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

DOUGLAS WALKER, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

PEET'S COFFEE, INC., a Virginia corporation
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. RG21095499

[Hon. Brad Seligman, Department 23]

**PLAINTIFF'S NOTICE OF MOTION AND
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 William L. Marder; Declaration of Douglas
Walker; [Proposed] Order]*

Date: March 14, 2023
Time: 3:00 p.m.
Department: 23

Reservation ID: 523939917519

Complaint Filed: September 23, 2020

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

2 **PLEASE TAKE NOTICE** that on March 14, 2023, at 3:00 p.m., or as soon thereafter as the
3 matter may be heard in Department 23 of the above-entitled court located at 1221 Oak Street, Oakland,
4 California 94612, Plaintiff, Douglas Walker, will and hereby does move for an Order:

- 5 1. approving the Joint Stipulation of Class Action Settlement (the “Agreement”) attached as
6 Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all current or
8 former non-exempt employees who worked for Defendant, Peet’s Coffee, Inc., in the State of
9 California and received both a live check and pay stub prepared by Ceridian at any time from
10 April 15, 2020, through July 9, 2021 (the “Class Period”);
- 11 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
12 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
- 13 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
14 Settlement Amount in the amount of \$318,850.00, the amounts requested for the
15 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
16 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
17 the range of reasonableness for a settlement that could ultimately be given final approval;
- 18 5. appointing Phoenix Settlement Administrators as the Administrator;
- 19 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
20 the Agreement; and
- 21 7. scheduling a Final Approval Hearing.

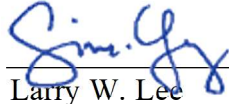
22 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
23 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
24 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and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

27 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
28 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.

1 Yang, William L. Marder, and Douglas Walker, all pleadings and papers on file herein, and any further
2 oral and documentary evidence as may be presented before or at the hearing of this matter.

3 DATED: February 17, 2023

DIVERSITY LAW GROUP, P.C.

4 By: 
5 Larry W. Lee
6 Simon L. Yang
7 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Douglas Walker, sues Defendant, Peet’s Coffee, Inc. for alleged failure to furnish wage statements that accurately show either the pay period start date or overtime rate of pay.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$318,850.00 for the classwide settlement of claims through March 29, 2022. Plaintiff and his counsel believe the settlement is an exceptional result for the Class. Each of approximately 843 Class Members will, on average, receive **\$169.91** (*after* all requested payments from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and his counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they 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, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On April 15, 2021, Plaintiff initiated this class action arising from Defendant’s alleged failure to furnish wage statements that accurately show either the pay period start date or overtime rate of pay. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On June 7, 2021, Plaintiff filed the operative first amended complaint to also pursue claims under PAGA for the same Labor Code violations. Upon the filing of the Action, Plaintiff and Defendant met and conferred about the alleged claims. Yang Decl. ¶ 2. Plaintiff provided Defendant with copies of wage statements to support the allegations, and Defendant provided wage statements in a different format to support its defenses. *Id.*

1 The Parties continued engaging in informal discovery, and Defendant provided Plaintiff with
2 additional information about the various wage statement formats at issue. Yang Decl. ¶ 3. Class Counsel
3 continued investigating the alleged claims and also analyzed any defenses raised by Defendant. *Id.* The
4 Parties continued to exchange information and documentation pursuant to informal methods to assist
5 them in exploring the possibility of a mediated resolution. *Id.* Defendant’s willingness to provide
6 informal discovery with respect to the classwide allegations enabled Plaintiff to evaluate the full scope
7 of Defendant’s potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

8 On October 18, 2022, the Parties attended mediation with Louis Marlin, an experienced mediator
9 knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang
10 Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to
11 negotiate the settlement terms in the Joint Stipulation of Class Action Settlement. *Id.* Ex. 1 (the
12 “Agreement”).

13 SUMMARY OF PROPOSED SETTLEMENT

14 I. Class Definition

15 The proposed settlement class of “Class Members” includes any current or former non-exempt
16 employees who worked for Defendant in the State of California and received both a live check and pay
17 stub prepared by Ceridian at any time during the Class Period. Agreement § 1.5. The Class Period is
18 from April 15, 2020, through July 9, 2021. *Id.* § 1.7.¹ There are approximately 843 Class Members. *Id.* §
19 1.5.

20 II. Settlement Payments

21 The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of
22 \$318,850.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the
23 Court approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs Award, and
24 Class Representative Award. *Id.* § 5.2. Except for these allocations requiring Court approval, the entirety
25 of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* It is expected
26

27
28 ¹ All Class Members are also Aggrieved Employees. Agreement § 1.5. The PAGA Period is the same as
the Class Period. *Id.* § 1.7.

1 that, on average, each Class Member would be allocated \$169.91 (*after* all requested payments from the
2 Gross Settlement Amount). Yang Decl. ¶ 7.

3 **III. Released Claims**

4 Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members release “any
5 and all causes of action or legal theories arising during the Class Period that were alleged in any
6 operative complaint or that could have been alleged based on the factual allegations in any operative
7 complaint, including but not limited to improper or inaccurate wage statements under Labor Code
8 section 226.” *Id.* § 6.1. The LWDA releases “any and all claims for civil penalties for violations of
9 Labor Code section 226(a) and 226.3 during the PAGA Period that were alleged in the Action or that
10 reasonably could have been alleged based on the facts alleged in the Action.” *Id.* § 6.2.

11 **LEGAL STANDARD**

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

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

23 Manual for Complex Litigation (Third) § 30.41.

24 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
25 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
26 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may
27 find that the settlement proposal contains some merit, is within the range of reasonableness required for
28 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).

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

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

7 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
8 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
9 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
10 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
11 and reasonable”).

12 DISCUSSION

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

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

15 A trial court must determine and approve a class action settlement is fair to “prevent fraud,
16 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*
17 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
18 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
19 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
20 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
21 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
22 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
23 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
24 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

25 While the recommendations of counsel proposing the settlement are not conclusive, the Court
26 can properly take them into account, particularly where, as here, they have been involved in thorough
27 investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s
28 length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*

1 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“So long as the integrity of the arm’s length
2 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
3 proposed settlement ... and ‘great weight’ is accorded to the recommendations of counsel, who are most
4 closely acquainted with the facts of the underlying litigation.”) (citations omitted). In such
5 circumstances, as here, courts do not substitute their judgment for that of the proponents. *Id.*; accord
6 *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y.
7 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham*
8 *Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

9 Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage
10 and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience
11 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
12 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of William L. Marder (“Marder Decl.”)
13 ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and
14 each side has considered the other’s contentions and theories. Defendant provided the relevant numbers
15 of individuals and wage statements, among other things—enabling Plaintiff to assess the full value of
16 Class Members’ claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶
17 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations between
18 the Parties and their counsel. *Id.* ¶ 9.

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

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

21 The Agreement requires Defendant to pay \$318,850.00—or approximately \$378.23, on average,
22 per Class Member. Yang Decl. ¶ 5. This amounts to approximately 17.91% of Defendant’s potential
23 liability and is an excellent result for Class Members. *Id.* Plaintiff contended that class claims under
24 Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to each Class Member
25 and a \$100 penalty for each additional non-compliant wage statement to the Class Member, up to a
26 maximum of \$4,000 per class member. Lab. Code § 226(e).² PAGA penalties under Section 2699(f) also
27 result in up to \$100 per non-compliant wage statement. Lab. Code § 2699(f).

28 ² Except as otherwise noted, all “Section” references are to the Labor Code.

1 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
2 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, Defendant
3 contended that liability under Section 226(e) would be subject to additional defenses requiring proof of
4 injuries resulting from knowing and intentional violations. *Id.* Likewise, Defendant contended that
5 PAGA penalties in any event would be subject to discretionary reductions. *Id.*

6 While the Parties disagree on the application of the law to the facts, each Party recognized in
7 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
8 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
9 Ultimately, based on 9,110 relevant wage statements received by 843 individuals, Plaintiff contended
10 that the potential total recovery amounts to \$1,779,850.00. *Id.* This amount consists of two sets of
11 penalties. First, there is approximately \$868,850.00 in penalties under Section 226(e), and second, there
12 is approximately \$911,000.00 in penalties under Section 2699(f).³ Plaintiff contends that the Gross
13 Settlement Amount of \$318,850.00—approximately 17.91% of the potential total recovery of
14 \$1,779,850.00—is an excellent result.

15 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
16 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
17 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
18 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
19 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
20 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
21 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
22 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
23 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3

24 ³ Because Plaintiff contended that class claims under Section 226(e) result in a \$50 penalty for the first
25 non-compliant wage statement to each Class Member and a \$100 penalty for each additional non-
26 compliant wage statement to the Class Member, penalties under Section 226(e) were calculated as
27 follows: **(843 initial wage statements x \$50 per initial wage statement) + (8,267 additional wage**
28 **statements x \$100 per additional wage statement) = \$868,850.00.** Yang Decl. ¶ 7. Because Plaintiff
contended that PAGA claims under Section 2699(f) result in a \$100 penalty per wage statement,
penalties under Section 2699(f) were calculated as follows: **9,110 wage statements x \$100 per wage**
statement = \$911,000.00. *Id.*

1 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
2 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
3 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
4 action settlement of approximately 15% of the potential recovery was fair and reasonable).

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

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

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

17 As discussed above, only Plaintiff is subject to a general release. Agreement § 6.3. Because
18 Plaintiff alleged targeted claims in the Action, Settlement Class Member releases are specifically
19 tailored to the facts alleged. Settlement Class Members are only subject to a release of claims arising
20 during the Class Period that were alleged in any operative complaint or that could have been alleged
21 based on the factual allegations in any operative complaint. *Id.* § 6.1. The settlement releases thus are
22 appropriate. *E.g.*, *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general
23 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action
24 settlements.”). Moreover, the settlement releases apply to claims arising during the Class Period only.
25 *Id.* ¶ 6.1.

26 **3. The Class Notice Is Adequate.**

27 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
28 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to

1 provide to the Administrator each Class Member’s last known address, among other information (the
2 “Class Data”), within seven days of a Preliminary Approval Order. Agreement § 3.2. Within 14 days of
3 a Preliminary Approval Order, the Administrator would mail the Notice of Class Action Settlement
4 (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using
5 the last known address for each Class Member, based on the Class List, or an updated address based on
6 the National Change of Address Database. *Id.* §§ 3.3, 3.4. Any Class Notice returned as undeliverable to
7 the Administrator would be sent promptly via First Class U.S. Mail to the forwarding address affixed
8 thereto. *Id.* If no forwarding address is provided, the Administrator would promptly attempt to determine
9 the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

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

15 **C. The Requested Payments and Allocations Are Reasonable.**

16 The Agreement provides for a Gross Settlement Amount of \$318,850.00. Agreement § 5.1. From
17 the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement
18 Amount (or \$106,283.33) and litigation costs of up to \$20,000. *Id.* § 5.1.1. The Class Representative
19 Award will be no more than \$10,000.00. Agreement § 5.1.2. Administration Costs will be no more than
20 \$12,000.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be \$36,440.00, and pursuant to statute, 75% of the
21 PAGA Penalty Fund (or \$27,330.00) would constitute the LWDA Payment, and 25% of the PAGA
22 Penalty Fund (or \$9,110.00) shall be payable to Aggrieved Employees on a pro rata basis, based on the
23 number of relevant wage statements they received. *Id.* § 5.1.4.⁴

24 **1. Each Class Member, on Average, Would Receive Almost \$170.**

25 It is expected that, on average, each Class Member would be allocated approximately \$169.91
26 (after all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on
27 average to each Class Member may increase, depending on how many Class Members opt out of the

28 ⁴ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease
2 depending on his or her number of relevant wage statements during the Class Period. *Id.* After deducting
3 any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Award,
4 Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder
5 would be allocated among Settlement Class Members on a pro rata basis, based on the number of
6 relevant wage statements they received. Agreement § 5.2.

7 As Plaintiff’s lawsuit sought penalties only, 100% of Class Members’ Individual Settlement
8 Payments would be characterized as penalties. Agreement ¶ 5.5. None of the settlement funds will revert
9 to Defendant. *Id.* ¶ 5.1. The principal for any uncashed checks (upon the expiration date) would escheat
10 to the State Controller Unclaimed Property Fund in the name of the Class Member, unless the Court
11 does not approve such disposition which then would be directed to Legal Aid at Work. *Id.* ¶ 5.4.

12 **2. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

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

20 Under California law, the award of attorneys’ fees in common fund wage and hour class action
21 settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503
22 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action
23 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
24 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
25 reasonable fee by choosing an appropriate percentage of the fund created”). Under the percentage of the
26 fund method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v.*
27 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court rather than by
28

1 contract, the object is to set it at a level that will approximate what the market will set The judge, in
2 other words, is trying to mimic the market in legal services.”).

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

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

18 **3. The Proposed Class Representative Award Is Reasonable.**

19 Plaintiff and proposed Class Representative Douglas Walker requests a modest Class
20 Representative Award of \$10,000.00. The request is reasonable in light of the general release that the
21 Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is
22 appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Douglas Walker
23 (“Walker Decl.”) ¶¶ 2-3.

24 As part of his duties as the Class Representative, Plaintiff provided all necessary information and
25 evidence that resulted in this settlement. Walker Decl. ¶¶ 2-3. Plaintiff met and conferred with Class
26 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. Plaintiff provided information and
27 documents to Class Counsel and made himself available to answer any questions during litigation. *Id.*
28 Ultimately, Plaintiff’s efforts secured an exceptional result for the Class.

1 In addition to the invaluable services that Plaintiff provided, he also took a significant risk, both
2 professionally and monetarily. Walker Decl. ¶ 4. Because the alleged claims involve the payment of
3 costs to the prevailing party, Plaintiff could have possibly faced paying Defendant's costs had Defendant
4 prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential
5 employers that may be less willing to hire an individual who has filed suit against a prior employer.
6 Plaintiff took this risk upon himself and the whole class benefited. Class Members did not have to file
7 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to
8 face potential prejudice in future employment.

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

10 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
11 quoted Administration Costs not to exceed \$12,000.00 to send notices and administer the settlement.
12 Agreement § 3.1. The Administration Costs are reasonable and should be approved.

13 **II. The Class Meets All Requirements for Certification.⁵**

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

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

27
28

⁵ Defendant expressly reserve its objections to class certification outside of the settlement context.

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

2 Class Members are identifiable from Defendant’s records. The class definition “is precise,
3 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
4 Indeed, there are approximately 843 Class Members. Agreement § 1.5. Numerosity thus is sufficiently
5 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
6 number is required as a matter of law for the maintenance of a class action” and citing examples in
7 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
8 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

9 **B. The Class Establishes a Community of Interest.**

10 “The community of interest requirement involves three factors: ‘(1) predominant common
11 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
12 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
13 435 (2000).

14 **1. Plaintiff’s Claims Are Typical of Those of the Class.**

15 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
16 furnished unlawful wage statements. With respect to typicality, Plaintiff was provided wage statements
17 that fail to accurately itemize and show either the pay period start date or overtime rate of pay—exactly
18 like other members of the Class, based on Defendant’s common wage statement practices. Walker Decl.
19 ¶ 2.

20 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

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

1 impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery*
2 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

3 **3. Plaintiff and His Counsel Adequately Represent the Class.**

4 With respect to adequate representation, Plaintiff does not have any interests adverse to the
5 Class, and no such issues have been raised or presented. Walker Decl. ¶ 3. Plaintiff has taken all
6 necessary steps to represent the interests of the Class, including by providing information and
7 documents to Class Counsel, making himself available to discuss the claims, providing wage statements
8 that he was issued, reviewing wage statements while the lawsuit was pending, and answering any
9 questions. *Id.* In sum, Plaintiff has adequately represented the Class Members and will continue to do so.

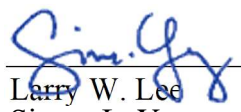
10 From the inception of the case, Class Counsel has zealously represented the interests of the
11 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
12 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
13 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
14 Yang Decl. ¶¶ 9-13; Marder Decl. ¶¶ 10-11.

15 **CONCLUSION**

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

23 DATED: February 17, 2023

DIVERSITY LAW GROUP, P.C.

24 By: 
25 Larry W. Lee
26 Simon L. Yang
27 Attorneys for Plaintiff
28

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On February 17, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
16 **SETTLEMENT**
- 17 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
18 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 19 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
- 22 **5. DECLARATION OF DOUGLAS WALKER IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
- 25 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**
26 **OF CLASS ACTION SETTLEMENT**

27 on the interested parties in this action as follows:

Alexander M. Chemers alexander.chemers@ogletree.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. 400 South Hope Street, Suite 1200 Los Angeles, CA 90071 <i>Attorney for Defendant Peet's Coffee, Inc.</i>	Atticus Lee atticus.lee@ogletree.com Sally I. Navarrete sally.navarrete@ogletreedekins.com OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. One Embarcadero Center, Suite 900
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San Francisco, California 94111
Attorney for Defendant Peet's Coffee, Inc.

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 17, 2023, at Los Angeles, California.


Erika Mejia