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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CELIA STEWART, as an individual and on behalf
of all others similarly situated, and as a private
attorney general;

Plaintiff,

vs.

RITCHIE BROS AUCTIONEERS (AMERICA)
INC., a Washington corporation; RITCHIE BROS
AUCTIONEERS INC., a Washington corporation
upon information and belief, and DOES 1 through
50, inclusive,

Defendants.

Case No. RG21086650

[Hon. Evelio Grillo, Department 21]

**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 Celia
Stewart; [Proposed] Order]*

Date: September 27, 2022
Time: 10:00 a.m.
Department: 21

Reservation ID: 411935024554

Complaint Filed: January 25, 2021

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

2 **PLEASE TAKE NOTICE** that on September 27, 2022, at 10:00 a.m., or as soon thereafter as
3 the matter may be heard in Department 21 of the above-entitled court located at 1221 Oak Street,
4 Oakland, California 94612, Plaintiff, Celia Stewart, 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 Classes for settlement purposes only:
 - 8 a. any current or former non-exempt employee of Defendants Ritchie Bros. Auctioneers
9 (America) Inc. and Ritchie Bros. Auctioneers Inc. in the State of California who was
10 paid sick pay wages in any workweek from April 4, 2021, through February 3, 2022
11 (“Class Period”) in which they also earned non-discretionary remuneration, including
12 profit-sharing pay (“Sick Pay Class”);
 - 13 a. any current or former non-exempt employee of Defendants in the State of California
14 who was paid overtime wages in any workweek during the Class Period in which they
15 also earned non-discretionary remuneration, including profit-sharing pay (“Overtime
16 Class”); and
 - 17 b. any current or former non-exempt employee of Defendants in the State of California
18 during the Class Period (“Wage Statement Class”).
- 19 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
20 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
- 21 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
22 Settlement Amount in the amount of \$228,900.00, the amounts requested for the
23 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
24 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
25 the range of reasonableness for a settlement that could ultimately be given final approval;
- 26 5. appointing Phoenix Settlement Administrators as the Administrator;
- 27 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
28 the Agreement; and

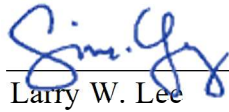
1 7. scheduling a Final Approval Hearing.

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

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

11 DATED: September 1, 2022

DIVERSITY LAW GROUP, P.C.

12 By: 
13 Larry W. Lee
14 Simon L. Yang
15 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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	4
I. The Proposed Settlement Is Fair, Adequate, and Reasonable.	4
A. The Settlement Is Entitled to a Presumption of Fairness.	4
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 Class Member, on Average, Would Receive Nearly \$600.	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 Her 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)	11
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	13
<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, 5, 12
<i>Global Mins. & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	12
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	10
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	13
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981)	13
<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	13
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	10
<i>Sevidal v. Target Corp.</i> , 189 Cal. App. 4th 905 (2010)	12
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	13
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	13
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	4, 5, 10, 12

Federal Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 620 (1997)	12
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1	<i>Bellinghausen v. Tractor Supply Co.</i> ,	
2	2015 WL 1289342 (N.D. Cal. Mar. 20, 2015).....	7
3	<i>Boeing Co. v. Van Gemert</i> ,	
4	444 U.S. 472 (1980).....	10
5	<i>Fernandez v. Victoria Secret Stores LLC</i> ,	
6	2008 WL 8150856 (C.D. Cal. July 21, 2008).....	11
7	<i>Gaskill v. Gordon</i> ,	
8	160 F.3d 361 (7th Cir. 1998)	10
9	<i>Hammon v. Barry</i> ,	
10	752 F. Supp. 1087 (D.D.C. 1990).....	5
11	<i>Hanlon v. Chrysler Corp.</i> ,	
12	150 F.3d 1011 (1998).....	13
13	<i>In re Armored Car Antitrust Litig.</i> ,	
14	472 F. Supp. 1357 (N.D. Ga. 1979).....	5
15	<i>In re Chicken Antitrust Litig.</i> ,	
16	560 F. Supp. 957 (N.D. Ga. 1980).....	5
17	<i>In re Mego Fin. Corp. Secs. Litig.</i> ,	
18	213 F.3d 454 (9th Cir. 2000)	7
19	<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> ,	
20	834 F.2d 677 (7th Cir. 1987)	5
21	<i>National Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
22	221 F.R.D. 523 (C.D. Cal. 2004).....	5
23	<i>Priddy v. Edelman</i> ,	
24	883 F.2d 438 (6th Cir. 1989)	5
25	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> ,	
26	79 F.R.D. 571 (E.D. Pa. 1978).....	5
27	<i>Steinberg v. Carey</i> ,	
28	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)	7
	<i>Villegas v. J.P. Morgan Chase & Co.</i> ,	
	2012 WL 5878390 (N.D. Cal. Nov. 21, 2012)	7
	<i>Vincent v. Hughes Air West, Inc.</i> ,	
	557 F. 2d 759 (9th Cir. 1997)	10

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, Celia Stewart, sues Defendants Ritchie Bros. Auctioneers (America) Inc. and Ritchie Bros. Auctioneers Inc., for alleged underpayments of sick pay wages and overtime wages. Defendants also fail to provide employees with lawful wage statements

The sick pay and overtime claims are based on Defendants’ miscalculation of the regular rate. When employees are paid non-discretionary, non-base compensation, including profit-sharing pay, Defendants does not consider the compensation for purposes of paying sick pay and overtime. The sick pay and overtime violations result in derivative failures to timely pay all wages due during employment and upon termination of employment. The wage statement claim is based on Defendants’ failure to furnish employees with wage statements that itemize and show the name of the legal entity that is the employer. Instead, the wage statements identify “Ritchie Bros. Auctioneers Inc.,” which has not been a California legal entity since 1999.

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 Defendants to pay at least \$228,900.00 for the classwide settlement of claims through February 3, 2022. Plaintiff and her counsel believe the settlement is an exceptional result for the Class; based on the available data at the time of mediation, the settlement requires Defendants to pay more than one-third of the potential liability Plaintiff argued at mediation. Each of approximately 168 Class Members will, on average, receive **\$644.94** (*after* all requested payments from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and her 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.

1 As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that
2 the Court grant this Motion for Preliminary Approval of Class Action Settlement.

3 **RELEVANT BACKGROUND**

4 On January 25, 2021, Plaintiff initiated this class and private attorney general action. Declaration
5 of Simon L. Yang (“Yang Decl.”) ¶ 2. Upon the initiation of the Action, Plaintiff and Defendants met
6 and conferred about the alleged claims. *Id.* On or about July 9, 2021, Plaintiff served initial written
7 discovery. *Id.* Defendants provided Plaintiff with information about various defenses, including those
8 based on a class action settlement in *Ronald Acker v. Ritchie Bros Auctioneers America, Inc. et al.*,
9 Superior Court of the State of California for the County of Tulare Case No. VCU283076. *Id.*

10 Class Counsel continued investigating the alleged claims and also analyzed any defenses raised
11 by Defendants. Yang Decl. ¶ 3. The Parties supplemented formal discovery by continuing to exchange
12 information and documentation pursuant to informal methods to assist them in exploring the possibility
13 of a mediated resolution. *Id.* Defendants’ willingness to supplement formal discovery with informal
14 discovery enabled Plaintiff to evaluate the full scope of Defendants’ potential liability. *Id.* Ultimately,
15 the Parties agreed to schedule a mediation. *Id.*

16 On February 3, 2022, the Parties attended mediation with Steve Pearl, an experienced mediator
17 knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang
18 Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to
19 negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1
20 (the “Agreement”).

21 **SUMMARY OF PROPOSED SETTLEMENT**

22 **I. Class Definition**

23 The proposed settlement class of “Class Members” includes Sick Pay Class Members, Overtime
24 Class Members, and Wage Statement Class Members. Agreement § 1.5. “Sick Pay Class Member”
25 means any current or former non-exempt employee of Defendants in the State of California who was
26 paid sick pay wages in any workweek during the Class Period in which they also earned non-
27 discretionary remuneration, including profit-sharing pay. *Id.* § 1.5.1. “Overtime Class Member” means
28 any current or former non-exempt employee of Defendants in the State of California who was paid

overtime wages in any workweek during the Class Period in which they also earned non-discretionary remuneration, including profit-sharing pay. *Id.* § 1.5.2. “Wage Statement Class Member” means any current or former non-exempt employee of Defendants in the State of California during the Class Period. *Id.* § 1.5.3. The Class Period is from April 4, 2021, through February 3, 2022. *Id.* § 1.7.¹ There are approximately 168 Class Members. *Id.* § 5.1.

II. Settlement Payments

The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of \$228,900.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs Award, and Class Representative Award. *Id.* § 5.2. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* It is expected that, on average, each Class Member would be allocated \$644.94 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8.

III. Released Claims

Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members release “any and all 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.” *Id.* § 6.1. Aggrieved Employees release “any and all claims for civil penalties 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.* § 6.2.

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

¹ All Class Members are also Aggrieved Employees. Agreement § 1.5. The PAGA Period is the same as the Class Period. *Id.* § 1.7.

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.

1 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l*
2 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
3 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
4 through arm's length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
5 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
6 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

7 While the recommendations of counsel proposing the settlement are not conclusive, the Court
8 can properly take them into account, particularly where, as here, they have been involved in thorough
9 investigation, are experienced with this type of litigation, and agreed to a resolution through arm's
10 length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*,
11 221 F.R.D. at 528 ("So long as the integrity of the arm's length negotiation process is preserved,
12 however, a strong initial presumption of fairness attaches to the proposed settlement ... and 'great
13 weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts
14 of the underlying litigation.") (citations omitted). In such circumstances, as here, courts do not substitute
15 their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
16 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990);
17 *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp.
18 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D.
19 Pa. 1978).

20 Here, both Plaintiff's counsel and Defendants' counsel have a great deal of experience in wage
21 and hour class action litigation. Plaintiff's counsel have extensive class action and litigation experience
22 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
23 W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of William L. Marder ("Marder Decl.")
24 ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and
25 each side has considered the other's contentions and theories. Defendants provided the relevant numbers
26 of individuals and relevant pay periods, among other things—enabling Plaintiff to assess the full value
27 of Class Members' claims and further enabling negotiations to take place between the Parties. Yang
28

Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations between the Parties and their counsel. *Id.* ¶ 9.

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

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendants to pay \$228,900.00—or approximately \$1,362.50, on average, per Class Member. Yang Decl. ¶ 6. This amounts to approximately 33.7% of Defendants’ potential liability and is an excellent result for Class Members. Plaintiff contended that underpaid sick pay wages and overtime resulted in late paid wages and a \$100 penalty per pay period under Labor Code sections 204 and 210. Lab. Code §§ 204, 210.² Plaintiff also contended that underpaid sick pay wages and overtime resulted in Section 203 penalties of up to 30 days wages. Lab. Code § 203. Under PAGA, Plaintiff contended that Defendants also would be liable for an additional \$50 per pay period under Section 558.³ With respect to wage statement violations, Plaintiff contended that Defendants were liable for up to \$100 in penalties per wage statement under Section 226(e) and up to \$250 in penalties per wage statement under Section 226.3.

Defendants contested the merits and denied they were liable at all. Yang Decl. ¶ 7. Moreover, even if Plaintiff prevailed on the merits, Defendants contested the extent of liability. *Id.* For example, with respect to wage statement liability, Defendants contended that (i) PAGA penalties would enable up to \$100 (not \$250) per violation, (ii) PAGA penalties in any event be subject to discretionary reductions, and (iii) liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations. *Id.* Likewise, with respect to sick pay and overtime liability, Defendants contended that they 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. Ultimately, based on data available at mediation on February 3, 2022, Plaintiff argued that the potential

² Except as otherwise noted, all “Section” references are to the Labor Code.

³ Actual underpayments of sick pay wages and overtime amount to comparatively smaller sums.

1 total recovery amounted to \$679,950—which included \$408,750 in penalties under Section 226.3,
2 \$163,500 in penalties under Section 226(e), \$7,800 in penalties under Section 210, \$3,900 in penalties
3 under Section 558, and up to \$96,000 in penalties under Section 203. *Id.* Plaintiff contends that the
4 Gross Settlement Amount of \$228,900—more than one third (or 33.7%) of the potential total recovery
5 of \$679,950—is an excellent result. *Id.*

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

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

25 Class Members would not need to do anything to receive their share of settlement funds. This
26 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
27 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the
28

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, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members are only subject to a release of claims during the Class Period expressly pleaded in the Action and all other claims that could have been pleaded based on the facts pleaded in the Action. *Id.* § 6.1. Plaintiff alleged targeted claims in the Action, and any settlement releases also are specifically tailored to the facts alleged. 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.”). Moreover, the settlement releases apply to claims arising during the Class Period only. *Id.* ¶ 6.1.

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendants 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 the Class List, or an updated address based on the National Change of Address Database. *Id.* § 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.* 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)).

1 **C. The Requested Payments and Allocations Are Reasonable.**

2 The Agreement provides for a Gross Settlement Amount of \$228,900.00. Agreement § 5.1. From
3 the Gross Settlement Amount, attorneys' fees will be no more than 33⅓% of the Gross Settlement
4 Amount (or \$76,300.00) and litigation costs are not expected to exceed \$12,500. *Id.* § 5.1.2; Yang Decl.
5 ¶ 7. The Class Representative Award will be no more than \$10,000.00. Agreement § 5.1.3.
6 Administration Costs will be no more than \$6,750.00. *Id.* § 5.1.1. The PAGA Penalty Fund will be
7 \$20,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$15,000.00) would constitute
8 the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to Aggrieved Employees in
9 equal shares. *Id.* § 5.1.4.⁴

10 **1. Each Class Member, on Average, Would Receive Nearly \$600.**

11 It is expected that, on average, each Class Member would be allocated approximately \$644.94
12 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on
13 average to each Class Member may increase, depending on how many Class Members opt out of the
14 class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease
15 depending on his or her number of relevant pay periods during the Class Period. *Id.* After deducting any
16 approved payments for an Attorneys' Fees and Costs Award, Class Representative Award,
17 Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder
18 would be allocated among Settlement Class Members on a pro rata basis.

19 50% of the Net Settlement Amount shall be designated for payments to Wage Statement Class
20 Members, and 50% of the Net Settlement Amount shall be designated for payments to Sick Pay Class
21 Members or Overtime Class Members. Agreement § 5.2. The portion of the Net Settlement Amount
22 designated for payments to Wage Statement Class Members shall be distributed to Settlement Class
23 Members as Individual Class Payments and proportionally allocated among Settlement Class Members
24 based on the number of pay periods worked by each Settlement Class Member during the Class Period.
25 *Id.* § 5.2.1. These allocations shall be classified for tax reporting purposes as penalties. *Id.* The portion
26 of the Net Settlement Amount designated for payments to Sick Pay Class Members and Overtime Class
27 Members shall be distributed to Settlement Class Members as Individual Class Payments and

28

⁴ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 proportionally allocated among Settlement Class Members based on the number of pay periods worked
2 by each Settlement Class Member during the Class Period in which they were paid either sick pay wages
3 or overtime wages in any workweek in which they also earned non-discretionary remuneration,
4 including profit-sharing pay. *Id.* § 5.2.2. 20% of these allocations shall be classified for tax reporting
5 purposes as wages. *Id.*

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

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

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

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

27 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
28 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.

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

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

3. The Proposed Class Representative Award Is Reasonable.

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

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

In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both professionally and monetarily. Stewart Decl. ¶ 4. Because the alleged claims involve the payment of costs to the prevailing party, Plaintiff could have possibly faced paying Defendants’ costs had Defendants prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other

1 potential employers that may be less willing to hire an individual who has filed suit against a prior
2 employer. Plaintiff took this risk upon herself and the whole class benefited. Class Members did not
3 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
4 have to face potential prejudice in future employment.

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

6 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
7 quoted Administration Costs not to exceed \$6,750.00 to send notices and administer the settlement.
8 Agreement § 3.1. The Administration Costs are reasonable and should be approved.

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

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

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

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

24 Class Members are identifiable from Defendants’ records. The class definition “is precise,
25 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).

27 ⁵ 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 Indeed, there are approximately 168 Class Members. Agreement § 5.1. Numerosity thus is sufficiently
2 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
3 number is required as a matter of law for the maintenance of a class action” and citing examples in
4 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
5 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

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

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

12 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
13 underpaid sick pay and overtime and furnished unlawful wage statements. With respect to typicality,
14 Plaintiff—exactly like other members of the Class—was compensated based on Defendants’ common
15 overtime practices and was provided wage statements based on Defendants’ common payroll practices.
16 Stewart Decl. ¶ 2.

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

18 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
19 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
20 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
21 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
22 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
23 462, 473 (1981). Defendants’ conduct is central to the commonality inquiry. *See City of San Jose v.*
24 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
25 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide
26 impact of the Defendants’ policies satisfies the commonality requirement. *See Stephens v. Montgomery*
27 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

1 **3. Plaintiff and Her 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 have been raised or presented. Stewart Decl. ¶ 3. Plaintiff has taken all
4 necessary steps to represent the interests of the Class, including by providing information and
5 documents to Class Counsel, making herself available to discuss the claims, providing wage statements
6 that she was issued, reviewing wage statements while the lawsuit was pending, and answering any
7 questions. *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will
8 continue to do so.

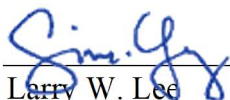
9 From the inception of the case, Class Counsel has zealously represented the interests of the
10 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
11 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
12 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
13 Yang Decl. ¶¶ 9-13; Marder Decl. ¶¶ 10-11.

14 **CONCLUSION**

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

22 DATED: September 1, 2022

DIVERSITY LAW GROUP, P.C.

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

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On September 1, 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 SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF LARRY W. LEE 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. DECLARATION OF CELIA STEWART IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 16 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**
OF CLASS ACTION SETTLEMENT

17 on the interested parties in this action as follows:

18 Michael Droke
19 Dorsey & Whitney LLP
20 701 5th Avenue, Suite 6100
21 Seattle, WA 98104

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 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 September 1, 2022, at Los Angeles, California.



Erika Mejia



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation

Reservation ID: 411935024554	Status: RESERVED
Reservation Type: Motion to Confirm Settlement	Number of Motions: 1
Case Number: RG21086650	Case Title: Stewart VS Ritchie Bros. Auctioneers(America), Inc.
Filing Party: Celia Stewart (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: September 27th 2022, 10:00AM	Confirmation Code: CR-BGKHRSFGQPVBFBQA

Fees

Description	Fee	Qty	Amount
Motion to Confirm Settlement	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX3359	Authorization: 04467G
Payment Date: 2022-08-23	

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