

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

Attorneys for Plaintiff Matthews and the Class

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiffs Smith, Alcala, and Knox and the Class

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

MARGARET MATTHEWS, OKEEM SMITH,
TOMAS VERDUZCO ALCALA, and DARRYL
KNOX, as individuals and on behalf of all others
similarly situated, and as private attorneys general,

Plaintiffs,

vs.

UNITED NATURAL FOODS WEST, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. S-CV-0046420

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

[Filed concurrently with Declaration of Larry W. Lee; Declaration of Simon L. Yang; Declaration of Kyle Nordrehaug; Declaration of Margaret Matthews; Declaration of Okeem Smith; Declaration of Tomas Verduzco Alcala; Declaration of Darryl Knox; [Proposed] Order]

Date: December 1, 2022
Time: 8:25 a.m.
Department: 3

Complaint Filed: March 23, 2021

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

2 **PLEASE TAKE NOTICE** that on December 1, 2022, at 8:25 a.m., or as soon thereafter as the
3 matter may be heard in Department 3 of the above-entitled court located at 101 Maple Street, Auburn,
4 California 95603, Plaintiffs Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl
5 Knox will and hereby move for an Order:

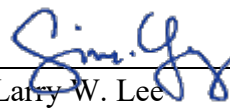
- 6 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
7 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 8 2. conditionally certifying the following Class for settlement purposes only:
 - 9 a. all persons employed by Defendant, United Natural Foods West, Inc., in the State of
10 California as exempt employees from May 11, 2019, through June 30, 2022 (the
11 “Exempt Class Period”); and
 - 12 b. all persons employed by Defendant in the State of California as hourly paid, non-
13 exempt employees and paid sick pay wages during the Sick Pay Period (defined as
14 March 23, 2017 through June 30, 2022), as well as all other persons employed by
15 Defendant in California as hourly-paid, non-exempt employees during the Post-
16 *Cortez* Period (defined as October 5, 2019 through June 30, 2022);
- 17 3. appointing Plaintiffs as the Class Representatives and Larry W. Lee and Simon L. Yang of
18 Diversity Law Group, P.C. and Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit
19 Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel;
- 20 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
21 Settlement Amount in the amount of \$2,750,000.00, the amounts requested for the
22 Administration Costs, Attorneys’ Fees and Costs, Class Representative Awards, PAGA
23 Penalty Fund, and the allocation of payments to Class Members appear to be within the range
24 of reasonableness for a settlement that could ultimately be given final approval;
- 25 5. appointing Phoenix Settlement Administrators as the Administrator;
- 26 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
27 the Agreement; and
- 28 7. scheduling a Final Approval Hearing.

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

6 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
7 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
8 Yang, Kyle Nordrehaug, Margaret Matthews, Okeem Smith, Tomas Verduzco Alcala, and Darryl Knox,
9 all pleadings and papers on file herein, and any further oral and documentary evidence as may be
10 presented before or at the hearing of this matter.

11 DATED: November 4, 2022

DIVERSITY LAW GROUP, P.C.

12 By: 
13 Larry W. Lee
14 Simon L. Yang
15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

	Page
SUMMARY OF MOTION.....	1
RELEVANT BACKGROUND	2
SUMMARY OF PROPOSED SETTLEMENT.....	2
I. Class Definition	2
II. Settlement Payments.....	3
III. Released Claims	3
LEGAL STANDARD.....	3
DISCUSSION	4
I. The Proposed Settlement Is Fair, Adequate, and Reasonable.	4
A. The Settlement Is Entitled to a Presumption of Fairness.	4
B. The Settlement Obtains an Excellent Result for Class Members.	6
1. The Settlement Amount Is Reasonable.	6
2. The Settlement Releases Are Appropriate.	7
3. The Class Notice Is Adequate.	8
C. The Requested Payments and Allocations Are Reasonable.	8
1. Each Class Member, on Average, Would Receive Over \$350.	9
2. The Requested Attorneys' Fees and Expenses Payment Is Reasonable.	10
3. The Proposed Service Payments Are Reasonable.	11
4. The Administration Costs Are Reasonable.	12
II. The Class Meets All Requirements for Certification.....	12
A. The Class Is Ascertainable and Sufficiently Numerous.	12
B. The Class Establishes a Community of Interest.	13
1. Plaintiffs' Claims Are Typical of Those of the Class.	13
2. Plaintiffs' Claims Raise Common Questions of Law and Fact.	13
3. Plaintiffs and Their Counsel Adequately Represent the Class.	14
CONCLUSION.....	14

TABLE OF AUTHORITIES

Page

State Cases

<i>Carter v. City of Los Angeles</i> , 224 Cal. App. 4th 808 (2014)	8
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	12
<i>City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	11
<i>Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America</i> , 141 Cal. App. 4th 46 (2006)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	4, 9, 10
<i>Global Mins. & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	9
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	12
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	10
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981)	10
<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	11
<i>Sevidal v. Target Corp.</i> , 189 Cal. App. 4th 905 (2010)	10
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	11
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	4, 9, 11

Federal Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 620 (1997).....	9
<i>Bellinghausen v. Tractor Supply Co.</i> , 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015).....	6
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	11
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	12
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	12
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	10
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	5
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980)	4
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	6
<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	4
<i>National Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	5
<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989)	4
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	5
<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	5
<i>Van Ba Ma v. Covidien Holding Inc.</i> , 2014 WL 2472316 (C.D. Cal. May 30, 2014)	6
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	11, 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUMMARY OF MOTION

On March 23, 2021, and on behalf of a putative class of current and former employees and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Margaret Matthews initiated this wage-and-hour lawsuit against Defendant, United Natural Foods West, Inc. Meanwhile, Okeem Smith, Tomas Verduzco Alcala, and Darryl Knox separately sued Defendant regarding various Labor Code violations.

In the operative Second Amended Complaint, Plaintiffs Smith, Alcala, and Knox join Plaintiff Matthews in pursuing class and representative action claims for (i) unreimbursed expenses, (ii) underpaid sick pay wages, (iii) unpaid wages and overtime, (iv) failure to provide meal and rest periods, (v) underpayment of the additional hour of regular rate wages for meal and rest period premiums, (vi) untimely payment of wages, and (vii) noncompliant wage statements.

On April 28, 2022, Defendant and all Plaintiffs attended a global mediation. Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$2,750,000.00 for the classwide settlement of claims through June 30, 2022. Plaintiffs and their counsel believe the settlement is a fair and appropriate result for the Class. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

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

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

RELEVANT BACKGROUND

On March 23, 2021, Plaintiff Matthews filed the initial class and representative action complaint in this matter. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On July 7, 2021, Plaintiff Smith filed a class action complaint in the Superior Court of the County of Riverside. Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”) ¶ 6. On July 8, 2021, Plaintiff Smith filed a separate “PAGA-only” complaint in the Superior Court of the County of Riverside. *Id.* On September 9, 2021, Plaintiffs Alcala and Knox joined Plaintiff Smith as plaintiffs in Plaintiff Smith’s class action lawsuit. *Id.*

Plaintiffs and Defendant met and conferred about the alleged claims and defenses, including those based on the settlement of a prior class action, *Cortez v. United Natural Foods, Inc.*, N.D. Cal. Case No. 5:18-cv-04603, with a release that limited the liability period for some claims. Yang Decl. ¶ 3. Class Counsel then continued investigating the alleged claims. *Id.* Class Counsel continued analyzing any defenses raised by Defendant, and the Parties continued to exchange information and documentation pursuant to informal methods to assist them in exploring the possibility of a mediated resolution. *Id.* Defendant’s willingness to participate in informal discovery enabled Plaintiffs to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, Plaintiffs and Defendant agreed to schedule a global mediation. *Id.*

On April 28, 2022, the Parties attended mediation with Mark S. Rudy, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang Decl. ¶ 4. With the mediator’s assistance, the Parties ultimately were able to negotiate a global resolution as set forth in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1 (the “Agreement”). As part of the settlement terms, on or about October 19, 2022, the Parties submitted a joint stipulation for leave to file a Second Amended Complaint adding Plaintiffs Smith, Alcala, and Knox and the allegations each Plaintiff alleged in their prior matters.

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class of “Class Members” includes all members of the “Exempt Class” and “Non-Exempt Class.” Agreement ¶ 1.5. The Exempt Class includes all persons employed by Defendant in the State of California as exempt employees during the Exempt Class Period (defined as

May 11, 2019, through June 30, 2022). *Id.* ¶ 1.5.1. The Non-Exempt Class includes all persons employed by Defendant in the State of California as hourly paid, non-exempt employees and paid sick pay wages during the Sick Pay Period (defined as March 23, 2017 through June 30, 2022), as well as all other persons employed by Defendant in California as hourly-paid, non-exempt employees during the Post-*Cortez* Period (defined as October 5, 2019 through June 30, 2022). *Id.* ¶ 1.5.2.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$2,750,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs, and Class Representative Awards. *Id.* ¶ 5.1.1-4. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* ¶¶ 5.2. After all requested payments from the Gross Settlement Amount, it is expected that, on average, each Class Member would be allocated \$354.20 in Settlement Payments and employee shares of PAGA Penalties. Yang Decl. ¶ 7.

III. Released Claims

Only Plaintiffs are subject to a general release (and all other Settlement Class Members are not). Agreement ¶ 6.4. Settlement Class Members who are members of the Exempt Class release only claims during the Exempt Class Period based on Labor Code section 2802 as alleged in the Action or that could have been alleged based on the facts pleaded in the Action. *Id.* ¶ 6.1. Similarly, other Settlement Class Members release Defendant and each Released Party from claims during the Sick Pay Period and the Post-*Cortez* Period that were alleged in the Action or that could have been alleged based on the facts pleaded in the Action. *Id.* ¶ 6.2.

LEGAL STANDARD

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

1 If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its
2 fairness or other obvious deficiencies, such as unduly preferential treatment of class
3 representatives or of segments of the class, or excessive compensation for attorneys, and appears
4 to fall within the range of possible approval, the court should direct that notice ... be given to the
5 class members of a formal fairness hearing, at which arguments and evidence may be presented
6 in support of and in opposition to the settlement.

7 Manual for Complex Litigation (Third) § 30.41.

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

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

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

22 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
23 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
24 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
25 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
26 and reasonable”).

27 DISCUSSION

28 I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

A. The Settlement Is Entitled to a Presumption of Fairness.

A trial court must determine and approve a class action settlement is fair to “prevent fraud,
collusion or unfairness to the class through settlement and dismissal of the class action.” *Consumer
Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the

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

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

21 Here, both Plaintiffs' counsel and Defendant's counsel have a great deal of experience in wage
22 and hour class action litigation. Plaintiffs' counsel have extensive class action and litigation experience
23 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
24 W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Nordrehaug Decl. ¶¶ 3-5, Ex. 1. Each side has
25 apprised the other of their respective factual contentions and legal theories, and each side has considered
26 the other's contentions and theories. Defendant provided the relevant numbers of individuals and
27 workweeks, time clock records, and pay details, for example, among other things—enabling Plaintiffs to
28 assess the full value of Class Members' claims and further enabling negotiations to take place between

1 the Parties. Yang Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm’s
2 length negotiations between the Parties and their counsel. *Id.* ¶ 8.

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

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

5 The Agreement requires Defendant to pay \$2,750,000.00—or approximately \$645.24 gross, on
6 average, per Class Member. Yang Decl. ¶ 5. Plaintiffs contend that this is a fair and appropriate result
7 for Class Members. Although actual unreimbursed expenses and underpayments of sick pay wages,
8 minimum wages, and overtime wages amounted to comparatively smaller sums, Plaintiffs argued that
9 underpaid wages resulted in Labor Code section 203 penalties of up to 30 days wages. *Id.* With respect
10 to meal and rest break violations, Plaintiffs contended that Defendant was liable for an additional hour
11 of regular rate wages under Section 226.7. *Id.*¹ Under PAGA, Plaintiffs contended that Defendant also
12 would be liable for an additional \$50 per pay period under Section 558 and \$100 per pay period under
13 Sections 210 and 2699(f). *Id.*

14 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
15 Plaintiffs prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with
16 respect to meal and rest break violations, Defendant contended that (i) there were no violations, (ii) if
17 there were, they were individualized issues not amenable to a class or representative proceeding, and
18 (iii) employees in any event were already paid premiums. *Id.* With respect to liability from underpaid
19 wages, Defendant contended that they would not be subject to Section 203 penalties, based on good faith
20 defenses. *Id.* Likewise, with respect to PAGA liability, Defendant contended that PAGA penalties would
21 be subject to discretionary reductions. *Id.*

22 While the Parties disagree on the application of the law to the facts, each Party recognized in
23 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
24 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
25 Ultimately, Plaintiffs argued that a successful representative trial would result in a total potential class
26 recovery of \$28,859,713—which included approximately \$8,809,920 in penalties under Section 203, at
27 least \$2,723,175 in missed meal or rest break premiums under Section 226.7, up to \$5,775,539 in

28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 penalties under Section 558, and up to \$11,551,079 in penalties under either Section 210 or Section
2 2699(f). *Id.* Plaintiffs contend that the Gross Settlement Amount of \$2,750,000.00—or 9.53% of the
3 potential class recovery—is a favorable result for the class. *Id.*

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

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

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

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

26 As discussed above, only Plaintiffs are subject to a general release. Agreement ¶ 6.4. Settlement
27 Class Members are only subject to a release of claims during the Class Period expressly pleaded in the
28 Action and other claims that could have been pleaded based on the allegations in the Action. *Id.* ¶ 6.1,

6.2. Plaintiffs alleged specific claims based on their investigation in the Action, and any settlement releases also are specific to the facts alleged and investigated. Moreover, the settlement releases apply to claims arising during the Class Periods only. The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”).

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to provide to the Administrator each Class Member’s last known address, among other information (the “Class Data”), within 14 days of a Preliminary Approval Order. Agreement ¶ 3.2. Within 10 days of receipt of the Class Data, the Administrator would mail the Notice of Proposed Class Action Settlement (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last known address for each Class Member, based on the Class Data. *Id.* ¶ 3.3. Any Class Notice returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* If no forwarding address is provided, the Administrator would promptly attempt to determine the correct address and then promptly send a re-mailing. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

C. The Requested Payments and Allocations Are Reasonable.

The Agreement provides for a Gross Settlement Amount of \$2,750,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$916,666.67) and litigation costs, which will not exceed \$40,000.00. *Id.* ¶ 5.1.1; Yang Decl. ¶ 7. Each Class Representative Award will be no more than \$10,000.00. Agreement ¶ 5.1.2. Administration Costs will be no more than \$37,500.00. *Id.* ¶ 5.1.3. The PAGA Penalty Fund will be \$275,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$206,250.00) would constitute

the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Employees based on the number of weeks worked by the PAGA Member as a percentage of the weeks worked by all PAGA Employees during the PAGA Period. *Id.* ¶¶ 5.1.4, 5.3.1.²

1. Each Class Member, on Average, Would Receive Over \$350.

Based on the data at mediation, it is expected that, on average, each Class Member would be allocated approximately \$354.20 in Settlement Payments and employee shares of PAGA Penalties (after all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of relevant pay periods during the Class Period. *Id.* After deducting any approved payments for the Attorneys' Fees and Costs, Class Representative Awards, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members.

5.0% of the Net Settlement Amount is to be allocated to Settlement Class Members who are members of the Exempt Class as Individual Class Payments. Agreement ¶ 5.3.2. Each Settlement Class Member who is a member of the Exempt Class will be allocated an equal share of this allocation to the Exempt Class. *Id.* These Individual Class Payments shall be subject to IRS Form 1099 reporting. *Id.*

The remainder of the Net Settlement Amount is to be allocated to Settlement Class Members who are members of the Non-Exempt Class as Individual Class Payments. Agreement ¶ 5.3.3. Each Settlement Class Member who is a member of the Non-Exempt Class shall be allocated pro rata based on the total number of workweeks the Settlement Class Member (i) worked during the Post-Cortez Period and/or (ii) was paid sick pay wages during the Sick Pay Period. *Id.* 20% of these Individual Class Payments shall be allocated to wages and subject to IRS Form W-2 reporting; the remainder of these Individual Class Payments shall be subject to IRS Form 1099 reporting. *Id.*

None of the settlement funds will revert to Defendant. Agreement ¶ 5.1. The principal for any uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property Fund in the name of the Class Member. *Id.* ¶ 5.7.

² This motion has also been submitted to the LWDA via online submission. Yang Decl. ¶ 14.

1 **2. The Requested Attorneys’ Fees and Expenses Payment Is Reasonable.**

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

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

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

1 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
2 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

7 **3. The Proposed Service Payments Are Reasonable.**

8 Plaintiffs and proposed Class Representatives Margaret Matthews, Okeem Smith, Tomas
9 Verduzco Alcala, and Darryl Knox each request a Class Representative Award of \$10,000.00. Plaintiffs
10 assert that the request is reasonable in light of the general release that the Agreement requires of
11 Plaintiffs but not of any other Class Members. Independently, the request is appropriate in recognition of
12 Plaintiffs’ efforts on behalf of the Class. Declaration of Margaret Matthews (“Matthews Decl.”) ¶¶ 2-3;
13 Declaration of Okeem Smith (“Smith Decl.”) ¶¶ 2-3; Declaration of Tomas Verduzco Alcala (“Alcala
14 Decl.”) ¶¶ 2-3; Declaration of Darryl Knox (“Knox Decl.”) ¶¶ 2-3.

15 As part of their duties as Class Representatives, Plaintiffs provided all necessary information and
16 evidence that resulted in this settlement. Matthews Decl. ¶ 3; Smith Decl. ¶ 3; Alcala Decl. ¶ 3; Knox
17 Decl. ¶ 3. Plaintiffs met and conferred with Class Counsel on a number of occasions to discuss the case.
18 Matthews Decl. ¶ 3; Smith Decl. ¶ 3; Alcala Decl. ¶ 3; Knox Decl. ¶ 3. Plaintiffs provided information
19 and documents to Class Counsel and made themselves available to answer any questions during
20 litigation. *Id.* Ultimately, Plaintiffs’ efforts secured a favorable result for the Class.

21 In addition to the invaluable services that Plaintiffs provided, they each also took a significant
22 risk, both professionally and monetarily. Matthews Decl. ¶ 4; Smith Decl. ¶ 4; Alcala Decl. ¶ 4; Knox
23 Decl. ¶ 4. Because the alleged claims involve the payment of costs to the prevailing party, Plaintiffs
24 could have possibly faced paying Defendant’s costs had Defendant prevailed in the action. Furthermore,
25 Plaintiffs assert that they risk prejudice in the future from other potential employers that may be less
26 willing to hire an individual who has filed suit against a prior employer. Plaintiffs took this risk upon
27 themselves—and the whole class benefited. Class Members did not have to file individual lawsuits and
28

1 bear the risks of payment of costs if they did not prevail, nor did they have to face potential prejudice in
2 future employment.

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

4 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
5 quoted Administration Costs not to exceed \$37,500.00 to send notices and administer the settlement.
6 Agreement ¶ 5.1.3. The Administration Costs are reasonable and should be approved.

7 **II. The Class Meets All Requirements for Certification.³**

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

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

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

22 Class Members are identifiable from Defendant’s records. Plaintiffs assert that the class
23 definition “is precise, objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th
24 905, 919 (2010). Indeed, there are more than 4,000 Class Members. Yang Decl. ¶ 5. It is Plaintiffs’
25 position that numerosity thus is sufficiently established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d

26
27 ³ Defendants expressly reserve their objections and do not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

926, 934 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples in which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

B. The Class Establishes a Community of Interest.

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

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

Plaintiffs allege that Defendant, as a matter of their corporate policy, practice, or procedure, underpaid various wages based on Defendant’s failures to reimburse expenses and pay all sick pay wages, minimum wages, and overtime wages, failed to provide meal and rest breaks, and failed to furnish lawful wage statements. With respect to typicality, Plaintiffs—exactly like other members of the Class—were compensated based on what they have alleged were Defendant’s common payroll practices, common pay and break practices, and uniform wage statements. Matthews Decl. ¶ 2; Smith Decl. ¶ 2; Alcala Decl. ¶ 2; Knox Decl. ¶ 2.

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

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

1 payroll practices and calculations resulted in regular rate of pay miscalculations. Common proof of those
2 practices predominate on a classwide basis.

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

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

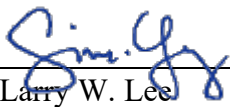
13 From the inception of the case, Class Counsel has zealously represented the interests of the
14 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
15 Representatives. Lee Decl. ¶ 2; Yang Decl. ¶ 13; Nordrehaug Decl. ¶ 9. Class Counsel have been
16 approved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

19 **CONCLUSION**

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

1 DATED: November 4, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: 
4 Larry W. Lee
5 Simon L. Yang
6 Attorneys for Plaintiff Williams
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28