

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

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff and the Class

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

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

Plaintiff,

vs.

AIR TRANSPORT INTERNATIONAL, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2021-00307289

[Assigned for all purposes to Department 25,
Hon. Jill H. Talley]

**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 Rene
Velasquez; [Proposed] Order]*

Date: June 3, 2022
Time: 9:00 a.m.
Department: 25

Reservation No.: 2638229

Complaint Filed: September 1, 2020

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

2 **PLEASE TAKE NOTICE** that on June 3, 2022, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 25 of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff, Rene Velasquez, will and hereby does seek an Order:

- 5 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
6 attached as 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 employees of Defendant, Air Transport International, Inc., in the State of California
9 who were issued a wage statement at any time from July 29, 2020, through August 3, 2021
10 (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 \$250,000.00, the amounts requested for the
15 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
16 LWDA Payment, and the allocation of payments to Class Members appear to be within the
17 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.

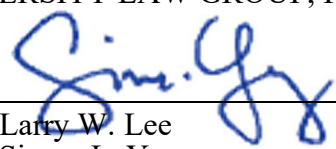
22 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
23 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
24 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and 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 Rene Velasquez, 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: April 14, 2022

DIVERSITY LAW GROUP, P.C.

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5 By: 

Larry W. Lee

Simon L. Yang

6 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

This class action alleges Defendant, Air Transport International, Inc., furnished Plaintiff, Rene Velasquez, and other employees with wage statements that fail to accurately show Defendant's name and fail to show its address at all. Plaintiff thus sues both 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") for alleged violations of Labor Code section 226(a).¹ Defendant denies the allegations.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement ("Agreement"), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$250,000.00 for the classwide settlement of claims from July 29, 2020, through August 3, 2021. Plaintiff and his counsel believe the settlement is an exceptional result for the Class; the settlement requires Defendant to pay **almost \$120 per wage statement** issued to Class Members. 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.

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RELEVANT BACKGROUND

On or about July 29, 2021, Plaintiff notified Defendant and the Labor and Workforce Development Agency that Defendant fails to furnish employees with wage statements that accurately show Defendant's name or show its address at all. Declaration of Simon L. Yang ("Yang Decl.") ¶ 2. On that basis, on September 1, 2021, Plaintiff initiated this class action alleging violations of Section 226(a). Yang Decl. ¶ 2. On behalf of all current and former employees in California who were issued

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

1 wage statements, the initial complaint alleged that Defendant’s failure to furnish wage statements that
2 accurately show Defendant’s name or to show its address at all violates Section 226(a). Also on that
3 basis, on October 1, 2021, Plaintiff initiated Case Number 34-2021-00309115 (the “PAGA Action”) to
4 allege the same Labor Code violations as a proxy for the State of California. *Id.*

5 Defendant immediately contacted Plaintiff to investigate Plaintiff’s allegations and to provide
6 Plaintiff with information regarding the alleged violations. Yang Decl. ¶ 3. The Parties engaged in a
7 thorough study of the legal principles and facts applicable to the claims Plaintiff alleged and defenses
8 Defendant might assert. *Id.* Defendant provided information related to the time period that Plaintiff’s
9 allegations applied, the number of employees issued wage statements during the period, and the number
10 of wage statements they were issued, among other items. *Id.*

11 Defendant’s willingness to engage in informal discovery enabled Plaintiff to evaluate the full
12 scope of Defendant’s potential liability, and the Parties commenced settlement discussions. Yang Decl. ¶
13 3. Ultimately, the Parties were able to negotiate the settlement terms in the Joint Stipulation of Class
14 Action and PAGA Settlement. *Id.* Ex. 1 (the “Agreement”). Pursuant to the Agreement’s terms, on
15 February 7, 2022, the Parties amended the Complaint in this matter to also allege the claims asserted in
16 the PAGA Action, which was dismissed on or about March 11, 2022. *Id.*

17 SUMMARY OF PROPOSED SETTLEMENT

18 I. Class Definition

19 The proposed settlement class includes all current or former employees of Defendant in the State
20 of California who were issued a wage statement at any time during the Class Period. Agreement ¶ 1.5.
21 The Class Period is from July 29, 2020, through August 3, 2021. *Id.* ¶ 1.7. There are approximately 103
22 Class Members. *Id.* ¶ 1.5. They received approximately 2,086 relevant wage statements. *Id.* ¶ 5.1.

23 II. Settlement Payments

24 The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of
25 \$250,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, the Parties will request that the
26 Court approve allocations for an LWDA Payment, Administration Costs, Attorneys’ Fees and Costs
27 Award, and Class Representative Award. *Id.* ¶ 1.14. Except for these allocations requiring Court
28 approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class

Members. *Id.* ¶¶ 1.15, 1.17. It is expected that, on average, each Class Member would be allocated \$1,031.55 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 5.

III. Released Claims

Plaintiff is subject to a general release. Agreement ¶ 6.3. Aggrieved Employees are subject to a release of claims for civil penalties for violations of Section 226(a) during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action. *Id.* ¶ 6.2. Settlement Class Members are subject to a release of claims for violations of Section 226(a) during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action. *Id.* ¶ 6.1.

LEGAL STANDARD

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

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

Manual for Complex Litigation (Third) § 30.41.

A preliminary approval by the trial court thus is a conditional finding that the settlement does not appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference 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).

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.*,

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

Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 8-12; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and each side has considered the other’s contentions and theories. Defendant provided the numbers of individuals and wage statements, among other things, relevant to Plaintiff’s allegations—enabling Plaintiff to assess the full value of Class Members’ claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 4. As further discussed below, the settlement is the result of extensive arm’s length negotiations between the Parties and their counsel. *Id.*

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

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendant to pay almost \$120 per wage statement issued to Class Members. This is an excellent result for Class Members. Plaintiff contended that class claims under Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to each Class Member and a \$100 penalty for each additional non-compliant wage statement to the Class Member, up to a maximum of \$4,000 per class member. Lab. Code § 226(e). PAGA penalties also result in up to \$250 per violation. Lab. Code § 226.3.

1 Defendant contested the merits and denied it was liable for any penalties. Yang Decl. ¶ 3.
2 Moreover, even if Defendant violated Section 226(a), Defendant contested the extent of liability. *Id.* For
3 example, Defendant contended that PAGA penalties would be subject to discretionary reductions and
4 that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
5 resulting from knowing and intentional violations. *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. ¶ 4.
9 Ultimately, the Gross Settlement Amount secures \$119.85 per wage statement—an excellent result that
10 obtains 35% of the potential class recovery of \$724,950. *Id.*²

11 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
12 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
13 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
14 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
15 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
16 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
17 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
18 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
19 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
20 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
21 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
22 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
23 action settlement of approximately 15% of the potential recovery was fair and reasonable).

24 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
25 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
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27 ² The potential class recovery includes \$50 under Section 226(e) for each of 103 initial violations for
28 Class Members, \$100 under Section 226(e) for each of 1,983 additional violations for Class Members,
and \$250 under Section 226.3 for each of 2,086 violations. Yang Decl. ¶ 5.

1 specific risks that class certification could be denied, liability could not be established at trial, or the
2 applicable law could change. Yang Decl. ¶ 6. The settlement for each participating Class Member is fair,
3 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
4 the costs of pursuing litigation. *Id.*

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

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

11 As discussed above, Settlement Class Members are only subject to a release of claims for
12 violations of Section 226(a) during the Class Period that were alleged in the Action or that reasonably
13 could have been alleged based on the facts alleged in the Action. Agreement ¶ 6.1. Similarly tailored,
14 Aggrieved Employees are subject to a release of claims for civil penalties for violations of Section
15 226(a) during the PAGA Period that were alleged in the Action or that reasonably could have been
16 alleged based on the facts alleged in the Action. *Id.* ¶ 6.2. Only Plaintiff is subject to a general release.
17 *Id.* ¶ 6.3.

18 The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App.
19 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in
20 the suit—is common in class action settlements.”). Moreover, the settlement releases apply to claims
21 arising during the Class Period only. Agreement ¶ 6.1. In sum, because Plaintiff alleged targeted claims
22 in the Action, any settlement releases also are specifically tailored.

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

24 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
25 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
26 provide to the Administrator each Class Member’s last known address and number of wage
27 statements, among other information (the “Class Data”), within seven days of a Preliminary
28 Approval Order. Agreement ¶ 3.2. Within 14 days of a Preliminary Approval Order, the Administrator

1 would mail the Notice of Class Action Settlement (“Class Notice”) to each Class Member to provide
2 notice of settlement via First Class U.S. Mail, using the last known address for each Class Member,
3 based on Class Data. *Id.* ¶ 3.3, 3.4. Any Class Notice returned to the Administrator as undeliverable
4 would be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* If no
5 forwarding address is provided, the Administrator would promptly attempt to determine the correct
6 address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

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

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

13 The Agreement provides for a Gross Settlement Amount of \$250,000.00. Agreement ¶ 5.1. From
14 the Gross Settlement Amount, attorneys’ fees will be no more than one-third of the Gross Settlement
15 Amount (or \$83,333.33) and litigation costs are not expected to exceed \$10,000. *Id.* ¶ 5.1.1. The Class
16 Representative Award will be no more than \$10,000.00. Agreement ¶ 5.1.2. Administration Costs will
17 be no more than \$5,000.00. *Id.* ¶ 5.1.3. 75% of the Net Settlement Amount will be allocated to Section
18 226(e) penalties, and 25% will be allocated to the PAGA Penalty Fund. *Id.* ¶ 5.2.1. Pursuant to statute,
19 75% of the PAGA Penalty Fund would constitute the LWDA Payment (no less than an estimated
20 \$26,562.50 based on the amounts of the other requested payments). *Id.*³

21 **1. Each Class Member, on Average, Would Receive More than \$1,000.**

22 It is expected that, on average, each Class Member would be allocated \$1,031.55 (*after* all
23 requested payments from the Gross Settlement Amount). Yang Decl. ¶ 5. The amount paid on average to
24 each Class Member may increase, depending on how many Class Members opt out of the class action
25 settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on
26 his or her number of relevant wage statements during the Class Period. *Id.* After deducting any approved
27 payments for an Attorneys’ Fees and Costs Award, Class Representative Award, Administration Costs,

28 ³ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 7.

1 and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated
2 among Settlement Class Members on a pro rata basis based on the number of relevant wage statements
3 for each Settlement Class Member. Agreement ¶ 5.2; *see also* Class Notice.⁴

4 As Plaintiff's lawsuit sought penalties only, 100% of Class Members' Individual Settlement
5 Payments would be characterized as penalties. Agreement ¶ 5.5. None of the settlement funds will revert
6 to Defendant. *Id.* ¶ 5.1. The principal for any uncashed checks (upon the expiration date) would escheat
7 to the State Controller Unclaimed Property Fund in the name of the Class Member. *Id.* ¶ 5.4.

8 **2. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

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

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

26
27
28 ⁴ 25% of the PAGA Penalty Fund would be allocated among Aggrieved Employees on a pro rata basis
based on the number of relevant wage statements for each Aggrieved Employee. Agreement ¶ 5.2.3.

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

Here, Plaintiff will request an attorneys' fees award of one-third of the Gross Settlement Amount. Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs.

3. The Proposed Class Representative Award Is Reasonable.

Plaintiff and proposed Class Representative Rene Velasquez requests a modest Class Representative Award of \$10,000. The request is quite reasonable in light of the general release that the Agreement requires of him but not of any other Class Member. Independently, the request is appropriate in recognition of Plaintiff's efforts on behalf of the Class. Declaration of Rene Velasquez ("Velasquez Decl.") ¶¶ 2-3.

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

In addition to the invaluable services that Plaintiff provided, he also took a significant risk, both professionally and monetarily. Velasquez Decl. ¶ 4. Because the alleged claims involve the payment of

costs to the prevailing party, Plaintiff could have possibly faced paying Defendant's costs had Defendant prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential employers that may be less willing to hire an individual who has filed suit against a prior employer. Plaintiff took this risk upon himself and the whole class benefited. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face potential prejudice in future employment.

4. The Administration Costs Are Reasonable.

Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has quoted Administration Costs not to exceed \$5,000 to send notices and administer the settlement. The Administration Costs are reasonable and should be approved.

II. The Class Meets All Requirements for Certification.⁵

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

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

⁵ Defendant expressly reserves its objections and does not agree that class certification of any of the claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the inherent risk of class certification motion practice.

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 103 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 their corporate policy, practice, or procedure
16 violated Section 226(a) by failing to furnish employees with wage statements that accurately show
17 Defendant’s name or show its address at all. With respect to typicality, Plaintiff—exactly like other
18 members of the Class—was provided wage statements that fail to accurately show Defendant’s
19 name and fail to show its address at all. Velasquez Decl. ¶ 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 been raised or presented. Velasquez Decl. ¶ 3. Plaintiff has taken all necessary
6 steps to represent the interests of the Class, including by providing information and documents to Class
7 Counsel, making himself available to discuss the claims, providing wage statements that he was issued,
8 reviewing wage statements while the lawsuit was pending, and answering any questions. *Id.* For such
9 reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

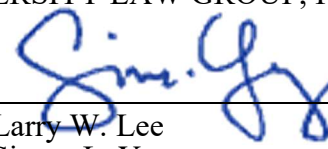
10 From the inception of the case, Class Counsel has zealously represented the interests of the
11 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
12 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
13 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
14 Yang Decl. ¶¶ 8-12; 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: April 14, 2022

DIVERSITY LAW GROUP, P.C.

24 By: 
25 _____

Larry W. Lee

Simon L. Yang

26 Attorneys for Plaintiff
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