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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ALONZO SMITH, DAWN WILLIAMS, and
ROMERO REYES, as individuals and on behalf
of all others similarly situated, and as private
attorneys general,

Plaintiffs,

vs.

CLEAN HARBORS ENVIRONMENTAL
SERVICES, INC., a Massachusetts corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00292526

[Hon. Lauri A. Damrell, Department 28]

**PLAINTIFFS' 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 Kyle Nordrehaug; Declaration of Melissa A.
Huether; Declaration of Alonzo Smith;
Declaration of Dawn Williams; Declaration of
Romero Reyes; [Proposed] Order]*

Date: November 4, 2022
Time: 9:00 a.m.
Department: 28

Complaint Filed: January 14, 2021

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17 Attorneys for Plaintiff Reyes

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

2 **PLEASE TAKE NOTICE** that on November 4, 2022, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 28 of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiffs Alonzo Smith, Dawn Williams, and Romero Reyes will and hereby move
5 for an Order:

- 6 1. approving the Joint Stipulation of Class and Representative Action Settlement Agreement
7 (the “Agreement”) attached as Exhibit 1 to the concurrently filed Declaration of Simon L.
8 Yang;
- 9 2. conditionally certifying the following Class for settlement purposes only: all current and
10 former non-exempt employees of Defendant, Clean Harbors Environmental Services, Inc., in
11 the State of California from April 6, 2017, to February 2, 2022 (the “Class Period”);
- 12 3. appointing Plaintiffs as the Class Representatives and Larry W. Lee and Simon L. Yang of
13 Diversity Law Group, P.C.; Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
14 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP; and Joseph Lavi of Lavi &
15 Ebrahimian, LLP as Class Counsel;
- 16 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
17 Settlement Amount in the amount of \$3,000,000.00, the amounts requested for the
18 Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment, Class Representative Service Payment, PAGA Civil Penalty Payment, and the
20 allocation of payments to Class Members appear to be within the range of reasonableness for
21 a settlement that could ultimately be given final approval;
- 22 5. appointing Phoenix Settlement Administrators as the Administrator;
- 23 6. approving the distribution of the Notice of Settlement of Class and Representative Action
24 attached as Exhibit A to the Agreement; and
- 25 7. scheduling a Final Approval Hearing.

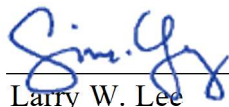
26 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
27 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
28 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the

1 procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt
2 out of, or object to the settlement.

3 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
4 and proposed Notice of Settlement of Class and Representative Action, the supporting Declarations of
5 Larry W. Lee, Simon L. Yang, Kyle Nordrehaug, Melissa A. Huether, Alonzo Smith, Dawn Williams,
6 and Romero Reyes, all pleadings and papers on file herein, and any further oral and documentary
7 evidence as may be presented before or at the hearing of this matter.

8 DATED: October 13, 2022

DIVERSITY LAW GROUP, P.C.

9
10 By: 
11 Larry W. Lee
12 Simon L. Yang
13 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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1 **SUMMARY OF MOTION**

2 Plaintiffs Alonzo Smith, Dawn Williams, and Romero Reyes each independently sued
3 Defendant, Clean Harbors Environmental Services, Inc. for Labor Code violations by their former
4 employer. On a classwide basis and as proxies for the State of California pursuant to the Labor Code
5 Private Attorneys General Act of 2004 (“PAGA”), Plaintiffs sought to remedy Defendant’s alleged
6 failure to pay wages, including minimum wages, overtime wages, prevailing wages, and reporting time
7 pay; failure to provide compliant meal and rest breaks and pay related premiums; failure to timely pay
8 either earned wages during employment or final wages upon the separation of employment; failure to
9 provide accurate wage statements; failure to reimburse expenses; failure to provide suitable seating;
10 failure to keep time and pay records or produce requested employment records; and resulting violations
11 of the Unfair Competition Law.

12 On February 2, 2022, Defendant and all three Plaintiffs attended a global mediation. Based on
13 their own independent investigations and evaluations, the Parties have agreed to a classwide resolution.
14 The Joint Stipulation of Class and Representative Action Settlement Agreement (“Agreement”), which
15 is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to
16 pay at least \$3,000,000.00 for the classwide settlement of claims through February 2, 2022. Plaintiffs
17 and their counsel believe the settlement is an exceptional result for the Class; **the settlement requires**
18 **Defendant to pay approximately \$1,702.61, on average, per Class Member.** Significantly, the entire
19 settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

20 Although Plaintiffs and their counsel are confident that litigation of the claims would result in a
21 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
22 specific risks that class certification could be denied, liability could not be established at trial, or the
23 applicable law could change. The Parties and their counsel are of the opinion that the settlement on the
24 terms set forth in the Agreement would be fair, reasonable, and adequate.

25 As the settlement would be in the best interests of the Class, Plaintiffs respectfully request that
26 the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On July 28, 2020, Plaintiff Williams filed a PAGA letter with the Labor and Workforce Development Agency (“LWDA”), and on August 17, 2020, Plaintiff Williams filed a class action complaint against Defendant. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2; Agreement ¶¶ 36-37. Separately, on November 20, 2020, Plaintiff Smith filed a PAGA letter with the LWDA, and on January 14, 2021, Plaintiff Smith initiated this class action. Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”) ¶¶ 6-9; Agreement ¶¶ 38-40. On September 23, 2021, Plaintiff Reyes filed a PAGA letter with the LWDA and filed a separate class action. Declaration of Melissa A. Huether (“Huether Decl.”) ¶ 2; Agreement ¶¶ 41-42.

Plaintiffs and Defendant met and conferred about the alleged claims. Yang Decl. ¶ 2. Class Counsel then continued investigating the alleged claims. *Id.* ¶ 3. For example, on or about April 29, 2021, Plaintiff Williams served initial written discovery. *Id.* ¶ 2. Class Counsel continued analyzing any defenses raised by Defendant, and the Parties supplemented formal discovery by continuing to exchange information and documentation pursuant to informal methods to assist them in exploring the possibility of a mediated resolution. *Id.* ¶ 3. Defendant’s willingness to supplement formal discovery with informal discovery enabled Plaintiffs to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, Plaintiffs and Defendant agreed to schedule a global mediation. *Id.*

On February 2, 2022, the Parties attended mediation with Louis Marlin, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang Decl. ¶ 4. Though the Parties were not able to resolve the matter at mediation, the Parties continued negotiations. *Id.* With the mediator’s assistance, the Parties ultimately were able to negotiate a global resolution as set forth in the Joint Stipulation of Class and Representative Action Settlement Agreement. *Id.* Ex. 1 (the “Agreement”).

As part of the settlement terms, on or about July 28, 2022, Plaintiff Smith filed a Second Amended Class Action Complaint adding Plaintiff Williams and Plaintiff Reyes and the allegations each Plaintiff alleged in their various matters.

SUMMARY OF PROPOSED SETTLEMENT

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 from April 6, 2017 to February 2, 2022. Agreement ¶¶ 3, 8. The Class Period is from April 6, 2017 to February 2, 2022. *Id.* ¶ 10.¹ There are approximately 1,762 Class Members. Yang Decl. ¶ 5.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$3,000,000.00. Agreement ¶ 17. From the Gross Settlement Amount, the Parties will request that the Court approve a PAGA Civil Penalty Payment, Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment. *Id.* ¶ 21. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* ¶¶ 18, 21, 46. *After* all requested payments from the Gross Settlement Amount, it is expected that, on average, each Class Member would be allocated \$1,037.17 in Settlement Payments and employee shares of PAGA Penalties. Yang Decl. ¶ 7.

III. Released Claims

Only Plaintiffs are subject to a general release. Agreement ¶ 59(c), (d). Participating Class Members are not and release only “all claims and causes of action, arising during the Class Period, that were or could have been alleged based on the allegations in the original and amended complaints in the Action” *Id.* ¶ 30. For PAGA, “all claims and causes of action, arising during the PAGA Period, that were or could have been alleged based on the allegations in the original and amended complaints in the Action, and in all of the PAGA Letters in the Action, that seek civil penalties and other relief under the PAGA ...” are released. *Id.* ¶ 31.

¹ All Class Members employed during the PAGA Period are also PAGA Members. Agreement ¶ 26. The PAGA Period is from July 28, 2019, through February 2, 2022. *Id.* ¶ 27. There are approximately 1,309 PAGA Members. Yang Decl. ¶ 5.

LEGAL STANDARD

Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice 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, as here, they have been involved in 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, as here, 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 Plaintiffs’ counsel and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiffs’ counsel have extensive class action and litigation experience

1 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
2 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Nordrehaug Decl. ¶¶ 3-5, Ex. 1; Huether Decl. ¶¶ 5-9.
3 Each side has apprised the other of their respective factual contentions and legal theories, and each side
4 has considered the other’s contentions and theories. Defendant provided the relevant numbers of
5 individuals, workweeks, shifts of varying lengths, and premiums paid, for example, among other
6 things—enabling Plaintiffs to assess the full value of Class Members’ claims and further enabling
7 negotiations to take place between the Parties. Yang Decl. ¶ 3. As further discussed below, the
8 settlement is the result of extensive arm’s length negotiations between the Parties and their counsel. *Id.* ¶
9 9.

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

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

12 The Agreement requires Defendant to pay \$3,000,000.00—or approximately \$1,702.61, on
13 average, per Class Member. Yang Decl. ¶ 5. Plaintiffs contend that this is an excellent result for Class
14 Members. Although actual underpayments of minimum wages, overtime wages, prevailing wages,
15 reporting time pay, or missed meal and rest break premiums amounted to comparatively smaller sums,
16 Plaintiffs argued that underpaid wages resulted in Labor Code section 203 penalties of up to 30 days
17 wages. *Id.* With respect to meal and rest break violations, Plaintiffs contended that Defendant were
18 liable for an additional hour of regular rate wages under Section 226.7. *Id.*² With respect to wage
19 statement violations, Plaintiffs contended that Defendant were liable for up to \$100 in penalties per
20 wage statement under Section 226(e). *Id.* Under PAGA, Plaintiffs contended that Defendant also would
21 be liable for an additional \$50 per pay period under Section 558 and \$100 per pay period under Sections
22 210 and 2699(f). *Id.*

23 Defendant contested the merits and denied they were liable at all. Yang Decl. ¶ 6. Moreover,
24 even if Plaintiffs prevailed on the merits, Defendant contested the extent of liability. *Id.* For example,
25 with respect to wage statement liability, Defendant contended that (i) liability under Section 226(e)
26 would be subject to additional defenses requiring proof of injuries resulting from knowing and
27 intentional violations. *Id.* Likewise, with respect to PAGA liability, Defendant contended that PAGA
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² Except as otherwise noted, all “Section” references are to the Labor Code.

1 penalties would be subject to discretionary reductions. *Id.* With respect to meal and rest break violations,
2 Defendant contended that (i) there were no violations, (ii) if there were, they were individualized issues
3 not amenable to a representative proceeding, and (iii) employees in any event were already paid
4 premiums. *Id.* With respect to liability from underpaid wages, Defendant contended that they would not
5 be subject to Section 203 penalties, based on a good faith defense. *Id.*

6 While the Parties disagree on the application of the law to the facts, each Party recognized in
7 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
8 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
9 Ultimately, Plaintiffs argued that a representative trial would result in a total potential class recovery of
10 at least \$27,723,077.20—which included \$4,231,327.20 in penalties under Section 203, \$5,236,000.00
11 in penalties under Section 226(e), \$6,085,250.00 in penalties under Section 558, and \$12,170,500.00 in
12 penalties under either Section 210 or Section 2699(f). *Id.* Plaintiffs contend that the Gross Settlement
13 Amount of \$3,000,000.00—or 10.82% of the potential class recovery—is an excellent result. *Id.*

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

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

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

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

9 As discussed above, only Plaintiffs are subject to a general release. Agreement ¶ 59(c), (d).
10 Participating Class Members are only subject to a release of claims during the Class Period expressly
11 pleaded in the Action and all other claims that could have been pleaded based on the allegations in the
12 Action. *Id.* ¶ 30. Plaintiffs alleged specific claims based on their investigation and discovery in the
13 Action, and any settlement releases also are specific to the facts alleged and investigated. Moreover, the
14 settlement releases apply to claims arising during the Class Period only. The settlement releases are thus
15 appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general
16 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action
17 settlements.”).

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

19 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
20 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
21 provide to the Administrator each Class Member’s last known address, among other information (the
22 “Class Data”), within 10 days of a Preliminary Approval Order. Agreement ¶ 49(a). Within 10 days of
23 receipt of the Class Data, the Administrator would mail the Notice of Proposed Class Action Settlement
24 (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using
25 the last known address for each Class Member, based on the Class List, or an updated address based on
26 the National Change of Address Database. *Id.* ¶ 49(b). Any Class Notice returned to the Administrator
27 as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed
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thereto. *Id.* ¶ 49(d). If no forwarding address is provided, the Administrator would promptly attempt to determine the correct address and then promptly send a 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 \$3,000,000.00. Agreement ¶ 17. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$1,000,000.00) and litigation costs are not to exceed \$50,000.00. *Id.* ¶ 49(b); Yang Decl. ¶ 7. Each Class Representative Service Payment will be no more than \$10,000.00. Agreement ¶ 49(a). Administration Expenses will be no more than \$17,500.00. *Id.* ¶ 49(d). The PAGA Civil Penalty Payment will be \$100,000.00, and pursuant to statute, 75% of the PAGA Civil Penalty Payment (or \$75,000.00) would constitute the LWDA Payment, and 25% of the PAGA Civil Penalty Payment shall be payable to PAGA Members based on the number of weeks worked by the PAGA Member as a percentage of the weeks worked by all PAGA Members during the PAGA Period. *Id.* ¶¶ 19, 25.³

1. Each Class Member, on Average, Would Receive Over \$1,000.

It is expected that, on average, each Class Member would be allocated approximately \$1,037.17 in Settlement Payments and employee shares of PAGA Penalties (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of relevant pay periods during the Class Period. *Id.* After deducting any approved payments for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses, and PAGA Civil Penalty Payment from the Gross Settlement Amount, the entire remainder would be allocated among Participating Class Members.

³ This motion has also been submitted to the LWDA via online submission. Yang Decl. ¶ 14.

1 The Net Settlement Amount shall be paid pro rata to each Participating Class Member based on
2 the number of weeks worked by the Participating Class Member as a percentage of the weeks worked by
3 all Class Members during the Class Period. Agreement ¶ 46(a). 20% of these allocations shall be
4 classified for tax reporting purposes as wages. *Id.* ¶ 46(b).

5 None of the settlement funds will revert to Defendant. Agreement ¶ 17. The principal for any
6 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
7 Fund in the name of the Class Member. *Id.* ¶ 57.

8 **2. The Requested Attorneys' Fees and Expenses Payment Is Reasonable.**

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

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

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

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, Plaintiffs 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 Service Payment Is Reasonable.

14 Plaintiffs and proposed Class Representatives Alonzo Smith, Dawn Williams, and Romero
15 Reyes each request a modest Class Representative Service Payment of \$10,000.00. The request is
16 reasonable in light of the general release that the Agreement requires of Plaintiffs but not of any other
17 Class Members. Independently, the request is appropriate in recognition of Plaintiffs’ efforts on behalf
18 of the Class. Declaration of Dawn Williams (“Williams Decl.”) ¶¶ 2-3; Declaration of Alonzo Smith
19 (“Smith Decl.”) ¶¶ 4-8; Declaration of Romero Reyes (“Reyes Decl.”) Decl. ¶¶ 2-3.

20 As part of her duties as the Class Representative, Plaintiffs provided all necessary information
21 and evidence that resulted in this settlement. Williams Decl. ¶¶ 2-3; Smith Decl. ¶ 6; Reyes Decl. ¶¶ 2-3.
22 Plaintiffs met and conferred with Class Counsel on a number of occasions to discuss the case. Williams
23 Decl. ¶ 3; Smith Decl. ¶¶ 10, 12; Reyes Decl. ¶ 3. Plaintiffs provided information and documents to
24 Class Counsel and made themselves available to answer any questions during litigation. *Id.* Ultimately,
25 Plaintiffs’ efforts secured an exceptional result for the Class.

26 In addition to the invaluable services that Plaintiffs provided, they each also took a significant
27 risk, both professionally and monetarily. Williams Decl. ¶ 4; Smith Decl. ¶ 9; Reyes Decl. ¶ 4. Because
28 the alleged claims involve the payment of costs to the prevailing party, Plaintiffs could have possibly

1 faced paying Defendant’s costs had Defendant prevailed in the action. Furthermore, Plaintiffs risk
2 prejudice in the future from other potential employers that may be less willing to hire an individual who
3 has filed suit against a prior employer. Plaintiffs took this risk upon themselves—and the whole class
4 benefited. Class Members did not have to file individual lawsuits and bear the risks of payment of costs
5 if they did not prevail, nor did they have to face potential prejudice in future employment.

6 **4. The Administration Expenses Are Reasonable.**

7 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
8 quoted Administration Expenses not to exceed \$17,500.00 to send notices and administer the settlement.
9 Agreement ¶ 49(d). The Administration Expenses are reasonable and should be approved.

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

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

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

27 ⁴ Defendants expressly reserve their objections and do not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

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

2 Class Members are identifiable from Defendant’s records. The class definition “is precise,
3 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
4 Indeed, there are approximately 1,762 Class Members. Yang Decl. ¶ 5. Numerosity thus is sufficiently
5 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
6 number is required as a matter of law for the maintenance of a class action” and citing examples in
7 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
8 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

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

14 **1. Plaintiffs’ Claims Are Typical of Those of the Class.**

15 Plaintiffs allege that Defendant, as a matter of their corporate policy, practice, or procedure,
16 underpaid various wages based on Defendant’s failures to pay reporting time pay, prevailing wages, or
17 the regular rate of pay, failed to provide meal and rest breaks, and failed to furnish lawful wage
18 statements. With respect to typicality, Plaintiffs—exactly like other members of the Class—were
19 compensated based on Defendant’s common payroll practices, worked under Defendant’s common
20 break practices, and were provided Defendant’s uniform wage statements. Williams Decl. ¶ 2; Smith
21 Decl. ¶ 5; Reyes Decl. ¶ 2.

22 **2. Plaintiffs’ Claims Raise Common Questions of Law and Fact.**

23 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
24 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
25 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
26 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
27 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
28 462, 473 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*

1 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
2 Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide
3 impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery*
4 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987). For example, Plaintiffs allege Defendant's common
5 payroll practices and calculations resulted in regular rate of pay miscalculations. Common proof of those
6 practices predominate on a classwide basis.

7 **3. Plaintiffs and Their Counsel Adequately Represent the Class.**

8 With respect to adequate representation, Plaintiffs do not have any interests adverse to the Class,
9 and no such issues have been raised or presented. Williams Decl. ¶ 3; Smith Decl. ¶¶ 4-7; Reyes Decl. ¶
10 3. Plaintiffs have taken all necessary steps to represent the interests of the Class, including by providing
11 information and documents to Class Counsel, making herself available to discuss the claims, providing
12 wage statements that she was issued, and answering questions about how she was paid or what her wage
13 statements show or meant. *Id.* Plaintiffs understand that they are responsible to the Class with respect to
14 trying the case, appearing in court, and working with Class Counsel. *Id.* She is willing to act as a
15 fiduciary for the Class and remains willing to devote her time to this lawsuit for the benefit of the Class.
16 *Id.* For such reasons, Plaintiffs have adequately represented the Class Members.

17 From the inception of the case, Class Counsel has zealously represented the interests of the
18 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
19 Representative. Lee Decl. ¶ 2; Yang Decl. ¶ 13; Nordrehaug Decl. ¶ 12; Huether Decl. ¶ 12. Class
20 Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other
21 class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9; Yang Decl. ¶¶ 9-13;
22 Nordrehaug Decl. ¶¶ 3-5, Ex. 1; Huether Decl. ¶¶ 5-9.

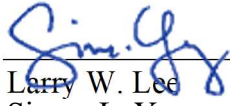
23 **CONCLUSION**

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

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

3 DATED: October 13, 2022

DIVERSITY LAW GROUP, P.C.

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5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff Williams
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