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

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

Plaintiff,

vs.

GENJI PACIFIC, LLC, (also known as HANA
GROUP OPS, LLC) a Delaware limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. RG20074795

[Hon. Stephen Kaus, Department 19]

**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 Fnu Linaki;
[Proposed] Order]*

Date: October 5, 2022
Time: 3:00 p.m.
Department: 19

Reservation ID: 386125078699

Complaint Filed: September 23, 2020

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

PLEASE TAKE NOTICE that on October 5, 2022, at 3:00 p.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled court located at 1221 Oak Street, Oakland, California 94612, Plaintiff, Fnu Linaki, will and hereby does move for an Order:

1. approving the Joint Stipulation of Class Action and Representative Action Settlement (the “Agreement”) attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
2. conditionally certifying the following Classes for settlement purposes only:
 - a. all individuals who were employed by Defendant, Genji Pacific, LLC, also known as Hana Group Ops, LLC, in California as non-exempt employees who earned overtime and non-discretionary compensation, including the Ooiri bonus, in the same month at any time between September 1, 2016 through January 13, 2022, inclusive (“Overtime Class Members”), and
 - b. all individuals who were employed by Defendant in California as either exempt or non-exempt employees whose wages were not paid within seven days of the last day of the pay period at any time between August 26, 2019 through January 13, 2022 (“Late Paid Class Members”).
3. appointing Plaintiff 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 Gross Settlement Amount in the amount of \$750,000.00, the amounts requested for the Settlement Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Incentive Award, PAGA Allocation, and the allocation of payments to Class Members appear to be within the range of reasonableness for a settlement that could ultimately be given final approval;
5. appointing Phoenix Settlement Administrators as the Administrator;
6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to the Agreement; and
7. scheduling a Final Approval Hearing.

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

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

10 DATED: September 9, 2022

DIVERSITY LAW GROUP, P.C.

11 By: _____
12

Larry W. Lee

Simon L. Yang

13 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

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”), Plaintiff, Fnu Linaki, sues Defendant, Genji Pacific, LLC, also known as Hana Group Ops, LLC, for alleged underpayments of overtime and untimely payment of wages. The overtime claim is based on Defendant’s alleged miscalculation of the regular rate; i.e., when employees are paid non-discretionary compensation, including flat-sum incentives and bonuses, Defendant does not consider the compensation for purposes of paying overtime. The overtime violations result in derivative failures to timely pay all wages due during employment and upon termination of employment. But the untimely payment claim is also based on Defendant’s general failure to timely pay wages. Specifically, Plaintiff alleges Defendant unlawfully fails to pay employees within seven days of the end of each pay period.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and Representative Action Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay a gross amount of \$750,000.00 for the classwide settlement of claims through January 13, 2022. Plaintiff and her counsel believe the settlement is an exceptional result for the Class; based on the available data at the time of mediation, the settlement requires Defendant to pay nearly one-third of its potential liability. Each of approximately 647 Class Members will, on average, receive **\$597.37** (*after* all requested payments from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and her 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. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

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

RELEVANT BACKGROUND

On September 23, 2020, Plaintiff initiated this class and private attorney general action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. The lawsuit seeks to remedy (i) alleged underpayments of overtime as a result of failing to factor non-discretionary compensation into the regular rate of pay and (ii) untimely payment of wages more than seven days after the close of a pay period. The initial complaint pled claims for failure to pay proper overtime, failure to timely pay wages during and upon separation of employment, failure to issue accurate itemized wage statements, unfair competition, and penalties pursuant to PAGA.

Plaintiff and Defendant met and conferred about the alleged claims. Yang Decl. ¶ 3. On February 22, 2021, Defendant served written discovery, and on April 23, 2021, Plaintiff served responses. *Id.* Likewise, On April 12, 2021, Plaintiff served written discovery, and on June 3, 2021, Defendant served responses. *Id.* Plaintiff continued investigating the claims, and the Parties supplemented formal discovery by continuing to exchange information and documentation pursuant to informal methods to assist them in exploring the possibility of a mediated resolution. *Id.* Defendant’s willingness to supplement formal discovery with informal discovery enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

On January 13, 2022, the Parties attended mediation with Deborah Saxe, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action and Representative Action Settlement. *Id.* Ex. 1 (the “Agreement”).

Pursuant to the Agreement’s terms, on February 3, 2022, Plaintiff filed her First Amended Complaint, specifying that Genji Pacific, LLC is also known as Hana Group Ops, LLC, amending the definition of the putative class to include all non-exempt and exempt California employees of Defendant who were not paid within seven days of the last day of a pay period at any time from August 26, 2019 through January 13, 2022, and specifying that allegations in certain causes of action also apply to other causes of action.

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class includes Overtime Class Members and Late Paid Class Members. Overtime Class Members include all individuals who were employed by Defendant in California as non-exempt employees and earned overtime and non-discretionary compensation, including the Ooiri bonus, in the same month at any time during the Overtime Class Period. Agreement ¶ 7. Late Paid Class Members include all individuals who were employed by Defendant in California as either exempt or non-exempt employees whose wages were not paid within seven days of the last day of the pay period at any time during the Late Paid Class Period. *Id.*

Class Members who (i) earned overtime and non-discretionary compensation in the same month during the PAGA Period or (ii) were not paid within seven days of the last day of the pay period at any point during the PAGA Period are Aggrieved Employees. Agreement ¶ 2. The Class Period and Overtime Class Period are from September 1, 2016, through January 13, 2022; the PAGA Period and Late Paid Class Period is from August 26, 2019, through January 13, 2022. *Id.* ¶¶ 8, 25.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$750,000.00. Agreement ¶ 15. From the Gross Settlement Amount, the Parties will request that the Court approve an LWDA Payment, Settlement Administration Costs, Attorneys' Fees and Costs Award, and Class Representative Incentive Award. *Id.* ¶ 37. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* It is expected that, on average, each Class Member would be allocated \$597.37 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 5.

III. Released Claims

Plaintiff is subject to a general release. Agreement ¶ 80. Participating Overtime Class Members release claims that accrued during the Overtime Class Period and which were pled or could have been pled based on the facts alleged in the First Amended Complaint. *Id.* ¶ 31(a). Participating Late Paid Class Members release claims that accrued during the Late Paid Class Period and which were pled or

1 could have been pled based on the facts alleged in the First Amended Complaint for violations of Labor
2 Code sections 204 and 210. *Id.* ¶ 31(b).¹

3 **LEGAL STANDARD**

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

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

13 Manual for Complex Litigation (Third) § 30.41.

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

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

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

26 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
27 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);

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

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 relevant pay periods, among other things—enabling Plaintiff to assess the full value
10 of Class Members’ claims and further enabling negotiations to take place between the Parties. Yang
11 Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations
12 between the Parties and their counsel. *Id.* ¶¶ 3-4.

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 approximately \$597.37, on average, per Class
16 Member. Yang Decl. ¶ 5. This is an excellent result for Class Members. Plaintiff contended that late
17 paid wages under Sections 204 and 210 result in a \$100 penalty per pay period. Lab. Code §§ 204, 210.
18 With respect to overtime-based claims, Plaintiff contended that underpaid overtime resulted in Section
19 203 penalties of up to 30 days wages. Lab. Code § 203.²

20 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
21 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, Defendant
22 contended that there were pay periods in which all work was performed during either the first through
23 fifteenth day of a month or the sixteenth through last day of a month—such that its payments of wages
24 were not untimely under Section 204. *Id.* Likewise, with respect to overtime liability, Defendant
25 contended that it would not be subject to Section 203 penalties, based on a good faith defense. *Id.*

26 While the Parties disagree on the application of the law to the facts, each Party recognized in
27 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the

28 ² Actual underpayments of overtime and other penalties amount to comparatively smaller sums.

1 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
2 Ultimately, based on data available at mediation through October 26, 2021, Plaintiff argued that the
3 potential total recovery exceeded \$2,250,000—which included \$1,063,900 in Section 210 penalties and
4 \$1,201,781 in Section 203 penalties. *Id.* Plaintiff contends that the Gross Settlement Amount of
5 \$750,000—nearly one third (or 33.10%) of the potential total recovery of \$2,265,681—is an excellent
6 result. *Id.*

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

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

26 Class Members would not need to do anything to receive their share of settlement funds. This
27 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
28 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the

claims proposed to be settled and released, each Class Member has the right to object or to submit a request for exclusion (i.e., opt out) from the settlement.

2. The Settlement Releases Are Appropriate.

As discussed above, Participating Class Members are only subject to a release of claims during the Class Period expressly pleaded in the Action and all other claims that could have been pleaded based on the facts pleaded in the Action. Agreement ¶ 31. Only Plaintiff is subject to a general release. *Id.* ¶ 80. The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”). Moreover, the settlement releases apply to claims arising during the Class Period only. *Id.* ¶ 31. In sum, because Plaintiff alleged targeted claims in the Action, any settlement releases also are specifically tailored to the facts alleged.

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to provide to the Administrator each Class Member’s last known address, among other information (the “Class List”), within 10 business days of a Preliminary Approval Order. Agreement ¶ 55. Within 10 calendar days of a receipt of the Class List, the Administrator would mail the Notice of Class Action Settlement (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last known address for each Class Member, based on the Class List, or an updated address based on the National Change of Address Database. *Id.* ¶¶ 56, 57. Any Class Notice returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* If no forwarding address is provided, the Administrator would promptly attempt to determine the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the

1 settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v.*
2 *Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

3 **C. The Requested Payments and Allocations Are Reasonable.**

4 The Agreement provides for a Gross Settlement Amount of \$750,000.00. Agreement ¶ 15. From
5 the Gross Settlement Amount, attorneys' fees will be no more than 33⅓% of the Gross Settlement
6 Amount (or \$250,000.00) and litigation costs are not expected to exceed \$15,000. *Id.* ¶ 3. The Class
7 Representative Incentive Award will be no more than \$10,000.00. Agreement ¶ 16. Settlement
8 Administration Costs will be no more than \$13,500.00. *Id.* ¶ 35. The PAGA Allocation will be
9 \$100,000.00, and pursuant to statute, 75% of the PAGA Allocation (or \$75,000.00) would constitute the
10 LWDA Payment. *Id.* ³

11 **1. Each Class Member, on Average, Would Receive Nearly \$600.**

12 It is expected that, on average, each Class Member would be allocated approximately \$597.37
13 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 5. The amount paid on
14 average to each Class Member may increase, depending on how many Class Members opt out of the
15 class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease
16 depending on his or her number of relevant pay periods and relevant months in which overtime and non-
17 discretionary compensation were earned, during the Class Period. *Id.* After deducting any approved
18 payments for an Attorneys' Fees and Costs Award, Class Representative Incentive Award, Settlement
19 Administration Costs, and PAGA Allocation from the Gross Settlement Amount, the entire remainder
20 would be allocated among Participating Class Members based on (i) the number of relevant months they
21 earned overtime and non-discretionary compensation in the same month from September 1, 2016
22 through January 13, 2022 and (ii) the number of relevant pay periods they worked from August 26,
23 2019, through January 13, 2022.

24 The Total Net Settlement Amount (minus the Aggrieved Employees' share of the PAGA
25 Allocation⁴) will be divided by the aggregate total number of Qualifying Months and Qualifying Pay

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

27 ⁴ The 25% share of the PAGA Allocation distributable to Aggrieved Employees will be calculated by
28 multiplying each individual Aggrieved Employee's total number of PAGA Qualifying Pay Periods by

1 Periods for Participating Class Members, resulting in the “Share Value.” Each Participating Class
2 Member’s Individual Settlement Payment will be calculated by multiplying each individual Participating
3 Class Member’s total number of Qualifying Months and Qualifying Pay Periods by the Share Value.
4 Agreement ¶ 52.⁵ 20% of Individual Settlement Payments shall be allocated to wages and subject to IRS
5 Form W-2 reporting; the remainder of Individual Settlement Payments shall be allocated to interest and
6 penalties and subject to IRS Form 1099 reporting. *Id.* ¶ 69.

7 None of the settlement funds will revert to Defendant. Agreement ¶ 15. The principal for any
8 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
9 Fund in the name of the Class Member. *Id.* ¶ 67.

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

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

18 Under California law, the award of attorneys’ fees in common fund wage and hour class action
19 settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503
20 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action
21 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
22

23 the PAGA Pay Period Value. Agreement ¶ 51. Individual PAGA Payments shall be deemed interest and
24 penalties and subject to IRS Form 1099 reporting. *Id.* ¶ 70.

25 ⁵ For Participating Class Members who are Overtime Class Members, Defendant will calculate the total
26 number of Qualifying Months worked by each Participating Class Member during the Class Period and
27 the aggregate total number of Qualifying Months worked by all Participating Overtime Class Members
28 during the Class Period. Agreement ¶ 52. For Participating Class Members who are Late Paid Class
Members, Defendant will calculate the total number of Qualifying Pay Periods worked by each
Participating Late Paid Class Member during the Late Paid Class Period and the aggregate total number
of Qualifying Pay Periods worked by all Participating Late Paid Class Members during the Late Paid
Class Period. *Id.*

1 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
2 reasonable fee by choosing an appropriate percentage of the fund created”). Under the percentage of the
3 fund method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v.*
4 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court rather than by
5 contract, the object is to set it at a level that will approximate what the market will set The judge, in
6 other words, is trying to mimic the market in legal services.”).

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

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

22 **3. The Proposed Class Representative Incentive Award Is Reasonable.**

23 Plaintiff and proposed Class Representative Fnu Linaki requests a modest Class Representative
24 Incentive Award of \$10,000.00. The request is reasonable in light of the general release that the
25 Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is
26 appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Fnu Linaki
27 (“Linaki Decl.”) ¶¶ 2-3.

1 As part of her duties as the Class Representative, Plaintiff provided all necessary information and
2 evidence that resulted in this settlement. Linaki Decl. ¶¶ 2-3. Plaintiff met and conferred with Class
3 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. She provided information and documents
4 to Class Counsel and made herself available to answer any questions during litigation. *Id.* Ultimately,
5 Plaintiff's efforts secured an exceptional result for the Class.

6 In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both
7 professionally and monetarily. Linaki Decl. ¶ 4. Because the alleged claims involve the payment of costs
8 to the prevailing party, Plaintiff could have possibly faced paying Defendant's costs had Defendant
9 prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential
10 employers that may be less willing to hire an individual who has filed suit against a prior employer.
11 Plaintiff took this risk upon herself and the whole class benefited. Class Members did not have to file
12 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to
13 face potential prejudice in future employment.

14 **4. The Settlement Administration Costs Are Reasonable.**

15 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
16 quoted Settlement Administration Costs not to exceed \$13,500.00 to send notices and administer the
17 settlement. The Settlement Administration Costs are reasonable and should be approved.

18 **II. The Class Meets All Requirements for Certification.⁶**

19 For purposes of settlement approval, a detailed analysis of the elements required for class
20 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
21 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
22 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.
23 App. 4th at 240 (explaining there is no "ironclad requirement" to conduct an evidentiary hearing to
24 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when
25 considering whether to certify a settlement class, the court is not faced with the case management issues
26

27 ⁶ Defendant expressly reserves its objections and does not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

1 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
2 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to
3 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
4 lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

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

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

8 Class Members are identifiable from Defendant’s records. The class definition “is precise,
9 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
10 Indeed, there are approximately 647 Class Members. Yang Decl. ¶ 5. Numerosity thus is sufficiently
11 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
12 number is required as a matter of law for the maintenance of a class action” and citing examples in
13 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
14 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

16 “The community of interest requirement involves three factors: ‘(1) predominant common
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
18 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
19 435 (2000).

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

21 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
22 underpaid overtime and furnished unlawful wage statements. With respect to typicality, Plaintiff—
23 exactly like other members of the Class—was compensated based on Defendant’s common overtime
24 practices and was provided wage statements based on Defendant’s common payroll practices. Linaki
25 Decl. ¶ 2.

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

27 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
28 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual

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

3. Plaintiff and Her Counsel Adequately Represent the Class.

With respect to adequate representation, Plaintiff does not have any interests adverse to the Class, and no such issues have been raised or presented. Linaki Decl. ¶ 3. Plaintiff has taken all necessary steps to represent the interests of the Class, including by providing information and documents to Class Counsel, making herself available to discuss the claims, providing wage statements that she was issued, reviewing wage statements while the lawsuit was pending, and answering any questions. *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

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

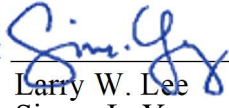
CONCLUSION

The proposed settlement would result in substantial monetary benefits to class members. It was the result of informed, arm’s length negotiations conducted by counsel experienced in wage and hour class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the

1 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
2 Approval Hearing.

3 DATED: September 9, 2022

DIVERSITY LAW GROUP, P.C.

4
5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 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]ss.
6 COUNTY OF LOS ANGELES]

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

10 On September 9, 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. DECLARATION OF FNU LINAKI IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 16 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT

17
18
19
20
21
22 on the interested parties in this action as follows:

23	Cheryl D. Orr	Amanda Semaan
24	Cheryl.orr@faegredrinker.com	Amanda.semaan@faegredrinker.com
25	Kevin D. Whittaker	Lauro, Trena M.
26	Kevin.whittaker@faegredrinker.com	trena.lauro@faegredrinker.com
27	Faegre Drinker Biddle & Reath LLP	Faegre Drinker Biddle & Reath LLP
28	Four Embarcadero Center, 27 th Floor	1800 Century Park East, Suite 1500
	San Francisco, CA 94111	Los Angeles, CA 90067
	<i>Attorneys for Defendant Genji Pacific, LLC</i>	<i>Attorneys for Defendant Genji Pacific, LLC</i>

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

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

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Erika Mejia



Court Reservation Receipt

Reservation

Reservation ID: 386125078699	Status: RESERVED
Reservation Type: Motion to Confirm Settlement	Number of Motions: 1
Case Number: RG20074795	Case Title: Linaki VS Genji Pacific, LLC
Filing Party: Fnu Linaki (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 19
Date/Time: October 5th 2022, 3:00PM	Confirmation Code: CR-A68WWXNJKUTEQEG5J

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: XXXX3359	Authorization: 00050G
Payment Date: 2022-08-24	

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