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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

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

Plaintiffs,

vs.

CONTROL AIR ENTERPRISES LLC, a
Delaware limited liability company; CONTROL
AIR CONDITIONING CORP., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2020-01155488-CU-OE-CXC

[Hon. Glenda Sanders, Department CX101]

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

*[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval of Class Action
Settlement; Declaration of Larry W. Lee;
Declaration of Simon L. Yang; Declaration of
Roger R. Carter; Declaration of Marc J. Phelps;
Declaration of Tara Joy; [Proposed] Order]*

Date: July 8, 2022
Time: 1:30 p.m.
Department: CX101

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

PLEASE TAKE NOTICE that at 1:30 p.m. on July 8, 2022, or a date to be assigned at the time of filing in Department CX101 of the above-entitled court located at 751 West Santa Ana Boulevard, Santa Ana California 92701, Plaintiff, Tara Joy, will and does move for an Order:

1. approving the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”) attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
2. conditionally certifying the following Classes:
 - a. The “Wage Statement Class” of all non-union employees who were issued wage statements from May 29, 2019, through August 9, 2020.
 - b. The “Vacation Class” of all employees whose employment with Control Air Conditioning Corporation ended on May 31, 2019.
3. appointing Plaintiff as Class Representative and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., Roger R. Carter of The Carter Law Firm, and Marc H. Phelps of The Phelps Law Group as Class Counsel;
4. approving the Agreement on a preliminary basis and finding that it, the total Gross Settlement Amount in the amount of \$750,000.00, and the amounts for the LWDA Payment, Class Representative Enhancement Payment, Class Counsel Fees and Costs Award, Administration Expenses, and allocation of payments to Class Members and PAGA Members appear to be within the range of reasonableness for a settlement that could ultimately be given final approval;
5. approving the distribution of the Notice of Class Action and PAGA Settlement attached as Exhibit 1 to the Agreement;
6. appointing Phoenix Settlement Administrators as the Administrator; and
7. setting the matter for a final approval hearing.

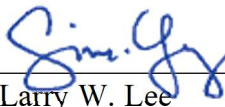
The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the Court to preliminarily certify a class for settlement purposes and to approve a class action settlement. The basis for the Motion, filed without any opposition from Defendants Control Air Enterprises LLC and Control Air Conditioning Corp., is that the proposed settlement is fair, adequate, and reasonable,

1 and the procedures proposed by the Parties are adequate to ensure class members are able to participate
2 in, opt out of, or object to the settlement.

3 The Motion is based on this notice, accompanying memorandum of points and authorities, the
4 Agreement and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W.
5 Lee, Simon L. Yang, Roger R. Carter, Marc H. Phelps, and Tara Joy, all pleadings and papers on file
6 herein, and any further oral and documentary evidence as may be presented before or at the hearing of
7 this matter.

8 DATED: June 13, 2022

DIVERSITY LAW GROUP, P.C.

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10 By: 
11 Larry W. Lee
12 Simon L. Yang
13 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

In this wage and hour class action, Plaintiff, Tara Joy, alleges that her former employers, Defendants Control Air Enterprises LLC and Control Air Conditioning Corp., violated the Labor Code. She alleges that Control Air Enterprises LLC violated Labor Code sections 226(a) by failing to furnish Plaintiff and other employees with wage statements showing the name and address of the legal entity that was their employer. She also alleges that their prior employer, Control Air Conditioning Corp., violated Section 227.3¹ by failing to pay Plaintiff and other employees their accrued vacation or “PTO” when it ended their employments. Plaintiff thus sues on a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Defendants deny all of Plaintiff’s allegations and any liability or wrongdoing of any kind. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 5. Although Plaintiff and her counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they also recognize the general risks of litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. Based on their independent investigations and evaluations, the Parties have agreed to a Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang. The Agreement requires Defendants to pay \$750,000.00 for a classwide settlement of the alleged claims. The entire settlement amount is non-reversionary; no claims need be made, and no monies will revert back to Defendant.

The Parties and their respective counsel are of the opinion that a settlement on the terms set forth in the Agreement would not only be fair, reasonable, and adequate, but also in the best interests of the Class in light of all known circumstances. The mediated resolution results in a settlement that would require Defendants to pay a gross settlement amount of **more than approximately \$2,083 per Vacation Class Member, on average, and more than approximately \$1,129 per Wage Statement Class Member, on average.** The settlement would release claims alleged in the lawsuit only. Individuals who are both Vacation Class Members and Wage Statement Class Members are entitled to recoveries from both classes.

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

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

3 **RELEVANT BACKGROUND**

4 During her employment, Plaintiff was furnished wage statements that did not show the name of
5 the legal entity that was the employer but instead showed “CAE Non Union PR,” which was not a legal
6 entity registered to do business in California, and also did not show any employer address. Declaration
7 of Tara Joy (“Joy Decl.”) ¶ 2. Plaintiff submitted a notice to the Labor and Workforce Development
8 Agency (“LWDA”) regarding the wage statements that failed to show the name or address of the legal
9 entity that was the employer. Yang Decl. ¶ 2.

10 On August 17, 2020, Plaintiff initiated this class and representative PAGA action to remedy
11 Defendants’ wage statement violations since April 6, 2019. Yang Decl. ¶ 2. Defendants attempted to
12 cure some of the wage statement deficiencies. *Id.* In various communications with the LWDA,
13 Defendants explained that employees previously employed by Control Air Conditioning Corporation
14 were transferred to Control Air Enterprises LLC on June 1, 2019. *Id.* On that basis, on November 17,
15 2020, Plaintiff submitted a supplemental notice to the LWDA and met and conferred with Defendants
16 about an amended complaint regarding Control Air Conditioning Corporation’s failure to pay all wages
17 and accrued PTO upon termination of employment. *Id.* The Parties then agreed to schedule a mediation.
18 *Id.*

19 Prior to the settlement of this action, Plaintiff served formal discovery, and Defendants provided
20 information related to defenses that it alleged would apply to Plaintiff’s claims. Yang Decl. ¶ 3. The
21 Parties investigated the facts relating to Plaintiff’s allegations and engaged in a thorough study of the
22 legal principles applicable to both the claims Plaintiff alleged and defenses Defendants asserted. *Id.*
23 Defendants also provided the numbers of individuals, wage statements, and pay periods relevant to
24 Plaintiff’s allegations, among other things. *Id.* Throughout the litigation, Plaintiff provided information
25 and documents, including while the lawsuit was pending, to confirm Defendants’ representations and
26 review produced documents. *Id.*

1 After 10 months of litigation, the Parties commenced settlement negotiations through a well-
2 respected mediator, the Hon. Steven R. Denton (Ret.). Yang Decl. ¶ 4. Following the mediation, the
3 Parties were ultimately able to agree to the current settlement described in the Agreement. *Id.*

4 **LEGAL STANDARD**

5 Rule 3.769 of the California Rules of Court governs settlements of class actions. Any party to a
6 settlement agreement may submit a written notice for preliminary approval of the settlement. The
7 settlement agreement and proposed notice to class members must be filed with the motion. California
8 Rules of Court, rule 3.769(c).

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

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

20 Manual for Complex Litigation (Third) § 30.41.

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

27 The parties also may, at the preliminary approval stage, request that the court provisionally
28 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

1 to the various items submitted to the court. Three basic rulings are often conditionally entered at
2 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.

3 4 Newberg on Class Actions, at § 11.26. Indeed, "pre-certification settlements are routinely approved if
4 found to be fair and reasonable." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
5 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
6 before any "adversary certification" may still be approved if a court is satisfied that it is "fair, adequate
7 and reasonable").

8 DISCUSSION

9 I. The Proposed Settlement Terms Are Fair, Adequate, and Reasonable.

10 A. Proposed Class Definitions

11 The proposed settlement concerns (1) all non-union employees who were issued wage statements
12 from May 29, 2019, through August 9, 2020 (the "Wage Statement Class"); and (2) all employees
13 whose employment with Control Air Conditioning Corporation ended on May 31, 2019 (the "Vacation
14 Class"). Agreement ¶ 7. The Wage Statement Class is comprised of 332 individuals. *Id.* ¶ 7(a). The
15 Vacation Class is comprised of no more than 180 individuals. *Id.* ¶ 7(b). "Class Members" include all
16 members of the Wage Statement Class and Vacation Class. *Id.* ¶ 7.

17 B. Settlement Terms and Evaluation

18 The trial court must determine and approve a class action settlement is fair to "prevent fraud,
19 collusion or unfairness to the class" through settlement and dismissal of the class action." *Consumer*
20 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
21 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
22 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l*
23 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
24 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
25 through arm's length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
26 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
27 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

1 While the recommendations of counsel proposing the settlement are not conclusive, the Court
2 can properly take them into account, particularly where, as here, they have been involved in formal and
3 informal investigation and negotiations, are experienced with this type of litigation, and mediated a
4 resolution with arm's length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National*
5 *Rural Telecomms. Coop.*, 221 F.R.D. at 528 ("So long as the integrity of the arm's length negotiation
6 process is preserved, however, a strong initial presumption of fairness attaches to the proposed
7 settlement ... and 'great weight' is accorded to the recommendations of counsel, who are most closely
8 acquainted with the facts of the underlying litigation.") (citations omitted). In such circumstances, as
9 here, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms.*
10 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp.
11 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
12 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan*
13 *Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

14 Here, both Plaintiff's counsel and Defendants' counsel have a great deal of experience in wage
15 and hour class action litigation. Plaintiff's counsel have extensive class action and litigation experience
16 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
17 W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-12; Declaration of Roger R. Carter ("Carter Decl.") ¶¶ 4-
18 10; Declaration of Marc J. Phelps ("Phelps Decl.") ¶¶ 4-10. Each side has apprised the other of their
19 respective factual contentions and legal theories, and each side has considered the other's contentions
20 and theories—resulting in negotiations taking place between the Parties. Yang Decl. ¶¶ 4-7.

21 Defendants provided the number of individuals and relevant number of wage statements
22 pertinent to Plaintiff's allegations, among other things. Yang Decl. ¶ 5. Based on the information
23 provided by Defendant, Plaintiff estimates that at the time of mediation Defendants faced potential
24 liability of approximately \$1,680,000 under Section 226(e) for 19,021 relevant wage statements. *Id.* For
25 at least 4,755 wage statements that Defendants did not attempt to correct during the PAGA cure process,
26 Defendants faced potential liability of an additional \$1,188,750 under Section 226.3. *Id.* Plaintiff also
27 estimates that at the time of mediation Defendants faced potential liability of approximately \$1,482,096
28 in waiting time penalties to 154 employees not timely paid their accrued vacation wages upon the end of

1 their employments with Control Air Conditioning Corporation. *Id.* Under PAGA, Defendants faced
2 potential liability of an additional \$15,400 under Section 2699(f). *Id.*

3 Defendants asserted various defenses. For example, Plaintiff understood that Defendants would
4 contend that PAGA penalties for each wage statement violation presented a theoretical maximum
5 liability of \$100 under Section 2699(f), rather than \$250 under Section 226.3, and that Section 226(e)
6 penalties would be subject to additional defenses requiring proof of injuries resulting from knowing and
7 intentional violations. Yang Decl. ¶ 6. As for potential liability for waiting time penalties, Plaintiff
8 expected that Defendants would further contend that liability under Section 203 would be subject to
9 additional defenses based on Defendants' good faith. *Id.* Plaintiff also expected that Defendants would
10 contend that the majority of potential PAGA liability would be subject to discretionary reduction. *Id.*
11 While the Parties disagree on the application of the law to the facts, each Party recognized in
12 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
13 Gross Settlement Amount to which the Parties ultimately agreed at mediation was reasonable. *Id.*

14 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
15 classwide judgment against Defendants, they recognize the inherent risks in litigation, including the
16 specific risks that class certification could be denied, liability could not be established at trial, or the
17 applicable law could change. Yang Decl. ¶ 7. The settlement for each participating Class Member is fair,
18 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
19 the costs of pursuing litigation. *Id.* The settlement is the result of extensive arms' length negotiations
20 between the Parties and their counsel. *Id.*

21 Even when including the aforementioned potential PAGA penalties under Section 226.3 and
22 2699(f) without any discretionary reduction, the Gross Settlement Amount secures approximately
23 17.18% of Defendants' potential liability. Yang Decl. ¶ 7. Numerous courts have held that gross
24 settlement amounts of as little as 8% of a defendant's potential exposure are fair and reasonable. *See,*
25 *e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action
26 settlement recovering 16% of potential exposure was fair and reasonable; "It is well-settled law that a
27 cash settlement amounting to only a fraction of the potential recovery does not per se render the
28 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be

1 assessed relative to risks of pursuing the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*,
2 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering
3 between 8.5% of the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*,
4 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and
5 granting preliminary approval of wage and hour class action settlement obtaining 9.1% of projected
6 damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012)
7 (holding that gross class action settlement of approximately 15% of the potential recovery was fair and
8 reasonable).

9 Class Members do not need to do anything should they wish to receive their share of the
10 settlement funds. This eliminates any burden to Class Members who wish to receive their settlement
11 share. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her
12 own case for the claims proposed to be settled and released, each Class Member has the right to submit a
13 request for exclusion (i.e., opt out) from the settlement. Agreement ¶ 34. Moreover, as set forth in the
14 Notice of Class Action Settlement (“Notice”), Class Members are advised of their right to attend the
15 final approval hearing and object to any of the terms contained in the Agreement. *Id.* ¶ 33, Ex. A.

16 **1. Class Member Payments**

17 The Agreement provides for \$750,000.00 as the Gross Settlement Amount. Agreement ¶ 12.
18 Defendants shall separately pay the employer’s share of payroll taxes, as applicable, in addition to the
19 Gross Settlement Amount. *Id.* From the Gross Settlement Amount, the Parties request that the Court
20 approve allocation of a Class Counsel Fees and Costs Award, Class Representative Enhancement
21 Payment, LWDA Payment, and Administration Expenses. *Id.*

22 The Class Counsel Fees and Costs Award consists of attorneys’ fees, which will be no more than
23 33⅓% of the Gross Settlement Amount, or \$250,000.00, and costs, which will be no more than
24 \$15,000.00. Agreement ¶ 25. The Class Representative Enhancement Payment will be no more than
25 \$10,000.00. *Id.* ¶ 26. Administration Expenses are estimated to be no more than \$9,500.00. *Id.* ¶ 27.
26 \$20,000.00 is allocated for settlement and release of claims for PAGA penalties, and pursuant to statute,
27 the LWDA Payment allocates 75% of PAGA penalties, or \$15,000.00, to be paid to the LWDA (with
28

1 the remaining 25% of PAGA penalties to be distributed to Class Members as a part of the Net
2 Settlement Amount. *Id.* ¶¶ 14, 28.

3 The portion of the Net Settlement Amount representing PAGA penalties will be distributed to
4 Class Members in equal shares. Agreement ¶ 28. 50% of the remaining Net Settlement Amount will be
5 allocated to the Wage Statement Class, and the other 50% will be allocated to the Vacation Class. *Id.* ¶
6 29(a). The Administrator will divide the funds allocated to the Wage Statement Class by the total
7 number of workweeks for all Settlement Class Members in the Wage Statement Class (“Work Week
8 Rate Amount”). *Id.* ¶ 29(b). Each such Settlement Class Member’s number of workweeks shall be
9 multiplied by the Work Week Rate Amount to determine that Settlement Class Member’s allocation
10 from the Wage Statement Class. *Id.* The Administrator will divide the funds allocated to the Vacation
11 Class by the total number of Settlement Class Members in the Vacation Class. *Id.* ¶ 29(c). Each such
12 Settlement Class Member shall be allocated this amount from the Vacation Class. *Id.*

13 Pursuant to the settlement’s terms, it is estimated that no less than approximately \$465,500.00
14 will be available to be distributed to Class Members. Yang Decl. ¶ 8. Based on Defendants’ data, **each**
15 **Wage Statement Class Member, on average, would receive approximately \$701.05**, after all
16 requested deductions from the Gross Settlement Amount. Yang Decl. ¶ 8. The amount actually paid to
17 any Wage Statement Class Member may increase or decrease depending on his or her number of
18 workweeks. *Id.* Based on Defendants’ data, **each Vacation Class Member, on average, would receive**
19 **approximately \$1,293.06**, after all requested deductions from the Gross Settlement Amount. *Id.*
20 Individuals who are both Wage Statement Class Members and Vacation Class Members are entitled to
21 receive payments as members of both classes. The amount paid on average to each Class Member may
22 increase, depending on how many Class Members opt out of the settlement. *Id.*

23 Plaintiff’s lawsuit sought penalties only for Wage Statement Class Members. As a result, 100%
24 of payments to Settlement Class Members who are Wage Statement Class Members but not Vacation
25 Class Members shall be characterized as penalties. Agreement ¶ 39. 10% of Vacation Class Members’
26 payments shall be characterized as wages. *Id.* All other settlement payments do not consist of wages and
27 shall be characterized as IRS Form 1099 payments. *Id.*

1 Finally, the principal for any uncashed checks (upon the expiration date) shall be tendered to the
2 State Controller, Unclaimed Property Division for handling on behalf of the recipient. Agreement ¶ 37.
3 None of the settlement funds will revert to Defendant. Agreement ¶¶ 12, 15.

4 **2. Class Members' Releases of Claims**

5 As a condition of participating in this settlement, Settlement Class Members of the Wage
6 Statement Class shall release claims for violations of California Labor Code § 226 for the period of May
7 29, 2019, through August 9, 2020. Agreement ¶ 18(a). Settlement Class Members of the Vacation Class
8 shall release claims for violations of California Labor Code §§ 201-203 and 227.3, as well as derivative
9 violations of Business & Professions Code § 17200 predicated on the change in employer name. *Id.*
10 ¶18(b). All Class Members shall release claims for PAGA penalties based on the above violations of
11 California Labor Code §§ 201-203, 226, 226.3, and 227.3. *Id.* ¶18(c).

12 As the release is narrowly tailored to the specific allegations litigated, the release is thus
13 appropriately limited. *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general
14 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action
15 settlements.”).

16 **C. Notice to Class Members**

17 Within 14 calendar days of the Preliminary Approval Order, Defendants shall provide to the
18 Administrator the total number of workweeks for each Class Member. Agreement ¶ 6. Defendants will
19 use their best efforts to provide to the Administrator each Class Member’s full name, most recent
20 mailing address, last known telephone number if readily available, and Social Security number. *Id.* The
21 Administrator shall send Notice to Class Members to provide notice of settlement.²

22 Before mailing the Notice, the Administrator shall review the national change of address registry
23 for all Class Members and/or skip trace to determine the most up-to-date addresses for all Class
24 Members. Agreement ¶ 32. Within five calendar days of receiving the Class Data, the Administrator
25 shall mail Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known
26 mailing addresses identified in the Class Data, or any updated addresses. *Id.* Any Notice Packet returned
27

28 ² Based on Defendants’ use of English at the workplace and the English-proficiency of the Class, there is
no apparent need for any translation of the Notice. Yang Decl. ¶ 4.

1 to the Administrator as undeliverable shall be sent promptly via First Class U.S. Mail to the forwarding
2 address affixed thereto. *Id.* If no forwarding address is provided, the Administrator shall promptly
3 attempt to determine the correct address using a skip-trace search and shall then promptly send a re-
4 mailing. *Id.*

5 As set forth in the Notice, Class Members will be allowed to opt out of the settlement or object to
6 the settlement by a certain deadline. Agreement ¶¶ 33, 34.

7 **D. Elements of Class Certification**

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

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

21 **1. More than 100 Class Members Satisfy Numerosity.**

22 There are well over 300 Class Members. Yang Decl. ¶ 3. Numerosity thus is sufficiently
23 established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
24 number is required as a matter of law for the maintenance of a class action” and citing examples in
25 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
26 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

1 **2. The Defined Class Is Ascertainable.**

2 Class Members are identifiable from Defendants’ records. The class definition “is precise,
3 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).

4 **3. Plaintiff Has Claims that Are Typical of the Class, Raise Predominant**
5 **Common Questions, and Permit Them to Adequately Represent the Class.**

6 “The community of interest requirement involves three factors: ‘(1) predominant common
7 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
8 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
9 435 (2000).

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

20 With respect to typicality, Plaintiff alleges that Defendants, as a matter of their corporate policy,
21 practice, or procedure violated Section 226(a) by failing to furnish employees with wage statements that
22 itemize and show the name and address of the legal entity that was the employer and violated Sections
23 201-203 and 227.3 by failing to pay all accrued wages including accrued vacation upon the end of
24 employment with Control Air Conditioning Corporation on May 31, 2019. As with other members of
25 the Class, when Plaintiff’s employment with Control Air Conditioning Corporation ended on May 31,
26 2019, Plaintiff was not paid her accrued paid time off (“PTO”). As with other members of the Class,
27 when Control Air Enterprises LLC began employing Plaintiff as of June 1, 2019, Plaintiff was provided
28 wage statements that did not show the name and address of Control Air Enterprises LLC. Instead,

1 Plaintiff received wage statements that show only “CAE Non Union PR,” without any address. Yang
2 Decl. ¶ 2; Joy Decl. ¶ 2.

3 With respect to adequate representation, Plaintiff does not have any interests adverse to the
4 Class, nor have any such issues been raised or presented. Joy Decl. ¶ 3. Plaintiff has taken all necessary
5 steps to represent the interests of the Class, including by providing information and documents to Class
6 Counsel, making herself available to discuss the claims, providing wage statements or reviewing wage
7 statements while the lawsuit was pending, and answering any questions. *Id.* For such reasons, Plaintiff
8 has adequately represented the Class Members and will continue to do so.

9 **4. Class Counsel Also Adequately Represents the Class.**

10 From the inception of the case, Class Counsel has zealously represented the interests of the
11 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
12 Representatives. Lee Decl. ¶ 2; Yang Decl. ¶ 13; Carter Decl. ¶ 7; Phelps Decl. ¶ 10. Further, Class
13 Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other
14 class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶ 9-12;
15 Carter Decl. ¶¶ 4-10; Phelps Decl. ¶¶ 4-10.

16 **E. Attorneys’ Fees and Costs, the Enhancement Award, and Settlement Costs**

17 **1. Attorneys’ Fees and Costs**

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

25 Under California law, the award of attorneys’ fees in common fund wage and hour class action
26 settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503
27 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action
28 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).

The Parties have agreed to a maximum attorneys’ fees award within the range of reasonableness for the market in legal services of \$250,000.00, or 33⅓% of the settlement. Agreement ¶ 25. The Parties’ agreement should be presumed to be fair. 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. *Id.*

2. Proposed Payment to the Class Representative

Plaintiff and proposed Class Representative Tara Joy requests a modest Class Representative Enhancement Payment of \$10,000. Agreement ¶ 26. Plaintiff met and conferred with Class Counsel on a number of occasions to discuss the case. Joy Decl. ¶ 3. She has provided information and documents to Class Counsel, made herself available to answer any questions during litigation, and reviewed wage statements and other documents during the pendency of the lawsuit. *Id.* In sum, as part of her duties as

1 Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted
2 in this settlement. *Id.* ¶¶ 2-3.

3 In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both
4 professionally and monetarily, by pursuing the claims on behalf of all other current and former
5 employees to seek benefits on behalf of the Class. Joy Decl. ¶ 4. Because the claims alleged could award
6 the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
7 Defendants had she not prevailed in this action. Furthermore, given that future employers are less likely
8 to hire individuals who have filed suit against their prior employers, Plaintiff risks prejudice in the future
9 from other potential employers. Only Plaintiff took these risks upon herself, and the whole Class
10 benefited from Plaintiff's willingness to do so. Class Members did not have to file individual lawsuits
11 and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for
12 retaliation in obtaining future employment had they filed a public lawsuit.

13 Equally important, as part of the settlement, Plaintiff has agreed to provide a full, complete, and
14 general release of individual claims—something that Class Members do not have to provide. This effort
15 by Plaintiff for the benefit of the Class further warrants the requested service award.

16 **3. Administration Expenses**

17 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
18 quoted Administration Expenses not to exceed \$9,500.00 to send notices and administer the settlement.
19 Agreement ¶ 27. The Parties believe that the Administration Expenses are reasonable and should be
20 approved.

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

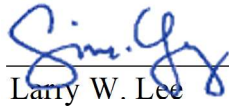
22 As discussed above, the proposed settlement will result in substantial monetary benefits for Class
23 Members. It was achieved as the result of informed, extensive, and arm's length negotiations conducted
24 by parties who are both represented by counsel experienced in wage and hour class action litigation. Its
25 terms appear to be fair, adequate, and reasonable. And there is no reason to believe the proposed
26 settlement is deficient or outside the range of reasonableness for such a settlement. Accordingly, the
27 Court should (i) grant preliminary approval of the settlement, (ii) approve and authorize the mailing of
28 the proposed Notice, and (iii) schedule a date for a final approval hearing.

1 **CONCLUSION**

2 For the benefit of the settlement class, Plaintiff respectfully requests—and Defendants do not
3 oppose—that the Court grant the motion for preliminary approval.

4 DATED: June 13, 2022

DIVERSITY LAW GROUP, P.C.

5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff
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