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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SACRAMENTO**

17 EMIL PETERSON, as an individual and on
18 behalf of all others similarly situated; and
19 WILLIE SUMPTER, JR., as an individual
and on behalf of all others similarly
situated,

20 Plaintiff,

21 v.

22 BP FUND A LLC, an unknown corporate
23 entity; BLAZE PIZZA OPERATIONS,
24 LLC, a limited liability company; and
DOES 1 through 50, inclusive,

25 Defendant.

Case No. 34-2020-00288162

*Assigned to Honorable Christopher E.
Krueger in Department 54*

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

Date: June 28, 2022

Time: 9:00 a.m.

Dept.: 54

Reservation No. 2646264

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

2 **PLEASE TAKE NOTICE** that on June 28, 2022 at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Christopher E. Krueger, judge presiding, in
4 Department 54 of the above referenced Court located at 720 9th St., Sacramento, CA 95814,
5 Plaintiff WILLIE SUMPTER, JR. (“Plaintiff” or “SUMPTER”) will seek an Order: (1)
6 preliminarily approving the Class Action Settlement Agreement (“Settlement Agreement”); (2)
7 conditionally certifying the following Class for settlement purposes only: “all individuals who are
8 or were non-exempt employees of Defendant and were paid wages in California at any time
9 between May 2, 2019 through November 20, 2020 (“Class Period”); (3) appointing Plaintiff
10 SUMPTER as the Class Representative and Larry W. Lee of Diversity Law Group, P.C., Edward
11 W. Choi of Law Offices of Choi & Associates, and Dennis Hyun of Hyun Legal, APC as Class
12 Counsel; (4) preliminarily approving the Settlement and the Gross Settlement Amount of
13 \$225,000.00; (5) finding on a preliminary basis that the Settlement Agreement appears to be
14 within the range of reasonableness of a settlement, including the Class Representative Service
15 Award, Class Counsel’s fees and costs, the settlement administration fees, and the allocation of
16 payments to Settlement Class Members, that could ultimately be given final approval by this
17 Court; (6) approving the Notice of Pendency of Class Action and Proposed Settlement (“Class
18 Notice” or “Notice of Settlement”) to be sent to Class Members, which is attached as an exhibit to
19 the Settlement Agreement; (7) approving the distribution of the Class Notice to Class Members
20 substantially in the manner and form set forth in the Settlement Agreement; (8) appointing ILYM
21 Group, Inc. as the Settlement Administrator; and (9) setting the matter for a Final Fairness and
22 Final Approval hearing.

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

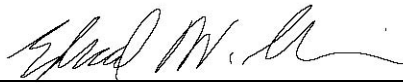
26 The basis for this Motion, filed without any opposition from Defendant BLAZE PIZZA
27 OPERATIONS, LLC, formerly known as BP Fund A, LLC (“Defendant” or “BLAZE PIZZA”), is

1 that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the
2 Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or
3 object to the settlement.

4 This Motion will be based on the attached Memorandum of Points and Authorities, the
5 Settlement Agreement, the proposed Notice to Class Members, and the supporting Declarations of
6 Larry W. Lee, Edward W. Choi, Dennis S. Hyun and Plaintiff, and upon the oral arguments of
7 counsel (should there be any) and on the complete records and file herein.

8
9 DATED: June 6, 2022

LAW OFFICES OF CHOI AND ASSOCIATES

10
11 By: 

12 Edward W. Choi
13 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 29, 2020, Plaintiff Emil Peterson (“Peterson”) filed a putative class action
4 complaint in Sacramento County Superior Court against BP Fund A, LLC (“BP Fund A”). (Class
5 Action Settlement Agreement (“Settlement Agreement” or “Settlement”) ¶34). The Complaint
6 alleged (1) failure to furnish accurate itemized wage statements, and (2) penalties under the
7 Private Attorneys General Act (“PAGA”). (*Id.* at ¶35).

8 On or about January 8, 2021, Plaintiff filed a First Amended Complaint which added
9 Plaintiff WILLIE SUMPTER, JR. (“Plaintiff” or “Sumpter”) and Defendant, BLAZE PIZZA
10 OPERATIONS, LLC (“Defendant” or “Blaze Pizza”) and removed Plaintiff Peterson as a Class
11 Representative. (*Id.* at ¶35). Defendant filed a demurrer to the First Amended Complaint on
12 March 26, 2021, alleging that Plaintiff failed to state a cause of action as to the PAGA claim
13 because Defendant successfully cured any alleged violations. (*Id.* at ¶36). On July 14, 2021, the
14 Court sustained Defendant’s demurrer as to the PAGA claim, without leave to amend, which
15 effectively dismissed Peterson from this Civil Action and Plaintiffs’ PAGA cause of action. (*Id.* at
16 ¶37). Defendant filed an Answer to the First Amended Complaint on July 26, 2021. (*Id.* at ¶38).
17 Defendant denies each of the allegations of the Complaint, that Defendant has any liability for the
18 claims of Plaintiff, the putative class he purports to represent or any allegedly aggrieved employee,
19 and denies that Plaintiff, the putative class he purports to represent or any allegedly aggrieved
20 employee is entitled to any relief. (*Id.* at ¶39).

21 Since the filing of this case, the Parties conducted discovery, including informal discovery,
22 engaging in an extensive meet and confer process, the production of documents and class payroll
23 data. (Declaration of Edward W. Choi (“Choi Decl.”) ¶6). Thereafter, the parties engaged in
24 mediation with well-respected mediator, Mark S. Rudy on January 11, 2022, which ultimately led
25 to this settlement. (*Id.*) The terms of the settlement provide that Defendant shall pay a Gross
26 Settlement Amount of Two Hundred Twenty Five Thousand Dollars (\$225,000.00) which will be
27 distributed to the class on a **non-reversionary** basis without the need to submit claim forms.

1 (Settlement Agreement at ¶¶2, 16). Thus, the entire settlement amount will be distributed and no
2 remaining amounts, i.e. unclaimed funds, will revert back to Defendant. (*Id.* at ¶2). Further, the
3 class members will not need to do anything to participate in the settlement and will be included in
4 the Settlement unless he/she opts out of the Settlement. (*Id.* at ¶¶ 52-53).

5 Although Plaintiff and the representing counsel have always believed that they can prevail
6 on class certification, as well as on the merits, they recognize the inherent risk in further drawn-out
7 litigation and the specific risks that a class might not be certified. Based on their own independent
8 investigation and evaluation, the Parties and their respective counsel are of the opinion that
9 settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
10 reasonable, and adequate and is in the best interests of the Class in light of all known facts and
11 circumstances and the expenses and risks inherent in litigation.

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

14 **II. DISCUSSION**

15 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
16 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review
17 after notice has been distributed to the class members for their comment or objections. The
18 Manual for Complex Litigation (Third) § 30.41 states:

19 Approval of class action settlements involves a two-step process. First, counsel
20 submits the proposed terms of settlement and the court makes a preliminary
21 fairness evaluation. If the preliminary evaluation of the proposed settlement does
22 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
23 unduly preferential treatment of class representatives or of segments of the class, or
24 excessive compensation for attorneys, and appears to fall within the range of
25 possible approval, the court should direct that notice ... be given to the class
26 members of a formal fairness hearing, at which arguments and evidence may be
27 presented in support of and in opposition to the settlement.

28 Thus, the preliminary approval by the trial court is simply a conditional finding that the
29 settlement appears to be within the range of acceptable settlements. As Professor Newberg
30 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
31 concerning a tentative settlement proposal may vary. The court may find that the settlement

1 proposal contains some merit, is within the range of reasonableness required for a settlement offer,
2 or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4

3 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002)

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

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

9 *Id.* at § 11.24.

10 Here, the Parties have reached such an agreement and have concurrently filed the
11 Settlement Agreement fully setting forth the agreement reached among the Parties. The
12 Settlement Agreement sets forth all terms of the agreement reached by the Parties, which include,
13 among other things, the method for calculating the Class Members’ Individual Settlement
14 Payments.

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

23 As further explained by Professor Newberg:

24 The strength of the findings made by a judge at a preliminary hearing or conference
25 concerning a tentative settlement proposal. . . . may be set out in conditional orders
26 granting tentative approval to the various items submitted to the court. Three basic
27 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.

1 4 Newberg on Class Actions, at §11.26.

2 In addition to such terms as class identification, settlement amount and payment
3 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to
4 which the Parties stipulate to the Court’s provisional certification of the Class, but do so for the
5 purposes of this settlement only.

6 **A. PROPOSED CLASS DEFINITION**

7 The current settlement is being settled on behalf of “all individuals who are or were non-
8 exempt employees of Defendant and were paid wages in California at any time between May 2,
9 2019 through November 20, 2020 (“Class Period”). (Settlement Agreement ¶¶4, 6).

10 **B. NUMEROSITY**

11 Courts generally find that numerosity is satisfied if the class includes forty or more
12 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see*
13 *also Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court
14 “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39]
15 ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

16 In this case, Defendant represented that the class includes approximately 356 Settlement
17 Class members, from May 2, 2019 through November 20, 2020, therefore, numerosity is satisfied.
18 (Choi Decl. ¶8).

19 **C. ASCERTAINABILITY**

20 Class members are ascertainable where they may be “readily identified without
21 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
22 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th
23 220, 240.)

24 Here, the identity of class members is clearly ascertainable from Defendant’s payroll
25 records and have already been identified.

26 ///

27 ///

1 **D. TYPICALITY AND ADEQUACY OF REPRESENTATION**

2 **1. Class Representative’s Claims are Typical of the Class**

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

14 Plaintiff alleges that Defendant, as a matter of corporate policy, practice or procedure
15 violated the Labor Code by providing Plaintiff and all other class members non-compliant wage
16 statements. Specifically, Plaintiff alleges that he was issued wage statements that failed to itemize
17 and show the name of the legal entity that is the employer. (Declaration of Willie Sumpter, Jr.
18 (“Sumpter Decl.”) ¶4). Instead, “BP Fund A LLC”—an entity which is not among the corporations,
19 limited liability companies, and limited partnerships of record with the California Secretary of
20 State—is shown on wage statements. (*Id.*)

21 Moreover, Plaintiff does not have any interests adverse to the class, nor has any such issues
22 been raised or presented. (Sumpter Decl. ¶5). Plaintiff has taken all necessary steps to represent
23 the interests of the Class, by providing information and documents. (Sumpter Jr. Decl. ¶¶ 6-7).
24 For such reasons, Plaintiff has adequately represented the class members and will continue to do
25 so.

26 ///

27 ///

1 **2. Class Counsel Have Adequately Represented the Class and Has**
2 **Experience with Wage and Hour Class Actions**

3 From the inception of the case, Class Counsel have solely represented the interest of the
4 class. For example, the informal discovery exchanged by the parties was directed towards class
5 issues. (Choi Decl. ¶8). Class counsel also engaged in numerous meet and confers with opposing
6 counsel to obtain sufficient class data in order to evaluate that class claims at issue. (*Id.*). The
7 mediation and settlement were also obtained for the benefit of the class, not for the individual
8 Plaintiff. Finally, Class counsel have been approved as class counsel on a number of prior cases
9 and are competent to represent the class. (Choi Decl. ¶20); (Declaration of Larry W. Lee (“Lee
10 Decl.”) ¶6); (Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶ 6).

11 **E. SUPERIORITY**

12 Class treatment is clearly superior to any other method of resolving Plaintiff’s claims.
13 (*Sav-on Drug Stores, Inc., supra*, 34 Cal. 4th 319 at p. 326.) In employment actions, class actions
14 are in fact encouraged. (*Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308 (“In
15 light of the numerous common issues of fact and law that predominate in this lawsuit, we conclude
16 that proceeding by way of class action is the superior method of adjudication. Doing so would
17 further judicial economy by avoiding repetitious suits, would unify what would otherwise be a
18 series of small claims so as to enhance the class members’ access to redress...”)).)

19 Here, Plaintiff’s claims are based on system-wide policies, procedures, and practices that
20 apply to all class members and can be most efficiently litigated on a class-wide basis. The
21 alternative would be the unrealistic filing of numerous individual claims. Since the putative class
22 members are employees with relatively modest individual claims and limited resources, there is a
23 strong likelihood that individual claims would never be brought. (*See Local Joint Exec. Bd. of*
24 *Culinary/Bartender Trust Fund* (9th Cir. 2001) 244 F.3d 1152, 1163 (superiority requirement met
25 where class members would recover, at most, about \$1,330); *see also Gentry v. Sup. Ct.* (2007) 42
26 Cal. 4th 443, 462.)

27 ///

1 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY AND**
2 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF**
3 **RECOVERY**

4 As discussed above, the Action alleges one cause of action Violation of Labor Code §226.

5 Specifically, the wage statements issued by the Defendant to Plaintiff SUMPTER and
6 Class Members do not itemize and show the name of the legal entity that is the employer. (*Id.* at
7 ¶2). Instead, “BP Fund A LLC”—an entity which is not among the corporations, limited liability
8 companies, and limited partnerships of record with the California Secretary of State—is shown on
9 wage statements. (*Id.*). Defendant denies the allegations in the Action and is prepared to continue
10 to defend the action vigorously. (*Id.*).

11 After the filing of the lawsuit and opposing Defendant’s pleadings challenges resulting in
12 dismissal of Peterson and Plaintiffs’ PAGA claim, Plaintiff engaged in informal discovery,
13 engaged in extensive meet and confers regarding the discovery to be produced by Defendant, and
14 obtained the putative class members’ payroll data. (Choi Decl. ¶¶2-6). Thereafter, the parties
15 engaged in a full day mediation with mediator Mark S. Rudy on January 11, 2022, which
16 ultimately resulted in this settlement. (*Id.* at ¶6).

17 Based on their own independent investigations and evaluations, the Parties and their
18 respective counsel are of the opinion that settlement for the consideration and on the terms set
19 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
20 the Class and Defendants in light of all known facts and circumstances and the expenses and risks
21 inherent in litigation. (Choi Decl. ¶11).

22 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
23 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
24 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
25 plaintiff’s claims. As discussed herein, Plaintiff’s counsel has conducted extensive discovery and
26 investigation and, in light of the strength and weaknesses of Plaintiff’s claims, Plaintiff’s attorneys
27 submit that this settlement is fair pursuant to *Kullar*.

1 In the present case, the gross settlement of \$225,000.00 is for approximately 5,852 wage
2 statements. This amounts to approximately \$38.45 per wage statement at issue. (Choi Decl. ¶9).
3 Indeed, an “apples to apples” comparison can be made between this settlement and the settlement
4 in *McKenzie v. Federal Express Corp.*, 2012 US Dist Lexis 103666 (C.D. Cal. July 2, 2012),
5 which involved a gross settlement amount of \$8,250,000 for 484,928 wage statements which
6 amounted to approximately \$17.00 per wage statement. Not only did the *McKenzie* case involve
7 the same exaction violations as alleged in the current case, the District Court found that the
8 *McKenzie* settlement to be fair, reasonable and adequate. *Id.* at *6. The current settlement is **2.26**
9 **times** the amount per wage statement that was approved in prior similar wage statement case.
10 Thus, the logical conclusion is that the current settlement is indeed, fair, reasonable and adequate.

11 Further, the total settlement is approximately 39.65% of the total exposure for the Labor
12 Code violations asserted. Specifically, the total Labor Code §226 penalties for 5,852 pay periods
13 amounts to a maximum of \$567,000.00 versus the gross settlement amount of \$225,000. (Choi
14 Decl. ¶9).

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

1 *Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov.
2 21, 2012) (holding that gross class action settlement of approximately 15% of the potential
3 recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL
4 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

5 Based on the above, the settlement amount is fair and reasonable.

6 **G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT**
7 **COLLUSIVE**

8 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
9 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
10 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
11 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
12 judgment for that of the proponents, particularly where, as here, settlement has been reached with
13 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
14 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
15 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
16 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. &*
17 *Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

18 While the recommendations of counsel proposing the settlement are not conclusive, the
19 Court can properly take them into account, particularly where, as here, they have been involved in
20 formal and informal discovery and negotiations for some period of time, appear to be competent,
21 have experience with this type of litigation, and have exchanged substantial evidence from the
22 opposing party. See *Newberg on Class Actions*, *supra*, at § 11.47; *Nat'l Rural Telecomms. Coop.*,
23 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.
24 1997) (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a
25 strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great
26 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the
27 facts of the underlying litigation”)).

1 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and
2 hour class action litigation. Plaintiff's counsel has been approved as class counsel in a number of
3 wage and hour class actions and have extensive litigation experience. (Choi Decl. at ¶20; Lee
4 Decl. at ¶¶3-6; Hyun Decl. at ¶¶ 3-6). As discussed above, Plaintiff's counsel conducted a
5 thorough investigation of the allegations involved in this case since the inception. Each side has
6 apprised the other of their respective factual contentions, legal theories and defenses, resulting in
7 extensive arms' length negotiations taking place among the Parties.

8 The settlement for each participating Class Member is fair, reasonable and adequate, given
9 the inherent risks of litigation, including the substantial risks relative to class certification, and the
10 costs of pursuing such litigation. The settlement is the result of extensive arms' length
11 negotiations between the Parties and their counsel, which was achieved after a full day of
12 mediation before a highly regarded mediator.

13 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
14 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
15 involved in not prevailing on one or more of the causes of action or theories alleged in the
16 operative Complaint, the possibility of non-certification and potential for appeals. (Choi Decl. at
17 ¶11).

18 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice,
19 should any Class Member wish to pursue his or her own case for the claims being released herein,
20 each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from the
21 settlement. Moreover, as set forth in the Class Notice, Class Members are advised of their right to
22 attend the final approval hearing and object to any of the terms contained in the proposed
23 Settlement Agreement, provided that they give proper notice to the Parties and the Court.

24 **H. SETTLEMENT TERMS AND EVALUATION**

25 **1. Proposed Terms of the Settlement**

26 This is a non-reversionary settlement wherein Class Members will be automatically paid
27 out of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement

1 are as follows.

2 The Settlement Agreement provides for a gross settlement amount of Two Hundred
3 Twenty-Five Thousand Dollars (\$225,000.00). (Settlement Agreement ¶16). Attorney's fees of up
4 to 35% or \$78,750.00 of the Gross Settlement Amount will be paid to Class Counsel along with
5 costs of up to \$30,000.00. (*Id.*). The Class Representative Service Award will be up to
6 \$10,000.00. (*Id.*). The Settlement Administrator will be paid up to \$6,000.00 for costs of
7 administering this settlement. (*Id.*) After deduction of the foregoing, the remainder will be
8 distributed to Class Members who do not opt-out of the Settlement Agreement. (*Id.* at ¶64).

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

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

11 **3. Amount and Manner of Distribution of the Compensation to be**
12 **Provided to Class Members Including the Amount, or an Estimate, of**
13 **What Each Class Member Will Receive**

14 The Net Settlement Amount (calculated after deduction of attorneys' fees, costs, incentive
15 awards, and claims administration costs) shall be paid to all Settlement Class Members who do not
16 opt out of the settlement. (Settlement Agreement ¶18). The amount allocated to each Settlement
17 Class Member will be based on each individual's number of wage statements received during the
18 Class Period. (*Id.* at ¶64). The reason for such allocation is so that the Settlement Class Members
19 who suffered higher damages will be allocated greater recovery. Settlement Class Members may
20 opt-out of the Settlement if they so choose. (*Id.* at ¶53). Based on the Net Settlement Amount, on
21 a pure raw average, each class member will receive approximately \$632.02. (Choi Decl. ¶17).
22 Such amounts for each person could increase or decrease depending on a number of factors,
23 including the amount of wage statements received by each Settlement Class Member. The
24 approximate amount each person will be entitled to will not be known until the class data is
25 transferred to the Settlement Administrator for processing.

26 ///

27 ///

1 **4. Whether, and Under What Circumstances, Amounts May Revert to**
2 **Defendant**

3 In no event shall any portion of the Gross Settlement Amount revert to Defendant.
4 (Settlement Agreement ¶ 2).

5 **5. Scope of the Release of Class Members' Claims**

6 Class Members who do not opt out of the Settlement will release the following:

7 “all claims, rights, demands, liabilities, causes of action, and theories of liability of
8 every nature and description, whether known or unknown, that were or could have
9 been alleged against any of the Released Parties arising out of, in connection with,
10 or based on the facts alleged in the operative First Amended Complaint. This
11 includes, but may not be limited to, claims for failure to provide accurate itemized
12 wage statements, penalties (including but not limited to civil and statutory
13 penalties), damages, interest, costs, or attorneys' fees, and violations of any other
14 local, state, or federal law, whether for penalties, to the extent necessary to effect a
15 full and complete release of the Class Released Claims, including, but not limited
16 to, all claims under any California Labor Code Sections 226 and 2698, et seq. and
17 any related provisions This release shall extend to all such claims accrued during
18 the Class Period”.

19 As shown, the scope of the release is narrow and is limited by the claims asserted in the
20 Operative Complaint. Further, the Scope of the Release does not waive Civil Code §1542 for
21 Settlement Class Members.

22 **6. Tax Treatment of Settlement Amounts**

23 One hundred percent (100%) of each Individual Settlement Payment to each Settlement
24 Class Member shall be allocated to alleged non-wage payments (10% interest and 90% penalties)
25 not subject to tax withholding and shall be reported on an IRS Form 1099. (Settlement Agreement
26 ¶68). These non-wage payments shall be comprised of 10% interest and 90% penalties, as
27 provided for under the California Labor Code. (*Id.*).

28 **7. Affirmative Obligations to be Undertaken by Class Members or Class**
29 **Counsel and the Reasons for Any Such Obligations**

30 As stated above, Settlement Class Members do not need to do anything should they wish to
31 receive their share of the settlement funds. Thus, this substantially decreases the amount of

1 burden each Settlement Class Member must bear in order to receive their settlement share. If a
2 Settlement Class Member does not wish to take part in this settlement and be bound by the release,
3 he/she must submit an exclusion request.

4 Such obligations are thoroughly identified in each class member's Class Notice.
5 (Settlement Agreement, Exhibit 1).

6 **I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS**

7 Class Members will not be required to submit a claim form to receive compensation.
8 Instead, this is a non-reversionary Settlement Agreement. (Settlement Agreement, Exhibit 1).
9 Settlement Class Members will be provided 30 calendar days to opt out or object to the settlement.
10 (Settlement Agreement ¶28). Any Class Member who does not opt-out of the settlement will be
11 automatically issued his/her share of the settlement proceeds. Given that this is a non-reversionary
12 settlement, the parties believe that 30 calendar days is sufficient time for class members to object
13 or opt-out of the settlement. Further, Settlement Class Members will be notified of the
14 Fairness/Final Approval hearing and will have an opportunity to appear at the Fairness hearing.

15 **J. UNCASHED FUNDS**

16 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
17 paid out. Funds represented by Individual Settlement Payment checks that remain uncashed after
18 One Hundred Eighty (180) days from issuance shall be void and the Settlement Administrator
19 shall pay the funds represented by such un-redeemed checks to the California State Controller's
20 Office as unclaimed property pursuant to the California Unclaimed Property Law to be held in the
21 name of the Settlement Class Member. (Settlement Agreement ¶70).

22 **K. NOTICE TO CLASS MEMBERS**

23 The Settlement Administrator shall, within thirty (30) days of the date of preliminary
24 approval of this Settlement, mail by First-Class United States mail the Notice of Class Action
25 Settlement to each Class Member (hereinafter "Notice"), using the most recent address available
26 to the Settlement Administrator for mail delivery, after updating provided addresses using the
27 National Change of Address Database. (Settlement Agreement ¶50). The Settlement

1 Administrator shall also, within 10 days of mailing the Notice, send an electronic copy of the
2 Notice via email to the last known email addresses (to the extent available) of each Class Member.
3 (*Id.*). Any Notice returned to the Settlement Administrator as non-delivered on or before the
4 Response Deadline with a forwarding address from the U.S. postal service shall be promptly re-
5 mailed to the forwarding address affixed thereto. (*Id.* at ¶50.a.). If no forwarding address is
6 provided, the Settlement Administrator shall promptly attempt to determine a correct address by
7 the use of skip-tracing, or other automated search, and shall then promptly perform a re-mailing to
8 the Class Member whose Notice was returned as non-delivered, assuming another mailing address
9 is identified by the Settlement Administrator. (*Id.*). A letter prepared by the Settlement
10 Administrator will be included in the re-mailed Notice in that instance, stating that the recipient of
11 the Notice has until the original deadline set forth on the Notice, or ten (10) calendar days after the
12 date of re-mailing of the Notice (whichever is later) to object or submit an Opt Out or submit
13 Proof of Work. (*Id.*). In no event shall this be more than ten (10) calendar days after the
14 Response Deadline. (*Id.*).

15 **L. COSTS AND FEES**

16 **1. Attorneys' Fees and Costs**

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

25 Under California law, the award of attorneys' fees in common fund wage and hour class
26 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.
27 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in

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

9 An award of 33% of the fund in attorneys’ fees mimics the marketplace as it “is supported
10 by the fact that typical contingency fee agreements provide that class counsel will recover 33% if
11 the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores*
12 *LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly*
13 *Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81
14 Wash U. L. Q. 653, 659 n. 11). Indeed, “empirical studies [that] show that . . . fee awards in class
15 actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
16 n.11 (2008).

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

22 Moreover, in the *Laffitte* intermediate court decision, the court observed that “35 percent of
23 the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
24 *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing
25 35% of the fund clearly falls within that range, and is consistent with other comprehensive surveys
26 of class action settlements and fee awards. See Fitzpatrick, *An Empirical Study of Class Action*
27 *Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases

1 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35
2 percent, with almost no awards more than 35 percent.”); Eisenberg & Miller, *Attorney Fees in*
3 *Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,
4 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees
5 representing one-third of the total recovery is consistent with market rates).

6 The results delivered by Plaintiff’s Counsel also support the requested percentage of the
7 fund. Here, the Parties have agreed to a payment of a maximum of 35% of the settlement
8 (\$78,750.00) for payment to Class Counsel as attorneys’ fees. (Settlement Agreement ¶77). The
9 Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be
10 presumed to be fair.

11 Further, the parties have agreed to reimbursement of class counsel’s litigation costs of up
12 to \$30,000.00. (Settlement Agreement ¶77). Class counsel have, at their own risk, expended costs,
13 for example, to file this instant action, service of process, payment of mediation fees, expert
14 witness fees and other litigation related costs and will be submitting detailed cost sheets for the
15 respective costs incurred prior to the Motion for Final Approval. Based on the foregoing, the
16 court should preliminarily approve the attorney’s fees and costs being requested by the parties.

17 2. Proposed Payment to Class Representative

18 Plaintiff requests a modest enhancement of \$10,000.00. (Settlement Agreement ¶76).
19 Plaintiff spent a very significant amount of time discussing this matter with his attorneys on many
20 occasions and explaining my understanding of the company’s practices. (Sumpter Decl. ¶6).
21 Plaintiff always made himself available to answer questions, gather documents,
22 reviewing/executing the memorandum of understanding, reviewing/executing the settlement
23 agreement and pleadings. (*Id.* at ¶7).

24 Given that future employers are much less likely to hire individuals who have filed suit
25 against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the
26 future from other potential employers. Plaintiff took this risk upon himself and the whole class
27 benefited from these risks taken by Plaintiff. Class members did not have to file individual

1 lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have
2 to face the potential for retaliation and not getting future employment had they filed a public
3 lawsuit.

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

17 3. Class Administration Fees

18 The parties have agreed to payment of a maximum of \$6,000.00 to the Settlement
19 Administrator, ILYM Group, Inc. for administering this Settlement, including, but not limited to,
20 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the
21 Maximum Settlement Amount, and providing necessary reports and declarations, as requested by
22 the Parties. (Settlement Agreement ¶¶71-72). ILYM Group, Inc. is a well-recognized class action
23 settlement administrator. The parties believe that the administration fee is reasonable and should
24 be approved.

25 III. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT AND 26 MOTION FOR APPROVAL, ATTORNEY’S FEES AND FINAL ACCOUNTING

27 Plaintiff requests that a final fairness/approval hearing be set for approximately 4 months

1 after the hearing on Plaintiff's Motion for Preliminary Approval.

2 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
3 **PRELIMINARY APPROVAL**

4 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
5 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
6 result of informed, extensive, and arms' length negotiations conducted by counsel for respective
7 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
8 Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement,
9 sign the proposed Order, approve and authorize mailing of the proposed Notice Packet, and set a
10 date for a final approval hearing on or after November 1, 2022.

11
12 DATED: June 6, 2022

LAW OFFICES OF CHOI AND ASSOCIATES

13 By: 
14 Edward W. Choi
15 Attorneys for Plaintiff and the Class
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