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

CHERYL KEPPLER, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

CHASE INC., a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-21-100637

[Assigned for All Purposes to the Hon. Thomas S.
Clark in Department 17]

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

Date: October 18, 2023
Time: 8:30 a.m.
Dept.: 17

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

2 **PLEASE TAKE NOTICE** that on October 18, 2023 at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Thomas S. Clark, judge presiding, in Department
4 17 of the above referenced Court located at 1215 Truxtun Ave Bakersfield, CA 93301, Plaintiff
5 CHERYL KEPPLER (“Plaintiff”) will seek an Order: (1) preliminarily approving the Joint
6 Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”); (2)
7 conditionally certifying the following Class for settlement purposes only: all current and former
8 non-exempt employees of Defendant that worked as a cashier at any gas station or truck stop in
9 California at any time during the Class Period (March 19, 2017 through the date the Court grants
10 preliminary approval); (3) appointing Plaintiff as the Class Representative, and Larry W. Lee of
11 Diversity Law Group, P.C., Edward W. Choi of Law Offices of Choi & Associates, and Dennis
12 Hyun of Hyun Legal, APC as Class Counsel; (4) preliminarily approving the Settlement
13 Agreement and the Gross Settlement Amount of \$475,000.00; (5) finding on a preliminary basis
14 that the Settlement Agreement appears to be within the range of reasonableness of a settlement,
15 including the amount of the Class Representative’s Enhancement Payment, Class Counsel’s fees
16 and costs, the settlement administration fees, and the allocation of payments to Class Members,
17 that could ultimately be given final approval by this Court; (6) approving the Notice of Class
18 Action Settlement (“Class Notice”) to be sent to Class Members, which is attached as Exhibit A to
19 the Settlement Agreement; (7) approving the distribution of the Class Notice to Class Members
20 substantially in the manner and form set forth in the Settlement Agreement; (8) appointing
21 Phoenix Settlement Administrators as the Settlement Administrator; and (9) setting the matter for
22 a Final Fairness and Final Approval hearing.

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

26 The basis for this Motion, filed without any opposition from Defendant CHASE INC., is
27 that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the
28 Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or

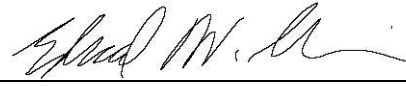
1 object to the settlement.

2 This Motion will be based on the attached Memorandum of Points and Authorities, the
3 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Edward W.
4 Choi, Larry W. Lee, Dennis Hyun, and Plaintiff Cheryl Keppler, and upon the oral arguments of
5 counsel (should there be any) and on the complete records and file herein.

6
7 DATED: September 18, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

8
9 By: _____



Edward W. Choi

Attorneys for PLAINTIFF and the CLASS

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On March 18, 2021, Plaintiff CHERYL KEPPLER (“Plaintiff”) mailed a notice pursuant to
4 the Private Attorneys General Act (the “PAGA”), to the Labor Workplace Development Agency
5 (“LWDA”) alleging that Defendant CHASE INC. (“Defendant”) violated Labor Code §§ 201-203,
6 226, 226.7, 510, 512, 558, and 1194. (Declaration of Edward W. Choi (“Choi Decl.”) ¶ 2).

7 On March 19, 2021, Plaintiff filed her Complaint as a class and representative action
8 against Defendant alleging (1) violation of Labor Code §§ 201-203, 510, 558, and 1194; (2)
9 violation of Labor Code §§ 201-203 and 226.7; (3) violation of Labor Code §§ 201-203, 226.7 and
10 512; (4) violation of Labor Code § 226(a); and (5) violation of California Bus. & Prof. Code §
11 17200, *et seq.* (Choi Decl. ¶ 3). On May 21, 2021, Plaintiff filed a First Amended Class and
12 Representative Action Complaint adding a cause of action for violation of the Private Attorneys
13 General Act (the “PAGA”) Labor Code § 2698, *et seq.* (“Operative Complaint”). (*Id.* at ¶ 4).

14 Since the filing of the case, the Parties engaged in formal and informal discovery resulting
15 in the production of data necessary for Plaintiff to calculate the potential exposure for this matter.
16 (*Id.* at ¶ 5). On May 2, 2022, the Parties engaged in mediation with well-respected mediator Russ
17 Wunderli. (*Id.* at ¶6).

18 After the failed mediation, the Parties continued to engage in formal litigation, including
19 further discovery. (*Id.* at ¶7). After receiving discovery responses and further meeting and
20 conferring, the Parties engaged in a second mediation with well-respected mediator, Christopher
21 Panetta, Esq. on June 29, 2023, which ultimately led to this settlement. (*Id.*).

22 The terms of the settlement provide that Defendant shall pay the Gross Settlement Amount
23 of Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) which will be distributed to the
24 class on a **non-reversionary** basis without the need to submit claim forms. (Joint Stipulation of
25 Class Action Settlement and Release (“Settlement Agreement” or “Settlement”) ¶ 13). Thus, the
26 entire settlement amount will be distributed and no remaining amounts, *i.e.*, unclaimed funds, will
27 revert back to Defendant. (*Id.*)

28 Plaintiff respectfully submits that this amount is fair, adequate, and reasonable, especially

1 given the substantial risks and uncertainty of class certification and liability on the merits. Although
2 Plaintiff and her counsel believe that they can prevail on class certification, as well as on the merits,
3 they recognize the inherent risk in further drawn-out litigation and the specific risks that a class
4 might not be certified and/or that Plaintiff could fail to establish liability. Based on their own
5 independent investigation and evaluation, Plaintiff and her counsel are of the opinion that
6 settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
7 reasonable, and adequate and is in the best interests of the Settlement Class in light of all known
8 facts and circumstances and the expenses and risks inherent in litigation.

9 Therefore, Plaintiff respectfully requests that the Court grant this Motion for Preliminary
10 Approval of Class Action Settlement.

11 **II. DISCUSSION**

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

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

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

The procedures for the parties’ submission of a proposed settlement for preliminary

1 approval by the court also are discussed in 4 *Newberg on Class Actions*:

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

7 *Id.* at § 11.24.

8 Here, the Parties have reached such an agreement and Plaintiff is concurrently filing a copy
9 of the Settlement Agreement with this Motion, fully setting forth the agreement reached among the
10 Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties,
11 which include, among other things, the method for calculating the Class Members' Individual
12 Settlement Payments.

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

21 As further explained by Professor Newberg:

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

28 4 *Newberg on Class Actions*, at §11.26

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

1 this settlement only. The Settlement Agreement further provides that if, for any reason, the
2 Settlement is not approved, the stipulation to certification will be void and Defendant has reserved
3 all rights to challenge certification.

4 **A. PROPOSED CLASS DEFINITION**

5 The current settlement is being settled on behalf of the following Class:

6 “All current and former non-exempt employees of Defendant that worked as
7 a cashier at any gas station or truck stop in California at any time during the
8 Class Period (March 19, 2017 through the date the Court grants preliminary
approval).”

9 (Settlement Agreement ¶¶ 6-7).

10 **B. NUMEROSITY**

11 Courts generally find that numerosity is satisfied if the class includes forty or more
12 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see also*
13 *Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court “would
14 be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained
15 class members”), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass’n v. Bd. of Educ.*
16 *of the Portland* (8th Cir. 1971) 446 F.2d 763, 765-66 (approving class of 20 members).)

17 In this case, there are approximately a total of 300 class members, therefore, numerosity is
18 satisfied. (Choi Decl. ¶ 8).

19 **C. ASCERTAINABILITY**

20 Class members are ascertainable where they may be “readily identified without
21 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
22 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th
23 220, 240.)

24 Here, for settlement purposes, the identity of class members is clearly ascertainable from
25 Defendant’s employment and payroll records and have already been identified during the informal
26 discovery and mediation process.

27 ///

28 ///

1 **D. TYPICALITY AND ADEQUACY OF REPRESENTATION**

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

3 The commonality requirement is met when there are questions of law and fact common to
4 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
5 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
6 couple with disparate legal remedies within the class”). Commonality requires only that some
7 common legal or factual questions exist; the Plaintiff need not show that all issues in the litigation
8 are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s
9 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Ca1. 3d
10 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s
11 conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the
12 Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward &*
13 *Co.*, 193 Cal. App. 3d 411, 421 (1987).

14 Plaintiff alleges that Defendant violated Labor Code §§ 201-203, 226, 226.7, 510, 512, 558,
15 and 1194 by failing to pay overtime pay at the correct regular rate of pay, failing to provide duty-
16 free meal and rest breaks, and failing to provide accurate itemized wage statements that identify the
17 accurate total hours worked. Based on the foregoing, Plaintiff further seeks penalties under the
18 PAGA. Plaintiff alleges that she was subject to the foregoing policies, practices and payment
19 procedures. (Declaration of Cheryl Keppler (“Keppler Decl.”) ¶ 3).

20 Plaintiff does not have any interests adverse to the Class, nor has any such issues been
21 raised or presented. (Keppler Decl. ¶ 4). Plaintiff has taken all necessary steps to represent the
22 interests of the Class, by providing information and documents. (*Id.* at ¶ 6). For such reasons,
23 Plaintiff has adequately represented the Class Members and will continue to do so.

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

26 From the inception of the case, Class Counsel have solely represented the interest of the
27 Class. For example, Plaintiff’s counsel conducted formal and informal discovery on behalf of
28 Plaintiff, the Class, and towards Class issues. (Choi Decl. ¶¶5, 7). Class counsel also engaged in

1 numerous meet and confers with opposing counsel and obtained the Class data prior to mediation.
2 (*Id.*) The mediation and settlement were also obtained for the benefit of the Class, as opposed to the
3 individual Plaintiff. Finally, Class counsel have been approved as class counsel on a number of
4 prior cases and are competent to represent the class. (Choi Decl. at ¶ 15; Declaration of Larry W.
5 Lee (“Lee Decl.”) at ¶¶ 3-6; Declaration of Dennis S. Hyun (“Hyun Decl.”) at ¶¶ 3-6).

6 **E. SUPERIORITY**

7 Class treatment is clearly superior to any other method of resolving Plaintiff’s claims. (*Sav-*
8 *on Drug Stores, Inc., supra*, 34 Cal. 4th 319 at p. 326) In employment actions, class actions are in
9 fact encouraged. (*Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308 (“In light of
10 the numerous common issues of fact and law that predominate in this lawsuit, we conclude that
11 proceeding by way of class action is the superior method of adjudication. Doing so would further
12 judicial economy by avoiding repetitious suits, would unify what would otherwise be a series of
13 small claims so as to enhance the class members’ access to redress...”).)

14 Here, Plaintiff’s claims are based on the alleged Class-wide policies, procedures, and
15 practices that apply to all Class Members and can be most efficiently litigated on a Class-wide
16 basis. The alternative would be the unrealistic filing of numerous individual claims. Since the
17 putative class members are employees with relatively modest individual claims and limited
18 resources, there is a strong likelihood that individual claims would never be brought. (*See Local*
19 *Joint Exec. Bd. of Culinary/Bartender Trust Fund* (9th Cir. 2001) 244 F.3d 1152, 1163 (superiority
20 requirement met where class members would recover, at most, about \$1,330); *see also Gentry v.*
21 *Sup. Ct.* (2007) 42 Cal. 4th 443, 462.)

22 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY, AND** 23 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF** 24 **RECOVERY**

25 As discussed above, the Operative Complaint alleges six causes of action for violation of
26 Labor Code § 201-203, 226, 226.7, 510, 512, 558, 1194 and 2698, *et seq.* (Choi Decl. ¶¶ 3-4).

27 Specifically, Plaintiff alleges that Defendant failed to calculate and/or factor shift
28 differentials and/or premiums, such as “Hazard” and “Night Allowance,” into the regular rate of

1 pay for purposes of calculating overtime pay. In addition, Plaintiff alleges Defendant failed to
2 provide duty-free meal and rest breaks and failed to pay meal and rest break premium pay. As a
3 result of these violations, Plaintiff and Class members were not provided with accurate itemized
4 wage statements that reflect the correct overtime wages rates and net/gross wages earned. (*Id.* at ¶
5 3). Defendant denies liability was and is prepared to continue to defend the action vigorously
6 through denial of class certification, summary judgment, and/or trial. (Settlement Agreement ¶75).

7 Since the filing of the case, the Parties engaged in formal and informal discovery resulting
8 in the production of data necessary for Plaintiff to calculate the potential exposure for this matter.
9 On May 2, 2022, the Parties engaged in mediation with well-respected mediator Russ Wunderli.
10 After the failed mediation, the Parties continued to engage in formal litigation, including further
11 discovery. After receiving discovery responses and further meeting and conferring, the parties
12 engaged in a second mediation with well-respected mediator, Christopher Panetta, Esq. on June 29,
13 2023, which ultimately led to this settlement.

14 Based on their own independent investigations and evaluations, the Parties and their
15 respective counsel are of the opinion that settlement for the consideration and on the terms set forth
16 in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the
17 Class and Defendant in light of all known facts and circumstances and the expenses and risks
18 inherent in litigation, and is designed so that the Parties may buy their peace and avoid continuing
19 litigation and costs. (Choi Decl. ¶¶ 12-13).

20 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
21 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
22 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
23 plaintiff's claims. As discussed herein, Plaintiff' counsel has conducted extensive discovery and
24 investigation and, in light of the strength and weaknesses of Plaintiff' claims, Plaintiff' attorneys
25 submit that this settlement is fair pursuant to *Kullar*.

26 Plaintiff estimated that the maximum Labor Code damages and penalties that could be
27 awarded was approximately \$3,582,100. (Choi Decl. ¶8). Further, Plaintiff estimated the total
28 potential PAGA penalties could amount to \$2,060,350. (*Id.*).

1 Defendant contested the merits and denied it was liable at all. (Choi Decl. ¶9). Defendant
2 argued that individualized issues would predominate and Plaintiff may not have been able to
3 prevail on his meal and rest break claims. (*Id.*) With respect to waiting time penalties, Defendant
4 contended that it would not be subject to Section 203 penalties, based on a good faith defense since
5 its policy was compliant. (*Id.*) With respect to wage statement liability, Defendant contended that
6 liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
7 resulting from knowing and intentional violations. (*Id.*)

8 PAGA penalties are also subject to any good faith defenses that Defendant may raise. (*Id.* at
9 ¶10). Moreover, PAGA penalties are discretionary and subject to reduction by this Court. Pursuant
10 to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties
11 where “...if, based on the facts and circumstances of the particular case, to do otherwise, would
12 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, courts have
13 affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.*,
14 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed the trial court’s reduction of PAGA
15 penalties by 90 percent, citing the employer’s good faith attempt at complying with the law.
16 Defendant argued that based on their compliant policies, that the Court would not be inclined to
17 impose maximum PAGA penalties based on their compliant policies and good faith attempt to pay
18 out any premiums that were due to class members. (*Id.*)

19 Based on the foregoing defenses a applying a 50% risk factor the realistic total exposure is
20 estimated at \$2,821,225. (*Id.* at ¶11). Thus, the current settlement is 17% of the realistic total
21 exposure (\$475,000 divided by \$2,821,225). (*Id.*)

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

1 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
2 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding
3 that class action settlement recovering between 8.5% and 25% of the defendant’s potential
4 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161
5 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which
6 obtained **only 9.1%** of projected damages, given the risks of continued litigation) *Villegas v. J.P.*
7 *Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21,
8 2012) (holding that gross class action settlement of approximately 15% of the potential recovery
9 was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10–cv–02576 NC, 2013 WL 1789602, at
10 *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

11 In the present case, 17% of the realistic total exposure is well within the range of that the
12 court could approve.

13 **G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT**
14 **COLLUSIVE**

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

25 While the recommendations of counsel proposing the settlement are not conclusive, the
26 Court can properly take them into account, particularly where, as here, they have been involved in
27 formal and informal discovery and negotiations for some period of time, appear to be competent,
28 have experience with this type of litigation, and have exchanged substantial evidence from the

1 opposing party. See *Newberg on Class Actions*, *supra*, at § 11.47; *Nat’l Rural Telecomms. Coop.*,
2 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.
3 1997) (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a
4 strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great
5 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the
6 facts of the underlying litigation”)).

7 Here, both Plaintiff and Defendant’s counsel have a great deal of experience in wage and
8 hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a number of
9 wage and hour class actions and have extensive litigation experience. (Choi Decl. at ¶ 15; Lee
10 Decl. at ¶ 6; Hyun Decl. ¶¶ 3-6). Moreover, as discussed above, Plaintiff’s counsel conducted a
11 very extensive investigation of the allegations involved in this case since the inception. Each side
12 has apprised the other of their respective factual contentions, legal theories and defenses, resulting
13 in extensive arms’ length negotiations taking place among the Parties.

14 The settlement for each participating Class Member is fair, reasonable and adequate, given
15 the inherent risks of litigation, including the substantial risks relative to class certification, and the
16 costs of pursuing such litigation. The settlement is the result of extensive arms’ length negotiations
17 between the Parties and their counsel, which was achieved after a full day of mediation before a
18 highly regarded mediator.

19 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness
20 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff in not prevailing
21 on one or more of the causes of action or theories alleged in the Operative Complaint, the
22 possibility of non-certification, adverse disposition, and potential for appeals by one or both sides.
23 (Choi Decl. at ¶¶12-13). Despite the asserted fairness of the settlement terms, as set forth in the
24 *Class Notice*, should any Class Member wish to pursue his or her own case for the claims being
25 released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out)
26 from the settlement. Moreover, as set forth in the *Class Notice*, Class Members are advised of their
27 right to attend the final approval hearing and object to any of the terms contained in the proposed
28 Settlement Agreement, provided that they give proper notice to the Parties and the Court.

1 **H. SETTLEMENT TERMS AND EVALUATION**

2 **1. Proposed Terms of the Settlement**

3 This is a non-reversionary settlement wherein Class Members will be automatically paid out
4 of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement are as
5 follows.

6 The Settlement Agreement provides for a Class Gross Settlement Amount of Four Hundred
7 and Seventy-Five Thousand Dollars (\$475,000.00). (Settlement Agreement ¶ 13.). Attorney's fees
8 of up to 35% or \$166,250.00 will be paid to Class Counsel, along with costs of up to \$40,000.00.
9 (Settlement Agreement ¶ 30). Plaintiff will seek a Class Representative Enhancement Payment up
10 to \$10,000.00. (Settlement Agreement ¶ 31). The Settlement Administrator will be paid an
11 estimated amount of \$10,000.00 for costs of administering this settlement. (Settlement Agreement
12 ¶ 32). After deduction of the foregoing, the remainder will be distributed to Class Members who
13 do not opt-out of the Settlement Agreement based on the number of Work Weeks a Class Member
14 worked during the Class Period. (Settlement Agreement ¶¶ 34-35). Further, 25% of the PAGA
15 amount (\$5,000.00) will be dispersed pro rata to all Aggrieved Employees regardless of whether
16 they submit timely, valid requests for exclusion, based on the number of Work Weeks issued
17 during the PAGA period. (Settlement Agreement ¶ 37(b)-(c)).

18 **2. Nature of Any Injunctive Relief**

19 The Settlement Agreement does not provide for any injunctive relief.

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

23 The Net Settlement Amount (calculated after deduction of attorneys' fees, costs, class
24 representative service payment, the PAGA portion of the settlement payable to the State and
25 Aggrieved Employees and claims administration costs) shall be paid to all Class Members who do
26 not opt out of the settlement. (Settlement Agreement ¶¶ 34-35(d)). The amount allocated to each
27 Class Member will be based on the number of Work Weeks each Class Member worked during the
28 Class Period. (Settlement Agreement ¶ 38(b)). The reason for such allocation is so that the Class

Members who suffered higher damages will be allocated greater recovery. Class Members may opt-out of the Settlement if they so choose. (Settlement Agreement ¶ 26). Based on the Net Settlement Amount, on a pure raw average, each class member will receive approximately \$766.67. (Choi Decl. ¶ 11). Such amounts for each person could increase or decrease depending on a number of factors, including the amount of Work Weeks worked by each Class Member. The actual amount each person will be entitled to will not be known until the class data is transferred to the Settlement Administrator for processing.

4. Whether, and Under What Circumstances, Amounts May Revert to Defendant, Disposition of Any Un-cashed Checks

This is a non-reversionary settlement as the entirety of the settlement amount will be fully paid out. Settlement checks will remain valid for a period of 180 calendar days after they issue. Any check not cashed within 180 calendar days will be distributed to the California State Controller Unclaimed Property Fund and held in the name of the Participating Class Member. (Settlement Agreement ¶ 51).

5. Scope of the Release of Class Members' Claims

The scope of the release, as listed below, is identified in the Settlement Agreement at paragraph 24 as well as in each of the Notices that will be sent to Class Members.

“Plaintiff and Participating Class Members' release Defendant and any parent, subsidiary, affiliate, predecessor, successor or other related entity of any type, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof (collectively the "Released Parties"), from any and all claims during the Class Period, alleged in the civil Complaint or those that could have been brought based on the claims asserted in the operative complaint and/or the LWDA PAGA Notice letter including the following: 1) failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay overtime including by any improper calculation of the regular rate of pay, 4) failure to furnish accurate itemized wage statements, and 5) failure to timely pay final wages upon separation of employment.”

(Settlement Agreement ¶ 24).

As shown, the scope of the release is narrow and is limited by the claims asserted in the Operative Complaint. Further, the Release does not waive Civil Code §1542 for Class Members, it

1 does so only for and with regard to the named Class Representative.

2 **6. Tax Treatment of Settlement Amounts**

3 All Individual Settlement Payments are allocated as follows: 20% wages subject to
4 withholding and reported on IRS W2 forms and 80% penalties and interest reported by IRS 1099
5 forms. (Settlement Agreement ¶ 53).

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

8 As stated above, Class Members do not need to do anything should they wish to receive
9 their share of the settlement funds. Thus, this substantially decreases the amount of burden each
10 Class Member must bear in order to receive their settlement share. If a Class Member does not
11 wish to take part in this settlement and be bound by the release, he/she must submit an exclusion
12 request.

13 Such obligations are thoroughly identified in each class member's Class Notices.
14 (Settlement Agreement ¶¶ 25-26, 46 & Ex. A).

15 **I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS**

16 Class Members will not be required to submit a claim form to receive compensation.
17 Instead, this is a non-reversionary Settlement Agreement. Class Members will be provided 45
18 calendar days to opt out or object to the settlement. (Settlement Agreement ¶¶ 25-26). Any Class
19 Member who does not opt-out of the settlement will be automatically issued his/her share of the
20 settlement proceeds. Given that this is a non-reversionary settlement, the parties believe that 45
21 calendar days is sufficient time for class members to object or opt-out of the settlement. Further,
22 Class Members will be notified of the Fairness/Final Approval hearing and will have an
23 opportunity to appear at the Fairness hearing.

24 **J. CY PRES DISTRIBUTION**

25 Individual Settlement Payments checks remaining un-cashed for more than 180 days after
26 issuance will be tendered to California State Controller Unclaimed Property Fund and held in the
27 name of the Settlement Class Member. (Settlement Agreement ¶ 51). Thus, the Settlement
28 Agreement does not provide for a cy pres recipient.

1 **K. NOTICE TO CLASS MEMBERS**

2 Within twenty (20) calendar days of preliminary approval of this settlement, Defendant will
3 provide the Class List to the Settlement Administrator. (Settlement Agreement ¶¶ 5, 40). The
4 Settlement Administrator will mail a Class Notice to all Class Members via regular First-Class U.S.
5 Mail, using the most current, known mailing addresses identified in the Class List. (*Id.* at ¶ 41).
6 Prior to mailing, the Settlement Administrator will perform a search based on the National Change
7 of Address Database for information to update and correct for any known or identifiable address
8 changes. (*Id.* at ¶ 42). If a Notice is returned as non-deliverable but with a forwarding address, the
9 Settlement Administrator shall resend the Notice to the forwarding address. (*Id.*) If a Notice is
10 returned as non-deliverable with no forwarding address, the Settlement Administrator shall conduct
11 a skip trace to locate the most current address of the person to whom the Notice was addressed and
12 shall resend the Notice to any updated address. (*Id.*) Each Class Notice will provide: (i)
13 information regarding the nature of the Action; (ii) a summary of the Settlement’s principal terms;
14 (iii) the Settlement Class definition; (iv) the total number of Work Weeks each respective
15 Settlement Class Member worked for Defendant during the Class Period; (v) each Settlement Class
16 Member’s estimated Individual Settlement Payment and the formula for calculating Individual
17 Settlement Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how to
18 submit Requests for Exclusion or Notices of Objection; (viii) the deadlines by which the Settlement
19 Class Member must postmark or fax any requests for exclusions/opt-outs/objections; and (ix) the
20 claims to be released. (*Id.* at ¶ 43; Ex. A)

21 Based on the foregoing, the notice procedures fully comply with California Rules of Court
22 Rule 3.766 (d) & (e).

23 **L. COSTS AND FEES**

24 **1. Attorneys’ Fees and Costs**

25 California state and federal courts have recognized that an appropriate method for
26 determining award of attorneys’ fees is based on a percentage of the total value of benefits to Class
27 Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001);
28 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*, 444 U.S.

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

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

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

21 Moreover, in the *Laffitte* intermediate court decision, the court observed that “35 percent of
22 the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
23 *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing
24 35% of the fund clearly falls within that range, and is consistent with other comprehensive surveys
25 of class action settlements and fee awards. *See Fitzpatrick, An Empirical Study of Class Action*
26 *Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases
27 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35
28 percent, with almost no awards more than 35 percent.”); Eisenberg & Miller, *Attorney Fees in*

1 *Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,
2 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees
3 representing one-third of the total recovery is consistent with market rates).

4 The results delivered by Plaintiff's Counsel also support the requested percentage of the
5 fund. Here, the Parties have agreed to a payment of a maximum of 35% of the settlement
6 (\$166,250.00) for payment to Class Counsel as attorneys' fees. (Settlement Agreement ¶ 30).
7 Further, the parties have agreed to reimbursement of class counsel's reasonable and actual litigation
8 costs incurred of up to \$40,000.00. (*Id.*) Class counsel have, at their own risk, expended costs, for
9 example, to file this instant action, service of process, payment of mediation fees, and other
10 litigation related costs and will be submitting detailed cost sheets for the respective costs incurred
11 prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily
12 approve the attorney's fees and costs being requested by the parties.

13 **2. Proposed Payment to Class Representative**

14 Plaintiff requests a Class Representative Enhancement Payment of \$10,000.00. (Settlement
15 Agreement ¶ 31). Plaintiff conferred with Class Counsel about the case, provided documents and
16 information to Class Counsel, and reviewed and signed the Settlement Agreement. (Keppler Decl.
17 ¶ 6). Moreover, as part of Plaintiff's duties as the representative, Plaintiff provided invaluable
18 information, evidence, and documents that resulted in this settlement. (*Id.*)

19 Given that future employers are much less likely to hire individuals who have filed suit
20 against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the
21 future from other potential employers. Plaintiff assumed these risks from which the whole class
22 benefited. Class members did not have to file individual lawsuits and bear the risks of payment of
23 fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not
24 getting future employment had they filed a public lawsuit.

25 Notably, courts have routinely granted approval of representative enhancements for far
26 greater amounts than the \$7,500.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
27 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
28 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two

incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiff requests an enhancement of \$10,00.00, which is “presumptively reasonable” and consistent with case law.

3. Class Administration Fees

The Settlement Administration Costs are currently estimated to Ten Thousand Dollars (\$10,000). (Settlement Agreement ¶ 32). The Parties have agreed to Phoenix Settlement Administrators, for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. (*Id.*). Phoenix is a well-recognized class action Settlement Administrator. The parties believe that the administration fee is reasonable and should be approved.

III. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION

Plaintiff uploaded a copy of this Motion, Settlement Agreement and Proposed Order to the LWDA. (Choi Decl. ¶ 16)

IV. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT, MOTION FOR APPROVAL, ATTORNEY’S FEES, AND FINAL ACCOUNTING

Description	Date	Details	Settlement Agreement
Preliminary Approval Date		20 calendar days from preliminary approval	¶40
Class List to Administrator		10 calendar days from receipt of Class List	¶41
Class Notice Distribution Opt Out/Objection Deadline		45 days from Notice Mailing	¶26

Final Approval

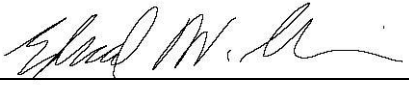
On or after 4/1/24

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

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing on or after April 1, 2024, or a later date that is convenient for the Court.

DATED: September 18, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS