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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

RASON WILLIAMS and MARQUISE
WOODSON, individually, and on behalf of
other members of the general public similarly
situated and aggrieved employees pursuant to
the Private Attorneys General Act ("PAGA");

Plaintiffs,

vs.

COROVAN CORPORATION, a California
corporation; COROVAN MOVING & STORAGE
CO., a California corporation; KLINGER
MOVING COMPANY, a California corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No. RG21085500
[Consolidated with Case No. 21CV004213]

[Assigned to Hon. Somnath Raj Chatterjee]

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

Date: July 7, 2022
Time: 1:30 p.m.
Department: 517

Reservation ID: 761644481306

Complaint Filed: January 11, 2021

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

2 **PLEASE TAKE NOTICE** that at 1:30 p.m. on July 7, 2022, or a date to be assigned at the time
3 of filing in Department 517 of the above-entitled court located at 24405 Amador Street Hayward,
4 California 94544, Plaintiffs Rason Williams and Marquise Woodson will and do move for an Order:

- 5 1. approving the Joint Stipulation for Class Action Settlement (“Agreement”) attached as
6 Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class: all persons employed by Corovan Corp.,
8 Corovan Moving & Storage Co., Klinger Moving Company, or Employer’s Leasing
9 Company, Inc. in California in a non-exempt hourly paid position and any non-exempt
10 hourly Temps placed or assigned at Corovan Corp., Corovan Moving & Storage Co., Klinger
11 Moving Company, or Employer’s Leasing Company, Inc. during the period of time, subject
12 to the Agreement’s Escalator Clause, starting on January 11, 2017 and ending on November
13 1, 2021 (the “Settlement Class Period”);
- 14 3. appointing Plaintiffs as Class Representatives and Larry W. Lee and Simon L. Yang of
15 Diversity Law Group, P.C. and Douglas Han, Shunt Tatavos-Gharajeh, and Philip Song of
16 Justice Law Corporation as Class Counsel;
- 17 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
18 Settlement Amount in the amount of \$2,131,833.92, subject to the Agreement’s Escalator
19 Clause, and the amounts for the PAGA Payment, Class Representative Enhancement
20 Payment, Class Counsel Award, Settlement Administration Costs, and allocation of
21 payments to Class Members and PAGA Members appear to be within the range of
22 reasonableness for a settlement that could ultimately be given final approval;
- 23 5. approving the distribution of the Notice of Pendency of Class Action Settlement attached as
24 Exhibit A to the Agreement;
- 25 6. appointing Phoenix Settlement Administrators as the Settlement Administrator; and
- 26 7. setting the matter for a final approval hearing.

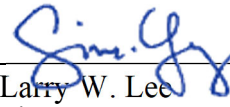
27 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
28 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.

1 The basis for the Motion, filed without any opposition from Defendants Corovan Corp., Corovan
2 Moving & Storage Co., Klinger Moving Company, or Employer's Leasing Company, Inc., is that the
3 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are
4 adequate to ensure class members are able to participate in, opt out of, or object to the settlement.

5 The Motion is based on this notice, accompanying memorandum of points and authorities, the
6 Agreement and proposed Notice of Pendency of Class Action Settlement, the supporting Declarations of
7 Larry W. Lee, Simon L. Yang, Douglas Han, Rason Williams, and Marquise Woodson, all pleadings
8 and papers on file herein, and any further oral and documentary evidence as may be presented before or
9 at the hearing of this matter.

10 DATED: June 14, 2022

DIVERSITY LAW GROUP, P.C.

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

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SUMMARY OF MOTION

In this wage and hour class action, Plaintiffs Rason Williams and Marquise Woodson allege that their former employers, Defendants Corovan Corp., Corovan Moving & Storage Co., Klinger Moving Company, or Employer's Leasing Company, Inc. violated the Labor Code.

Specifically, Plaintiffs sue Defendants for unpaid minimum wages and overtime, an additional hour of regular rate wages for noncompliant meal and rest periods, untimely payment of earned wages, inaccurate itemized wage statements, and unreimbursed business expenses. Plaintiffs litigate on classwide basis on behalf of all other nonexempt California employees and as proxies for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Defendants deny all of Plaintiffs' allegations and any liability or wrongdoing of any kind. Although Plaintiffs and their counsel are confident that litigation of the claims would result in a classwide judgment against Defendants, they also recognize the general risks of litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. Based on their independent investigations and evaluations, the Parties have agreed to a Joint Stipulation for Class Action Settlement ("Agreement"), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang. The Agreement requires Defendants to pay at least \$2,131,833.92, subject to the Agreement's Escalator Clause,¹ for a classwide settlement of the alleged claims. The entire settlement amount is non-reversionary; no claims need be made, and no monies will revert back to Defendants.

The Parties and their respective counsel are of the opinion that a settlement on the terms set forth in the Agreement would not only be fair, reasonable, and adequate, but also in the best interests of the Class in light of all known circumstances. The mediated resolution results in a settlement that would require Defendants to pay a gross settlement amount of **more than approximately \$1,035 per Class Member, on average**. The settlement would release claims alleged in the lawsuit only.

¹ If the number of Class Member workweeks ultimately increases by more than 15% over 90,638 (i.e., 104,234 or more), Defendants shall have the option of either (a) increasing the Gross Settlement Amount on a pro rata basis equal to the percentage increase in the number of workweeks above 15% or (b) modifying the Class Period so that the total number of workweeks in the Settlement Period does not exceed 104,234. Agreement, Definitions ¶ 9.

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

3 **RELEVANT BACKGROUND**

4 In about June of 2008, Plaintiff Woodson began working for Defendants as a mover. Declaration
5 of Marquise Woodson (“Woodson Decl.”) ¶ 2. Until his employment ended in March of 2020, Plaintiff
6 Woodson regularly was required to use his own tools and cell phone to perform his job duties but was
7 not reimbursed for his related expenses. *Id.* Plaintiff Woodson also regularly worked more than five
8 hours in a workday but routinely was not provided duty-free 30-minute meal periods. *Id.* On those
9 occasions, Plaintiff Woodson was not paid an additional hour of regular rate wages for missed meal
10 periods. *Id.* From around August 2020 to October 2020, Plaintiff Williams also worked for Defendants.
11 Declaration of Rason Williams (“Williams Decl.”) ¶ 2. Like Plaintiff Woodson, Plaintiff Williams also
12 was required to use his own cell phone for his job duties and was not provided duty-free 30-minute meal
13 periods. Williams Decl. ¶ 2. Like Plaintiff Woodson, Plaintiff Williams also was not reimbursed for his
14 expenses or paid an additional hour of regular rate wages for missed meal periods. *Id.* Plaintiffs also
15 were not permitted duty-free rest periods or paid an additional hour of regular rate wages for missed rest
16 periods. Williams Decl. ¶ 16. They also were not paid for all hours worked, in light of pre-shift duties, or
17 provided with accurate itemized wage statements. *Id.* ¶ 14; Woodson Decl. ¶ 2.

18 On January 11, 2021, Plaintiff Williams initiated this lawsuit against Defendants Corovan Corp.,
19 Corovan Moving & Storage Co., and Klinger Moving Company. Declaration of Simon L. Yang (“Yang
20 Decl.”) ¶ 2. On January 25, 2021, Plaintiff Woodson filed a lawsuit against Employer’s Leasing
21 Company, Inc. in San Diego County Superior Court, entitled *Marquise Woodson v. Employers Leasing*
22 *Company, Inc.*, San Diego Superior Court, Case No. 37-2021-00003436 (the “Woodson Action”). *Id.*
23 The Parties in both lawsuits met and conferred and agreed to proceed to private mediation with well-
24 renowned Southern California wage and hour mediator, Lynn Frank. Yang Decl. ¶ 3. The Parties
25 scheduled an August 3, 2021 mediation to attempt to resolve both lawsuits. *Id.*

26 In the months preceding the August 3, 2021 mediation, Defendants produced personnel records,
27 hundreds of pages of relevant written policies, and thousands of pay and time records. Yang Decl. ¶ 3.
28 Defendants also produced key data points, including the relevant numbers of current and former

employees, workweeks, and pay periods, among other information, for the relevant period. *Id.* The Parties thoroughly investigated the facts relating to Plaintiffs' allegations and engaged in a comprehensive study of the legal principles applicable to both the claims Plaintiff alleged and defenses Defendants asserted. *Id.* The Parties engaged in discussions leading up to the mediation session, as well as during mediation, to ensure that each side understood the claims, defenses, groups of employees, scope and limitations of data and information, and other relevant information to enable a productive mediation. *Id.* Throughout the litigation, Plaintiffs provided information and documents, including while the lawsuit was pending, to confirm Defendants' representations and review produced documents. *Id.*

After more than 12 hours of negotiation at the mediation and subsequent weeks of further negotiation, the Parties agreed to a settlement in principle pursuant to a mediator’s proposal. Yang Decl. ¶ 4. Ultimately, the Parties were ultimately able to agree to the current settlement described in the Agreement. *Id.* Pursuant to the settlement, the *Woodson* Action was transferred to Alameda County Superior Court as Case No. 21CV004213. *Id.* The *Woodson* Action was then consolidated with this lawsuit. *Id.* An operative First Amended Complaint in this lawsuit now alleges all claims alleged by Plaintiff Williams and Plaintiff Woodson. *Id.*

Plaintiffs now seek approval of an excellent result that they were collectively able to obtain on behalf of the Class.

LEGAL STANDARD

Rule 3.769 of the California Rules of Court permits a party to a class action settlement to submit a written notice for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion. Cal. R. Ct., rule 3.769(c).

Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to class members for their comment or objections. As the Manual for Complex Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation”:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the

1 class members of a formal fairness hearing, at which arguments and evidence may be presented
2 in support of and in opposition to the settlement.

3 Manual for Complex Litigation (Third) § 30.41.

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

10 The parties also may, at the preliminary approval stage, request that the court provisionally
11 approve certification of the class—conditioned upon final approval of the settlement. As further
12 explained by Professor Newberg:

13 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
14 tentative settlement proposal ... may be set out in conditional orders granting tentative approval
15 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.

16 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
17 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
18 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
19 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
20 and reasonable”).

21 DISCUSSION

22 I. The Proposed Settlement Terms Are Fair, Adequate, and Reasonable.

23 A. Proposed Class Definitions

24 The proposed settlement concerns Class Members defined as all persons employed by Corovan
25 Corp., Corovan Moving & Storage Co., Klinger Moving Company, or Employer’s Leasing Company,
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1 Inc. in California in a non-exempt hourly paid position and any non-exempt hourly Temps² placed or
2 assigned at Corovan Corp., Corovan Moving & Storage Co., Klinger Moving Company, or Employer's
3 Leasing Company, Inc. during the period of time, subject to the Agreement's Escalator Clause, starting
4 on January 11, 2017 and ending on November 1, 2021. Agreement, Definitions ¶¶ 3, 9. Defendant's
5 records have identified 2,059 Class Members. *Id.*, Definitions ¶ 3.

6 **B. Settlement Terms and Evaluation**

7 The trial court must determine and approve a class action settlement is fair to "prevent fraud,
8 collusion or unfairness to the class" through settlement and dismissal of the class action." *Consumer*
9 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
10 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
11 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l*
12 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
13 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
14 through arm's length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
15 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
16 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

17 While the recommendations of counsel proposing the settlement are not conclusive, the Court
18 can properly take them into account, particularly where, as here, they have been involved in formal and
19 informal investigation and negotiations, are experienced with this type of litigation, and mediated a
20 resolution with arm's length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National*
21 *Rural Telecomms. Coop.*, 221 F.R.D. at 528 ("So long as the integrity of the arm's length negotiation
22 process is preserved, however, a strong initial presumption of fairness attaches to the proposed
23 settlement ... and 'great weight' is accorded to the recommendations of counsel, who are most closely
24 acquainted with the facts of the underlying litigation.") (citations omitted). In such circumstances, as
25 here, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms.*

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28 ² "Temps" are individuals employed by Temp Agencies and assigned to one or more of Defendants during the Settlement Class Period, which does not include direct employees of Defendants. Agreement, Definitions ¶ 35.

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

5 Here, both Plaintiffs’ counsel and Defendants’ counsel have a great deal of experience in wage
6 and hour class action litigation. Plaintiffs’ counsel have extensive class action and litigation experience
7 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
8 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-11; Declaration of Douglas Han (“Han Decl.”) ¶¶ 5-7.
9 Each side has apprised the other of their respective factual contentions and legal theories, and each side
10 has considered the other’s contentions and theories—resulting in negotiations taking place between the
11 Parties. Yang Decl. ¶¶ 4-7.

12 Defendants provided the number of employees, workweeks, and pay periods pertinent to
13 Plaintiffs’ allegations, among other things, from its records. Yang Decl. ¶ 5. Based on an expert’s
14 analysis of a sample of the class data, Plaintiffs contended—based on information available at the time
15 of mediation and extrapolated through November 3, 2021—that Defendants faced potential liability of
16 approximately \$2,094,411 for unpaid wages and overtime, approximately \$5,719,981 in owed payments
17 of an additional hour of wages for meal periods and rest periods, approximately \$771,884 in
18 unreimbursed expenses, approximately \$1,330,665 in wage statement penalties, and approximately
19 \$3,867,425 in waiting time penalties—for a total of **\$13,784,366 in class recoveries**. *Id.* Under PAGA, a
20 \$100 penalty under Section 1197.1 per pay period for minimum wage violations, a \$50 penalty under
21 Section 558 per pay period for overtime violations, a \$50 penalty under Section 558 per pay period for
22 meal period violations, a \$50 penalty under Section 558 per pay period for rest period violations, and a
23 \$100 penalty under Section 2699(f) per pay period for reimbursement violations adds **\$4,658,150 in**
24 **PAGA penalties**. *Id.* In sum, Plaintiffs contended Defendants were liable for approximately
25 **\$18,442,516 in total**. *Id.*

26 Plaintiffs understood that Defendants would assert various defenses, including for example that
27 liability for wage statement penalties would be subject to additional defenses requiring proof of injuries
28 resulting from knowing and intentional violations and that liability for waiting time penalties would be

1 subject to additional defenses based on Defendants’ good faith. Yang Decl. ¶ 6. Plaintiffs also expected
2 that Defendants would contend that the majority of class recoveries for rest period violations would not
3 be amenable to classwide resolution or difficulties in proving such liability. *Id.* Plaintiffs also expected
4 Defendants to maintain that potential PAGA liability would be subject to discretionary reduction. *Id.*

5 While the Parties disagree on the application of the law to the facts, each Party recognized in
6 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
7 Gross Settlement Amount to which the Parties ultimately agreed at mediation was reasonable. *Id.*
8 Although Plaintiffs and their counsel are confident that litigation of the claims would result in a
9 classwide judgment against Defendants, they recognize the inherent risks in litigation, including the
10 specific risks that class certification could be denied, liability could not be established at trial, or the
11 applicable law could change. Yang Decl. ¶ 7. The settlement for each participating Class Member is fair,
12 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
13 the costs of pursuing litigation. *Id.* The settlement is the result of extensive arms’ length negotiations
14 between the Parties and their counsel. *Id.*

15 Ultimately, the Gross Settlement Amount secures approximately 11.6% of Defendants’ potential
16 liability. Yang Decl. ¶ 7. Numerous courts have held that gross settlement amounts of as little as 8% of a
17 defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213
18 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure
19 was fair and reasonable; “It is well-settled law that a cash settlement amounting to only a fraction of the
20 potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the
21 adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment.”);
22 *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that
23 class action settlement recovering between 8.5% of the defendant’s potential exposure was fair); *Van Ba*
24 *Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014) (acknowledging risks
25 of continued litigation and granting preliminary approval of wage and hour class action settlement
26 obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6
27 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the
28 potential recovery was fair and reasonable).

1 Class Members do not need to do anything should they wish to receive their share of the
2 settlement funds. This eliminates any burden to Class Members who wish to receive their settlement
3 share. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her
4 own case for the claims proposed to be settled and released, each Class Member has the right to submit a
5 request for exclusion (i.e., opt out) from the settlement. Agreement § 3.1.4. Moreover, as set forth in the
6 Notice of Pendency of Class Action Settlement (“Notice”), Class Members are advised of their right to
7 object to any of the terms contained in the Agreement and attend the final approval hearing. Agreement,
8 Ex. A.

9 **1. Class Member Payments**

10 The Agreement provides for \$2,131,833.92 as the Gross Settlement Amount. Agreement,
11 Definitions ¶ 12. Defendants shall separately pay the employer’s share of payroll taxes, as applicable, in
12 addition to the Gross Settlement Amount. *Id.* From the Gross Settlement Amount, the Parties request
13 that the Court approve allocation of a Class Counsel Award, Class Representative Enhancement
14 Payments, PAGA Payment, and Settlement Administration Costs. *Id.*

15 The Class Counsel Award consists of attorneys’ fees, which will be no more than 33⅓% of the
16 Gross Settlement Amount, or \$710,611.30, and costs, which will be no more than \$20,000.00.
17 Agreement, Definitions ¶ 26. The Class Representative Enhancement Payments will be no more than
18 \$10,000.00 for each Plaintiff. *Id.* ¶ 21. Settlement Administration Costs are estimated to be no more than
19 \$9,500.00. *Id.* ¶ 4. The PAGA Payment of \$135,000.00 is allocated for settlement and release of claims
20 for PAGA penalties, and pursuant to statute, the PAGA LWDA Payment allocates 75% of PAGA
21 penalties, or \$101,250.00, to be paid to the LWDA (with the remaining 25% of PAGA penalties to be
22 distributed to PAGA Members from the Gross Settlement Amount). *Id.* ¶¶ 19.

23 All remaining amounts will be the Net Settlement Amount to be allocated to Settlement Class
24 Members. Agreement, Definitions ¶ 13. From the Net Settlement Amount, Settlement Class Members
25 shall receive an allocation of a pro rata share of the Net Settlement Amount calculated by the
26 Administrator, less applicable withholdings, based on the number of workweeks worked by the
27 individual Settlement Class Member during the Settlement Class Period. *Id.* ¶ 12. This allocation plus
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1 his or her pro-rata share of the PAGA Payment based on the number of workweeks he or she worked as
2 an PAGA Member during the PAGA Period, if any, shall constitute Individual Settlement Payments. *Id.*

3 Pursuant to the settlement's terms, it is estimated that no less than approximately \$1,221,222.62
4 will be available to be distributed to Class Members as the Net Settlement Amount (plus \$33,750.00 as
5 PAGA penalties from the Gross Settlement Amount). Yang Decl. ¶ 7. Based on Defendants' data, **each**
6 **Class Member, on average, would receive approximately \$609.51**, after all requested deductions
7 from the Gross Settlement Amount. *Id.* The amount actually paid to any Class Member may increase or
8 decrease depending on his or her number of workweeks. *Id.* The amount paid on average to each Class
9 Member may increase, depending on how many Class Members opt out of the settlement. *Id.*

10 20% of each Individual Settlement Payment from the Net Settlement Amount shall be
11 characterized for tax purposes as wages reported on an IRS Form W-2 and subject to all legally required
12 withholdings and deductions, and the remaining 80% (plus PAGA penalties) shall be characterized as
13 penalties and interest reported on an IRS Form 1099 and not subject to withholdings or deductions.
14 Agreement § 3.3.1.1. All other settlement payments do not consist of wages and shall be characterized
15 as IRS Form 1099 payments.

16 Finally, the principal for any uncashed checks (upon the expiration date) shall be distributed
17 pursuant to California Code of Civil Procedure § 384 with 100% of the amount being distributed to
18 CASA (see <http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9A/Home.htm>) if
19 permitted by the Court or as otherwise directed by applicable law and as ordered by the Court with
20 jurisdiction over the settlement or agreed by the Parties. Agreement § 3.4. None of the settlement funds
21 will revert to Defendant. Agreement, Definitions ¶ 11.

22 2. Class Members' Releases of Claims

23 As a condition of participating in this settlement, Settlement Class Members shall only release
24 claims arising during the Settlement Class Period that any Settlement Class Member may have against a
25 Released Party, whether known or unknown, that were alleged in the operative Complaint and the
26 PAGA letter in the applicable Action, or which could have been alleged based on the facts alleged
27 therein. Agreement § 5.1; *see also* Agreement, Definitions ¶ 29. Plaintiffs, all Class Members who are
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1 also PAGA Members, and the LWDA shall release all PAGA Claims arising during the PAGA Period.
2 *Id.* § 5.2.

3 As the release is narrowly tailored to the specific allegations litigated, the release is thus
4 appropriately limited. *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general
5 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action
6 settlements.”).

7 **C. Notice to Class Members**

8 Within 30 calendar days of the Preliminary Approval Order, Defendants shall provide the Class
9 List to the Settlement Administrator. Agreement § 3.1.2. Defendants will use their best efforts to provide
10 to the Settlement Administrator each Class Member’s full name, last known address, full social security
11 number, and number of workweeks. *Id.* The Settlement Administrator shall send Notice to Class
12 Members to provide notice of settlement.

13 Before mailing the Notice, the Settlement Administrator shall perform an electronic address
14 search using the National Change of Address Database or a similar tool. Agreement § 3.1.3. Within 15
15 calendar days of receiving the Class List, the Settlement Administrator shall mail Notice to all Class
16 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified
17 in the Class Data, or any updated addresses. *Id.* Any Notice returned to the Settlement Administrator as
18 undeliverable shall be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto.
19 *Id.* § 3.1.8. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to
20 determine the correct address using a skip-trace search and shall then promptly send a re-mailing. *Id.*

21 As set forth in the Notice, Class Members will be allowed to opt out of the settlement or object to
22 the settlement by a certain deadline. Agreement §§ 3.1.4, 3.1.6.

23 **D. Elements of Class Certification**

24 For purposes of settlement approval, a detailed analysis of the elements required for class
25 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
26 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
27 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.
28 App. 4th at 240 (explaining there is no “ironclad requirement” to conduct an evidentiary hearing to

1 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when
2 considering whether to certify a settlement class, the court is not faced with the case management issues
3 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
4 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to
5 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
6 lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

7 **1. More than 100 Class Members Satisfy Numerosity.**

8 There are over 2,000 Class Members identifiable from Defendants’ records. Yang Decl. ¶ 5.
9 Numerosity thus is sufficiently established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934
10 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action”
11 and citing examples in which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of
12 28—*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld). The class definition “is precise,
13 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).

14 **2. Plaintiff Has Claims that Are Typical of the Class, Raise Predominant**
15 **Common Questions, and Permit Them to Adequately Represent the Class.**

16 “The community of interest requirement involves three factors: ‘(1) predominant common
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
18 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
19 435 (2000).

20 With respect to commonality, there are questions of law and fact common to the class. *See*
21 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with
22 divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate
23 legal remedies within the class”). Commonality requires only that some common legal or factual
24 questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v.*
25 *Dart Indus., Inc.*, 29 Cal. 3d 462, 473 (1981). A defendant’s conduct is central to the commonality
26 inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*,
27 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at a class of
28

employees, as it is here, the class wide impact of the Defendants' policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

With respect to typicality, Plaintiffs regularly were required to use their own tools and cell phones to perform job duties but were not reimbursed for related expenses. Woodson Decl. ¶ 2; Williams Decl. ¶ 2. As with other Class Members, Plaintiffs also routinely were not provided duty-free meal periods and rest periods. Woodson Decl. ¶ 2; Williams Decl. ¶ 16. On those occasions, Plaintiffs like Class Members were not paid an additional hour of regular rate wages for missed meal periods and rest periods. *Id.* As with other Class Members, Plaintiffs also were not paid for all hours worked, in light of pre-shift duties, or provided with accurate itemized wage statements. Williams Decl. ¶ 14; Woodson Decl. ¶ 2.

With respect to adequate representation, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. Woodson Decl. ¶ 3; Williams Decl. ¶¶ 9, 17. Plaintiffs have taken all necessary steps to represent the interests of the Class, including by providing information and documents to Class Counsel, making themselves available to discuss the claims, providing information and feedback while the lawsuit was pending, and answering any questions. Woodson Decl. ¶ 3; Williams Decl. ¶¶ 10, 11. For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

3. Class Counsel Also Adequately Represents the Class.

From the inception of the case, Class Counsel has zealously represented the interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representatives. Lee Decl. ¶ 2; Yang Decl. ¶ 7; Han Decl. ¶ 16. Further, Class Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶ 9-11; Han Decl. ¶¶ 5-7.

E. Attorneys' Fees and Costs, the Enhancement Award, and Settlement Costs

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 settlement benefits to Class Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing*

1 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
2 Cir. 1997). The purpose of the equitable doctrine is to “spread litigation costs proportionally among all
3 the beneficiaries so that the active beneficiary does not bear the entire burden alone” so as to avoid
4 unjust enrichment. *Vincent*, 557 F. 2d at 769.

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

15 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal
16 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
17 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
18 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the
19 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide
20 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
21 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
22 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
23 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%
24 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
25 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

26 The Parties have agreed to a maximum attorneys’ fees award within the range of reasonableness
27 for the market in legal services of \$710,611.30, or 33⅓% of the settlement. Agreement, Definitions ¶ 26.
28 The Parties’ agreement should be presumed to be fair. Further, the Parties have agreed to reimbursement

1 of Class Counsel’s litigation costs. Class Counsel have incurred costs at their own risk, for example, for
2 filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs. Lee
3 Decl. ¶ 9; Han Decl. ¶¶ 30-32.

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

5 Plaintiffs and proposed Class Representatives Rason Williams and Marquise Woodson each
6 request a modest Class Representative Enhancement Payment of \$10,000. Agreement, Definitions ¶ 4.
7 Plaintiffs met and conferred with Class Counsel on a number of occasions to discuss the case. Williams
8 Decl. ¶¶ 10-11; Woodson Decl. ¶¶ 2-3. They have provided information and documents to Class
9 Counsel, made themselves available to answer any questions during litigation, and reviewed information
10 and other documents during the pendency of the lawsuit. *Id.* In sum, as part of their duties as Class
11 Representatives, Plaintiffs provided invaluable information, evidence, and documents that resulted in
12 this settlement. *Id.*

13 In addition to the invaluable services that Plaintiffs provided, they also took a significant risk,
14 both professionally and monetarily, by pursuing the claims on behalf of all other current and former
15 employees to seek benefits on behalf of the Class. Woodson Decl. ¶ 4; Williams Decl. ¶ 18. Because the
16 claims alleged could award the payment of costs to the prevailing party, Plaintiffs could have possibly
17 faced paying the costs of Defendants had they not prevailed in this action. Furthermore, given that future
18 employers are less likely to hire individuals who have filed suit against their prior employers, Plaintiffs
19 risks prejudice in the future from other potential employers. Only Plaintiffs took these risks upon
20 themselves, and the whole Class benefited from Plaintiffs’ willingness to do so. Class Members did not
21 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
22 have to face the potential for retaliation in obtaining future employment had they filed a public lawsuit.

23 Equally important, as part of the settlement, Plaintiffs have agreed to provide a full, complete,
24 and general release of individual claims—something that Class Members do not have to provide.
25 Agreement § 5.3. These efforts by Plaintiffs for the benefit of the Class further warrant the requested
26 enhancement awards.

1 **3. Settlement Administration Costs**

2 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
3 quoted Settlement Administration Costs not to exceed \$25,500.00 to send notices and administer the
4 settlement. Agreement, Definitions ¶¶ 31, 32. The Parties believe that the Settlement Administration
5 Costs are reasonable and should be approved.

6 **II. The Actions Requested by the Motion for Preliminary Approval Should Be Granted.**

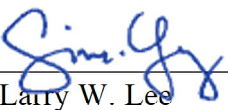
7 As discussed above, the proposed settlement will result in substantial monetary benefits for Class
8 Members. It was achieved as the result of informed, extensive, and arm's length negotiations conducted
9 by parties who are represented by counsel experienced in wage and hour class action litigation. Its terms
10 appear to be fair, adequate, and reasonable. And there is no reason to believe the proposed settlement is
11 deficient or outside the range of reasonableness for such a settlement. Accordingly, the Court should (i)
12 grant preliminary approval of the settlement, (ii) approve and authorize the mailing of the proposed
13 Notice, and (iii) schedule a date for a final approval hearing.

14 **CONCLUSION**

15 For the benefit of the settlement class, Plaintiffs respectfully request that the Court grant the
16 motion for preliminary approval.

17 DATED: June 14, 2022

DIVERSITY LAW GROUP, P.C.

18 By: 
19 Larry W. Lee
20 Simon L. Yang
21 Attorneys for Plaintiff
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On June 14, 2022, I served the following document(s) described as:

- on the interested parties in this action as follows:

Jim Hart JHart@littler.com Ian Robertson	Douglas Han dhan@justicelawcorp.com Shunt Tatavos-Gharajeh
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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 ACE Attorney Service E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on this proof of service 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 June 14, 2022, at Los Angeles, California.



Erika Mejia