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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

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

Plaintiffs,

vs.

GENERAL DYNAMICS MISSION SYSTEMS,
INC., a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV03134

[Hon. Thomas P. Anderle]

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

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

Date: September 14, 2021
Time: 10:00 a.m.
Department: 3

Complaint Filed: September 28, 2020

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

PLEASE TAKE NOTICE that on September 14, 2021, at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 10 of the above-entitled court located at 1100 Anacapa Street, Santa Barbara, California 93101, Plaintiff, David Andrade, will and hereby does seek an Order:

1. approving the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”) attached as Exhibit A to the concurrently filed Declaration of Simon L. Yang;
2. conditionally certifying the following Class for settlement purposes only: (i) all current and former nonexempt employees who worked for Defendant in California between September 28, 2019, and the date of Preliminary Approval” (“Non-Exempt Class Members”); and (ii) all current and former exempt employees who worked for Defendant in California between September 28, 2019, and December 18, 2020 (“Exempt Class Members”);
3. appointing Plaintiff, David Andrade, as the Class Representative and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
4. approving the Agreement on a preliminary basis and finding that it, the total Maximum Settlement Amount in the amount of \$450,000, and the amounts for the LWDA Payment, Enhancement Payment, Attorneys’ Fees and Costs Award, Settlement Administration Costs, and allocation of payments to Class Members and PAGA Employees 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 Settlement attached as Exhibit A to the Agreement;
6. appointing Phoenix Settlement Administrators as the Settlement Administrator; and
7. setting the matter for a final approval hearing.

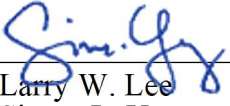
The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the Court to preliminarily certify a class for settlement purposes and to approve a class action settlement. The basis for the Motion, filed without any opposition from Defendant, General Dynamics Mission Systems, Inc., is that the proposed settlement is fair, adequate, and reasonable, and the procedures

1 proposed by the Parties are adequate to ensure class members are able to participate in, opt out of, or
2 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, William L. Marder, and David Andrade, all pleadings and papers on file herein,
6 and any further oral and documentary evidence as may be presented before or at the hearing of this
7 matter.

8 DATED: August 20, 2021

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

This wage and hour class action alleges Defendant, General Dynamics Mission Systems, Inc., furnishes its employees with wage statements that fail to comply with Labor Code section 226. Plaintiff, David Andrade, sued on a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Defendant denies the allegations.

Based on their own independent investigation and evaluation, the Parties have agreed to the settlement set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit A to the concurrently filed Declaration of Simon L. Yang. The Agreement requires Defendant to pay \$450,000 for the classwide settlement. Significantly, the entire \$450,000 settlement amount is non-reversionary, such that no monies will revert back to Defendant. The Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in the Agreement would be fair, reasonable, and adequate.

The Parties and their respective counsel also are of the opinion that the settlement would be in the best interests of the Class in light of all known circumstances and the expenses and risks inherent in litigation. Indeed, Defendant would be paying **more than \$36 per wage statement, on average**, based on the terms in the Agreement. Although Plaintiff and his counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change.

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

RELEVANT BACKGROUND

On September 28, 2020, Plaintiff initiated this class and representative PAGA action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On May 11, 2021, Plaintiff filed the operative First Amended Complaint (the “Complaint”). *Id.* On behalf of all current and former employees in California since September 28, 2019, and as a proxy for the State of California, Plaintiff sues to remedy Defendant’s failure to furnish employees with accurate itemized wage statements. *Id.*

1 The Complaint alleges that Defendant violates Section 226(a) in several ways.¹ *First*, whenever
2 overtime wages are paid, Defendant issues wage statements that do not itemize and show the applicable
3 overtime rate of pay. Rather, the wage statements show a base rate of pay only. FAC ¶ 2; Yang Decl. ¶
4 3. *Second*, whenever “OT Recast” wages are paid, Defendant issues wage statements that do not itemize
5 and show either the applicable rate or applicable hours used to calculate such wages. Again, the wage
6 statements show a base rate of pay only. *Id.* *Third*, even when regular wages are paid, Defendant issues
7 wage statements that do not itemize and show the accurate base rate of pay for regular wages. Instead,
8 the wage statements show an inapplicable hourly rate that is rounded to the nearest cent, when in
9 actuality the rate paid is lower than shown. For example, Plaintiff was furnished wage statements that
10 show an hourly rate of “40.77,” when in actuality his wages were paid at a rate of approximately
11 “40.769.” *Id.* *Fourth*, Defendant issues wage statements that do not itemize and show the name of the
12 legal entity that is the employer. Instead, “GD Mission Systems, Inc” is shown on wage statements. *Id.*

13 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the
14 claims alleged in the Complaint and engaged in a thorough study of the legal principles applicable to the
15 claims Plaintiff alleged and defenses Defendant asserted. Yang Decl. ¶ 4. Plaintiff served formal
16 discovery, and Defendant provided information related to a Dispute Resolution Policy and other
17 defenses that Defendant alleged would apply to Plaintiff’s claims. *Id.* Defendant also provided the
18 numbers of non-exempt and exempt individuals and wage statements relevant to Plaintiff’s allegations,
19 and the dates when certain wage statement practices were changed, among other things. *Id.* Throughout
20 the litigation, Plaintiff continued to provide information and documents, including additional wage
21 statements that he was issued while the lawsuit was pending, and to confirm Defendant’s ongoing wage
22 statement practices. *Id.*

23 After nearly six months of litigation, the Parties commenced settlement negotiations through a
24 well-respected mediator, T. Warren Jackson. Yang Decl. ¶ 5. Following the mediation, the Parties were
25 ultimately able to agree to the current settlement described in the Agreement. *Id.*

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

1 **LEGAL STANDARD**

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

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

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

17 Manual for Complex Litigation (Third) § 30.41.

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

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

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

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

DISCUSSION

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

A. Proposed Class Definition

The proposed settlement class includes (1) all current and former nonexempt employees who worked for Defendant in California between September 28, 2019, and the date of Preliminary Approval (“Non-Exempt Class Members”) and (2) all current and former exempt employees who worked for Defendant in California between September 28, 2019, and December 18, 2020 (“Exempt Class Members”). Agreement ¶ 6. All “Class Members” also are “PAGA Employees.” *Id.* ¶ 24. There are at least 520 Class Members. Yang Decl. ¶ 5.

B. Settlement Terms and Evaluation

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

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in formal and informal investigation and negotiations, are experienced with this type of litigation, and mediated a

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

11 Here, both Plaintiff's counsel and Defendant's counsel have a great deal of experience in wage
12 and hour class action litigation. Plaintiff's counsel have extensive class action and litigation experience
13 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
14 W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 8-12; Declaration of William L. Marder ("Marder Decl.")
15 ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and
16 each side has considered the other's contentions and theories—resulting in negotiations taking place
17 between the Parties. Yang Decl. ¶¶ 4-5.

18 Defendant provided the number of non-exempt individuals and wage statements relevant to
19 Plaintiff's allegations, the number of exempt individuals and wage statements relevant to Plaintiff's
20 allegations, and dates when certain wage statement practices were changed, among other things. Yang
21 Decl. ¶¶ 4-5. Based on the information provided by Defendant, Plaintiff estimates that at the time of
22 mediation Defendant faced potential liability for approximately \$4,335,700 in penalties. *Id.* ¶ 6.
23 Defendant contended that the majority of this potential liability—approximately \$3,097,000 under
24 Section 226.3—is subject to potential discretionary reduction. *Id.* Defendant also contended that the
25 remaining potential liability—approximately \$1,238,700 under Section 226(e)—would be subject to
26 additional defenses requiring proof of injuries resulting from knowing and intentional violations. *Id.*
27 While the Parties disagree on the application of the law to the facts, each Party recognized in
28

1 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
2 Maximum Settlement Amount to which the Parties ultimately agreed at mediation was reasonable. *Id.*

3 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
4 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
5 specific risks that class certification could be denied, liability could not be established at trial, or the
6 applicable law could change. Yang Decl. ¶ 6. The settlement for each participating Class Member is fair,
7 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
8 the costs of pursuing litigation. *Id.* The settlement is the result of extensive arms' length negotiations
9 between the Parties and their counsel. *Id.*

10 Ultimately, the Maximum Settlement Amount secures more than one-third—more than 36%—of
11 Defendant's potential liability for penalties not subject to discretionary reductions. Yang Decl. ¶ 6.
12 Indeed, numerous courts have held that gross settlement amounts of less than 20%—and as little as
13 8%—of a defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
14 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
15 potential exposure was fair and reasonable; "It is well-settled law that a cash settlement amounting to
16 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
17 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
18 the litigation to judgment."); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
19 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
20 defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
21 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
22 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
23 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
24 action settlement of approximately 15% of the potential recovery was fair and reasonable).

25 Class Members do not need to do anything should they wish to receive their share of the
26 settlement funds. This eliminates any burden to Class Members who wish to receive their settlement
27 share. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her
28 own case for the claims proposed to be settled and released, each Class Member has the right to submit a

request for exclusion (i.e., opt out) from the settlement. Agreement ¶ 55. Moreover, as set forth in the Notice of Class Action Settlement (“Notice Packet”), Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the Agreement. Agreement ¶ 57, Ex. A.

1. Class Member Payments

The Agreement provides for \$450,000 as the Maximum Settlement Amount. Agreement ¶ 19. From the Maximum Settlement Amount, attorneys’ fees will be no more than 35% of the Maximum Settlement Amount, which amounts to \$157,500. *Id.* ¶ 3. Class Counsel’s costs will be no more than \$15,000. *Id.* The Enhancement Payment will be no more than \$10,000. *Id.* ¶ 13. Settlement Administration Costs will be no more than \$10,000. *Id.* ¶ 35. The LWDA Payment is proposed as \$30,000 from a PAGA Settlement Amount of \$40,000. *Id.*

The remaining Net Settlement Amount will be allocated among Settlement Class Members on a pro rata basis based on the number of Applicable Pay Periods for each Settlement Class Member. Agreement ¶¶ 2, 48-49. In addition, the PAGA Penalty the remaining amount of the PAGA Settlement Amount not distributed as the LWDA Payment will be allocated among PAGA Employees on a pro rata basis based on the number of Applicable Pay Periods for each PAGA Employee. *Id.*

Pursuant to the settlement’s terms, it is estimated that no less than approximately \$227,500 will be available to be distributed to Class Members. Based on Defendant’s data through the date of mediation, **each Class Member, on average, would receive approximately \$437.50 per person** pursuant to the settlement’s terms. Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of Applicable Pay Periods during the Class Period. *Id.*

As Plaintiff’s lawsuit sought penalties only, 100% of Settlement Class Member’s Individual Settlement Payments shall be characterized as penalties. Agreement ¶ 63. All other settlement payments also do not consist of wages and shall be characterized as IRS Form 1099 payments. *Id.*

Finally, the principal for any uncashed checks (upon the expiration date) shall be distributed to the transmitted to California CASA Association. Agreement ¶ 61. The Settlement Administrator shall

1 direct such funds in compliance with Code of Civil Procedure section 384, or as otherwise directed by
2 the Final Approval Order. *Id.* None of the settlement funds will revert to Defendant. Agreement ¶ 47.

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

4 As a condition of participating in this settlement, Settlement Class Members shall waive and
5 release any and all wage and hour claims and causes of action that were or are alleged in the Action, or
6 could have been alleged based on the facts, circumstances, and claims alleged in the Action, against
7 Defendant from September 28, 2019, through the date of Preliminary Approval, including without
8 limitation all claims arising out of Section 226 and Defendant's provision of wage statements to its
9 employees. Agreement ¶ 28. With respect to just these Released Claims only, all Settlement Class
10 Members waive their rights under Civil Code section 1542. *Id.*

11 PAGA Employees, whether requesting exclusion from the settlement or not, will release any and
12 all claims and causes of action that were or are alleged in the Action or Plaintiff's September 16, 2020
13 PAGA letter, September 28, 2020 Supplemental PAGA Letter, and March 5, 2021 Supplemental PAGA
14 letter (collectively, "PAGA Letters"), or could have been alleged under PAGA based on the facts,
15 circumstances, and claims alleged in the Action or the PAGA Letters, against Defendant from
16 September 28, 2019 through the date of Preliminary Approval, including without limitation all claims
17 for civil penalties under PAGA arising out of Section 226 and Defendant's provision of wage statements
18 to its employees. Agreement ¶ 29. With respect to just these Released PAGA Claims only, all PAGA
19 Employees waive their rights under Civil Code section 1542. *Id.*

20 The release is thus appropriately limited. *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808,
21 820 (2014) ("A general release—covering 'all claims' that were or could have been raised in the suit—is
22 common in class action settlements."). Moreover, the Settlement Class Member release applies only to
23 claims arising during the Class Period, and the PAGA Employee release applies only to claims arising
24 during the PAGA Period.

25 **C. Notice to Class Members**

26 Within 30 calendar days of the Preliminary Approval Order, Defendant shall provide to the
27 Settlement Administrator each Class Member's full name; most recent mailing address; Social Security
28 number; and each Class Member's respective number of Applicable Pay Periods (the "Class List") to the

1 Settlement Administrator to perform all necessary responsibilities pursuant to the settlement. Agreement
2 ¶¶ 5, 51. The Settlement Administrator shall send a Notice Packet to Class Members to provide notice of
3 settlement.

4 Before mailing the Notice Packet, the Settlement Administrator shall review the national change
5 of address registry for all Class Members and/or skip trace to determine the most up-to-date addresses
6 for all Class Members. Agreement ¶ 52. Within 15 calendar days of receiving the Class List, the
7 Settlement Administrator mail a Notice Packet to all Class Members via regular First-Class U.S. Mail,
8 using the most current, known mailing addresses identified in the Class List, or any updated addresses.
9 *Id.* Any Notice Packet returned to the Settlement Administrator as undeliverable shall be sent promptly
10 via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* If no forwarding address is
11 provided, the Settlement Administrator shall promptly attempt to determine the correct address using a
12 skip-trace search and shall then promptly send a re-mailing. *Id.*

13 As set forth in the Notice Packet, Class Members will be allowed to opt out of the settlement by
14 a certain deadline, or object to the settlement in writing or by appearing at the final approval hearing.
15 Agreement ¶¶ 55, 57.

16 **D. Elements of Class Certification**

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

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

3 **1. More than 500 Class Members Satisfy Numerosity.**

4 There are more than 500 Class Members. Yang Decl. ¶ 5. Numerosity thus is sufficiently
5 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
6 number is required as a matter of law for the maintenance of a class action” and citing examples in
7 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
8 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

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

12 **3. Plaintiff Has Claims that Are Typical of the Class, Raises Predominant**
13 **Common Questions, and Adequately Represents the Class.**

14 “The community of interest requirement involves three factors: ‘(1) predominant common
15 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
16 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
17 435 (2000).

18 With respect to commonality, there are questions of law and fact common to the class. *See*
19 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with
20 divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate
21 legal remedies within the class”). Commonality requires only that some common legal or factual
22 questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v.*
23 *Dart Indus., Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s conduct is central to the commonality
24 inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*,
25 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at a class of
26 employees, as it is here, the class wide impact of the Defendant’s policies satisfies the commonality
27 requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

1 With respect to typicality, Plaintiff alleges that Defendant, as a matter of their corporate policy,
2 practice, or procedure violated Section 226(a) by failing to furnish employees with wage statements that
3 itemize and show all applicable hourly rates in effect during the pay period, the corresponding number
4 of hours worked at each hourly rate, and the name of the legal entity that is the employer. As with other
5 members of the Class, Plaintiff was provided wage statements that do not itemize and show all
6 applicable hourly rates in effect during the pay period, the corresponding number of hours worked at
7 each hourly rate, or the name of the legal entity that is the employer. Yang Decl. ¶ 3; Declaration of
8 David Andrade (“Andrade Decl.”) ¶ 2.

9 With respect to adequate representation, Plaintiff does not have any interests adverse to the
10 Class, nor have any such issues been raised or presented. Andrade Decl. ¶ 3. Plaintiff has taken all
11 necessary steps to represent the interests of the Class, including by providing information and
12 documents to Class Counsel, making himself available to discuss the claims, providing additional wage
13 statements that he was issued while the lawsuit was pending, and answering any questions. *Id.* For such
14 reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

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

16 From the inception of the case, Class Counsel has zealously represented the interests of the
17 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
18 Representative. Further, Class Counsel have been approved as class counsel in a number of prior cases,
19 have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶
20 2-9; Yang Decl. ¶¶ 8-12; Marder Decl. ¶¶ 10-11.

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

22 **1. Attorneys’ Fees and Costs**

23 California state and federal courts have recognized that an appropriate method for determining
24 award of attorneys’ fees is based on a percentage of the total value of settlement benefits to Class
25 Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing*
26 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
27 Cir. 1997). The purpose of the equitable doctrine is to “spread litigation costs proportionally among all
28

1 the beneficiaries so that the active beneficiary does not bear the entire burden alone” so as to avoid
2 unjust enrichment. *Vincent*, 557 F. 2d at 769.

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

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

24 The Parties have agreed to a maximum attorneys’ fees award within the range of reasonableness
25 for the market in legal services of \$157,500 or 35% of the settlement. Agreement ¶ 3. The Parties’
26 agreement should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class
27 Counsel’s litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the
28 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 David Andrade requests a modest Enhancement Payment of \$10,000. Agreement ¶ 13. Plaintiff met and conferred with Class Counsel on a number of occasions to discuss the case. Andrade Decl. ¶ 3. He provided information and documents to Class Counsel, made himself available to answer any questions during litigation, and continued supplying wage statements during the pendency of the lawsuit. *Id.* In sum, as part of his duties as the Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. *Id.* ¶¶ 2-3.

In addition to the invaluable services that Plaintiff provided, he also took a significant risk, both professionally and monetarily, as a current employee willing to pursue the claims on behalf of all other current and former employees by seeking benefits on behalf of the Class. Andrade Decl. ¶ 4. Because the claims alleged by the class representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant had he not prevailed in this action. Furthermore, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, Plaintiff risks prejudice in the future from other potential employers. Plaintiff took this risk upon himself and the whole class benefited from these risks taken by Plaintiff. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation in obtaining future employment had they filed a public lawsuit.

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

3. Settlement Administration Costs

Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has quoted Settlement Administration Costs not to exceed \$10,000 to send notices and administer the settlement. Agreement ¶¶ 34-35. The Parties believe that the Settlement Administration Costs are reasonable and should be approved.

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

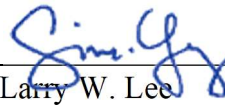
2 As discussed above, the proposed settlement will result in substantial monetary benefits to class
3 members. It was achieved as the result of informed, extensive, and arms-length negotiations conducted
4 by parties who are both represented by counsel experienced in wage and hour class action litigation.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

9 **CONCLUSION**

10 For the benefit of the settlement class, Plaintiff respectfully requests—and Defendant does not
11 oppose—that the Court grant the motion for preliminary approval that Defendant does not oppose.

12 DATED: August 20, 2021

DIVERSITY LAW GROUP, P.C.

13 By: 
14 Larry W. Lee
15 Simon L. Yang
16 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

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

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

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

10 On August 20, 2021, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF
- 12 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **4. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. DECLARATION OF DAVID ANDRADE IN SUPPORT OF PLAINTIFF**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 16 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**

17 on the interested parties in this action as follows:

18
19 Carrie A. Gonell
20 Carrie.gonell@morganlewis.com
21 Joel M. Purles
22 Joel.purles@morganlewis.com
23 Morgan, Lewis & Bockius LLP
24 600 Anton Boulevard, Suite 1800
25 Costa Mesa, California 92626-7653
26 *Attorney for Defendant General Dynamics Mission Systems, Inc.*
27
28

X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 20, 2021, at Los Angeles, California.


Erika Mejia