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

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

Plaintiff,

vs.

HAYWARD SISTERS HOSPITAL dba ST.
ROSE HOSPITAL, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. RG20074747

[Hon. Brad Seligman, Department 23]

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

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

Date: December 13, 2022
Time: 3:00 p.m.
Department: 23

Reservation ID: 105787183984

Complaint Filed: September 23, 2020

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

2 **PLEASE TAKE NOTICE** that on December 13, 2022, at 3:00 p.m., or as soon thereafter as the
3 matter may be heard in Department 23 of the above-entitled court located at 1221 Oak Street, Oakland,
4 California 94612, Plaintiff, Joseluis Davila, will and hereby does move for an Order:

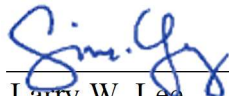
- 5 1. approving the Joint Stipulation of Class Action Settlement and Release (the “Agreement”)
6 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all current or
8 former non-exempt employees who worked for Defendant, Hayward Sisters Hospital, a
9 California corporation dba St. Rose Hospital, in the State of California who were paid shift
10 differential wages at any time from September 23, 2019, through March 29, 2022 (the “Class
11 Period”);
- 12 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
13 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
- 14 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
15 Settlement Amount in the amount of \$1,008,000.00, the amounts requested for the
16 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
17 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
18 the range of reasonableness for a settlement that could ultimately be given final approval;
- 19 5. appointing Phoenix Settlement Administrators as the Administrator;
- 20 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
21 the Agreement; and
- 22 7. scheduling a Final Approval Hearing.

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

1 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
2 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
3 Yang, William L. Marder, and Joseluis Davila, all pleadings and papers on file herein, and any further
4 oral and documentary evidence as may be presented before or at the hearing of this matter.

5 DATED: November 17, 2022

DIVERSITY LAW GROUP, P.C.

6 By: 
7 Larry W. Lee
8 Simon L. Yang
9 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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1 **SUMMARY OF MOTION**

2 On a classwide basis and as a proxy for the State of California pursuant to the Labor Code
3 Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Joseluis Davila, sues Defendant, Hayward
4 Sisters Hospital dba St. Rose Hospital, for alleged failure to furnish wage statements that accurately
5 show the total hours worked to non-exempt employees who were paid shift differential wages.

6 Based on their own independent investigations and evaluations, the Parties have agreed to a
7 classwide resolution. The Joint Stipulation of Class Action Settlement and Release (“Agreement”),
8 which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires
9 Defendant to pay at least \$1,008,000.00 for the classwide settlement of claims through March 29, 2022.
10 Plaintiff and his counsel believe the settlement is an exceptional result for the Class. Each of
11 approximately 1,217 Class Members will, on average, receive **\$427.28** (*after* all requested payments
12 from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary;
13 none of the settlement amount will revert back to Defendant.

14 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
15 classwide judgment against Defendant, 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. The Parties and their counsel are of the opinion that the settlement on the
18 terms set forth in the Agreement would be fair, reasonable, and adequate.

19 As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that
20 the Court grant this Motion for Preliminary Approval of Class Action Settlement.

21 **RELEVANT BACKGROUND**

22 On September 23, 2020, Plaintiff initiated this class and private attorney general action.
23 Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. Upon the filing of the Action, Plaintiff and Defendant
24 met and conferred about the alleged claims. *Id.* On or about February 5, 2021, Plaintiff served initial
25 written discovery. *Id.* On or about March 30, 2021, Defendant served responses to the discovery. *Id.*

26 Class Counsel continued investigating the alleged claims and also analyzed any defenses raised
27 by Defendant. Yang Decl. ¶ 3. The Parties supplemented formal discovery by continuing to exchange
28 information and documentation pursuant to informal methods to assist them in exploring the possibility

1 of a mediated resolution. *Id.* Defendant’s willingness to supplement formal discovery with informal
2 discovery enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately,
3 the Parties agreed to schedule a mediation. *Id.*

4 On March 29, 2022, the Parties attended mediation with Russ Wunderli, Esq., an experienced
5 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
6 issue. Yang Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the Parties
7 were able to negotiate the settlement terms in the Joint Stipulation of Class Action Settlement and
8 Release. *Id.* Ex. 1 (the “Agreement”).

9 SUMMARY OF PROPOSED SETTLEMENT

10 I. Class Definition

11 The proposed settlement class of “Class Members” includes any current or former non-exempt
12 employees who worked for Defendant in the State of California and who were paid shift differential
13 wages at any time during the Class Period. Agreement § 1.5. The Class Period is from September 23,
14 2019, through March 29, 2022. *Id.* § 1.7.¹ There are approximately 1,217 Class Members. *Id.* § 1.5.

15 II. Settlement Payments

16 The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of
17 \$1,008,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the
18 Court approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs Award, and
19 Class Representative Award. *Id.* § 5.2. Except for these allocations requiring Court approval, the entirety
20 of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* It is expected
21 that, on average, each Class Member would be allocated \$427.28 (*after* all requested payments from the
22 Gross Settlement Amount). Yang Decl. ¶ 7.

23 III. Released Claims

24 Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members release “any
25 and all claims for violations of Labor Code section 226(a) during the Class Period that were alleged in
26 the Action or that reasonably could have been alleged based on the facts alleged in the Action.” *Id.* §

27
28 ¹ All Class Members are also Aggrieved Employees. Agreement § 1.5. The PAGA Period is the same as
the Class Period. *Id.* § 1.7.

1 6.1. Aggrieved Employees release “any and all claims for civil penalties for violations of Labor Code
2 section 226(a) during the PAGA Period that were alleged in the Action or that reasonably could have
3 been alleged based on the facts alleged in the Action.” *Id.* § 6.2.

4 **LEGAL STANDARD**

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

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

14 Manual for Complex Litigation (Third) § 30.41.

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

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

24 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
25 tentative settlement proposal ... may be set out in conditional orders granting tentative approval
26 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.

27 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
28 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);

1 *accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
2 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
3 and reasonable”).

4 DISCUSSION

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

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

7 A trial court must determine and approve a class action settlement is fair to “prevent fraud,
8 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*
9 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
10 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
11 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
12 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
13 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
14 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
15 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
16 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

17 While the recommendations of counsel proposing the settlement are not conclusive, the Court
18 can properly take them into account, particularly where, as here, they have been involved in thorough
19 investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s
20 length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*,
21 221 F.R.D. at 528 (“So long as the integrity of the arm’s length negotiation process is preserved,
22 however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great
23 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts
24 of the underlying litigation.”) (citations omitted). In such circumstances, as here, courts do not substitute
25 their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
26 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990);
27 *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp.

1 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D.
2 Pa. 1978).

3 Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage
4 and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience
5 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
6 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of William L. Marder (“Marder Decl.”)
7 ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and
8 each side has considered the other’s contentions and theories. Defendant provided the relevant numbers
9 of individuals and wage statements, among other things—enabling Plaintiff to assess the full value of
10 Class Members’ claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶
11 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations between
12 the Parties and their counsel. *Id.* ¶ 9.

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

14 **1. The Settlement Amount Is Reasonable.**

15 The Agreement requires Defendant to pay \$1,008,000.00—or approximately \$828.27, on
16 average, per Class Member. Yang Decl. ¶ 5. This amounts to approximately 14.28% of Defendant’s
17 potential liability and is an excellent result for Class Members. *Id.* Plaintiff contended that class claims
18 under Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to each Class
19 Member and a \$100 penalty for each additional non-compliant wage statement to the Class Member, up
20 to a maximum of \$4,000 per class member. Lab. Code § 226(e).² PAGA penalties under Section 2699(f)
21 also result in up to \$100 per non-compliant wage statement. Lab. Code § 2699(f).

22 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
23 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, Defendant
24 contended that liability under Section 226(e) would be subject to additional defenses requiring proof of
25 injuries resulting from knowing and intentional violations. *Id.* Likewise, Defendant contended that
26 PAGA penalties in any event would be subject to discretionary reductions. *Id.*

27
28

² Except as otherwise noted, all “Section” references are to the Labor Code.

1 While the Parties disagree on the application of the law to the facts, each Party recognized in
2 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
3 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
4 Ultimately, based on data available at mediation on February 3, 2022, Plaintiff argued that the potential
5 total recovery amounted to \$7,058,750.00—which included \$3,498,950.00 in penalties under Section
6 226(e) and \$3,559,800 in penalties under Section 226(e). *Id.* Plaintiff contends that the Gross Settlement
7 Amount of \$1,008,000.00—approximately 14.28% of the potential total recovery of \$7,058,750.00—is
8 an excellent result. *Id.*

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

22 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
23 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
24 specific risks that class certification could be denied, liability could not be established at trial, or the
25 applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair,
26 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
27 the costs of pursuing litigation. *Id.*

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

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

7 As discussed above, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement
8 Class Members are only subject to a release of claims for violations of Section 226(a) during the Class
9 Period that were alleged in the Action or that reasonably could have been alleged based on the facts
10 alleged in the Action. *Id.* § 6.1. Plaintiff alleged targeted claims in the Action, and any settlement
11 releases also are specifically tailored to the facts alleged. The settlement releases are thus appropriate.
12 *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering
13 ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”).
14 Moreover, the settlement releases apply to claims arising during the Class Period only. *Id.* ¶ 6.1.

15 **3. The Class Notice Is Adequate.**

16 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
17 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
18 provide to the Administrator each Class Member’s last known address, among other information (the
19 “Class Data”), within seven days of a Preliminary Approval Order. Agreement § 3.2. Within 14 days of
20 a Preliminary Approval Order, the Administrator would mail the Notice of Class Action Settlement
21 (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using
22 the last known address for each Class Member, based on the Class List, or an updated address based on
23 the National Change of Address Database. *Id.* § 3.4. Any Class Notice returned to the Administrator as
24 undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed
25 thereto. *Id.* If no forwarding address is provided, the Administrator would promptly attempt to determine
26 the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

27 The Class Notice accurately informs Class Members of the settlement and their rights.
28 Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The

Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

C. The Requested Payments and Allocations Are Reasonable.

The Agreement provides for a Gross Settlement Amount of \$1,008,000.00. Agreement § 5.1. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$76,300.00) and litigation costs of up to \$20,000. *Id.* § 5.1.1. The Class Representative Award will be no more than \$10,000.00. Agreement § 5.1.2. Administration Costs will be no more than \$14,000.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be \$144,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$108,000.00) would constitute the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to Aggrieved Employees on a pro rata basis, based on the number of relevant wage statements they received. *Id.* § 5.1.4.³

1. Each Class Member, on Average, Would Receive More than \$427.

It is expected that, on average, each Class Member would be allocated approximately \$427.28 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of relevant wage statements during the Class Period. *Id.* After deducting any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis, based on the number of relevant wage statements they received. Agreement § 5.2.

As Plaintiff’s lawsuit sought penalties only, 100% of Class Members’ Individual Settlement Payments would be characterized as penalties. Agreement ¶ 5.5. None of the settlement funds will revert to Defendant. *Id.* ¶ 5.1. The principal for any uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property Fund in the name of the Class Member. *Id.* ¶ 5.4.

³ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 **2. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

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

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

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

1 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
2 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

7 **3. The Proposed Class Representative Award Is Reasonable.**

8 Plaintiff and proposed Class Representative Joseluis Davila requests a modest Class
9 Representative Award of \$10,000.00. The request is reasonable in light of the general release that the
10 Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is
11 appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Joseluis Davila
12 (“Davila Decl.”) ¶¶ 2-3.

13 As part of his duties as the Class Representative, Plaintiff provided all necessary information and
14 evidence that resulted in this settlement. Davila Decl. ¶¶ 2-3. Plaintiff met and conferred with Class
15 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. Plaintiff provided information and
16 documents to Class Counsel and made himself available to answer any questions during litigation. *Id.*
17 Ultimately, Plaintiff’s efforts secured an exceptional result for the Class.

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

1 **4. The Administration Costs Are Reasonable.**

2 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
3 quoted Administration Costs not to exceed \$14,000.00 to send notices and administer the settlement.
4 Agreement § 3.1. The Administration Costs are reasonable and should be approved.

5 **II. The Class Meets All Requirements for Certification.⁴**

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

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

19 **A. The Class Is Ascertainable and Sufficiently Numerous.**

20 Class Members are identifiable from Defendant’s records. The class definition “is precise,
21 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
22 Indeed, there are approximately 1,217 Class Members. Agreement § 1.5. 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).

27
28

⁴ Defendant expressly reserve its objections to class certification outside of the settlement context.

1 **B. The Class Establishes a Community of Interest.**

2 “The community of interest requirement involves three factors: ‘(1) predominant common
3 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
4 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
5 435 (2000).

6 **1. Plaintiff’s Claims Are Typical of Those of the Class.**

7 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
8 underpaid sick pay and overtime and furnished unlawful wage statements. With respect to typicality,
9 Plaintiff—exactly like other members of the Class—was provided wage statements that fail to
10 accurately itemize and show the total hours worked, based on Defendant’s common wage statement
11 practices. Davila Decl. ¶ 2.

12 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

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

23 **3. Plaintiff and His Counsel Adequately Represent the Class.**

24 With respect to adequate representation, Plaintiff does not have any interests adverse to the
25 Class, and no such issues have been raised or presented. Davila Decl. ¶ 3. Plaintiff has taken all
26 necessary steps to represent the interests of the Class, including by providing information and
27 documents to Class Counsel, making himself available to discuss the claims, providing wage statements
28 that he was issued, reviewing wage statements while the lawsuit was pending, and answering any

1 questions. *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will
2 continue to do so.

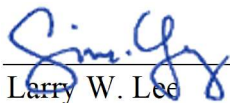
3 From the inception of the case, Class Counsel has zealously represented the interests of the
4 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
5 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
6 litigated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

8 CONCLUSION

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

16 DATED: November 17, 2022

DIVERSITY LAW GROUP, P.C.

17 By: 
18 Larry W. Lee
19 Simon L. Yang
20 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 November 17, 2022, 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
- 12 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 14 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **5. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**
OF CLASS ACTION SETTLEMENT

16 on the interested parties in this action as follows:

17 Linda M. Moroney

18 lmoroney@grsm.com

19 Sara A. Moore

20 smoore@grsm.com

21 Matt Dalton

22 mdalton@grsm.com

23 Violaine Brunet

24 vbrunet@grsm.com

25 mcalderon@grsm.com

26 Gordon Rees Scully Mansukhani LLP

27 275 Battery Street, Suite 2000

28 San Francisco, California 94111

Attorneys for Defendant Hayward Sisters Hospital dba St. Rose Hospital

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

7
8 I declare under penalty of perjury under the laws of the State of California that the
9 above is true and correct. Executed on November 17, 2022, at Los Angeles, California.
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Erika Mejia



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation

Reservation ID: 105787183984	Status: RESERVED
Reservation Type: Motion to Confirm Settlement	Number of Motions: 1
Case Number: RG20074747	Case Title: Davila VS Hayward Sisters Hospital
Filing Party: Joseluis Davila (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 23
Date/Time: December 13th 2022, 3:00PM	Confirmation Code: CR-JGH8SGYVWTNWH5W2P

Fees

Description	Fee	Qty	Amount
Motion to Confirm Settlement	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX3042	Authorization: 01897G
Payment Date: 2022-10-04	

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