

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

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

Plaintiffs,

vs.

HCL AMERICA, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV371353

[Hon. Sunil R. Kulkarni, Department 1]

**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 Jordan
McDonald; [Proposed] Order]*

Date: January 19, 2023
Time: 1:30 p.m.
Department: 1

Complaint Filed: October 7, 2020

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

2 **PLEASE TAKE NOTICE** that on January 19, 2022, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 1 of the above-entitled court located at 191 North First Street, San
4 Jose, California 95113, Plaintiff, Jordan McDonald, will and hereby does move for an Order:

- 5 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
6 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: (i) all former non-
8 exempt employees of Defendant, HCL America, Inc., in the State of California whose
9 employment ended at any time from April 12, 2017, through April 30, 2022 (the “Late Pay
10 Period”), and (ii) all current and former non-exempt employees of Defendant in the State of
11 California at any time from April 12, 2019, through February 28, 2021 (the “Wage Statement
12 Period”);
- 13 1. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
14 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
- 15 2. approving the Agreement on a preliminary basis and finding that it, the total Gross
16 Settlement Amount in the amount of \$410,000.00, the amounts requested for the
17 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
18 LWDA Payment, and the allocation of payments to Class Members appear to be within the
19 range of reasonableness for a settlement that could ultimately be given final approval;
- 20 3. appointing Phoenix Settlement Administrators as the Administrator;
- 21 4. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
22 the Agreement; and
- 23 5. scheduling a Final Approval Hearing.

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

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

5 DATED: December 22, 2022

DIVERSITY LAW GROUP, P.C.

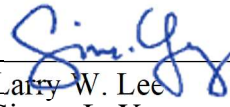
6 By:  _____
7 Larry W. Lee
8 Simon L. Yang
9 Attorneys for Plaintiff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
SUMMARY OF MOTION.....	1
RELEVANT BACKGROUND	2
SUMMARY OF PROPOSED SETTLEMENT.....	2
I. Class Definition	2
II. Settlement Payments.....	3
III. Released Claims	3
LEGAL STANDARD.....	3
DISCUSSION	5
I. The Proposed Settlement Is Fair, Adequate, and Reasonable.	5
A. The Settlement Is Entitled to a Presumption of Fairness.	5
B. The Settlement Obtains an Excellent Result for Class Members.	6
1. The Settlement Amount Is Reasonable.....	6
2. The Settlement Releases Are Appropriate.....	8
3. The Class Notice Is Adequate.....	8
C. The Requested Payments and Allocations Are Reasonable.	9
1. Each Late Pay Class Member, on Average, Would Receive More than \$600 and Each Wage Statement Class Member Would Receive More than \$20 per Wage Statement.....	9
2. The Requested Attorneys' Fees and Costs Award Is Reasonable.	10
3. The Proposed Class Representative Award Is Reasonable.....	11
4. The Administration Costs Are Reasonable.....	12
II. The Class Meets All Requirements for Certification.....	12
A. The Class Is Ascertainable and Sufficiently Numerous.	12
B. The Class Establishes a Community of Interest.	13
1. Plaintiff's Claims Are Typical of Those of the Class.....	13
2. Plaintiff's Claims Raise Common Questions of Law and Fact.	13
3. Plaintiff and His Counsel Adequately Represent the Class.....	14
CONCLUSION.....	14

TABLE OF AUTHORITIES

Page

State Cases

<i>Carter v. City of Los Angeles</i> , 224 Cal. App. 4th 808 (2014)	8
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	12
<i>City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	11
<i>Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America</i> , 141 Cal. App. 4th 46 (2006)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	4, 9, 10
<i>Global Mins. & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	9
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	12
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	10
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981)	10
<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	11
<i>Sevidal v. Target Corp.</i> , 189 Cal. App. 4th 905 (2010)	10
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	11
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	4, 9, 11

Federal Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 620 (1997).....	9
<i>Bellinghausen v. Tractor Supply Co.</i> , 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015).....	6
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	11
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	12
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	12
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	10
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	5
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980).....	4
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	6
<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	4
<i>National Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	5
<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989)	4
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	5
<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	5
<i>Van Ba Ma v. Covidien Holding Inc.</i> , 2014 WL 2472316 (C.D. Cal. May 30, 2014)	6
<i>Villegas v. J.P. Morgan Chase & Co.</i> , 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012)	6
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	11, 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, Jordan McDonald, sues Defendant, HCL America, Inc., for alleged failures to furnish lawful wage statements and to timely pay wages at separation. The wage statement claim alleges Defendant’s wage statements fail to accurately itemize and show the number of total hours worked or the hourly rates paid for any hours worked; instead, wage statements show gross wages earned, without any hourly rates or the corresponding number of hours worked at the rates. The untimely payment claim alleges final wages were not paid promptly upon termination but delayed until Defendant’s next regular pay date. Defendant denies the allegations.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$410,000.00 for the classwide settlement of wage statement claims through February 28, 2021, and of untimely payment claims through April 30, 2022. Plaintiff and his counsel believe the settlement is an exceptional result for the Class; *after* all requested payments from the Gross Settlement Amount, it is expected that **each Late Pay Class Member would be allocated at least \$633.88 on average** and that **each Wage Statement Class Member would be allocated at least \$20.09 per relevant wage statement received**. This is an excellent result. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and his counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. 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 October 7, 2020, Plaintiff initiated this class and private attorney general action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. The lawsuit seeks to remedy Defendant’s alleged failure to furnish lawful wage statements and failure to timely pay wages at separation. *Id.* On October 15, 2020, the Court deemed the matter complex and stayed discovery. *Id.* ¶ 3.

On November 20, 2020, and numerous dates thereafter, Plaintiff and Defendant met and conferred about the alleged claims and defenses. Yang Decl. ¶ 3. In light of the stay, the Parties proceeded with informal discovery. *Id.* Plaintiff provided Defendant with examples of the wage statements Plaintiff received, and Defendant provided Plaintiff with information about various defenses, including those based on an arbitration agreement. *Id.* Class Counsel continued investigating the alleged claims and also analyzed any defenses raised by Defendant. *Id.* The Parties continued to exchange information and documentation pursuant to informal methods to assist the Parties in exploring the possibility of a mediated resolution. *Id.* Defendant’s willingness to exchange 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 February 16, 2022, the Parties attended a mediation with Mike Young, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue in the Action. 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 PAGA Settlement. *Id.* Ex. 1 (the “Agreement”).

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class includes all members of the Late Pay Class and all members of the Wage Statement Class. Agreement § 1.5. The Late Pay Class includes all former non-exempt employees of Defendant in the State of California whose employment ended at any time during the Late Pay Period, which is from April 12, 2017, through April 30, 2022. *Id.* § 1.5.1. The Wage Statement Class includes all current and former non-exempt employees of Defendant in the State of California at any time during the Wage Statement Period, which is from April 12, 2019, through February 28, 2021. *Id.* § 1.5.2. All

1 Class Members who were employed by Defendant since April 12, 2019, are also “Aggrieved
2 Employees.” *Id.* § 1.5.4. Unless an additional payment is made, the Late Pay Class will include no more
3 than 61 former employees and the Wage Statement Class will involve no more than 7,700 wage
4 statements. *Id.* § 5.1.

5 **II. Settlement Payments**

6 The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of
7 \$410,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the
8 Court approve allocations for an LWDA Payment, Administration Costs, Attorneys’ Fees and Costs
9 Award, and Class Representative Award. *Id.* §§ 1.12, 1.14. Except for these allocations requiring Court
10 approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class
11 Members. *Id.* ¶¶ 1.13, 1.14. It is expected that, on average, each Late Pay Class Member would be
12 allocated at least \$633.88 (*after* all requested payments from the Gross Settlement Amount). Yang Decl.
13 ¶ 7. It also is expected that, on average, each Wage Statement Class Member would be allocated at least
14 \$20.09 per relevant wage statement received (again *after* all requested payments from the Gross
15 Settlement Amount). *Id.*

16 **III. Released Claims**

17 Plaintiff is subject to a general release. Agreement § 6.4. Aggrieved Employees and the LWDA
18 are subject to a release of claims for civil penalties for violations of Labor Code sections 201-203 and
19 226(a) during the PAGA Period that were alleged in the Action or that reasonably could have been
20 alleged based on the facts alleged in the Action. *Id.* § 6.3. Settlement Class Members are subject to a
21 release of Section 226(a) claims arising during the Wage Statement Period that were alleged in the
22 Action or that reasonably could have been alleged based on the facts alleged in the Action and Section
23 201-203 claims arising during the Class Period that were alleged in the Action or that reasonably could
24 have been alleged based on the facts alleged in the Action. *Id.* § 6.2.¹

25 **LEGAL STANDARD**

26 Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is
27 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice

28

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

has been distributed to class members for their comment or objections. As the Manual for Complex Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation”:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears 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.

Manual for Complex Litigation (Third) § 30.41.

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

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:

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

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

DISCUSSION

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

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

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

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where counsel have conducted thorough investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528 (“So long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the 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; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 10-11. 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 the relevant numbers of individuals and relevant wage statements, among other things—enabling Plaintiff to assess the full 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.*

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

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendant to pay at least \$410,000.00. Agreement § 5.1. This is an excellent result for Class Members. This amounts to approximately 24.17% of Defendant’s potential liability and is an excellent result for Class Members. Yang Decl. ¶ 5.

To wit, Plaintiff contended that wage statement 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 class member. Yang Decl. ¶ 5. Plaintiff also contended PAGA penalties under Section 2699(f) result in up to \$100 per violation. *Id.* With respect to late payment claims, Plaintiff contended that late paid wages resulted in Section 203 penalties of up to 30 days wages. *Id.*

Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with respect to wage statement liability, Defendant contended that (i) liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations and (ii) PAGA penalties in any event would be subject to discretionary reductions. *Id.* Likewise, with respect to untimely payment liability, Defendant contended that it would not be subject to Section 203 penalties, based on a good faith defense. *Id.*

While the Parties disagree on the application of the law to the facts, each Party recognized in negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.

1 Ultimately, the Gross Settlement Amount of \$410,000 secures 24.17% of the potential total recovery of
2 approximately \$1,695,961.54. *Id.* ¶ 5.²

3 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
4 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
5 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
6 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
7 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
8 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
9 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
10 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
11 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
12 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
13 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
14 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
15 action settlement of approximately 15% of the potential recovery was fair and reasonable).

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

22 Class Members would not need to do anything to receive their share of settlement funds. This
23 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
24 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the
25
26

27 ² The total recovery includes approximately \$175,961.54 in waiting time penalties under Section 203,
28 \$750,000.00 in Section 226(e) penalties, and \$770,000.00 in Section 2699(f) penalties under PAGA.
Yang Decl. ¶ 5.

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, Settlement Class Members are only subject to a release of Section 226 claims during the Wage Statement Period and Sections 201-203 claims during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action. Agreement § 6.2. Similarly tailored, Aggrieved Employees are subject to a release of claims for civil penalties for violations of Section 226 and Sections 201-203 during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action. *Id.* § 6.3. Only Plaintiff is subject to a general release. *Id.* § 6.4.

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.”). 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 Data”), within seven days of a Preliminary Approval Order. Agreement § 3.2. Within 14 days of a Preliminary Approval Order, 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 Class Data. *Id.* §§ 3.3, 3.4. 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.* § 3.4. 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 \$410,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$136,666.66) and litigation costs are not expected to exceed \$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 \$10,000.00. *Id.* ¶ 5.1.3. The PAGA Penalty Fund will be \$40,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$30,000.00) would constitute the LWDA Payment. *Id.*³

1. Each Late Pay Class Member, on Average, Would Receive More than \$600 and Each Wage Statement Class Member Would Receive More than \$20 per Wage Statement.

After deducting any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members. Agreement § 5.2. 20% of the “Net Settlement Amount” would be allocated to the Late Pay Class Members; 80% of the Net Settlement Amount would be allocated to the Wage Statement Class Members. *Id.* As the Action did not allege or seek unpaid wages, all payments to Class Members shall be classified for tax reporting purposes as penalties. *Id.* § 5.5.

As a result, it is expected that, on average, each Late Pay Class Member would be allocated at least \$633.88 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. It also is expected that, on average, each Wage Statement Class Member would be allocated at least \$20.09 per relevant wage statement received (again *after* all requested payments from the Gross Settlement Amount). *Id.* The amounts paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Late

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

1 Pay Class Member may increase or decrease depending on his or her number of relevant wage
2 statements during the Late Pay Class Period. *Id.*⁴

3 None of the settlement funds will revert to Defendant. Agreement § 5.1. The principal for any
4 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
5 Fund in the name of the Class Member. *Id.* § 5.4.

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

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

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

24 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
25 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
26 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that

27
28 ⁴ 25% of the PAGA Penalty Fund would be allocated among Aggrieved Employees on a pro rata basis
based on the number of relevant wage statements for each Aggrieved Employee. Agreement § 5.1.4.

1 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the
2 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide
3 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
4 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
5 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
6 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%
7 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
8 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

13 3. The Proposed Class Representative Award Is Reasonable.

14 Plaintiff and proposed Class Representative Jordan McDonald requests a modest Class
15 Representative Award of \$10,000.00. The request is reasonable in light of the general release that the
16 Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is
17 appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Jordan McDonald
18 (“McDonald Decl.”) ¶¶ 2-3.

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

24 In addition to the invaluable services that Plaintiff provided, he also took a significant risk, both
25 professionally and monetarily. McDonald Decl. ¶ 4. Because the alleged claims involve the payment of
26 costs to the prevailing party, Plaintiff could have possibly faced paying Defendant’s costs had Defendant
27 prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential
28 employers that may be less willing to hire an individual who has filed suit against a prior employer.

1 Plaintiff took this risk upon himself and the whole class benefited. Class Members did not have to file
2 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to
3 face potential prejudice in future employment.

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

5 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
6 quoted Administration Costs not to exceed \$10,000.00 to send notices and administer the settlement.
7 The Administration Costs are reasonable and should be approved.

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

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

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

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

23 Class Members are identifiable from Defendant’s records. The class definition “is precise,
24 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
25 Indeed, there are approximately 61 Late Pay Class Members. Agreement § 1.5.1. There are more than
26

27 ⁵ 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.

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

B. The Class Establishes a Community of Interest.

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

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

Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure paid final wages late and furnished unlawful wage statements. With respect to typicality, Plaintiff—exactly like other members of the Class—was compensated based on Defendant’s common final pay practices and provided wage statements based on Defendant’s common payroll practices. McDonald Decl. ¶ 2.

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

The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler 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).

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

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

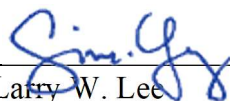
8 From the inception of the case, Class Counsel has zealously represented the interests of the
9 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
10 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
11 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-8;
12 Yang Decl. ¶¶ 9-13; Marder Decl. ¶¶ 10-11.

13 **CONCLUSION**

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

21 DATED: December 22, 2022

DIVERSITY LAW GROUP, P.C.

22 By: 
23 Larry W. Lee
24 Simon L. Yang
25 Attorneys for Plaintiff
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2

4
57
8

9

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21

2

24
25
26
27

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 22, 2022, at Los Angeles, California.


Erika Mejia