within the class”). Commonality requires only that
4 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
5 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
6 Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*,
7 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the
8 employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide
9 impact of the Defendant’s policies satisfies the commonality requirement. *See Stephens v.*
10 *Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

11 Plaintiff alleges that Defendant, as a matter of its corporate policy and procedure, violated
12 the Labor Code by its uniform policy of furnishing inaccurate wage statements that do not identify
13 accurate overtime rates of pay and total hours worked whenever overtime wages and/or shift
14 differential wages are paid. *See Cal. Lab. Code §§ 226(a)(2) and (a)(9)*. Like other Class
15 Members, Plaintiff was not provided compliant wage statements. (*See Moreno Decl.* at ¶¶ 3-4.)
16 Thus, Plaintiff’s claims are typical to those of the Class Members.

17 **3. Plaintiff and Class Counsel Have Adequately Represented the Class**

18 The adequacy requirement is also met. “Adequacy of representation depends on whether
19 the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests
20 are not antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,
21 450 (1976). Here, Plaintiff does not have any interests adverse to the Class, nor have any such
22 issues been raised or presented. (*Moreno Decl.* at ¶ 6.) Plaintiff has taken all necessary steps to
23 represent the interests of the Class, by providing information and documents to Class Counsel
24 pertaining to the claims in this lawsuit. (*Id.* at ¶¶ 5-6.) For such reasons, Plaintiff has adequately
25 represented the Class Members and will continue to do so.

26 Further, as detailed in their declarations, Class Counsel are experienced and well-qualified
27 class action litigators who have litigated many wage and hour class actions and have each been
28 certified as class counsel in numerous other class actions, particularly wage and hour class actions.

(Tulyathan Decl. at ¶¶ 33-36; Lee Decl. at ¶¶ 6-8; Marder Decl. at ¶¶ 4-11.) From the inception of the case, Class Counsel have solely represented the interest of the Class. For example, Class Counsel expended significant time and resources reviewing the documents and pleadings in this case, opposing Defendant's motion to stay, meeting and conferring with defense counsel on a number of issues, calculating and analyzing the potential range of recoverable penalties, preparing for and attending mediation, negotiating the terms of the settlement, and drafting the Settlement Agreement. (Tulyathan Decl. at ¶ 31.) Finally, the settlement was obtained for the benefit of the Class, not for the individual Plaintiff. (*Id.*)

V. CONCLUSION

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of Class Action Settlement, and set a date for a final approval hearing.

DATED: April 11, 2022

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved
Employees

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 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

9 On April 11, 2022, I served the following document(s) described as:

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

27 on the interested parties in this action as follows:

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 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was completed and that all pages were received by the party(ies) identified herein or on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 11, 2022, at Los Angeles, California.



Erika Mejia