

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com

Attorneys for Plaintiff and the Class

*ADDITIONAL ATTORNEYS ON FOLLOWING PAGE

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

ISRAEL HERMOSILLO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AMERICOLD LOGISTICS, LLC, a limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CV-21-003009

[Assigned to the Hon. Stacy Speiller, Dept. 22]

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

Date: November 29, 2022

Time: 8:30 a.m.

Dept.: 22

ADDITIONAL COUNSEL

Dennis S. Hyun (State Bar No. 224240)

HYUN LEGAL, APC

515 S. Figueroa St., Suite 1250

Los Angeles, California 90071

(213) 488-6555

(213) 488-6554 facsimile

dhyun@hyunlegal.com

Edward W. Choi, Esq. SBN 211334

LAW OFFICES OF CHOI & ASSOCIATES

515 S. Figueroa St., Suite 1250

Los Angeles, CA 90071

Telephone: (213) 381-1515

Facsimile: (213) 465-4885

Email: edward.choi@choiandassociates.com

William L. Marder (SBN 170131)

bill@polarislawgroup.com

POLARIS LAW GROUP

501 San Benito Street, Suite 200

Hollister, CA 95023

Telephone: (831) 531-4214

Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

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

2 **PLEASE TAKE NOTICE** that on November 29, 2022 at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Stacy Speiller, judge presiding, in Department
4 22 of the above referenced Court located at 801 10th Street, Modesto, CA 95354, Plaintiff ISRAEL
5 HERMOSILLO (“Plaintiff” or “Hermosillo”) will seek an Order: (1) preliminarily approving the
6 Stipulation Re: Settlement Of Class Action (“Settlement Agreement” or “Stipulation”); (2)
7 conditionally certifying the following Class for settlement purposes only: “all current and former
8 non-exempt employees of Americold in the State of California between April 17, 2020 through
9 September 12, 2022 (“Class Period”); (3) appointing Hermosillo as the Class Representative and
10 Larry W. Lee of Diversity Law Group, P.C., Edward W. Choi of the Law Offices of Choi &
11 Associates, William L. Marder of Polaris Law Group, and Dennis Hyun of Hyun Legal, APC as
12 Class Counsel; (4) preliminarily approving the Settlement and the Gross Settlement Amount of
13 \$1,000,000.00; (5) finding on a preliminary basis that the Settlement Agreement appears to be
14 within the range of reasonableness of a settlement, including the Class Representative Service
15 Award, Class Counsel’s fees and costs, the settlement administration fees, and the allocation of
16 payments to Settlement Class Members, that could ultimately be given final approval by this
17 Court; (6) approving the Notice To Class Members Re: Pendency of a Class Action and Notice of
18 Hearing On Proposed Settlement (“Class Notice” or “Notice of Settlement”) to be sent to Class
19 Members, which is attached as an exhibit to the Settlement Agreement; (7) approving the
20 distribution of the Class Notice to Class Members substantially in the manner and form set forth in
21 the Settlement Agreement; (8) appointing CPT Group Class Action Administrators as the
22 Settlement Administrator; and (9) setting the matter for a Final Fairness and Final Approval
23 hearing.

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

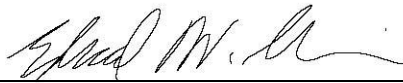
27 The basis for this Motion, filed without any opposition from Defendant AMERICOLD

1 LOGISTICS, LLC (“Defendant” or “Americold”), is that the proposed settlement is fair, adequate,
2 and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity
3 of class members to participate in, opt-out of, or object to the settlement.

4 This Motion will be based on the attached Memorandum of Points and Authorities, the
5 Settlement Agreement, the proposed Notice to Class Members, and the supporting Declarations of
6 Larry W. Lee, Edward W. Choi, William L. Marder, Dennis S. Hyun and Plaintiff, and upon the
7 oral arguments of counsel (should there be any) and on the complete records and file herein.

8
9 DATED: November 3, 2022

LAW OFFICES OF CHOI AND ASSOCIATES

10
11 By: 

12 Edward W. Choi
13 Attorneys for Plaintiff and the Class
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

TABLE OF CONTENTS

I.	INTRODUCTION.....	6
II.	DISCUSSION	7
A.	PROPOSED CLASS DEFINITION	9
B.	NUMEROSITY	9
C.	ASCERTAINABILITY	9
D.	TYPICALITY AND ADEQUACY OF REPRESENTATION	9
	1. Class Representative’s Claims are Typical of the Class	9
	2. Class Counsel Have Adequately Represented the Class and Has	
	Experience with Wage and Hour Class Actions	10
E.	SUPERIORITY	11
F.	SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY	
	AND REASONABLE ESTIMATE OF THE NATURE AND AMOUNT	
	OF RECOVERY	11
G.	SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS	
	NOT COLLUSIVE.....	14
H.	SETTLEMENT TERMS AND EVALUATION	16
	1. Proposed Terms of the Settlement.....	16
	2. Nature of Any Injunctive Relief	16
	3. Amount and Manner of Distribution of the Compensation to be	
	Provided to Class Members Including the Amount, or an	
	Estimate, of What Each Class Member Will Receive	16
	4. Whether, and Under What Circumstances, Amounts May	
	Revert to Defendant	17
	5. Scope of the Release of Class Members’ Claims	17
	6. Tax Treatment of Settlement Amounts	18
	7. Affirmative Obligations to be Undertaken by Class Members or	

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

	Class Counsel and the Reasons for Any Such Obligations.....	18
I.	SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS	18
J.	UNCASHED FUNDS	19
K.	NOTICE TO CLASS MEMBERS.....	19
L.	COSTS AND FEES	20
	1. Attorneys’ Fees and Costs	20
	2. Proposed Payment to Class Representative.....	22
	3. Class Administration Fees	23
III.	PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT	
	AND MOTION FOR APPROVAL, ATTORNEY’S FEES AND FINAL	
	ACCOUNTING	23
IV.	CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION	
	FOR PRELIMINARY APPROVAL	23

TABLE OF AUTHORITIES

Cases

1		
2	<u>Cases</u>	
3	<i>Accord Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1803 (1996).....	8
4	<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal.	
5	Mar. 20, 2015).....	14
6	<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980).....	20
7	<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001).....	23
8	<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504, 517 (2018).....	13
9	<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 66 n.11 (2008)	21
10	<i>City of San Jose v. Superior Court</i> , 12 Ca1. 3d 447, 460 (1974).....	10
11	<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998).....	23
12	<i>Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) .	23
13	<i>Faulkinbury v. Boyd & Assocs., Inc.</i> (2013) 216 Cal. App. 4th 220, 240.....	9
14	<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008)	
15		21
16	<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	21
17	<i>Gentry v. Sup. Ct.</i> (2007) 42 Cal. 4th 443, 462.....	11
18	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
19	27, 2007).....	23
20	<i>Greko v. Diesel U.S.A., Inc.</i> , No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26,	
21	2013).....	14
22	<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990).....	14
23	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....	9
24	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	14
25	<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475, 478 (S.D.N.Y. 1984)	8
26	<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957, 962 (N.D. Ga. 1980).....	14
27	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374.....	23

1	<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000).....	13
2	<i>In re Paine Webber Ltd. P’ships Litig.</i> , 171 F.R.D. 104, 125 (S.D.N.Y. 1997)	15
3	<i>Jaimez v. DAIOHS USA, Inc.</i> (2010) 181 Cal. App. 4th 1286, 1308.....	11
4	<i>Jordan v. L.A. County</i> (9th Cir. 1982) 669 F.2d 1311, 1320	9
5	<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 130, 133 (2008)	12
6	<i>Laffitte v. Robert Half Int’l</i> , 1 Cal. 5th 480, 503 (Aug. 11, 2016).....	20, 21
7	<i>Laffitte v. Robert Half Int’l</i> , 231 Cal. App. 4th 860, 871 (2014)	21
8	<i>Lee v. Dynamex, Inc.</i> (2008) 166 Cal. App. 4th 1325, 1334.....	9
9	<i>Local Joint Exec. Bd. of Culinary/Bartender Trust Fund</i> (9th Cir. 2001) 244 F.3d 1152, 1163....	11
10	<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677, 682 (7th Cir. 1987)	
11		14
12	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004)	14, 15
13	<i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989).....	14
14	<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981).....	10
15	<i>Sav-on Drug Stores, Inc., supra</i> , 34 Cal. 4th 319 at p. 326.)	11
16	<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977) (“ <i>Serrano III</i> ”)	20
17	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	14
18	<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979).....	14
19	<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411, 421 (1987).....	10
20	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)...	14
21	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995).....	23
22	<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971).....	10
23	<i>Villalpando v. Excel Direct Inc.</i> (N.D. Cal. 2014) 303 F.R.D. 588, 605-606.....	9
24	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6	
25	(N.D. Cal. Nov. 21, 2012)	14
26	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997).....	20
27	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 240 (2001)	8, 20

1	<u>Statutes</u>	
2	Business and Professions Code § 17200 <i>et seq.</i>	6, 12
3	Civil Code §1542	18
4	Labor Code § 1194.....	6, 12
5	Labor Code § 226.....	6, 12
6	Labor Code § 226.7	6, 12
7	Labor Code § 233.....	6, 12
8	Labor Code § 246.....	6, 12
9	Labor Code § 2698 <i>et seq.</i>	6, 12
10	Labor Code § 510.....	6, 12
11	Labor Code § 512	6, 12
12	Labor Code §§ 201-203.....	6, 12
13	<u>Other Authorities</u>	
14	4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.24.....	8
15	4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.26 (4th ed. 2002)	8, 9
16	4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.47.....	15
17	Brickman, <i>Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-</i>	
18	<i>Competitive Fees</i> (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11.....	21
19	Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> , 7	
20	J. of Empirical Leg. Stud. 248, 262, fn.16 (2010).....	22
21	Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> , 7 J. Empirical	
22	Leg. Stud. 811, 833 (2010).....	22
23	Manual for Complex Litigation (Third) § 30.41	7
24		
25		
26		
27		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 10, 2021, Plaintiff Israel Hermosillo (“Plaintiff” or “Hermosillo”) filed a putative
4 class action complaint in Stanislaus County Superior Court against Defendant AMERICOLD
5 LOGISTICS, LLC (“Defendant” “Americold”) (Plaintiff and Defendant collectively, the
6 “Parties”). The initial Complaint alleged one cause of action for failure to provide accurate
7 itemized wage statements in violation of Labor Code § 226. Pursuant to the Parties’ stipulation,
8 Plaintiff filed a First Amended Complaint dated December 23, 2021, alleging claims under Labor
9 Code sections 201-203, 226, 226.7, 233, 246, 510, 512, and 1194, as well as Labor Code section
10 2698 *et seq.* (“PAGA”), and Business and Professions Code sections 17200 *et seq.* (“Operative
11 Complaint”)

12 Defendant denies all claims and contentions alleged in the Operative Complaint.
13 Americold maintains that at all times relevant, it properly compensated employees and provided
14 employees with accurate and legally compliant wage statements and all other records as mandated
15 by law, and has otherwise complied with federal and California law in all aspects.

16 Since the filing of this case, the Parties conducted informal discovery and investigation,
17 including the production of documents and class payroll data. (Declaration of Edward W. Choi
18 (“Choi Decl.”) ¶5). Thereafter, the parties engaged in mediation with well-respected wage and
19 hour class action mediator, Tripper Ortman on September 12, 2022, which ultimately led to this
20 settlement. (*Id.*)

21 The settlement is for a Gross Settlement Amount of One Million Dollars (\$1,000,000.00).¹
22 (Stipulation Re: Settlement of Class Action (“Settlement Agreement” or “Stipulation”) ¶1.19).
23 The class members need not do anything to participate in the settlement and will be automatically
24 included in the Settlement unless he/she opts out of the Settlement. (*Id.*, Exhibit A).

25 _____
26 ¹ The \$1 million Gross Settlement Amount also includes the Employer Credit of \$150,000.00 that
27 Defendant previously paid to Class Members. Specifically, Defendant voluntarily spent \$150,000
in calculating, processing, and paying retroactive wages and interest to the Class Members
following the initiation of this Lawsuit. (Stipulation ¶ 1.16).

1 Although Plaintiff and the representing counsel have always believed that they can prevail
2 on class certification, as well as on the merits, they recognize the inherent risk in further drawn-out
3 litigation and the specific risks that a class might not be certified. Based on their own independent
4 investigation and evaluation, the Parties and their respective counsel are of the opinion that
5 settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
6 reasonable, and adequate and is in the best interests of the Class in light of all known facts and
7 circumstances and the expenses and risks inherent in litigation.

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

10 **II. DISCUSSION**

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

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

24 Thus, the preliminary approval by the trial court is simply a conditional finding that the
25 settlement appears to be within the range of acceptable settlements. As Professor Newberg
26 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
27 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
approval by the court also are discussed in 4 *Newberg on Class Actions*:

1 When the parties to an action reach a monetary settlement, they will usually prepare
2 and execute a joint stipulation of settlement, which is submitted to the court for
3 preliminary approval. The stipulation should set forth the central terms 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.

4 *Id.* at § 11.24.

5 Here, the Parties have reached such an agreement and have concurrently filed the
6 Settlement Agreement fully setting forth the agreement reached among the Parties. The
7 Settlement Agreement sets forth all terms of the agreement reached by the Parties, which include,
8 among other things, the method for calculating the Class Members' Individual Settlement Sum.

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

17 As further explained by Professor Newberg:

18 The strength of the findings made by a judge at a preliminary hearing or conference
19 concerning a tentative settlement proposal. . . . may be set out in conditional orders
20 granting tentative approval to the various items submitted to the court. Three basic
21 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.

22 4 Newberg on Class Actions, at §11.26.

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

27 ///

1 **A. PROPOSED CLASS DEFINITION**

2 The current settlement is being settled on behalf of “all current and former non-exempt
3 employees of Americold in the State of California at any time between April 17, 2020 through
4 September 12, 2022 (“Class Period”). (Settlement Agreement ¶¶1.7 and 1.11).

5 **B. NUMEROSITY**

6 Courts generally find that numerosity is satisfied if the class includes forty or more
7 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see*
8 *also Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court
9 “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39]
10 ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

11 In this case, Defendant represented that the class includes approximately 1,250 Settlement
12 Class members, from April 17, 2020 through September 12, 2022, therefore, numerosity is
13 satisfied. (Choi Decl. ¶14).

14 **C. ASCERTAINABILITY**

15 Class members are ascertainable where they may be “readily identified without
16 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
17 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th
18 220, 240.)

19 Here, the identity of class members is clearly ascertainable from Defendant’s payroll
20 records and have already been identified.

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

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

23 The commonality requirement is met when there are questions of law and fact common to
24 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
25 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
26 facts couple with disparate legal remedies within the class”). Commonality requires only that
27 some common legal or factual questions exist; the plaintiffs need not show that all issues in the

1 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
2 Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
3 *Court*, 12 Ca1. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
4 Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class
5 wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v.*
6 *Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

7 Plaintiff alleges that Defendant, as a matter of corporate policy, practice or procedure
8 violated the Labor Code by providing Plaintiff and all other class members non-compliant wage
9 statements. Specifically, Plaintiff alleges that he was issued inaccurate wage statements that failed
10 to identify the correct applicable rate of pay and hours whenever shift differential/premium and
11 overtime wages were paid. (Declaration of Israel Hermosillo ("Hermosillo Decl.") at ¶4). Further,
12 Plaintiff was not paid proper overtime wages whenever he received non-discretionary income
13 because the non-discretionary remuneration was not factored into the regular rate of pay for
14 purposes of overtime pay. (*Id.*). Finally, Plaintiff was also not paid sick pay and meal break
15 premium wages at the regular rate of pay because the non-discretionary remuneration was not
16 factored into the regular rate of pay. (*Id.*).

17 Plaintiff does not have any interests adverse to the class, nor has any such issues been
18 raised or presented. (Hermosillo Decl. ¶5). Plaintiff has taken all necessary steps to represent the
19 interests of the Class, by providing information and documents. (Hermosillo Decl. ¶¶6-7). For
20 such reasons, Plaintiff has adequately represented the class members and will continue to do so.

21 **2. Class Counsel Have Adequately Represented the Class and Has**

22 **Experience with Wage and Hour Class Actions**

23 From the inception of the case, Class Counsel have solely represented the interest of the
24 class. For example, the informal discovery exchanged by the parties was directed towards class
25 issues. (Choi Decl. ¶7). Class counsel also engaged in numerous written and verbal
26 communications with opposing counsel to obtain sufficient class data in order to evaluate that
27 class claims at issue. (*Id.*). The mediation and settlement were also obtained for the benefit of the
class, not for the individual Plaintiff. Finally, Class counsel have been approved as class counsel

1 on a number of prior cases and are competent to represent the class. (Choi Decl. ¶22; Declaration
2 of Larry W. Lee (“Lee Decl.”) ¶3-6; Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ 3-6).

3 **E. SUPERIORITY**

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

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

18 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY AND**
19 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF**
20 **RECOVERY**

21 As set forth above, the Operative Complaint alleges (1) Violation of Labor Code § 226; (2)
22 Violation of Labor Code §§ 510, 1194; (3) Violation of Labor Code § 226.7 and 512; (4) Violation
23 of Labor Code §§ 201-203, 233 and 246; (5) Violation of Bus. & Prof. Code § 17200, *et seq.*; and
24 (6) Violation of Labor Code § 2698, *et seq.* (“PAGA”).

25 Specifically, Plaintiff seeks Labor Code §226 penalties based on Defendant’s failure to
26 identify the correct rate of pay and hours whenever shift differential/premium wages were paid.
27 Further, whenever overtime wages were paid, the rate of pay identified for such wages were

1 displayed as the base hourly rate of pay rather than the overtime rate of pay on wage statements.
2 In addition, whenever “Special Earn” wages were paid, the total hours worked is inaccurate.
3 Finally, Plaintiff seeks derivative wage statement penalties whenever overtime, sick pay, meal
4 premium wages and non-discretionary remuneration was paid because the non-discretionary
5 remuneration was not factored into the regular rate of pay for proper calculation of overtime, sick
6 pay and/or meal premium wages.

7 Finally, Plaintiff seeks PAGA penalties for the foregoing violations.

8 Plaintiff engaged in informal discovery, engaged in extensive communications regarding
9 the data and documents to be produced by Defendant for mediation, including the putative class
10 members’ payroll data. (Choi Decl. ¶5). Thereafter, the parties engaged in a full day mediation
11 with mediator Tripper Ortman on September 12, 2022, which resulted in this settlement. (*Id.* at
12 ¶5).

13 Based on their own independent investigations and evaluations, the Parties and their
14 respective counsel are of the opinion that settlement for the consideration and on the terms set
15 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
16 the Class and Defendants in light of all known facts and circumstances and the expenses and risks
17 inherent in litigation. (Choi Decl. ¶13).

18 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
19 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
20 conducted sufficient investigation and the settlement is reasonable in light of the strengths of the
21 plaintiff’s claims. As discussed herein, Plaintiff’s counsel has conducted extensive investigation
22 and, in light of the strength and weaknesses of Plaintiff’s claims, Plaintiff’s attorneys submit that
23 this settlement is fair pursuant to *Kullar*.

24 In the present case, the gross settlement of \$1,000,000.00. Defendant voluntarily paid
25 approximately \$150,000.00 to class members calculating, processing, and paying retroactive
26 wages and interest to the Class Members following the initiation of this Lawsuit. (Settlement
27 Agreement ¶1.16). Further, Defendant will pay an additional \$850,000.00 beyond the

1 \$150,000.00 that was already paid resulting in a Gross Settlement Amount of \$1,000.000. (*Id.* at
2 ¶1.19).

3 Prior to the mediation, Plaintiff received payroll data from Defendant which was analyzed
4 by an expert witness. (Choi Decl. ¶9). Plaintiff's expert calculated total unpaid overtime, sick
5 pay, meal break premiums to amount to approximately \$246,002.86. (*Id.*). Further, Plaintiff's
6 expert calculated Labor Code §226 damages to amount to \$997,650.00. (*Id.*). Finally, waiting time
7 penalties amounted to \$2,860,615.39. (*Id.*). Thus, the total Labor Code Damages amounted to
8 \$4,104,268.25. (*Id.*).

9 The derivative PAGA penalties amounted to \$5,826,000. However, based on Defendant's
10 voluntarily retroactive payment of the underpaid overtime, meal break premiums and sick pay
11 wages, Defendant alleged that it is entitled to good faith defenses that would have reduced the
12 PAGA penalties for such claims to zero. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
13 504, 517 (2018), where the Court of Appeal affirmed the trial court's reduction of PAGA penalties
14 by 90 percent, citing the employer's good faith attempt at complying with the law. (*Id.*). Applying
15 a 90% reduction, the total PAGA penalties could have been reduced to approximately \$582,600.

16 Based on the above, the total realistic value of the settlement including PAGA penalties
17 amounted to \$4,686,868.25. Thus, the Gross Settlement Amount is approximately 21% of the
18 total realistic value of the settlement.

19 Numerous courts have held that gross settlements approximating between only 8 and 25%
20 of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
21 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16%
22 of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement
23 amounting to only a fraction of the potential recovery does not per se render the settlement
24 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
25 relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair
26 and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor*
27 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding

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

9 Based on the above, the settlement amount is fair and reasonable.

10 **G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT**
11 **COLLUSIVE**

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

22 While the recommendations of counsel proposing the settlement are not conclusive, the
23 Court can properly take them into account, particularly where, as here, they have been involved in
24 formal and informal discovery and negotiations for some period of time, appear to be competent,
25 have experience with this type of litigation, and have exchanged substantial evidence from the
26 opposing party. See *Newberg on Class Actions*, *supra*, at § 11.47; *Nat'l Rural Telecomms. Coop.*,
27 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.

1 1997) (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a
2 strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great
3 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the
4 facts of the underlying litigation”).

5 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and
6 hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of
7 wage and hour class actions and have extensive litigation experience. (Choi Decl. at ¶22; Lee
8 Decl. at ¶¶3-6; Hyun Decl. at ¶¶ 3-6). As discussed above, Plaintiff’s counsel conducted a
9 thorough investigation of the allegations involved in this case since the inception. Each side has
10 apprised the other of their respective factual contentions, legal theories and defenses, resulting in
11 extensive arms’ length negotiations taking place among the Parties.

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

17 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
18 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
19 involved in not prevailing on one or more of the causes of action or theories alleged in the
20 Operative Complaint, the possibility of non-certification and potential for appeals. (Choi Decl. at
21 ¶12).

22 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice,
23 should any Class Member wish to pursue his or her own case for the claims being released herein,
24 each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from the
25 settlement. Moreover, as set forth in the Class Notice, Class Members are advised of their right to
26 attend the final approval hearing and object to any of the terms contained in the proposed
27 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
4 out of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement
5 are as follows.

6 The Settlement Agreement provides for a Gross Settlement Amount of One Million
7 Dollars (\$1,000,000.00). (Settlement Agreement ¶1.19). Attorney's fees of up to 33 1/3% or
8 \$333,333.33 of the Gross Settlement Amount will be paid to Class Counsel along with costs of up
9 to \$30,000.00. (*Id.* at ¶1.5-1.6). The Class Representative Service Award will be up to
10 \$10,000.00. (*Id.* at ¶1.13). The allocation for PAGA Penalties is \$80,000, of which \$60,000 will
11 be paid to the LWDA and \$20,000 distributed proportionally to the PAGA Members who do not
12 return a request to be excluded from the Action. (*Id.* at ¶1.29). The Administrator will be paid up
13 to \$14,750.00 for costs of administering this settlement. (*Id.* at ¶1.4). After these deductions, the
14 remainder will be distributed to the Class Members who do not timely request an opt-out. (*Id.* at
15 ¶¶ 2.5.4, 2.6.2).

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

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

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

21 The Net Settlement Amount (calculated after deduction of employer credit, attorneys' fees,
22 costs, incentive awards, LWDA payment and administration costs) shall be paid to all Settlement
23 Class Members who do not opt out of the settlement. (Settlement Agreement ¶¶1.40-1.41, 2.50).
24 The amount allocated to each Settlement Class Member will be based on each individual's number
25 of pay periods worked during the Class Period. (*Id.* at ¶¶1.40-1.41). The reason for such
26 allocation is so that the Settlement Class Members who suffered higher damages will be allocated
27 greater recovery. Settlement Class Members may opt-out of the Settlement if they so choose. (*Id.*

1 at ¶2.5.3). Based on the Net Settlement Amount, on a pure raw average, each class member will
2 receive approximately \$100.35. (Choi Decl. ¶19). Such amounts for each person could increase
3 or decrease depending on a number of factors, including the amount of wage statements received
4 by each Settlement Class Member. The approximate amount each person will be entitled to will
5 not be known until the class data is transferred to the Settlement Administrator for processing.

6 **4. Whether, and Under What Circumstances, Amounts May Revert to**
7 **Defendant**

8 In no event shall any portion of the Gross Settlement Amount revert to Defendant.
9 (Settlement Agreement ¶2.6.2).

10 **5. Scope of the Release of Class Members' Claims**

11 Class Members who do not opt out of the Settlement will release the following:

12 “all claims for damages and/or penalties based on the facts that were or could have
13 been asserted in the Complaint, First Amended Complaint, or LWDA Letter,
14 including claims for missed or unpaid meal periods; failure to pay overtime pay,
15 double time pay, meal period; any claim for failure to properly pay sick pay; any
16 claim for failure to properly pay all wages upon termination or waiting time
17 penalties; wage statement claims; record-keeping claims; conversion with respect
18 to the facts alleged; wage-theft with respect to the facts alleged; and PAGA
19 penalties based on the facts alleged in the LWDA letters, FLSA claims based on the
20 facts alleged in the Complaint, First Amended Complaint, or LWDA Letter, and/or
21 unfair competition claims based on the foregoing, including without limitation any
22 claims asserted under California Labor Code §§201-203, 226, 226.3, 226.7, 233,
23 246, 510, 512, 558, 1194, 2698 *et seq.*, 2699 *et seq.*, the applicable Wage Orders of
the Industrial and Welfare Commission (the “IWC”), Code of Civil Procedure §
1021.5, and California Business and Professions Code § 17200, *et seq.*, and
includes all types of relief available for the above-referenced claims, including,
without limitation, any claims for damages, restitution, losses, penalties, fines,
liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory
relief, liquidated damages, or any other related relief of any nature during the Class
Period”.

24 (Settlement Agreement ¶1.35).

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

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

2 Eighty percent (80%) of each Individual Settlement Sum shall be deemed a payment for
3 penalties or interest, and as such shall not be subject to withholdings or deductions, and twenty
4 percent (20%) shall be deemed a payment for wages, and subject to tax withholdings. (Settlement
5 Agreement ¶2.2.1). Each Class Member shall be issued any applicable IRS Form 1099 in
6 connection with the payment of the penalty portion, and W-2 in connection with the payment of
7 the wage portion. (*Id.* at ¶2.2.2). Defendant shall also be responsible for its share of employer-
8 side payroll taxes in addition to the Gross Settlement Amount. (*Id.* ¶ 2.6.1).

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

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

16 Such obligations are thoroughly identified in each class member's Class Notice.
17 (Settlement Agreement, Exhibit A).

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

19 Class Members will not be required to submit a claim form to receive compensation.
20 Instead, this is a non-reversionary Settlement Agreement. (Settlement Agreement, Exhibit A).
21 Settlement Class Members will be provided 45 calendar days to opt out or object to the settlement.
22 (Settlement Agreement ¶1.27). Any Class Member who does not opt-out of the settlement will be
23 automatically issued his/her share of the settlement proceeds. Given that this is a non-reversionary
24 settlement, the parties believe that 45 calendar days is sufficient time for class members to object
25 or opt-out of the settlement. Further, Settlement Class Members will be notified of the
26 Fairness/Final Approval hearing and will have an opportunity to appear at the Fairness hearing.

27 ///

1 **J. UNCASHED FUNDS**

2 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
3 paid out. Checks issued pursuant to this Agreement shall remain negotiable for a period of at least
4 one-hundred eighty (180) days from the date of mailing. (Settlement Agreement 2.6.2). Any
5 funds associated with any checks which are not properly or timely negotiated shall escheat to the
6 State of California's Controller's Office Unclaimed Property Fund to be held in the name of the
7 Class Member. (*Id.*).

8 **K. NOTICE TO CLASS MEMBERS**

9 If, by entering the Preliminary Approval Order, the Court provides authorization to send the Class
10 Notice, Americold, through the Administrator, will facilitate the mailing to all Class Members at their Last
11 Known Addresses of the Class Notice via first class mail through the United States Postal Service, postage
12 pre-paid. (Settlement Agreement ¶2.4.1). Americold shall prepare the name and Last Known Address,
13 Social Security Number, and number of Pay Periods worked by each Class Member for the Administrator
14 only so that the Administrator can engage in the processing and mailing of each Class Notice and the
15 associated claims process. (*Id.* at ¶2.4.3). This list shall be provided to the Administrator within twenty-
16 one (21) days after the Court grants Preliminary Approval of the Settlement. (*Id.*). Prior to mailing the
17 Class Notice to each Class member, the Administrator shall undertake a Reasonable Address Verification
18 Measure to ascertain the current accuracy of the Last Known Address of each Class Member. To the
19 extent this process yields an Updated Address, that Updated Address shall replace the Last Known Address
20 and be treated as the new Last Known Address for purposes of this Stipulation and for subsequent mailings
21 in particular. (*Id.* at ¶2.4.4).

22 In the event that subsequent to the first mailing of a Class Notice and prior to the Notice
23 Response Deadline, that Class Notice is returned to the Administrator by the United States Postal
24 Service with a forwarding address for the recipient, the Administrator shall promptly re-mail the
25 Class Notice to that address, and the forwarding address shall be deemed the Updated Address for
26 that Class Member. (*Id.* at ¶2.4.6). In the event that subsequent to the first mailing of a Class
27 Notice and prior to the Notice Response Deadline, that Class Notice is returned to the Claims

1 Administrator by the United States Postal Service because the address of the recipient is no longer
2 valid, *i.e.*, the envelope is marked “Return to Sender,” the Claims Administrator shall undertake
3 another Reasonable Address Verification Measure to attempt to ascertain the current address of
4 the particular Class Member in question and, if such an address is ascertained, the Claims
5 Administrator will re-send the Class Notice within three (3) days of receiving such information; if
6 no Updated Address is obtained for that Class Member, the Class Notice shall be sent again to the
7 Last Known Address. (*Id.*) In either event, the Class Notice shall be deemed received once it is
8 mailed for the second time. (*Id.*) If the Class Notice is re-mailed due to a previously defective
9 address, the respective Class Member’s Notice Response Deadline shall be extended by fifteen
10 (15) days. (*Id.*)

11 **L. COSTS AND FEES**

12 **1. Attorneys’ Fees and Costs**

13 California state and federal courts have recognized that an appropriate method for
14 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
15 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
16 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*,
17 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997).
18 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread
19 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
20 bear the entire burden alone.” *Vincent*, 557 F. 2d at 769.

21 Under California law, the award of attorneys’ fees in common fund wage and hour class
22 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal.
23 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state courts in
24 holding that when class action litigation establishes a monetary fund for the benefit of the class
25 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
26 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
27 fund created.”). Under the percentage of the fund method, the Court’s objective remains to “mimic

1 the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998)
2 (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level
3 that will approximate what the market will set... The judge, in other words, is trying to mimic the
4 market in legal services.”).

5 An award of 33% of the fund in attorneys’ fees mimics the marketplace as it “is supported
6 by the fact that typical contingency fee agreements provide that class counsel will recover 33% if
7 the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores*
8 *LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly*
9 *Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81
10 Wash U. L. Q. 653, 659 n. 11). Indeed, “empirical studies [that] show that . . . fee awards in class
11 actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
12 n.11 (2008).

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

18 Moreover, in the *Laffitte* intermediate court decision, the court observed that “35 percent of
19 the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
20 *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing
21 35% of the fund clearly falls within that range, and is consistent with other comprehensive surveys
22 of class action settlements and fee awards. See Fitzpatrick, *An Empirical Study of Class Action*
23 *Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases
24 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35
25 percent, with almost no awards more than 35 percent.”); Eisenberg & Miller, *Attorney Fees in*
26 *Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,
27 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees

1 representing one-third of the total recovery is consistent with market rates).

2 The results delivered by Plaintiff's Counsel also support the requested percentage of the
3 fund. Here, the Parties have agreed to a payment of a maximum of 33 1/3% of the settlement
4 (\$333,333.33) for payment to Class Counsel as attorneys' fees. (Settlement Agreement ¶1.6). The
5 Parties have agreed to a payment of the foregoing attorney's fees and, thus, this payment should be
6 presumed to be fair.

7 Further, the parties have agreed to reimbursement of class counsel's litigation costs of up
8 to \$30,000.00. (Settlement Agreement ¶1.5). Class counsel have, at their own risk, expended costs,
9 for example, to file this instant action, service of process, payment of mediation fees, expert
10 witness fees and other litigation related costs and will be submitting detailed cost sheets for the
11 respective costs incurred prior to the Motion for Final Approval. Based on the foregoing, the
12 court should preliminarily approve the attorney's fees and costs being requested by the parties.

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

14 Plaintiff requests a modest enhancement of \$10,000.00. (Settlement Agreement ¶1.13).
15 Plaintiff spent a very significant amount of time discussing this matter with his attorneys on many
16 occasions and explaining my understanding of the company's practices. (Hermosillo Decl. ¶6).
17 Plaintiff always made himself available to answer questions, gather documents,
18 reviewing/executing the memorandum of understanding, reviewing/executing the settlement
19 agreement and pleadings. (*Id.* at ¶7).

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

27 Notably, courts have routinely granted approval of representative enhancements for far

greater amounts than the \$10,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *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 a modest enhancement of \$10,000.00, which is “presumptively reasonable” and consistent with case law.

3. Class Administration Fees

The parties have agreed to payment of a maximum of \$14,750.00 to the Settlement Administrator, CPT Group Class Action Administrators for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. (Settlement Agreement ¶¶1.4, 2.4-2.6). CPT Group Class Action Administrators is a well-recognized class action settlement administrator. The parties believe that the administration fee is reasonable and should be approved.

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

Plaintiff requests that a final fairness/approval hearing be set for approximately 4 months after the hearing on Plaintiff’s Motion for Preliminary Approval.

IV. 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

1 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
2 result of informed, extensive, and arms' length negotiations conducted by counsel for respective
3 parties who are experienced in wage and hour class action litigation. For the foregoing reasons,
4 Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement,
5 sign the proposed Order, approve and authorize mailing of the proposed Notice Packet, and set a
6 date for a final approval hearing on or after April 1, 2023.

7
8 DATED: November 3, 2022

LAW OFFICES OF CHOI AND ASSOCIATES

9 By: 
10 Edward W. Choi
11 Attorneys for Plaintiff and the Class
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27