

Larry W. Lee (State Bar No. 228175)
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
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By: Mark Dimas, Deputy Clerk

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

CARL HANEY, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

PENINSULA PACKAGING, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: VCU285695

[Assigned for all purposes to the Hon. Bret
D. Hillman, Dept. 7]

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

Date: March 29, 2022

Time: 8:30 A.M.

Dept.: 7

Complaint Filed: January 25, 2021

FAC Filed: January 6, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on March 29, 2022, at 8.30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Bret D. Hillman, judge presiding, in
4 Department 7 of the above referenced Court located at 221 S. Mooney Blvd., Visalia,
5 California 93291, Plaintiff Carl Haney ("Plaintiff") will and hereby does move this Court for
6 the following relief with respect to the Stipulation of Settlement ("Settlement Agreement")
7 entered into by Plaintiff and Defendant Peninsula Packaging, LLC ("Defendant") (together
8 with Plaintiff, the "Parties"):

9 1. That the Court approve the Settlement Agreement referenced above;

10 2. That the Court conditionally certify the following Settlement Class for settlement
11 purposes only:

12 All non-exempt employees of Defendant in the State of California
13 who were allegedly underpaid sick pay while working on Shifts B
14 or C, and whose employment ended (either voluntarily or
15 involuntarily) at any time from January 25, 2018 to October 27,
2021.

16 3. That Plaintiff Carl Haney be appointed as the Class Representative and Larry W.
17 Lee and Mai Tulyathan of Diversity Law Group, P.C. be appointed as Class Counsel;

18 4. That the Court preliminarily approve the Settlement Agreement and the total
19 Gross Settlement Amount of Three Hundred Fifty Thousand Dollars (\$350,000.00);

20 5. That the Court finds on a preliminary basis that the Settlement Agreement
21 appears to be within the range of reasonableness of a settlement, including the amount of the
22 PAGA penalties, the enhancement payment to the Class Representative, Class Counsel award
23 of attorneys' fees and litigation costs, settlement administration costs, and the allocation of
24 individual settlement payments to Settlement Class Members, that could ultimately be given
25 final approval by this Court;

26 6. That the Court approve the mailing of the proposed Notice of Class Action
27 Settlement ("Class Notice") to be sent to Settlement Class Members;

28 7. That the Court appoint Phoenix Settlement Administrators as the Settlement

1 Administrator; and

2 8. That the Court schedule the matter for a Final Fairness and Final Approval
3 hearing.

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

7 The basis for this unopposed Motion is that the proposed settlement is fair, adequate,
8 and reasonable, and the procedures proposed by the Parties are adequate to ensure the
9 opportunity of Settlement Class Members to participate in, opt-out of, or object to the
10 settlement. This Motion is based on the attached Memorandum of Points and Authorities, the
11 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of
12 Larry W. Lee, Mai Tulyathan, and Plaintiff Carl Haney, upon the oral arguments of counsel
13 (should there be any), and on the complete records and file herein.

14
15 DATED: March 7, 2022

DIVERSITY LAW GROUP, P.C.

16
17 By: 

Larry W. Lee

Mai Tulyathan

18 Attorneys for Plaintiff, the Class, and Aggrieved
19 Employees

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code.
4 Plaintiff Carl Haney (“Plaintiff”) alleges that Defendant Peninsula Packaging, LLC
5 (“Defendant”) failed to pay all paid sick leave owed upon separation of employment in
6 violation of Labor Code §§ 201-203 and 246 and failed to provide accurate itemized wage
7 statements to its employees in violation of Labor Code § 226(a). Based on these violations,
8 Plaintiff asserts class and representative PAGA claims for violations of Labor Code §§ 201-
9 203, 246, 226(a), and 2698, *et seq.* The Parties have reached a class action settlement, the
10 terms of which are reflected in the Parties’ Stipulation of Settlement (“Settlement
11 Agreement”).¹

12 Prior to the settlement of this action, the Parties thoroughly investigated the facts
13 relating to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study
14 of the legal principles applicable to the claims asserted against Defendant. Through the
15 exchange of informal discovery in connection with mediation, Defendant provided necessary
16 data pertaining to the number of class members, the number of former employees, payroll data
17 with the hourly rates of pay for the entire class, as well as documents and information
18 pertaining to Defendant’s policies and practices regarding payment of paid sick leave. The
19 information provided by Defendant allowed Plaintiff to review and analyze the liability and
20 potential exposure. Thereafter, the Parties attended a full day of mediation with mediator
21 Louis Marlin, Esq., after which the Parties were able to reach the current settlement.

22 The terms of the Settlement Agreement provide that Defendant pay a Gross Settlement
23 Amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) to resolve the class and
24 PAGA claims in this case. Significantly, this is a **non-reversionary settlement**, meaning that
25 the entirety of the Gross Settlement Amount will be distributed to the class, such that **no**
26 **remaining monies will revert to Defendant.** Further, no claim forms are required. The

27 _____
28 ¹ The Parties’ Stipulation of Settlement is attached to the Declaration of Mai Tulyathan as
 Exhibit A.

following represents the key terms of the settlement:

- Gross Settlement Amount of \$350,000.00;
- Class size of 108 individuals in the Settlement Class;
- Enhancement award payment to the Class Representative of up to \$10,000.00;
- Class Counsel's attorneys' fees of one-third of the Gross Settlement Amount, up to \$116,666.67;
- Class Counsel's costs associated with prosecution and resolution of this action of up to \$20,000.00;
- Settlement administration costs of up to \$5,000.00;
- Payment to the Labor & Workforce Development Agency of \$26,250.00, representing 75 percent of the total PAGA allocation of \$35,000.00;
- Net Settlement Fund of approximately \$172,083.33, which will be apportioned among the Settlement Class Members on a per capita basis; and
- Raw average of approximately **\$1,593.36** to each participating Settlement Class Member.

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that the classes might not be certified and/or that Plaintiff could fail to establish liability.

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

II. PROCEDURAL HISTORY

A. The Claims and Allegations in This Lawsuit.

On December 16, 2020, Plaintiff filed his written notice with the California Labor & Workforce Development Agency ("LWDA"), alleging violations of Labor Code §§ 201-204, 226(a), 226.7, and 246, pursuant to the PAGA, Labor Code § 2699. (Declaration of Mai

1 Tulyathan (“Tulyathan Decl.”) at ¶ 2.) Thereafter, on January 25, 2021, Plaintiff filed his class
2 and PAGA action complaint against Defendant in the Superior Court of California, County of
3 Tulare. (*Id.* at ¶ 3.) The complaint alleges the following causes of action: (1) violation of
4 Labor Code §§ 201-203, (2) violation of Labor Code § 226.7, (3) violation of Labor Code §
5 226(a), (4) violation of Business & Professions Code § 17200, *et seq.*, and (5) violation of
6 Labor Code § 2698, *et seq.* (*Id.*)

7 On March 8, 2021, Defendant filed a demurrer and motion to strike portions of
8 Plaintiff’s Complaint. Defendant’s demurrer challenged Plaintiff’s first cause of action for
9 failure to pay wages due upon termination, on the grounds that paid sick leave does not qualify
10 as a wage under Labor Code section 200(a). Defendant’s motion to strike challenged
11 Plaintiff’s reference to Labor Code sections 201-203, and 246, in his PAGA cause of action on
12 the grounds that an individual is not allowed to recover civil penalties for violations of the
13 Healthy Workplaces, Healthy Families Act (“HWHFA”) as a matter of law.

14 In connection with this settlement, on January 5, 2022, the Parties filed a stipulation to
15 allow Plaintiff leave to file a First Amended Complaint to remove Plaintiff’s rest break claim
16 and unfair business practice claim. (Tulyathan Decl. at ¶ 4.) The Court entered its order
17 granting leave to file the First Amended Complaint on January 6, 2022. (*Id.*) The First
18 Amended Complaint was filed on January 6, 2022, and alleges causes of action for (1)
19 violation of Labor Code §§ 201-203, (2) violation of Labor Code § 226(a), and (3) violation of
20 Labor Code § 2698, *et seq.* (*Id.*) The First Amended Complaint is the operative Complaint in
21 this action.

22 Plaintiff’s class and PAGA claims as pled in the operative First Amended Complaint
23 are predicated upon the following allegations. Plaintiff contends that Defendant failed to pay
24 paid sick leave to its employees at the regular rate of pay, and thus underpaid sick pay to
25 employees, in violation of Labor Code §§ 201-203 and 246. More specifically, paid sick leave
26 was paid at an hourly rate that was lower than the regular rate of pay. As the underpaid paid
27 sick leave has yet to be paid to Plaintiff and other separated employees, Plaintiff alleges that
28 Defendant owes waiting time penalties under Labor Code § 203. As a result of the sick pay

1 regular rate violations, Plaintiff also alleges derivative wage statement violations under Labor
2 Code § 226(a). Based on these allegations, Plaintiff seeks statutory and civil penalties under
3 the California Labor Code and the PAGA, as well as attorneys' fees and costs. (*Id.* at ¶ 5.)

4 **B. The Parties Agree to Participate in Private Mediation.**

5 After the filing of the complaint, counsel for the Parties met and conferred regarding
6 participating in early mediation. (Tulyathan Decl. at ¶ 6.) The Parties subsequently agreed to
7 mediate this matter with Louis Marlin, Esq. (*Id.*)

8 In connection with mediation, the Parties engaged in informal discovery to allow
9 Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of
10 damages and penalties. (*Id.* at ¶ 7.) In particular, Defendant provided Plaintiff's counsel with
11 informal data and information pertaining to the number of class members, the number of
12 former employees, payroll data with the hourly rates of pay for the entire class, as well as
13 documents and information pertaining to Defendant's policies and practices regarding payment
14 of paid sick leave. (*Id.*) Based on the data provided by Defendant, Plaintiff's counsel
15 conducted an analysis of liability and potential maximum exposure for the class and PAGA
16 penalties. (*Id.*)

17 On October 28, 2021, the Parties engaged in a full-day mediation with neutral Louis
18 Marlin, Esq. (Tulyathan Decl. at ¶ 8.) After thorough investigation and evaluation of the facts
19 and claims, and as a result of the arm's-length negotiations facilitated by Mr. Marlin, the
20 Parties and their counsel reached a settlement of the class and PAGA claims. (*Id.*) The Parties
21 formalized their agreement in a memorandum of understanding. (*Id.*) The Parties
22 subsequently finalized their agreement and entered into the Settlement Agreement, a true and
23 correct copy of which is attached as **Exhibit A** to the Declaration of Mai Tulyathan. (*Id.* at ¶
24 9.)

25 The Parties recognize the risk, expense, and delay in continuing litigation with the class
26 and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. (Tulyathan
27 Decl. at ¶ 10.) Accordingly, the Parties desire to settle, compromise, and discharge all disputes
28 and claims arising from or relating to the class and PAGA claims as set forth in the Settlement

1 Agreement.

2 **III. DISCUSSION**

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

7 Approval of class action settlements involves a two-step process.
8 First, counsel submits the proposed terms of settlement and the court
9 makes a preliminary fairness evaluation. If the preliminary
10 evaluation of the proposed settlement does not disclose grounds to
11 doubt its fairness or other obvious deficiencies, such as unduly
12 preferential treatment of class representatives or of segments of the
13 class, or excessive compensation for attorneys, and appears to fall
14 within the range of possible approval, the court should direct that
15 notice...be given to the class members of a formal fairness hearing,
16 at which arguments and evidence may be presented in support of
17 and in opposition to the settlement.

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

19 Thus, the preliminary approval by the trial court is simply a conditional finding that the
20 settlement appears to be within the range of acceptable settlements. As Professor Newberg
21 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
22 conference concerning a tentative settlement proposal may vary. The court may find that the
23 settlement proposal contains some merit, is within the range of reasonableness required for a
24 settlement offer, or is presumptively valid subject only to any objections that may be raised at
25 a final hearing.” (4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26
26 (4th ed. 2002).)

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

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms 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.

(*Id.* § 11.24.)

Here, the Parties have reached such an agreement and have submitted to this Court in connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement reached by the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties as to settlement of the class and PAGA claims. Said terms in the Settlement Agreement include, among other things, the method for calculating the Settlement Class Members' individual portions of the settlement payment.

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class for settlement purposes—conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240; *accord Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).) 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* § 11.26.)

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to which the Parties stipulate to the Court's provisional certification of the Settlement Class for

1 the purposes of this settlement only. (*See* Settlement Agreement ¶ 1.)

2 **A. Proposed Class Definition**

3 The current settlement is being settled on behalf of “All non-exempt employees of
4 Defendant in the state of California who were allegedly underpaid sick pay while working on
5 Shifts B or C,² and whose employment ended (either voluntarily or involuntarily) at any time
6 from January 25, 2018 to October 27, 2021” (the “Settlement Class”). (*See* Settlement
7 Agreement ¶ 1.) The Class Period is from January 25, 2018 to October 27, 2021.

8 Pursuant to the Settlement Agreement, Defendant has represented that there are no
9 more than 108 individuals that comprise the Settlement Class during the Class Period. (*Id.*)

10 **B. Settlement Terms and Evaluation**

11 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
12 evidence to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447;
13 *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677,
14 682; *In re Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F.Supp. 957, 962.) Courts do not
15 substitute their judgment for that of the proponents, particularly where, as here, settlement has
16 been reached with the participation of experienced counsel familiar with the litigation. (*Nat’l*
17 *Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v.*
18 *Barry* (D.D.C. 1990) 752 F.Supp. 1087; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471;
19 *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F.Supp. 1357; *Sommers v. Abraham*
20 *Lincoln Federal Sav. & Loan Ass’n* (E.D. Pa. 1978) 79 F.R.D. 571.)

21 While the recommendations of counsel proposing the settlement are not conclusive, the
22 Court can properly take them into account, particularly where, as here, they have been

23 ² The employees who worked the B and C Shifts are defined herein: Employees in
24 Defendant’s Labeling & Application, Warehouse, and Shipping Departments, who worked the
25 **B Shift**, worked an 8-hour shift starting at 3:00 p.m., and received a shift differential of 35
26 cents per hour in addition to their base hourly wage. Employees in Defendant’s Labeling &
27 Application, Warehouse, and Shipping Departments, who worked the **C Shift**, worked an 8-
28 hour shift starting at 11:00 p.m., and received a shift differential of 75 cents per hour in
addition to their base hourly wage. Employees in Defendant’s Thermoforming and Extrusion
Departments, who worked the A2 and C2 shifts (“**C Shift**”) worked an Alternative Workweek
Schedule of 12 hours per day, and received a shift differential of 75 cents per hour in addition
to their base hourly wage.

involved in informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. (*See Newberg on Class Actions*, *supra* § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at p. 528 (“[s]o 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...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”).)

Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. (Declaration of Larry W. Lee (“Lee Decl.”) at ¶¶ 7-8; Tulyathan Decl. at ¶¶ 31-33.) Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties. (Tulyathan Decl. at ¶ 11.)

Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face potential liability of up to approximately \$413,640.00 for Plaintiff’s sick pay regular rate class claims if Plaintiff succeeded at trial. (Tulyathan Decl. at ¶ 12.) Plaintiff was able to estimate the potential class penalties based on data provided by Defendant, including the number of former employees and the average hourly rates of pay applicable to the class members. (*Id.*) Specifically, the amount of potential waiting time penalties under Labor Code § 203 is \$408,240.00. Plaintiff calculated said waiting time penalties based on the number of former employees (108 employees), multiplied by their daily wage based on the average hourly rates of pay calculated from Defendant’s payroll data (\$15.75 x 8), and multiplied by 30 days. (*Id.* at ¶ 13.) The amount of Labor Code § 226(e) penalties amounted to \$5,400.00, which is calculated based on 108 former employees multiplied by the initial pay period violation of \$50 pursuant to Labor Code § 226(e). (*Id.* at ¶ 14.)

With respect to potential liability of Plaintiff’s PAGA claim, Plaintiff estimated that Defendant could face civil penalties of up to a maximum of \$37,800.00 if Plaintiff were to succeed at trial. (Tulyathan Decl. at ¶ 15.) Plaintiff calculated PAGA penalties for sick pay

1 violations at \$10,800.00. This is based on 108 former employees, multiplied by PAGA's
2 penalty provision providing for \$100 per each aggrieved employee per pay period for the
3 initial violation. (*Id.*) With respect to PAGA for derivative 226 violations, Plaintiff calculated
4 PAGA penalties at \$27,000.00, based on \$250 per pay period pursuant to *Raines v. Coastal*
5 *Pacific Food Distributors* (2018) 23 Cal. App. 5th 667. (*Id.* at ¶ 17.)

6 Based on the above, the total potential maximum liability exposure for both the class
7 and PAGA claims total approximately **\$451,440.00**. (*Id.* at ¶ 18.)

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

17 Although Plaintiff believes in the merits of the alleged claims and maintains that there
18 is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses
19 to the claims and further with respect to the reduction of PAGA penalties and that it could be
20 persuasive to the Court. (Tulyathan Decl. at ¶ 19.) Thus, even if Plaintiff were to successfully
21 prove his claims at trial, there is a possibility that the Court may only award a small percentage
22 of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
23 premised with this risk in mind, associated with the possibility of the Court significantly
24 reducing Plaintiff’s PAGA penalties, along with other attendant risks, even if Plaintiff was to
25 prevail at trial. (*Id.*)

26 Further, Defendant raised several defenses that presented risk on the sick pay regular
27 rate theory of liability. Defendant particularly disputes the “willfulness” requirement under
28 Labor Code § 203 and thus it contends that it is not liable for waiting time penalties altogether.

1 In this regard, Defendant has indicated that it has retroactively paid all class members the
2 underpaid amounts of paid sick leave after the filing of the lawsuit. In light of this, there is a
3 chance that the waiting time penalties will be significantly discounted by the Court, should it
4 find that there was no willful failure on Defendant's part to correctly pay paid sick leave.
5 Should the Court find in favor of Defendant on that defense, the total waiting time penalties
6 recoverable by Plaintiff and class members will be \$0. (Tulyathan Decl. at ¶ 20.)

7 As another risk to prevailing on class certification, there is essentially no precedent
8 from any California courts granting class certification of a sick pay regular rate claim. Thus,
9 while Plaintiff believes that a class can be certified, there is a possibility that the Court will
10 also not grant class certification on Plaintiff's sick pay regular rate claim here. (Tulyathan
11 Decl. at ¶ 21.)

12 Thus, the Settlement for each Settlement Class Member is fair, reasonable, and
13 adequate, given the inherent risks of litigation, including the substantial risks relative to class
14 certification and the merits of the claims, the costs of pursuing such litigation, and the risks
15 associated with the Court's discretion to reduce PAGA penalties. The Settlement is the result
16 of extensive arm's-length negotiations between the Parties and their counsel and was
17 facilitated by an experienced and neutral mediator.

18 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
19 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
20 involved in not prevailing on one or more of the causes of action or theories alleged in the
21 operative First Amended Complaint, the possibility of non-certification, and the potential for
22 appeals. (Tulyathan Decl. at ¶ 22.) These risks on class certification are compounded by the
23 California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1.
24 There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight
25 years of litigation, but the judgment and the certification ruling were reversed by the California
26 Supreme Court after an additional five years of litigation. The case was remanded back to
27 superior court where class certification was denied and plaintiffs' subsequent appeal also was
28 denied.

1 Indeed, numerous courts have held that **gross** settlements approximating between only
2 8 and 25 percent of the defendant's potential exposure are fair and reasonable. (*See, e.g., In re*
3 *Mego Fin. Corp. Secs. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (holding that class action
4 settlement recovering 16 percent of potential exposure was fair and reasonable; "[i]t is well-
5 settled law that a cash settlement amounting to only a fraction of the potential recovery does
6 not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of
7 the settlement should be assessed relative to risks of pursuing the litigation to judgment";
8 noting that whether the settlement is fair and adequate depends on the "the difficulties in
9 proving the case"); *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. Mar. 20, 2015) 2015 WL
10 1289342, at p.*6 (holding that class action settlement recovering between **8.5 percent and 25**
11 **percent** of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*
12 (C.D. Cal. 2014) U.S. Dist. Ct. Case No. 8:12-cv-02161 (granting preliminary approval of
13 wage and hour class settlement which obtained **only 9.1 percent** of projected damages, given
14 the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.* (N.D. Cal. Nov. 21,
15 2012) 2012 WL 5878390, at p.*6 (holding that gross class action settlement of approximately
16 15 percent of the potential recovery was fair and reasonable).)

17 Here, the maximum exposure of class and PAGA penalties amount to approximately
18 \$451,440.00, without discounting for potentially losing on any of the causes of action.
19 (Tulyathan Decl. at ¶ 18.) The Gross Settlement Amount is \$350,000.00, which is
20 approximately **77.5%** of the maximum class and PAGA penalties. (*Id.* at ¶ 23.) Thus, the
21 settlement was negotiated at arm's length and the **significantly high** settlement percentage-to-
22 recovery strongly supports that the settlement is fair and reasonable.

23 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
24 Action Settlement ("Class Notice"), should any Settlement Class Member wish to pursue his or
25 her own case for the claims being released herein, each Settlement Class Member has the right
26 to submit a request for exclusion (*i.e.*, opt-out) from the settlement. (*See* Class Notice,
27 attached as **Exhibit B** to Tulyathan Decl.) Moreover, as set forth in the Notice, Settlement
28 Class Members are advised of their right to object to any of the terms contained in the

1 Stipulation and attend the final approval hearing. (*Id.*)

2 **1. Amount and Manner of Distribution of the Compensation to be**
3 **Provided to Settlement Class Members Including the Amount, or an**
4 **Estimate, of What Each Settlement Class Member Will Receive**

5 The Stipulation provides for Three Hundred Fifty Thousand Dollars (\$350,000.00) as
6 the Gross Settlement Amount. (Settlement Agreement at ¶ 4.) The Net Settlement Amount,
7 calculated after deduction of attorneys' fees (up to \$116,666.67), litigation costs (up to
8 \$20,000.00), the enhancement payment to the Class Representative (up to \$10,000.00),
9 payment to the LWDA for PAGA penalties (\$26,250.00), and settlement administration costs
(up to \$5,000.00), is estimated to be approximately **\$172,083.33**. (*Id.* at ¶¶ 4-7.)

10 Pursuant to the Settlement Agreement, the Net Settlement Amount will be equally
11 apportioned among the Settlement Class Members on a per capita basis. (Settlement
12 Agreement ¶ 4.B.ii.) Based thereon, on a raw average, each Settlement Class Member may
13 potentially recover approximately **\$1,593.36**. (Tulyathan Decl. at ¶ 24.) The amount actually
14 paid to each Settlement Class Member may increase or decrease depending on the number of
15 opt-outs received. (*Id.*)

16 Finally, the terms of the Settlement provide that uncashed settlement payment checks
17 (upon the expiration date) shall be paid to Legal Aid at Work as the *cy pres* beneficiary.
18 (Settlement Agreement at ¶ 4.E.)

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

22 This Settlement is **non-reversionary**, meaning that none of the settlement funds will
23 revert back to Defendant. (Settlement Agreement at ¶ 4.)

24 **3. Scope of the Release of Settlement Class Members' Claims**

25 As a condition of participating in this Settlement, Settlement Class Members who do
26 not opt out of the Settlement will provide a limited release of the following claims:

27 Settlement Class members will release all claims under state, federal
28 or local law, whether statutory, common law or administrative that
were or could have been alleged based on the facts alleged in the
First Amended Complaint predicated on claims for failure to pay

1 sick pay wages upon termination of employment, pursuant to Labor
2 Code §§ 201-203, 226(a), 246, and for claims for civil penalties
3 under the PAGA, Labor Code § 2698, *et seq.*, predicated on failure
4 to pay sick pay wages upon termination of employment, that
occurred during the Class Period. The period of the Release shall
extend to the limits of the Class Period.

5 (Settlement Agreement at ¶ 3.)

6 Per this release for Settlement Class Members, the release is tailored to only claims
7 based on those pled in the operative First Amended Complaint and limited to the Class Period.
8 As such, the release is appropriately limited.

9 **4. Tax Treatment of Settlement Amounts**

10 As this lawsuit seeks statutory and civil penalties as recovery, the Parties have agreed
11 that each individual settlement payment to Settlement Class Members shall be treated as 90%
12 as penalties, and 10% as interest, and shall be reported by IRS Forms 1099. (Settlement
13 Agreement at ¶ 4.B.ii.)

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

16 As stated above, Settlement Class Members do **not** need to do anything should they
17 wish to receive their share of the settlement funds. In other words, because this is not a claims-
18 made settlement, Settlement Class Members will not be required to make a submission to
19 participate in the settlement. No claim forms are required. (Settlement Agreement at ¶ 4.)
20 Thus, this substantially decreases the amount of burden each Settlement Class Member must
21 bear in order to receive his or her share of the settlement funds.

22 However, if a Settlement Class Member does not wish to take part in this Settlement or
23 be bound by the release, the Settlement Class Member must submit a request for exclusion.
24 (*Id.* ¶ 9.C.)

25 **C. Notice to Settlement Class Members**

26 Should the Court grant the instant motion, Defendant will provide the Settlement
27 Administrator with a list containing all Settlement Class Members' full names, last known
28 addresses, phone numbers, Social Security numbers, and the dates of employment ("Class

1 Data”). (Settlement Agreement at ¶ 9.A.) Pursuant to the Settlement Agreement, Defendant
2 will provide said Class Data within ten (10) business days of preliminary approval. (*Id.*)

3 Within ten (10) business days of receipt of the Class Data from Defendant, the
4 Settlement Administrator will mail the Class Notice to Settlement Class Members. (*Id.* at ¶
5 9.B.) For any Class Notices returned to the Settlement Administrator with a forwarding
6 address, the Settlement Administrator will remail the Class Notice to the forwarding address
7 affixed thereto. (*Id.* at ¶ 9.F.) For any Class Notices returned to the Settlement Administrator
8 as undeliverable, the Settlement Administrator shall conduct a skip trace to locate an updated
9 address for re-mailing. (*Id.*) If an updated address is obtained through skip tracing, the
10 Settlement Administrator will re-mail the Class Notice within three (3) business days of
11 obtaining the updated address. (*Id.*) Settlement Class Members who receive a re-mailed Class
12 Notice will have their deadline to submit opt-outs, written objections, and/or disputes
13 regarding information pertaining to their individual settlement payments as contained in the
14 Class Notice extended by fourteen (14) calendar days. (*Id.*)

15 The Class Notice will advise Settlement Class Members of what the lawsuit is about,
16 their rights and/or options under the settlement, the total settlement amount and other terms of
17 the settlement, their expected individual settlement payment share, their opportunity to and
18 procedures to opt out or to object to the settlement, information pertaining to the final approval
19 hearing, and the release of claims. (*See* Class Notice.) As set forth in the Class Notice, Class
20 Members will be allowed to opt out of or object to the Settlement by a certain deadline, which
21 is forty-five (45) calendar days after the initial mailing of the Class Notice. (Settlement
22 Agreement at ¶¶ 9.C, 9.D.) Settlement Class Members who received a re-mailed Class Notice
23 will have that deadline extended by 14 calendar days from the date of re-mailing, or until the
24 original response deadline, whichever is later. (*Id.* at ¶ 9.F.) With respect to objections,
25 Settlement Class Members are also informed in the Class Notice that they may object to the
26 Settlement in writing, with the exception of the PAGA claim. (*Id.* at ¶ 9.D; *see* Class Notice.)

27 If Settlement Class Members need further information about the settlement and/or the
28 lawsuit, Settlement Class Members are provided with Class Counsel’s contact information and

1 the Settlement Administrator's contact information in the Class Notice. (*See* Class Notice.)

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

3 **1. Class Representative's Claims are Typical of the Settlement Class**

4 The commonality requirement is met when there are questions of law and fact common
5 to the class. (*See Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1019 ("The existence of
6 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
7 salient facts couple with disparate legal remedies within the class").) Commonality requires
8 only that some common legal or factual questions exist; the plaintiffs need not show that all
9 issues in the litigation are identical. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d
10 462, 473.) Defendant's conduct is central to the commonality inquiry. (*See City of San Jose v.*
11 *Superior Court* (1974) 12 Cal.3d 447, 460; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800,
12 812-13.) Where the employer's conduct is uniformly directed at a class of employees, as
13 Plaintiff alleges here, the class-wide impact of the Defendant's policies satisfies the
14 commonality requirement. (*See Stephens v. Montgomery Ward & Co.* (1987) 193 Cal.App.3d
15 411, 421.)

16 In the present case, Plaintiff alleges that Defendant is liable to the Class for failure to
17 pay paid sick leave based on the correct regular rate of pay in violation of Labor Code §§ 201-
18 203 and 246, and for failure to provide accurate itemized wage statements in violation of Labor
19 Code § 226(a). Like all Settlement Class Members, Plaintiff was subjected to these same
20 policies and practices. (Declaration of Carl Haney ("Haney Decl.") at ¶ 2.) Defendant did not
21 pay paid sick leave at the regular rate of pay, and as such underpaid said wages to Plaintiff.
22 (*Id.*) Furthermore, as a result of the underpayment of paid sick leave, the wage statements
23 issued by Defendant to Plaintiff did not comply with Labor Code § 226(a). (*Id.*) In other
24 words, Plaintiff contends that he was subjected to the same policies and practices as other
25 Settlement Class Members and thus, the typicality requirement is met.

26 Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor
27 have any such issues been raised or presented. (*Id.* at ¶ 3.) Plaintiff has taken all necessary
28 steps to represent the interests of the Settlement Class, including by providing information and

documents to Plaintiff's counsel. (*Id.* at ¶ 4.) For such reasons, Plaintiff has adequately represented the Settlement Class and will continue to do so.

2. Class Counsel Have Adequately Represented the Settlement Class and Have Experience with Wage and Hour Class Action

From the inception of the case, Class Counsel have zealously represented the interests of the Settlement Class. Class Counsel have engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents on behalf of the Settlement Class. (Tulyathan Decl. at ¶ 26.) The settlement was obtained for the benefit of the Settlement Class, as opposed to the individual Class Representative. (*Id.*) Further, Class Counsel have been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the class. (Lee Decl. at ¶¶ 7-8; Tulyathan Decl. at ¶¶ 31-33.)

E. Costs and Fees

1. Attorneys' Fees and Costs

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

The Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, she may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. (*Serrano III*, 20 Cal.3d at p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund

1 doctrine has been applied “consistently in California when an action brought by one party
2 creates a fund in which other persons are entitled to share.” The reasons for applying the
3 common fund doctrine include:

4 Fairness to the successful litigant, who might otherwise receive no
5 benefit because his recovery might be consumed by the expenses;
6 correlative prevention of an unfair advantage to the others who are
7 entitled to share in the fund and who should bear their share of the
8 burden of its recovery; encouragement of the attorney for the
9 successful litigant who will be more willing to undertake and
diligently prosecute proper litigation for the protection or recovery
of the fund if he is assured that he will be properly and directly
compensated should his efforts be successful.

10 (*Id.*)

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

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

24 The Parties have agreed to a payment of a maximum of one-third of the Gross
25 Settlement Amount, or \$116,666.67, for payment to Class Counsel as attorneys’ fees.
26 (Settlement Agreement at ¶ 5.) The Parties have agreed to a payment of the foregoing
27 attorneys’ fees and, thus, this payment should be presumed to be fair. Class Counsel’s request
28 for fees is also within a range of reasonableness. Historically, courts have awarded percentage

1 fees in the range of 20% to 50%. (*See In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F.
2 Supp. 1373, 1375.) According to Profession Newberg: “No general rule can be articulated on
3 what is a reasonable percentage of a common fund... Usually 50 percent of the fund is the
4 upper limit on a reasonable fee award from a common fund, in order to assure that fees do not
5 consume a disproportionate part of the recovery obtained for the class, though somewhat larger
6 percentages are not unprecedented.” (*Newberg, supra*, § 14.6 at 550.)

7 The “reasonableness” of the fee award requested is also supported by the lodestar
8 methodology. Although California supports the common fund doctrine, the lodestar method is
9 also used independently or as a cross check for fee awards. (*In re Consumer Privacy Cases*
10 (2009) 175 Cal. App. 4th 545, 557.) Under the lodestar method, a base fee amount is
11 calculated from a compilation of time reasonably spent on the case and the reasonable hourly
12 compensation of the attorney. (*Serrano, supra*, 20 Cal. 3d at p. 48.) The court then may
13 enhance this lodestar figure by a “multiplier” to account for a range of factors, such as the
14 novelty and difficulty of the case, its contingent nature, and the degree of success achieved.
15 (*Id.* at p. 49; *see also Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132-36; *Thayer v. Wells*
16 *Fargo Bank* (2001) 92 Cal. App. 4th 819, 834 (“[t]here is no...rule limiting the factors that
17 may justify an exercise of judicial discretion to [adjust the] lodestar”).)

18 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2
19 to 4 or even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see*
20 *also, e.g., Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a
21 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at p. 60
22 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
23 Cal.App.3d 78 (1988) (affirming a 2.34 multiplier without remand).) The intermediate court in
24 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
25 affirmed a 2.13 multiplier. (*Laffitte*, 231 Cal.App.4th at pp. 881-82.) The intermediate court
26 opinion was affirmed in full by the California Supreme Court in its new decision guiding lower
27 courts on assessing fees.

28 //

1 Here, Class Counsel has expended approximately 134.7 hours in this matter to date.
2 (Lee Decl. at ¶ 9, Ex. A; Tulyathan Decl. at ¶ 34, Ex. C.) Moreover, Class Counsel will
3 continue to expend time and resources on this case after preliminary approval is granted. Class
4 Counsel expects to incur approximately 40 additional hours in finalizing this settlement,
5 including handling notice distribution and settlement administration issues, preparing for,
6 drafting and filing for final approval of the settlement, and handling any post-approval matters
7 and settlement issues that may arise. (Lee Decl. at ¶ 10; Tulyathan Decl. at ¶ 35.) Mr. Lee
8 requests an hourly rate of \$750.00 per hour. (Lee Decl. at ¶ 11.) Ms. Tulyathan requests an
9 hourly rate of \$500.00. (Tulyathan Decl. at ¶ 36.) The courts are quite liberal in the evidence
10 required to prove an attorney's hours. Detailed time records are not required. An attorney's
11 testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a
12 particular case is sufficient evidence to support an award of attorney fees, even in the absence
13 of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

14 Reasonable hours include, in addition to time spent during litigation, the time spent
15 before the action is filed, including time spent interviewing the clients, investigating the facts
16 and the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980)
17 447 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend
18 the attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639 [*Serrano IV*].) Thus,
19 Class Counsel requests that the court find that these hours were reasonable in this litigation.

20 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
21 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
22 1095.) The court may consider other factors when determining a reasonable hourly rate, e.g.,
23 the attorney's skill and experience, the nature of the work performed, the relevant area of
24 expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol*
25 (1998) 61 Cal.App.4th 629, 632-33.)

26 Class Counsel's skill and experience justify the requested rate. As shown in the
27 supporting declarations, Class Counsel have significant experience in the area of employment
28 and wage and hour class actions. Specifically, Class Counsel's practice focuses on

1 representing employees in employment matters, particularly wage and hour cases. (Lee Decl.
2 at ¶¶ 6-8; Tulyathan Decl. at ¶¶ 30-33.) As such, based on the hours and applicable rate, the
3 total lodestar to be expended by Class Counsel through finalizing this settlement will be
4 approximately **\$101,475.00**, based on 174.7 total hours. (Lee Decl. at ¶¶ 9-11; Ex. A;
5 Tulyathan Decl. at ¶¶ 34-36, Ex. C.)

6 Once the court establishes the lodestar amount, it may enhance the fee award by a
7 multiplier in order to make an appropriate fee award. (*Serrano III*, 20 Cal.3d at p. 48.) It is
8 also critical to note that prompt settlement cannot be used to diminish the fee or the
9 enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal.App.4th at p. 52 (the
10 promptness of settlement “cannot be used to justify the refusal to apply a multiplier”).)
11 According to *Lealao*, courts placed “an extraordinarily high value” on settlement, and counsel
12 should be rewarded, not punished, for achieving this goal in a timely fashion. (*Id.*)

13 Here, based upon Class Counsel’s lodestar of \$101,475.00, Plaintiff’s request for a low
14 multiplier of approximately **1.15** is reasonable and fair, particularly as it is on the lower
15 spectrum of multipliers awarded by the court. (*Wershba v. Apple Computer, Inc.* (Ct. App.
16 2001) 91 Cal.App.4th 224 (noting that courts using the lodestar method to calculate attorney
17 fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of*
18 *Am. Corp.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the common
19 fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v.*
20 *Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the
21 common fund, based on a multiplier of 2.52).) As such, the lodestar cross check seeks a low
22 amount over the fee and should be deemed reasonable.

23 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs of
24 up to \$20,000.00. (Settlement Agreement at ¶ 4.D(4).) Class Counsel have, at their own risk,
25 expended costs, for example, to file this instant action and other pleadings in the case, effect
26 service of process, participate in mediation, and advance other litigation-related costs. If Class
27 Counsel’s actual costs are less than \$20,000.00, the remainder will become part of the Net
28 Settlement Amount to be distributed to Settlement Class Members. (*Id.*)

1 Based on the foregoing, the Court should preliminarily approve the attorneys' fees and
2 costs as requested by the Parties.

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

4 Class Representative Carl Haney requests a modest enhancement of \$10,000.00.
5 (Settlement Agreement at ¶ 6.) The Class Representative discussed this case with his counsel
6 on numerous occasions, searched for and provided documents and information to his counsel,
7 and reviewed pleadings and documents, including his PAGA letter, the complaint, and the
8 Settlement Agreement. (Haney Decl. at ¶ 4.) As part of his duties as the Class Representative,
9 Plaintiff provided invaluable information, evidence, and documents that resulted in this
10 settlement. Furthermore, in consideration for his service payment, Plaintiff also executed an
11 individual general release of all claims including a waiver under California Civil Code § 1542,
12 which other members of the Settlement Class did not have to do. (Settlement Agreement at ¶
13 6.)

14 In addition to the invaluable services that he provided, Plaintiff also took a significant
15 risk, both professionally and monetarily, in acting as the Class Representative and seeking
16 benefits on behalf of the Settlement Class. Because the claims alleged by the Class
17 Representative involved the payment of costs to the prevailing party, Plaintiff could have
18 possibly faced paying the costs of Defendant, had he not prevailed in this action.

19 Furthermore, given that future employers are much less likely to hire individuals who
20 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
21 prejudice in the future from other potential employers. Plaintiff took this risk upon himself
22 and the whole Settlement Class benefited from these risks taken by Plaintiff. Settlement Class
23 Members did not have to file individual lawsuits and bear the risks of payment of costs if they
24 did not prevail, nor did they have to face the potential for retaliation and rejection of future
25 employment had they filed a public lawsuit.

26 Finally, the \$10,000 enhancement award to the Class Representative is well within the
27 range of enhancements awarded to class representatives in similar wage and hour class actions.
28 In *Andrade v. Novacap, LLC*, Los Angeles County Superior Court Case No. 20STCV21805,

on September 10, 2021, the court approved a \$10,000 enhancement award to the class representative for a gross settlement of \$125,000 which represents an award of 8% of the gross settlement amount. Similarly, in *Alvarez v. Amerisourcebergen Drug Corp.*, United States District Court, Central District of California, Case No. 8:19-cv-02253-MCS-KESx, on June 7, 2021, the court approved a \$10,000 enhancement award to the class representative for a gross settlement of \$500,000, which represents an award of 2% of the gross settlement amount.

Accordingly, Class Representative's requested enhancement award here, which Defendant does not oppose, is fair and reasonable in light of his efforts to bring class-wide relief to his class members, and for obtaining a settlement with significant recovery to each individual class member.

3. Settlement Administration Fees

The Parties have agreed to an estimated payment of no more than \$5,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. (Settlement Agreement at ¶¶ 4.A, 7.) Phoenix Settlement Administrators is a well-recognized class action settlement administrator and has extensive experience administering class action matters. (*See* Declaration of Jodey Lawrence.) The Parties believe that the administration fee is reasonable and should be approved.

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

The settlement presented here is fair, adequate, and reasonable. The settlement will result in both substantial monetary benefits to Settlement Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation and facilitated by an experienced and neutral mediator.

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1 For the foregoing reasons, Plaintiff respectfully requests that the Court grant
2 preliminary approval of the proposed Settlement, sign the proposed Order, approve and
3 authorize mailing of the proposed Class Notice, and set a date for a final approval hearing.

4
5 DATED: March 7, 2022

DIVERSITY LAW GROUP, P.C.

6 By: 

Larry W. Lee

Mai Tulyathan

7 Attorneys for Plaintiff, the Class, and Aggrieved
8 Employees
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7
8 I declare under penalty of perjury under the laws of the State of California that the
9 above is true and correct. Executed on March 7, 2022, at Los Angeles, California.
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Erika Mejia