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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOSE CABALO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

JONES LANG LASALLE AMERICAS,
INC., a Maryland corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00044322-CU-OE-CTL

(Assigned to the Hon. Ronald F. Frazier, Dept. C-65)

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

Date: July 29, 2022

Time: 8:30 a.m.

Dept.: C-65

Complaint Filed: December 3, 2020

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

2 **PLEASE TAKE NOTICE** that on July 29, 2022, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Ronald F. Frazier, judge presiding, in Department
4 C-65 of the above referenced Court, located at 330 W. Broadway, San Diego, California 92101,
5 Plaintiff Jose Cabalo (“Plaintiff”) will seek an Order: (1) approving the Joint Stipulation of Class
6 Action and PAGA Settlement and Release (“Stipulation” or “Settlement Agreement”)¹ in this
7 matter; (2) conditionally certifying the following Class for settlement purposes only: “all hourly-
8 paid, non-exempt persons employed by Defendant in the State of California at any time during
9 the Class Period who received differential shift pay and, in that same workweek, either worked
10 overtime (including double time) and/or used personal (sick) time”; (3) appointing Plaintiff Jose
11 Cabalo as the Class Representative and Larry W. Lee and Mai Tulyathan of Diversity Law
12 Group, P.C., and William Marder of Polaris Law Group as Class Counsel; (4) preliminarily
13 approving the Stipulation and the total Maximum Settlement Amount in the amount of Nine
14 Hundred Fifty Thousand Dollars (\$950,000.00); (5) finding on a preliminary basis that the
15 Stipulation appears to be within the range of reasonableness of a settlement, including the
16 amount of the PAGA penalties, Class Representative Service Award, Class Counsel’s fees and
17 costs, settlement administration costs, and allocation of payments to Class Members, that could
18 ultimately be given final approval by this Court; (6) approving the Notice of Class Action and
19 PAGA Settlement and Release to be sent to Class Members; (7) appointing Phoenix Settlement
20 Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness
21 and Final Approval hearing.

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

25 The basis for this Motion, filed without any opposition from Defendant Jones Lang
26 LaSalle Americas, Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and

27 _____
28 ¹ The Settlement Agreement is attached as **Exhibit A** to the Declaration of Larry W. Lee.

1 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
2 Class Members to participate in, opt-out of, or object to the settlement.

3 This Motion will be based on the attached memorandum of points and authorities, the
4 Stipulation and the proposed Notice of Class Action and PAGA Settlement and Release, and the
5 supporting Declarations of Larry W. Lee, William L. Marder, and Plaintiff Jose Cabalo, and
6 upon the oral arguments of counsel (should there be any) and on the complete records and file
7 herein

8
9 DATED: July 6, 2022

DIVERSITY LAW GROUP, P.C.

10
11 By: 

Larry W. Lee

Mai Tulyathan

12
13 Attorneys for Plaintiff, the Class, and Aggrieved
14 Employees

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative action seeking unpaid wages and
3 penalties. Plaintiff Jose Cabalo (“Plaintiff”) brought his claims based on a class-wide basis for
4 violation of various Labor Code sections. Defendant Jones Lang LaSalle Americas, Inc.
5 (“Defendant”) denies each, every, and all of the allegations of the Complaint.

6 Prior to the settlement of this action, Plaintiff and Defendant (collectively, the “Parties”)
7 thoroughly investigated the facts relating to the claims alleged in the Complaint and engaged in a
8 thorough study of the legal principles applicable to the claims asserted against Defendant.
9 Defendant provided a voluminous amount of records related to its employment practices and
10 policies, as well as time and pay records for a 15% sample of the Class. Thereafter, the Parties
11 commenced settlement negotiations through a mediator and were ultimately able to reach the
12 current settlement. **Significantly, this entire amount is non-reversionary, such that no monies**
13 **will revert back to Defendant.**

14 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
15 risks and uncertainty of class certification and the merits of this case.

16 Although Plaintiff and his counsel are confident that they could prevail on class
17 certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation
18 and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish
19 liability. Based on their own independent investigation and evaluation, the Parties and their
20 respective counsel are of the opinion that the settlement for the consideration and on the terms
21 set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release
22 (“Stipulation” or “Settlement Agreement”)² is fair, reasonable, and adequate and is in the best
23 interests of the Class and Defendant in light of all known circumstances and the expenses and
24 risks inherent in litigation.

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

27 _____
28 ²

1 **II. BACKGROUND**

2 On or about November 3, 2020, Plaintiff sent written notice to the California Labor &
3 Workforce Development Agency (“LWDA”) of Defendant’s violations of the Labor Code
4 sections described herein, pursuant to Labor Code § 2699.3. Declaration of Larry W. Lee (“Lee
5 Decl.”) ¶ 2.

6 On December 3, 2020, Plaintiff filed a wage and hour class and Private Attorneys
7 General Act (“PAGA”) representative action complaint, alleging causes of action for: (1)
8 violation of California Labor Code §§ 510, 558, and 1194; (2) violation of California Labor
9 Code §§ 201-203; (3) violation of California Labor Code § 226(a); (4) violation of California
10 Business & Professions Code § 17200, *et seq.*; and (5) violation of Labor Code § 2698, *et seq.*
11 *Id.* ¶ 3.

12 On October 29, 2021, the Parties attended a full-day mediation with experienced wage
13 and hour mediator the Louis Marlin. Lee Decl. ¶ 5. In advance of the mediation, Defendant
14 provided Plaintiff with the following information via informal discovery: over 5,200 pages of
15 documents, including Defendant’s employment policies, practices, and procedures; and time and
16 pay records for a 15% sample of the Class. *Id.* ¶ 4.

17 After arm’s-length negotiation during the mediation and subsequent discussions, the
18 Parties reached a resolution of the action in its entirety. Lee Decl. ¶ 5.

19 **III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

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

24 Approval of class action settlements involves a two-step process. First, counsel
25 submits the proposed terms of settlement and the court makes a preliminary
26 fairness evaluation. If the preliminary evaluation of the proposed settlement does
27 not disclose grounds to doubt its fairness or other obvious deficiencies, such as
28 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.

1 (Fed. Jud. Ctr., 3rd ed. 1995).

2 Thus, the preliminary approval by the trial court is simply a conditional finding that the
3 settlement appears to be within the range of acceptable settlements. As Professor Newberg
4 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
5 concerning a tentative settlement proposal may vary. The court may find that the settlement
6 proposal contains some merit, is within the range of reasonableness required for a settlement
7 offer, or is presumptively valid subject only to any objections that may be raised at a final
8 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed.
9 2002).

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

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

16 *Id.* at § 11.24.

17 Here, the Parties have reached such an agreement and have submitted to this Court in
18 connection with this Motion a copy of the Settlement Agreement fully setting forth the
19 agreement reached by the Parties. The Settlement Agreement sets forth all terms of the
20 agreement reached by the Parties, which include, among other things, the method for calculating
21 the Class Members’ individual settlements.

22 The parties also may, at the preliminary approval stage, request that the court
23 provisionally approve certification of the class—conditional upon final approval of the
24 settlement. “[P]re-certification settlements are routinely approved if found to be fair and
25 reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk*
26 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached
27 before any “adversary certification,” the court was satisfied that it was “fair, adequate and
28 reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts

1 have employed this practice in the name of judicial efficiency in order to facilitate apparently
2 beneficial settlement proposals”). As further explained by Professor Newberg:

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

9 *4 Newberg on Class Actions* at § 11.26.

10 In addition to such terms as class identification, settlement amount, and payment
11 procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to
12 which the Parties stipulate to the Court’s provisional certification of the Class for the purposes of
13 this settlement only.

14 **A. Proposed Class Definition**

15 The current settlement is being settled on behalf of “all hourly-paid, non-exempt persons
16 employed by Defendant in the State of California at any time during the Class Period who
17 received differential shift pay and, in that same workweek, either worked overtime (including
18 double time) and/or used personal (sick) time.” Stipulation ¶ 5. There are approximately 1,050
19 individuals that comprise the Class. Stipulation ¶ 76. Should the number of Class Members
20 exceed 1,050 individuals by more than five percent (5%) (i.e. more than 1,103), the Maximum
21 Settlement Amount shall be increased by the difference that the number of Class Members
22 exceeds 5%. *Id.* For example, if the number of Class Members exceeds 1,050 by 7%, the
23 Maximum Settlement Amount shall increase by 2%. *Id.*

24 **B. Settlement Terms and Evaluation**

25 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
26 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
27 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
28 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
judgment for that of the proponents, particularly where, as here, settlement has been reached
with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms.*

1 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
2 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
3 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
4 *& Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

5 While the recommendations of counsel proposing the settlement are not conclusive, the
6 Court can properly take them into account, particularly where, as here, they have been involved
7 in formal and informal discovery and negotiations for some period of time, appear to be
8 competent, have experience with this type of litigation, and have exchanged substantial evidence
9 from the opposing party. *See Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural*
10 *Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation
11 process is preserved, however, a strong initial presumption of fairness attaches to the proposed
12 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
13 are most closely acquainted with the facts of the underlying litigation”).

14 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
15 and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a
16 number of wage and hour class actions and have extensive litigation experience. Lee Decl. ¶¶ 26-
17 31; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 7-14. Each side has apprised the
18 other of their respective factual contentions, legal theories and defenses, resulting in negotiations
19 taking place between the Parties. Lee Decl. ¶ 5.

20 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
21 face potential liability of up to approximately \$2,070,046 for Plaintiff’s class claims, which is
22 based on approximately \$240,846.40 in unpaid wages and \$1,829,199.60 in derivative penalties.
23 Lee Decl. ¶ 14. Plaintiff was able to estimate the potential damages and penalties based on data
24 provided by Defendant, including the number of employees in the putative class and the number
25 of wage statements at issue. *Id.*

26 With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated that
27 Defendant could face civil penalties of up to a maximum \$1,237,900 if Plaintiff were successful
28 at trial, and without any reduction by the Court. *Id.* ¶ 15.

1 Thus, based on the data provided by Defendant, Plaintiff's counsel estimated total class
2 and PAGA penalties to be approximately \$3,307,946. *Id.* ¶ 16.

3 Even assuming Plaintiff prevailed on his PAGA claim, the Court still has discretion to
4 reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to
5 award PAGA penalties where "if, based on the facts and circumstances of the particular case, to
6 do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
7 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal.
8 App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court
9 reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt
10 at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction
11 to be proper. *Id.* at p. 539.

12 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
13 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
14 involved in not prevailing on one or more of the causes of action or theories alleged in the
15 operative Complaint, the possibility of non-certification, and potential for appeals. Lee Decl. ¶¶
16 19, 25, 29. These risks on class certification are compounded by the California Supreme Court's
17 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
18 class certification and subsequently prevailed at trial after eight years of litigation, but the
19 judgment and the certification ruling were reversed by the California Supreme Court after an
20 additional five years of litigation. The case was remanded back to superior court where class
21 certification was denied and plaintiffs' subsequent appeal also was denied.

22 Indeed, numerous courts have held that gross settlements approximating between only
23 8% and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego*
24 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
25 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
26 settlement amounting to only a fraction of the potential recovery does not per se render the
27 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
28 assessed relative to risks of pursuing the litigation to judgment"; noting that whether the

1 settlement is fair and adequate depends on the “the difficulties in proving the case”);
2 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
3 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
4 the Defendants’ potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
5 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
6 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
7 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
8 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
9 approximately 15% of the potential recovery was fair and reasonable). Here, the \$950,000.00
10 gross settlement is approximately 28.7% of the maximum potential damages and statutory
11 penalties.

12 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
13 Action and PAGA Settlement and Release (“Settlement Notice”), should any Class Member
14 wish to pursue his or her own case for the claims being released herein, each Class Member has
15 the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. Stipulation ¶ 28.
16 Moreover, as set forth in the Settlement Notice, Class Members are advised of their right to
17 object to any of the terms contained in the Settlement Agreement. *Id.* ¶¶ 18, 29.

18 **1. Amount and Manner of Distribution of the Compensation to be**
19 **Provided to Class Members Including the Amount, or an Estimate, of**
20 **What Each Class Member Will Receive**

21 The Settlement Agreement provides for Nine Hundred Fifty Thousand Dollars
22 (\$950,000.00) as the Maximum Settlement Amount. Stipulation ¶ 16. The Net Settlement
23 Amount (calculated after deduction of attorneys’ fees (up to \$316,666.67) and costs (up to
24 \$20,000.00), Class Representative Service Award (up to \$10,000.00), PAGA Payment
25 (\$100,000.00), and Settlement Administration Costs (\$5,450.00)³) was estimated to be
26 approximately \$497,883.33. Stipulation ¶¶ 16, 17, 20, 52.b, 52.c, 53. To determine the amount
27 that each Class Member is entitled from the Net Settlement Amount, the Settlement

28 ³ Although the Settlement Agreement allows Settlement Administration Costs of up to \$25,000, the actual
administration costs should not exceed \$5,450.

1 Administrator will first divide the Net Settlement Amount by the combined total number of
2 Workweeks worked by the Class during the Class Period, to arrive at the Workweek Value. *Id.* ¶
3 52.a.i. The Workweek Value will then be multiplied by the individual number of Workweeks
4 worked by each Class Member during the Class Period, to arrive at the Individual Class Payment
5 for that Class Member. *Id.*

6 Separate from the Individual Class Payment, PAGA Members will be entitled to receive
7 an Individual PAGA Payment. The Individual PAGA Payment will be calculated by the
8 Settlement Administrator by dividing the 25% of the PAGA Payment (or \$25,000.00) by the
9 total number of Workweeks worked by PAGA Members during the PAGA Period, to arrive at
10 the PAGA Workweek Value. Stipulation ¶ 52.a.ii. The PAGA Workweek Value will be
11 multiplied by the individual number of Workweeks worked by each PAGA Member during the
12 PAGA Period, to arrive at the Individual PAGA Payment for that PAGA Member. *Id.*

13 Based thereon, on a raw average, each Class Member may recover approximately
14 \$474.17 per person and each PAGA Member may recover approximately \$23.81 per person. Lee
15 ¶ 21. The amount actually paid to each Participating Class Member will increase or decrease
16 depending on his or her number of Workweeks, as well as the number of opt-outs received and
17 fees and costs approved by the Court. Stipulation ¶ 52.a.v. Finally, uncashed checks (upon the
18 expiration date) shall be escheat to the nonprofit organization, Jewish Family Service of San
19 Diego. *Id.* ¶ 52.a.viii.

20 **2. Whether, and Under What Circumstances, Amounts Available for**
21 **Payment in Settlement Might Not Be Paid to Class Members or Might**
Revert to the Defendants

22 None of the settlement funds will revert to Defendant. Stipulation ¶ 52.a.

23 **3. Scope of the Release of Class Members' Claims**

24 As a condition of participating in this class action settlement, Participating Class
25 Members shall waive and release “any and all claims for wages, damages, unpaid costs,
26 penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution,
27 or equitable relief, against any of the Released Parties, that were pled or could have been pled in
28 the PAGA Notice or the Action, based on the factual allegations, circumstances, and primary

rights set forth therein, that arose during the Class Period, including without limitation all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and applicable law for: failure to pay wages (including overtime and double time wages and minimum wages); failure to pay at the appropriate rate of pay including for overtime, double time, and sick leave; failure to pay wages timely during and upon separation of employment; failure to provide legally-compliant wage statements; unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*; and all claims for penalties under PAGA based on the afore-referenced claims during the PAGA Period” (“Released Claims”). Stipulation ¶¶ 26, 48.a. The Class Period is defined as the period of December 4, 2020 through January 27, 2022. *Id.* ¶ 6.

Class Members who timely and validly opt out of the settlement will remain PAGA Members, receive Individual PAGA Payments, be bound by the PAGA Released Claims. Stipulation ¶¶ 14, 21, 23, 26, 28, 48.b. The PAGA Released Claims are “any and all Released Claims that may be asserted under PAGA during the PAGA Period.” *Id.* ¶ 21. The PAGA Period is defined as the period of December 4, 2020 through January 27, 2022. *Id.* ¶ 24.

4. Tax Treatment of Settlement Amounts

The Individual Class Payments shall be allocated as one-third (1/3) wages subject to tax withholding and reported on IRS Form W-2, one-third (1/3) interest and non-wage damages reported on IRS Form 1099, and one-third (1/3) penalties reported on IRS Form 1099. Stipulation ¶ 52.a.vii. Defendant shall be responsible for paying the employer’s share of payroll taxes separately from the Maximum Settlement Amount. *Id.*

The Individual PAGA Payments shall be allocated as one hundred percent (100%) penalties and reported on IRS Form 1099. *Id.*

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. Stipulation ¶ 52.a. This substantially decreases the amount of burden each Class Member must bear in order to receive their settlement share. If a Class

1 Member does not wish to take part in this settlement and be bound by the Released Claims, the
2 Class Member must submit a Request for Exclusion. *Id.* ¶ 28. Class Members who timely and
3 validly submit a Request for Exclusion, however, will still receive Individual PAGA Payments
4 and be bound by the PAGA Released Claims. Stipulation ¶¶ 14, 21, 26, 28, 48.b.

5 **C. Notice to Class Members**

6 Within fifteen (15) calendar days of the preliminary approval of this settlement,
7 Defendant will confidentially transmit to the Settlement Administrator a list containing for each
8 Class Member the following information: full name; last known address, Social Security
9 Number; the number of Workweeks worked during the Class Period, deducting any gaps in
10 employment or leaves of absences; and the number of Workweeks worked during the PAGA
11 Period, deducting any gaps in employment or leaves of absence (“Class List”). Stipulation ¶¶ 4,
12 51.a.

13 Upon receipt of the information and prior to mailing the Notice of Class Action and
14 PAGA Settlement and Release (“Settlement Notice”), the Settlement Administrator shall
15 perform a search based on the National Change of Address Database for information to update
16 and correct for any known or identifiable address changes. Stipulation ¶ 51.a.i. Within fifteen
17 (15) after receiving the Class List from Defendant, the Settlement Administrator shall mail the
18 Settlement Notice to all Class Members via regular First-Class U.S. Mail. *Id.* The Settlement
19 Administrator will re-mail the Settlement Notice to the forwarding address provided for returned
20 notices within seven calendars days of receipt of the returned Settlement Notice. Stipulation ¶
21 51.a.ii. Settlement Notices that are returned without a forwarding address will be re-mailed to a
22 corrected address obtained by the Settlement Administrator after performing a skip-trace or other
23 automated search. *Id.*

24 As set forth in the Settlement Notice, Class Members will be allowed to opt out of the
25 settlement by a certain deadline or object to the settlement in writing. Stipulation ¶¶ 18, 28, 29.

26 **D. Typicality and Adequacy of Representation**

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

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

12 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
13 violated the Labor Code by failing to pay overtime wages, double time wages, and sick pay
14 based on the correct, regular rate of pay, and issuing inaccurate itemized wage statements.
15 Declaration of Jose Cabalo (“Cabalo Decl.”) ¶¶ 3-6.

16 In other words, Plaintiff was subjected to the same policy and practice as other Class
17 Members. Thus, Plaintiff’s claims are typical to those of Class Members.

18 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
19 issues been raised or presented. Cabalo Decl. ¶ 7. Plaintiff has taken all necessary steps to
20 represent the interests of the Class, and provided information and documents to his counsel. *Id.* ¶
21 8. Finally, Plaintiff has no relationship of any kind with the Jewish Family Service of San
22 Diego. Cabalo Decl. ¶ 10. For such reasons, Plaintiff has adequately represented the Class
23 Members and will continue to do so.

24 **2. Class Counsel Have Adequately Represented the Class and Have** 25 **Experience with Wage and Hour Class Actions**

26 From the inception of the case, Class Counsel have zealously represented the interests of
27 the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual
28 Class Representative. Further, Class Counsel have been approved as class counsel on a number

1 of prior cases, have litigated numerous other class action cases, and are competent to represent
2 the class. Lee Decl. ¶¶ 26-33; Marder Decl. ¶¶ 7-14. Class Counsel do not have any relationship
3 of any kind with the Jewish Family Service of San Diego. Lee Decl. ¶ 34; Marder Decl. ¶ 6.
4 Finally, Class Counsel has provided notice of this settlement to the LWDA concurrent with the
5 filing of this Motion. Lee Decl. ¶ 35.

6 **E. Costs and Fees**

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

8 California state and federal courts have recognized that an appropriate method for
9 determining award of attorneys' fees is based on a percentage of the total value of benefits to
10 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
11 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,
12 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
13 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
14 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
15 bear the entire burden alone." *Vincent*, 557 F.2d at 769.

16 The common fund doctrine is predicated on the principle of preventing unjust
17 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
18 he may require the passive beneficiaries to compensate those who created the fund. Both
19 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
20 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
21 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
22 been applied "consistently in California when an action brought by one party creates a fund in
23 which other persons are entitled to share." The reasons for applying the common fund doctrine
24 include: "...fairness to the successful litigant, who might otherwise receive no benefit because
25 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage
26 to the others who are entitled to share in the fund and who should bear their share of the burden
27 of its recovery; encouragement of the attorney for the successful litigant who will be more
28 willing to undertake and diligently prosecute proper litigation for the protection or recovery of

1 the fund if he is assured that he will be properly and directly compensated should his efforts be
2 successful.” *Id.*

3 Indeed, more recently, the California Supreme Court has also now held that the award of
4 attorneys’ fees in common fund wage and hour class action settlements should start with the
5 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
6 overwhelming majority of federal and state courts in holding that when class action litigation
7 establishes a monetary fund for the benefit of the class members, and the trial court in its
8 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
9 of a reasonable fee by choosing an appropriate percentage of the fund created”).

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

15 The Parties have agreed to a payment of a maximum of one-third of the Maximum
16 Settlement Amount (or \$316,666.67) for payment to Class Counsel as attorneys’ fees. The
17 Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this payment should
18 be presumed to be fair.

19 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs in
20 an amount up to \$20,000.00. Class Counsel have, at their own risk, expended costs, for example,
21 to file this instant action, effect service of process, pay mediation costs, and pay other litigation
22 related costs.

23 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and
24 costs being requested by the Parties.

25 **2. Proposed Payment to the Class Representative**

26 Plaintiff Jose Cabalo requests a modest enhancement of \$10,000.00. Stipulation ¶ 52.b.
27 The Class Representative met and conferred with Class Counsel on a number of occasions to
28 discuss the case, provided documents and information to Class Counsel, and reviewed the

1 Settlement Agreement. As part of his duties as Class Representatives Plaintiff provided
2 invaluable information, evidence, and documents that resulted in this settlement. Cabalo Decl. ¶¶
3 8-9. In addition to the invaluable services that he provided, Plaintiff also took a significant risk,
4 both professionally and monetarily, in acting as the Class Representative and seeking benefits on
5 behalf of the Class. Because the claims alleged by the Class Representative involved the
6 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
7 Defendant had he not prevailed in this action.

8 Furthermore, given that future employers are much less likely to hire individuals who
9 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
10 prejudice in the future from other potential employers. Plaintiff assumed these risks and the
11 whole class benefited from these risks taken by Plaintiff. Class Members did not have to file
12 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
13 have to face the potential for retaliation and not getting future employment had they filed a
14 public lawsuit.

15 Finally, as part of this settlement, Plaintiff has executed a general release of his individual
16 claims, including as to Civil Code § 1542, something that the Class Members did not have to
17 provide. Plaintiff's sacrifice for the benefit of the Class further warrants the requested
18 enhancement amount.

19 **3. Settlement Administration Costs**

20 The Parties have agreed to an estimated payment of \$5,450.00 to the Settlement
21 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
22 settlement. Stipulation ¶¶ 30, 53. Phoenix Settlement Administrators is a well-recognized class
23 action settlement administrator. The Parties believe that the administration fee is reasonable and
24 should be approved.

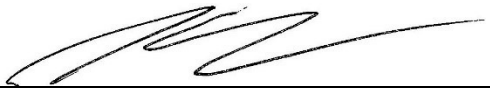
25 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 26 **PRELIMINARY APPROVAL**

27 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
28 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the

1 result of informed, extensive, and arm's-length negotiations conducted by counsel for respective
2 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
3 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
4 settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of
5 Class Action and PAGA Settlement and Release, and set a date for a final approval hearing.

6
7 DATED: July 6, 2022

DIVERSITY LAW GROUP, P.C.

8
9 By: 

Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
Employees

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 July 6, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 13 **3. DECLARATION OF PLAINTIFF JOSE CABALO IN SUPPORT OF**
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **5. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

16 on the interested parties in this action as follows:

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18
19
20
21
22 Spencer C. Skeen
Spencer.skeen@ogletree.com
23 Marlene M. Moffitt
Marlene.moffitt@ogletree.com
24 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
25 4370 La Jolla Village Drive, Suite 990
26 San Diego, CA 92122
Attorneys for Defendant Jones Lang Lasalle Americas, Inc.

27 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
28 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)

1 indicated above or on the attached mailing list. I certify that said electronic transmission was
2 completed and that all pages were received by the party(ies) identified herein or on the attached
3 mailing list.

4 I declare under penalty of perjury under the laws of the State of California that the
5 above is true and correct. Executed on July 6, 2022, at Los Angeles, California.

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8 Erika Mejia
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