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

IKEYEE JACKSON, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SAMUEL, SON & CO. (USA) INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVRI2101679

(Assigned to the Honorable Sunshine Sykes,
Dept. 6)

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

Date: July 13, 2022

Time: 8:30 a.m.

Dept.: 6

Reservation ID: 857359202946

Complaint Filed: March 30, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 13, 2022, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Sunshine Sykes, judge presiding, in Department 6 of the above referenced Court located at 4050 Main Street, Riverside, California 92501, Plaintiff Ikeyee Jackson (“Plaintiff”) will seek an Order: (1) approving the Stipulation of Class Action Settlement and Release (“Agreement” or “Settlement Agreement”) in this matter; (2) conditionally certifying the following Class for settlement purposes only: “all current and former employees of Defendant in the State of California who were paid shift differential and/or shift premium wages at any time between November 1, 2020, through July June 11, 2021” (the “Class”); (3) appointing Plaintiff Ikeyee Jackson as the Class Representative and Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel; (4) preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the amount of Two Hundred Forty One Thousand Four Hundred Forty Two Dollars and Fifty Cents (\$241,442.50); (5) finding on a preliminary basis that the Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, Class Representative Enhancement Payment, Class Counsel fees and costs, the Settlement Administration Costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Class Action Settlement to be sent to Class Members; (7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness and Final Approval hearing.

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

The basis for this Motion, filed without any opposition from Defendant Samuel, Son & Co. (USA) Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or object to the settlement. This Motion will be based on

1 the attached Memorandum of Points and Authorities, the Settlement Agreement and the
2 proposed Notice of Class Action Settlement, and the supporting Declarations of Larry W. Lee,
3 Kristen M. Agnew, Nicholas Rosenthal, William Marder, and Plaintiff Ikeyee Jackson, and upon
4 the oral arguments of counsel (should there be any) and on the complete records and file herein.
5

6 DATED: April 19, 2022

DIVERSITY LAW GROUP, P.C.

7
8
9 By: 

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Ikeyee Jackson

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative action seeking statutory and civil
3 penalties for wage statement violations. Plaintiff Ikeyee Jackson (“Plaintiff”) brought claims
4 against Defendant Samuel, Son & Co. (USA) Inc. (“Defendant”) (together, Plaintiff and
5 Defendant shall be referred to as the “Parties”) on a class-wide basis, alleging that Defendant had
6 a policy and practice of issuing defective wage statements in violation of Labor Code section
7 226(a). Defendant denies each, every, and all of the allegations of the complaint.

8 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
9 to the claims alleged in the complaint and engaged in a thorough study of the legal principles
10 applicable to the claims asserted against Defendant. Defendant provided information related to
11 the number of wage statements issued to the Class that violated the Labor Code. **Significantly,**
12 **this entire amount is non-reversionary, such that no monies will revert back to Defendant.**

13 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
14 risks and uncertainty of class certification and the merits of this case.

15 Although Plaintiff and his counsel believe that they can prevail on class certification, as
16 well as on the merits, Plaintiff and his counsel recognize the inherent risks in drawn-out litigation
17 and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish
18 liability. Defendant denies the allegations in the Complaint and believes that it can prevail at
19 trial. Based on their own independent investigation and evaluation, the Parties and their
20 respective counsel are of the opinion that the settlement for the consideration and on the terms
21 set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests
22 of the Class and Defendant in light of all known circumstances and the expenses and risks
23 inherent in litigation.

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

26 **II. DISCUSSION**

27 On March 30, 2021, Plaintiff filed a class and representative action complaint against
28 Defendant alleging violation of California Labor Code sections 226(a) and 2698, *et seq.*, the

1 Private Attorneys General Act (“PAGA”). Declaration of Nicholas Rosenthal (“Rosenthal
2 Decl.”) ¶ 2. Specifically, Plaintiff’s complaint alleged that the wage statements issued by
3 Defendant failed to identify the hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate in violation of Labor Code section
5 226(a) and sought penalties pursuant to PAGA for the underlying violation of Labor Code
6 section 226(a). *Id.*

7 After the exchange of further information and extended negotiations, the Parties reached
8 an agreement in principle. *Id.* After further continued negotiations, the Parties reached the
9 present class-wide settlement. *Id.*

10 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
11 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
12 review after notice has been distributed to the class members for their comment or objections.

13 The *Manual for Complex Litigation, Third* § 30.41 states:

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

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

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

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

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

7 *Id.* § 11.24.

8 Here, the Parties have reached such an agreement and have submitted to this Court in
9 connection with this Motion a copy of the Settlement Agreement fully setting forth the
10 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
11 agreement reached by the Parties, which include, among other things, the method for calculating
12 the Class Members' individual settlements.

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

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

26 *4 Newberg on Class Actions* § 11.26.

27 In addition to such terms as class identification, settlement amount and payment
28 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant

1 to which the Parties stipulate to the Court’s provisional certification of the Class for the purposes
2 of this settlement only.

3 **A. Proposed Class Definition**

4 The current settlement is being settled on behalf of a Class of “all current and former
5 employees of Defendant in the State of California who were paid shift differential and/or shift
6 premium wages at any time between November 1, 2020, through June 11, 2021.” There are
7 approximately 240 individuals that comprise of the Class.

8 **B. Settlement Terms and Evaluation**

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

19 While the recommendations of counsel proposing the settlement are not conclusive, the
20 Court can properly take them into account, particularly where, as here, they have been involved
21 in formal and informal discovery and negotiations for some period of time, appear to be
22 competent, have experience with this type of litigation, and have exchanged substantial evidence
23 from the opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat’l Rural Telecomms.*
24 *Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is
25 preserved, however, a strong initial presumption of fairness attaches to the proposed
26 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
27 are most closely acquainted with the facts of the underlying litigation”).

1 Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage
2 and hour class action litigation. Plaintiff's counsel has been approved as class counsel in a
3 number of wage and hour class actions and have extensive litigation experience. Rosenthal Decl.
4 ¶¶ 21-23; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 7-9; Declaration of Kristen M. Agnew
5 ("Agnew Decl.") ¶¶ 6-11; Declaration of William L. Marder ("Marder Decl.") ¶¶ 6-13. Each side
6 has apprised the other of their respective factual contentions, legal theories and defenses,
7 resulting in negotiations taking place between the Parties. Rosenthal Decl. ¶¶ 10-20.

8 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
9 face potential liability of up to approximately \$496,300 for Plaintiff's class claims, pursuant to
10 Labor Code § 226(e), which provides a \$50 penalty for the initial violation, followed by \$100
11 penalties for subsequent violations, with each employee's cumulative penalties totaling no more
12 than \$4,000. Rosenthal Decl. ¶ 10 Plaintiff was able to estimate the potential damages and
13 penalties based on data provided by Defendant, including the number of employees in the
14 putative class and the number of wage statements at issue. *Id.* Specifically, the amount of Labor
15 Code § 226(e) penalties are based on approximately 5,083 allegedly deficient wage statements
16 and approximately 240 class members. *Id.*

17 With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that
18 Defendant could face civil penalties for violation of Labor Code § 226 of up to a maximum
19 \$508,300 if Plaintiff were successful at trial, which is premised on a \$100 penalty per wage
20 statement. *Id.* ¶ 11.

21 Thus, based on the data provided by Defendant, Plaintiff's counsel estimated total class
22 and PAGA penalties to be approximately \$1,004,600. *Id.* ¶¶ 10, 11.

23 Even assuming Plaintiff prevailed on his PAGA claim, the Court still has discretion to
24 reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to
25 award PAGA penalties where "if, based on the facts and circumstances of the particular case, to
26 do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
27 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal.
28 App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court

1 reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt
2 at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction
3 to be proper. *Id.* at p. 539.

4 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
5 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to
6 the wage statement claims and that with respect to the reduction of PAGA penalties, it could be
7 persuasive to the Court. Rosenthal Decl. ¶ 12. Thus, even if Plaintiff was to successfully prove
8 his claims at trial, there is a possibility that the Court may only award a small percentage of
9 PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
10 premised with this risk in mind, associated with the possibility of the Court significantly
11 reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to
12 prevail at trial. *Id.*

13 Further, Defendant raised several defenses that presented risk, including an employee
14 could perform math calculations to determine his or her hourly pay rate on wage statements that
15 included shift differential/premium payments.

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

22 Although Plaintiff believe that a class can be certified, Plaintiff also believes in the
23 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
24 involved in not prevailing on one or more of the causes of action or theories alleged in the
25 operative Complaint, the possibility of non-certification, and the potential for appeals. Rosenthal
26 Decl. ¶ 19. These risks on class certification are compounded by the California Supreme Court's
27 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
28 class certification and subsequently prevailed at trial after eight years of litigation, but the

1 judgment and the certification ruling were reversed by the California Supreme Court after an
2 additional five years of litigation. The case was remanded back to superior court where class
3 certification was denied and plaintiffs' subsequent appeal also was denied.

4 Indeed, numerous courts have held that **gross** settlements approximating between only 8
5 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
6 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
7 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
8 settlement amounting to only a fraction of the potential recovery does not per se render the
9 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
10 assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
11 settlement is fair and adequate depends on the "the difficulties in proving the case");
12 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
13 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
14 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
15 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
16 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
17 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
18 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
19 approximately 15% of the potential recovery was fair and reasonable). Here, the Gross
20 Settlement Amount is fair and reasonable as it is approximately 48.6% of the potential class
21 recovery and 24.0% of the total class and PAGA recovery if Plaintiff was to fully succeed at
22 trial. Rosenthal Decl. ¶ 13.

23 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
24 Action Settlement, should any Class Member wish to pursue his or her own case for the claims
25 being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*,
26 opt-out) from the settlement. Settlement Agreement ¶ I.31. Moreover, as set forth in the Notice
27 Packet, Class Members are advised of their right to attend the final approval hearing and object
28 to any of the terms contained in the Settlement Agreement.

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

4 The Settlement Agreement provides for Two Hundred Forty One Thousand Four
5 Hundred Forty Two Dollars and Fifty Cents (\$241,442.50) as the Gross Settlement Amount.
6 Settlement Agreement ¶ I.17. The Net Settlement Amount, calculated after deduction of
7 attorneys' fees (up to \$80,480.83), costs (up to \$7,500.00), Class Representative Enhancement
8 Payment (up to \$7,500.00), payment to the LWDA (\$15,000.00), and Settlement Administration
9 Costs (up to \$12,000.00), is estimated to be approximately \$118,961.67. *Id.* ¶¶ I.3, I.8. Each
10 Participating Class Member who does not opt-out of the Settlement will be awarded a portion of
11 the Net Settlement Amount based upon the number of wage statements that include a payment of
12 shift differential/premium wages each respective Participating Class Member received during the
13 Class Period. *Id.* ¶ III.8(a).

14 Based thereon, on a raw average, each Participating Class Member may potentially
15 recover approximately \$495.67. Rosenthal Decl. ¶ 16. The amount actually paid to each
16 Participating Class Member may increase or decrease depending on the actual number of wage
17 statements that include a payment of shift differential/premium wages he or she received during
18 the Class Period and/or the number of timely Requests for Exclusion received. *Id.* ¶ 17.

19 Finally, the terms of the settlement provide that uncashed checks (upon the expiration
20 date) shall be re-distributed to class members who cashed their checks.

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

24 None of the settlement funds will revert to Defendant.

25 **3. Scope of the Release of Class Members' Claims**

26 As a condition of participating in this settlement, Class Members shall waive and release
27 all claims, demands, rights, liabilities, and causes of action that were pled in the operative
28 Complaint, or could have been pled based on the factual allegations in the operative
29 Complaint, during the applicable period from November 1, 2020 through June 11, 2021.
30 Settlement Agreement ¶¶ I.5, I.28.

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

2 As Plaintiff's lawsuit sought solely statutory and civil penalties, the Parties have agreed
3 that 100% of all settlement payments to Class Members shall be deemed as IRS Form 1099
4 income and not subject to withholdings and deductions. Settlement Agreement ¶ III.8a.

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

7 As stated above, Class Members do not need to do anything should they wish to receive
8 their share of the settlement funds. Thus, this substantially decreases the amount of burden each
9 Class Member must bear in order to receive their settlement share. If a Class Member does not
10 wish to take part in this settlement and be bound by the release, the Class Member must submit
11 an exclusion request. Settlement Agreement ¶ I.31.

12 **C. Notice to Class Members**

13 Within fourteen (14) days of the preliminary approval of this settlement, Defendant shall
14 provide the Settlement Administrator with the Class Information for purposes of mailing the
15 Notice of Class Action Settlement to the Settlement Class Members. No later than three (3)
16 business days after receipt of the Class Information, the Settlement Administrator shall notify
17 counsel for the Parties that the list has been received and state: (1) the number of Class Members
18 and the number of pay periods they worked wage statements containing shift differential and/or
19 shift premium pay received by Class Members during the Class Period. Because employees'
20 sensitive personal information is included in the Class Information, the Settlement Administrator
21 shall maintain the Class Information securely and in confidence. Access to such Class
22 Information shall be limited to employees of the Settlement Administrator with a need to use the
23 Class Information for administration of the Settlement. The Settlement Administrator shall not
24 be permitted to share any information included in the Class Information with Plaintiff or Class
25 Counsel absent express approval by Defendant or Defense Counsel. Settlement Agreement ¶
26 III.6(a). Within five (5) business days of receipt of the Class Information from Defendant, the
27 Settlement Administrator will mail copies of the Notice of Class Action Settlement to all
28 Settlement Class Members via regular First-Class U.S. Mail. *Id.* ¶ III.6(b). Any Notice of Class

1 Action Settlement returned to the Settlement Administrator as undeliverable before the Response
2 Deadline, the Settlement Administrator shall: (1) conduct a skip trace to locate a correct address
3 based on the National Change of Address Database to update and correct any known or
4 identifiable address changes; and (2) if an updated or correct address is obtained using this
5 method, re-mail the returned Notice of Class Action Settlement within five (5) calendar days of
6 receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-
7 mailed Notice of Class Action Settlement shall have their Response Deadline extended fifteen
8 (15) calendar days from the original Response Deadline. *Id.* ¶ III.6(c).

9 As set forth in the Notice Packet, Class Members will be allowed to opt out of the
10 settlement by a certain deadline, or object to the settlement in writing or by appearing at the final
11 approval hearing. Settlement Agreement ¶ I.31.

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

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

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

25 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
26 violated the Labor Code by issuing inaccurate itemized wage statements. Declaration of Ikeyee
27 Jackson (“Jackson Decl.”) ¶ 2. In other words, Plaintiff was subjected to the same policy and
28 practice as other Class Members. Thus, Plaintiff's claims are typical to those of Class Members.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Jackson Decl. ¶ 3. Plaintiff has taken all necessary steps to represent the interests of the Class, and by providing information and documents to Plaintiff's counsel. *Id.* ¶ 4. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Has Adequately Represented the Class and Has Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel has zealously represented the interests of the class. The settlement was obtained for the benefit of the class, as opposed to the individual Class Representative. Further, Class Counsel has been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the class. Rosenthal Decl. ¶¶ 21-23; Lee Decl. ¶¶ 2-9; Agnew Decl. ¶¶ 2-11; Marder Decl. ¶¶ 2-113.

E. Costs and Fees

1. Attorneys' Fees and Costs

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

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

1 which other persons are entitled to share.” The reasons for applying the common fund doctrine
2 include: “fairness to the successful litigant, who might otherwise receive no benefit because his
3 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
4 the others who are entitled to share in the fund and who should bear their share of the burden of
5 its recovery; encouragement of the attorney for the successful litigant who will be more willing
6 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund
7 if he is assured that he will be properly and directly compensated should his efforts be
8 successful.” *Id.*

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

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

21 The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
22 Amount (or \$80,480.83) for payment to Class Counsel as attorneys’ fees. The Parties have
23 agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be presumed
24 to be fair.

25 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs in
26 an amount up to \$7,500.00. Class Counsel has expended costs at their own risk, for example, to
27 file this instant action, effect service of process, pay the mediation fee, and pay of other
28 litigation-related costs.

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

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

4 Class Representative Ikeyee Jackson requests a modest enhancement of \$7,500.00.
5 Settlement Agreement ¶ 8. The Class Representative met and conferred with Class Counsel on a
6 number of occasions to discuss the case, provided documents and information to Class Counsel,
7 and reviewed the Settlement Agreement. As part of his duties as the Class Representative,
8 Plaintiff provided invaluable information and documents that resulted in this settlement. Jackson
9 Decl. ¶ 4. In addition to the invaluable services that Plaintiff provided, he also took a significant
10 risk, both professionally and monetarily, in acting as the Class Representative and seeking
11 benefits on behalf of the Class. Because the claims alleged by the Class Representative involved
12 the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs
13 of Defendant had he not prevailed in this action.

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

21 **3. Settlement Administration Fees**

22 The Parties have agreed to an estimated payment of \$12,000.00 to the Settlement
23 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
24 settlement. Settlement Agreement ¶¶ I.34, I.35. Phoenix Settlement Administrators is a well-
25 recognized class action settlement administrator. The Parties believe that the administration fee
26 is reasonable and should be approved.

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1 **III. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
2 **PRELIMINARY APPROVAL**

3 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
4 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
5 result of informed, extensive, and arm's-length negotiations conducted by counsel for respective
6 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
7 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
8 settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of
9 Class Action Settlement, and set a date for a final approval hearing.

10
11 DATED: April 19, 2022

DIVERSITY LAW GROUP, P.C.

12
13 By: 

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