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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

SAN FRANCISCO C&C/MEL'S DRIVE IN,
form unknown; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV41738

[Hon. Carolyn B. Kuhl, Department 12]

**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 Mario Romero; [Proposed] Order]*

Date: January 11, 2023
Time: 10:30 a.m.
Department: 12

Complaint Filed: October 27, 2020

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

PLEASE TAKE NOTICE that on January 11, 2022, at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 12 of the above-entitled court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff, Mario Romero, will and hereby does move for an Order:

1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”) attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
2. conditionally certifying the following Class for settlement purposes only: all current and former non-exempt employees of Defendant, San Francisco C & C dba Mel’s Drive-In, in the State of California from October 20, 2016, through May 31, 2022 (the “Class Period”);
3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. 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 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award, PAGA Penalty Fund, 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 and PAGA Settlement attached as Exhibit A to the Agreement; and
7. scheduling a Final Approval Hearing.

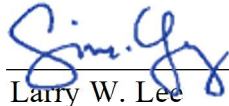
The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the Court to preliminarily certify a class for settlement purposes and to approve a class action settlement. The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures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

The Motion is based on this notice, the memorandum of points and authorities, the Agreement and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.

1 Yang, and Mario Romero, all pleadings and papers on file herein, and any further oral and documentary
2 evidence as may be presented before or at the hearing of this matter.

3 DATED: December 16, 2022

DIVERSITY LAW GROUP, P.C.

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5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff
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1 **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, Mario Romero, sues Defendant, San
4 Francisco C & C dba Mel’s Drive-In, for alleged underpayments of sick pay wages and overtime, meal
5 and rest period violations, and noncompliant wage statements.

6 Based on their own independent investigations and evaluations, the Parties have agreed to a
7 classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which
8 is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to
9 pay \$750,000.00 for the classwide settlement of claims through May 31, 2022. Plaintiff and his counsel
10 believe the settlement is an exceptional result for the Class. On average, each of approximately 1,580
11 Class Members will receive approximately \$265 (*after* all requested payments from the Gross
12 Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the
13 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 August 27, 2020, Plaintiff initiated this class and private attorney general action on behalf of
23 a putative class of current and former non-exempt employees of Defendant in the State of California.
24 Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. The Action pursued class action and representative
25 action claims for Defendant’s alleged failures to pay or timely pay all sick pay wages and overtime,
26 provide meal and rest breaks, and furnish accurate itemized wage statements. *Id.*

27 On November 24, 2020, and numerous dates thereafter, Plaintiff and Defendant met and
28 conferred about the alleged claims. Yang Decl. ¶ 3. On June 30, 2021, Plaintiff served initial written

discovery. *Id.* On July 15, 2021, Defendant served initial written discovery. *Id.* The Parties supplemented formal discovery by continuing to exchange information pursuant to informal methods to assist the Parties in exploring the possibility of a mediated resolution. *Id.* Plaintiff continued investigating the alleged claims and also analyzed any defenses raised by Defendant. *Id.* Defendant’s willingness to supplement formal discovery with informal discovery enabled Plaintiff to evaluate the extent of Defendant’s potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

On March 31, 2022, the Parties attended a mediation with Lynn Frank, 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 upon the mediator’s proposal, the Parties were able to agree to settlement terms, which were negotiated in light of all known facts and circumstances—including the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. *Id.* The settlement terms were memorialized in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1 (the “Agreement”).

SUMMARY OF PROPOSED SETTLEMENT¹

I. Class Definition

The proposed settlement class of “Class Members” includes all current and former non-exempt employees of Defendant in the State of California during the Class Period. Agreement § 1.5. The Class Period is from October 20, 2016, through May 31, 2022. *Id.* § 1.7.² There are approximately 1,580 Class Members. *Id.* § 5.1.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$750,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve payments for a PAGA Penalty Fund and LWDA Payment, Administration Costs, Attorneys’ Fees and Costs Award, and Class Representative Award. *Id.* § 5.1.1-4. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will

¹ Plaintiff has uploaded the Agreement and this motion to the LWDA. Yang Decl. ¶ 14.

² The settlement also defines a subgroup of PAGA Employees. Agreement § 1.17. The PAGA Period is from October 14, 2019, through May 31, 2022. *Id.* § 1.18.

1 be allocated to Class Members. *Id.* § 5.2. It is expected that, on average, each Class Member would be
2 allocated \$264.24 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7.

3 **III. Released Claims**

4 Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members release “any
5 and all claims during the Class Period that were pleaded in the Action or that could have been pleaded
6 based on the facts alleged in the Action.” *Id.* § 6.1. PAGA Employees release “any and all claims during
7 the PAGA Period for civil penalties pleaded in the Action or that could have been pleaded based on the
8 facts alleged in the Action.” *Id.* § 6.2.

9 **LEGAL STANDARD**

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

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

21 Manual for Complex Litigation (Third) § 30.41.

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

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

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

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

9 DISCUSSION

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

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

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

22 While the recommendations of counsel proposing the settlement are not conclusive, the Court
23 can properly take them into account, particularly where counsel have conducted thorough investigation,
24 are experienced with this type of litigation, and agreed to a resolution through arm's length negotiation.
25 See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528
26 ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial
27 presumption of fairness attaches to the proposed settlement ... and 'great weight' is accorded to the
28 recommendations of counsel, who are most closely acquainted with the facts of the underlying

litigation.”) (citations omitted). In such circumstances, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

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

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

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendant to pay \$750,000.00—or approximately \$474.68 gross, on average, per Class Member. Yang Decl. ¶ 5. This amounts to approximately 9.86% of Defendant’s potential liability and is an excellent result for Class Members. *Id.*

To wit, Plaintiff contended that meal and rest period violations resulted in Labor Code section 226.7 penalties of an additional hour of regular rate wages. Yang Decl. ¶ 5.³ Plaintiff also contended that underpaid sick pay wages and overtime resulted in Section 203 penalties of up to 30 days wages. *Id.*⁴ Under PAGA, Plaintiff contended that Defendant also would be liable for an additional \$50 per pay period under Section 558. *Id.* Moreover, Plaintiff contended that class claims under Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to each Class Member and a \$100 penalty for each additional non-compliant wage statement to the Class Member, up to a maximum of \$4,000 per

³ Except as otherwise noted, all “Section” references are to the Labor Code.

⁴ Actual underpayments of sick pay wages and overtime amount to comparatively smaller sums.

1 class member. *Id.* Under PAGA, Plaintiff contended that PAGA penalties under Section 2699(f) also
2 result in up to \$100 per pay period. *Id.*

3 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
4 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with
5 respect to wage statement liability, Defendant contended that liability under Section 226(e) would be
6 subject to additional defenses requiring proof of injuries resulting from knowing and intentional
7 violations. *Id.* Likewise, with respect to sick pay and overtime liability, Defendant contended that it
8 would not be subject to Section 203 penalties, based on a good faith defense. *Id.* As for meal and rest
9 period violations, Defendant contended that (i) it had already paid an additional hour of wages for meal
10 and rest period violations and (ii) the claims were not suitable for class or representative action
11 litigation. *Id.* Finally, with respect to PAGA penalties, Defendant contended that PAGA penalties in any
12 event be subject to discretionary reductions. *Id.*

13 While the Parties disagree on the application of the law to the facts, each Party recognized in
14 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
15 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
16 Ultimately, based on data available at mediation and extrapolated through May 31, 2022, Plaintiff
17 argued that the potential total recovery amounted to approximately \$7,608,490—which included
18 approximately \$931,500 under Section 226.7, approximately \$2,468,490 under Section 203,
19 approximately \$857,500 under Section 558, approximately \$1,636,000 under Section 226(e), and
20 approximately \$1,715,000 under Section 2699(f). *Id.* Plaintiff contends that the Gross Settlement
21 Amount of \$750,000.00—approximately 9.86% of the potential total recovery of \$7,608,490—is an
22 excellent result. *Id.*

23 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
24 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
25 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
26 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
27 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
28 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing

1 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
2 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
3 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
4 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
5 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
6 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
7 action settlement of approximately 15% of the potential recovery was fair and reasonable).

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

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

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

20 As discussed above, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement
21 Class Members are only subject to a release of claims during the Class Period that were pleaded in the
22 Action or that could have been pleaded based on the facts alleged in the Action. *Id.* § 6.1. The PAGA
23 release similarly releases only claims during the PAGA Period for civil penalties pleaded in the Action
24 or that could have been pleaded based on the facts alleged in the Action. *Id.* § 6.2.

25 Plaintiff alleged targeted claims in the Action, and any settlement releases also are specifically
26 tailored to the facts alleged. The settlement releases are thus appropriate. *E.g., Carter v. City of Los*
27 *Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or
28

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. Agreement ¶ 6.1.

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 Data”), within 14 days of a Preliminary Approval Order. Agreement § 3.2. Within 14 days of receipt of the Class Data, the Administrator would mail the Notice of Class Action and PAGA 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.* § 3.3. 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 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 \$750,000.00. Agreement § 5.1. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$250,000.00) 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 \$15,000.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be \$50,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$37,500.00) would constitute the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Employees on a pro rata basis. *Id.* §§ 5.1.4, 5.3.1.

1 **1. Each Class Member, on Average, Would Receive Approximately \$265.**

2 It is expected that, on average, each Class Member would be allocated approximately \$264.24
3 (after all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on
4 average to each Class Member may increase, depending on how many Class Members opt out of the
5 class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease
6 depending on his or her number of relevant workweeks during the Class Period. *Id.*

7 After deducting any approved payments for an Attorneys' Fees and Costs Award, Class
8 Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement
9 Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis,
10 based on the number of relevant workweeks they worked. Agreement § 5.3.2. 15% of these allocations
11 shall be classified for tax reporting purposes as wages. *Id.*

12 None of the settlement funds will revert to Defendant. *Id.* ¶ 5.1. The principal for any uncashed
13 checks (upon the expiration date) would escheat to the State Controller Unclaimed Property Fund in the
14 name of the Class Member. *Id.* ¶ 5.7.

15 **2. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

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

23 Under California law, the award of attorneys' fees in common fund wage and hour class action
24 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503
25 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action
26 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
27 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
28 reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the

1 fund method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v.*
2 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court rather than by
3 contract, the object is to set it at a level that will approximate what the market will set The judge, in
4 other words, is trying to mimic the market in legal services.”).

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

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

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

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

26 As part of his duties as the Class Representative, Plaintiff provided all necessary information and
27 evidence that resulted in this settlement. Romero Decl. ¶¶ 2-3. Plaintiff met and conferred with Class
28 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. Plaintiff provided information and

documents to Class Counsel and made himself available to answer any questions during litigation. *Id.* Ultimately, Plaintiff's efforts secured an exceptional result for the Class.

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

4. The Administration Costs Are Reasonable.

Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has quoted Administration Costs not to exceed \$15,000.00 to send notices and administer the settlement. Agreement §§ 3.1, 5.1.3. The Administration Costs are reasonable and should be approved.

II. The Class Meets All Requirements for Certification.⁵

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

⁵ Defendant expressly reserve its objections to class certification outside of the settlement context.

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

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

4 Class Members are identifiable from Defendant’s records. The class definition “is precise,
5 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
6 Indeed, there are approximately 1,580 Class Members. Agreement § 5.1. Numerosity thus is sufficiently
7 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
8 number is required as a matter of law for the maintenance of a class action” and citing examples in
9 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
10 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

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

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

17 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
18 underpaid sick pay and overtime, failed to provide meal and rest periods, and furnished unlawful wage
19 statements. With respect to typicality, Plaintiff—exactly like other members of the Class—was paid sick
20 pay at his base rate of pay, did not have certain compensation considered when calculating his overtime
21 rate, denied meal and rest periods, and furnished wage statements that failed to accurately itemize and
22 show hourly rates of pay, hours worked, gross wages earned, net wages earned, and the name of the
23 legal entity that was the employer. Romero Decl. ¶ 2.

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

25 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
26 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
27 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
28 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs

1 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
2 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v.*
3 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
4 Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide
5 impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery*
6 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

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

8 With respect to adequate representation, Plaintiff does not have any interests adverse to the
9 Class, and no such issues have been raised or presented. Romero Decl. ¶ 3. Plaintiff has taken all
10 necessary steps to represent the interests of the Class, including by providing information and
11 documents to Class Counsel, making himself available to discuss the claims, and answering any
12 questions. *Id.* Moreover, Plaintiff is willing to devote his time to the lawsuit for the benefit of the Class
13 and to act as a fiduciary for the Class. *Id.* For such reasons, Plaintiff has adequately represented the
14 Class Members and will continue to do so.

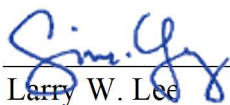
15 From the inception of the case, Class Counsel has zealously represented the interests of the
16 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
17 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have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

20 **CONCLUSION**

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

1 DATED: December 16, 2022

DIVERSITY LAW GROUP, P.C.

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3 By: 
4 Larry W. Lee
5 Simon L. Yang
6 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 December 16, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
18 **SETTLEMENT**
- 19 **4. DECLARATION OF MARIO ROMERO IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
- 22 **5. [PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF CLASS**
23 **ACTION SETTLEMENT**

24 on the interested parties in this action as follows:

25 Matthew Wertheim
26 wertheimlaw@gmail.com
27 Matt Wertheim & Associates
28 2135 Lombard St.
San Francisco, CA 94123
Attorney for Defendant

29 X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a
30 court order I caused the above-entitled document(s) to be served through Case Anywhere at the
31 website www.caseanywhere.com, addressed to all parties appearing on the electronic service list
32 for the above-entitled case. The service transmission was reported as complete and a copy of the
33 Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the
34 original document(s) in this office.

1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct. Executed on December 16, 2022, at Los Angeles, California.
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5 Erika Mejia
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