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

ANTONIO JESUS JARAMILLO DE LA CRUZ,
as an individual and on behalf of all others
similarly situated, and as a private attorney
general,

Plaintiff,

vs.

WEIDNER PROPERTY MANAGEMENT, LLC,
a Washington limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00308697

[Assigned for all purposes to Department 28,
Hon. Lauri A. Damrell]

**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 Kelsey A. Webber; Declaration of Antonio
Jesus Jaramillo De La Cruz; [Proposed] Order]*

Date: August 4, 2023
Time: 9:00 a.m.
Department: 25

Complaint Filed: September 22, 2021
FAC Filed: February 28, 2022

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

2 **PLEASE TAKE NOTICE** that on August 4, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 28 of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff, Antonio Jesus Jaramillo De La Cruz, will and hereby does move for an
5 Order:

- 6 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
7 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 8 2. conditionally certifying the following Class of Sick Pay Class Members, Non-Exempt Class
9 Members, and Exempt Class Members for settlement purposes only:
 - 10 a. *Sick Pay Class Members*: all current or former non-exempt employees of Defendant
11 in the State of California who were paid sick pay wages in any workweek from
12 September 22, 2017, through April 1, 2023, in which they also earned non-hourly
13 remuneration, including but not limited to non-discretionary bonuses and rent
14 discount incentives;
 - 15 b. *Non-Exempt Class Members*: all current or former non-exempt employees of
16 Defendant in the State of California from February 10, 2021, through April 1, 2023;
17 and
 - 18 c. *Exempt Class Members*: all current or former exempt employees of Defendant in the
19 State of California from September 22, 2017, through April 1, 2023.
- 20 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
21 Diversity Law Group, P.C. and Kelsey A. Webber of Webber & Egbert Employment Law,
22 P.C. as Class Counsel;
- 23 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
24 Settlement Amount in the amount of \$140,000.00, the amounts requested for the
25 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
26 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
27 the range of reasonableness for a settlement that could ultimately be given final approval;
- 28 5. appointing Phoenix Settlement Administrators as the Administrator;

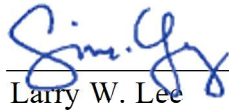
- 1 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
2 the Agreement; and
3 7. scheduling a Final Approval Hearing.

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

9 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
10 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
11 Yang, Kelsey A. Webber, and Antonio Jesus Jaramillo De La Cruz, all pleadings and papers on file
12 herein, and any further oral and documentary evidence as may be presented before or at the hearing of
13 this matter.

14 DATED: July 11, 2023

DIVERSITY LAW GROUP, P.C.

15 By: 
16 Larry W. Lee
17 Simon L. Yang
18 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Antonio Jesus Jaramillo De La Cruz, sues Defendant, Weidner Property Management, LLC, for (1) unpaid overtime; (2) unpaid sick pay wages; (3) failure to provide meal and rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; and (6) failure to reimburse business expenses.

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 \$140,000.00 for the classwide settlement of claims through April 1, 2023. Plaintiff and his counsel believe the settlement is an exceptional result for the Class. Each of approximately 126 Class Members will receive, on average, around \$443.57 (*after* all requested payments from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and his counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On September 21, 2021, Plaintiff filed a representative PAGA action in Sacramento County Superior Court, Case No. 34-2021-00308475 (the “PAGA Action”). The PAGA Action sought penalties for (1) unpaid overtime; (2) unpaid sick pay wages; (3) failure to provide meal and rest periods; (4) failure to timely pay wages; (5) failure to provide accurate itemized wage statements; and (6) failure to reimburse business expenses. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On September 22, 2021, Plaintiff filed this class action in Sacramento County Superior Court asserting the same

underlying claims asserted in the PAGA Action as well as a claim for unfair or unlawful business practices under California Business and Professions Code sections 17200 et seq. *Id.*

Upon the filing of the complaints, Plaintiff and Defendant met and conferred about the alleged claims. Yang Decl. ¶ 3. On October 21, 2021, and numerous dates thereafter, Plaintiff and Defendant exchanged information and documents that Plaintiff contended supported the claims and that Defendant contended supported its defenses, including for example documents related to a prior class action settlement approved by the San Bernardino Superior Court in *Antonio Cornejo Herrera v. Weidner Property Management LLC*, Case No. CIVDS2016465. *Id.* Class Counsel continued investigating the alleged claims and analyzing any defenses raised by Defendant. *Id.* Ultimately, the Parties agreed to file an amended complaint to streamline litigation by consolidating the claims alleged in the PAGA Action in this Action and tailoring class allegations to the applicable facts. *Id.*

On September 9, 2022, Defendant also agreed to informally provide additional information related to the value of Plaintiff's claims, if Plaintiff were to prevail on the merits. Yang Decl. ¶ 4. Defendant's willingness to engage in extensive informal discovery enabled Plaintiff to evaluate the extent of Defendant's potential liability. *Id.* On October 10, 2022, Plaintiff communicated a settlement demand, and over the next four months the Parties continued conferring about the alleged claims and defenses. *Id.* Ultimately, on January 31, 2023, the Parties were able to agree to settlement terms, which were negotiated in light of all known facts and circumstances—including the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. *Id.* The settlement terms were memorialized in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1 (the "Agreement").

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class of "Class Members" includes Sick Pay Class Members, Non-Exempt Class Members, and Exempt Class Members. Agreement § 1.5. Specifically, Sick Pay Class Members include all current or former non-exempt employees of Defendant in the State of California who were paid sick pay wages in any workweek from September 22, 2017, through April 1, 2023, in which they also earned non-hourly remuneration, including but not limited to non-discretionary bonuses

1 and rent discount incentives. *Id.* § 1.5.1. Non-Exempt Class Members include all current or former non-
2 exempt employees of Defendant in the State of California from February 10, 2021, through April 1,
3 2023. *Id.* § 1.5.2. Exempt Class Members include all current or former exempt employees of Defendant
4 in the State of California from September 22, 2017, through April 1, 2023. *Id.* § 1.5.3. There are
5 approximately 127 Class Members. *Id.* § 1.5.¹

6 **II. Settlement Payments**

7 The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of
8 \$140,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the
9 Court approve payments for a PAGA Penalty Fund and LWDA Payment, Administration Costs,
10 Attorneys' Fees and Costs Award, and Class Representative Award. *Id.* § 5.1.1-4. Except for these
11 allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will
12 be allocated to Class Members. *Id.* § 5.2. It is expected that, on average, each Class Member would be
13 allocated \$443.95 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7.

14 **III. Released Claims**

15 Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members release any
16 “any and all claims that were pled in the operative complaint in the Action, or which could have been
17 pled in the operative complaint in the Action based on the factual allegations therein, that arose from
18 September 22, 2017, through April 1, 2023.” *Id.* § 6.1. The LWDA releases “any and all PAGA claims
19 that are based on the Labor Code violations pled in the operative complaint that arose [from July 14,
20 2020, through April 1, 2023].” *Id.* § 6.2; *see also id.* § 1.18.

21 **LEGAL STANDARD**

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

27
28 ¹ The settlement also defines a group of PAGA Employees, which includes all Class Members who
worked in the State of California from July 14, 2020, through April 1, 2023. Agreement §§ 1.17, 1.18.

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

7 Manual for Complex Litigation (Third) § 30.41.

8 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
9 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
10 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may
11 find that the settlement proposal contains some merit, is within the range of reasonableness required for
12 a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final
13 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

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

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

22 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
23 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
24 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
25 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
26 and reasonable”).

27 DISCUSSION

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

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

A trial court must determine and approve a class action settlement is fair to “prevent fraud,
collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer
Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the

1 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
2 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l*
3 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
4 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
5 through arm's length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
6 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
7 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

8 While the recommendations of counsel proposing the settlement are not conclusive, the Court
9 can properly take them into account, particularly where counsel have conducted thorough investigation,
10 are experienced with this type of litigation, and agreed to a resolution through arm's length negotiation.
11 See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528
12 ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial
13 presumption of fairness attaches to the proposed settlement ... and 'great weight' is accorded to the
14 recommendations of counsel, who are most closely acquainted with the facts of the underlying
15 litigation.") (citations omitted). In such circumstances, courts do not substitute their judgment for that of
16 the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
17 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
18 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers*
19 *v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

20 Here, both Plaintiff's counsel and Defendant's counsel have a great deal of experience in wage
21 and hour class action litigation. Plaintiff's counsel have extensive class action and litigation experience
22 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
23 W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of Kelsey A. Webber ("Webber Decl.")
24 ¶¶ 2-7. Each side has apprised the other of their respective factual contentions and legal theories, and
25 each side has considered the other's contentions and theories. Defendant provided its written policies
26 and classwide data, among other things—enabling Plaintiff to assess the value of Class Members'
27 claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 4. As further
28

discussed below, the settlement is the result of extensive arm's length negotiations between the Parties and their counsel. *Id.* ¶ 9.

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

1. The Settlement Amount Is Reasonable.

The Agreement requires Defendant to pay \$140,000.00—or approximately \$1,102.36 gross, on average, per Class Member. Yang Decl. ¶ 5. This amounts to approximately 15.54% of Defendant's potential liability and is an excellent result for Class Members. *Id.*

To wit, while Plaintiff admits that allegedly underpaid sick pay, overtime, and additional hours of regular rate wages for meal and rest break violations amount to comparatively smaller sums, Plaintiff contends that such underpayments result in Labor Code section 203 penalties of up to 30 days wages. Yang Decl. ¶ 5.² Plaintiff also contends 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. *Id.* Plaintiff additionally contends that Defendant would be liable for actual Class Member expenses under Section 2802. *Id.* Moreover, under PAGA, Plaintiff contends that Defendant also would be liable for an additional \$100 per pay period under Section 2699(f). *Id.*

Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with respect to liability for underpaid wages, overtime, and additional hours of regular rate wages, Defendant contended that it would not be subject to Section 203 penalties, based either on the prior class action settlement or on a good faith defense. *Id.* Likewise, with respect to wage statement liability, Defendant disputed whether Plaintiff could prevail on its theory that wage statements failed to state the name of the legal entity that was the employer and further contended that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations. *Id.* Finally, with respect to PAGA penalties, Defendant contended that the circumstances were such that PAGA penalties would be subject to discretionary reductions. *Id.*

² Except as otherwise noted, all "Section" references are to the Labor Code.

1 While the Parties disagree on the application of the law to the facts, each Party recognized in
2 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
3 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
4 Ultimately, based on classwide data, Plaintiff argued that the potential total recovery amounted to
5 approximately \$900,788.80—which included approximately \$290,188.80 under Section 203,³
6 approximately \$260,850.00 under Section 226(e),⁴ approximately \$82,550.00 under Section 2802,⁵ and
7 approximately \$267,200.00 under Section 2699(f).⁶ *Id.* Plaintiff contends that the Gross Settlement
8 Amount of \$140,000.00—approximately 15.54% of the potential total recovery of \$900,788.80—is an
9 excellent result. *Id.*

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

23 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
24 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the

25 _____
26 ³ 66 former non-exempt employees x 8.0 hours per day x \$18.32 per hour x 30 days.

27 ⁴ 127 initial wage statements x \$50 per initial wage statement + 2,545 subsequent wage statements x
28 \$100 per subsequent wage statement.

⁵ 127 class members x \$25 per month x 26 months.

⁶ 2,672 pay periods x \$100 per pay period.

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. ¶ 8. 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, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement
12 Class Members are only subject to a release of “claims that were pled in the operative complaint in the
13 Action, or which could have been pled in the operative complaint in the Action based on the factual
14 allegations therein, that arose from September 22, 2017, through April 1, 2023.” *Id.* § 6.1. The LWDA
15 releases “PAGA claims that are based on the Labor Code violations pled in the operative complaint that
16 arose [from July 14, 2020, through April 1, 2023].” *Id.* § 6.2; *see also id.* § 1.18.

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

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

22 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
23 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
24 provide to the Administrator each Class Member’s last known address, among other information (the
25 “Class Data”), within seven days of a Preliminary Approval Order. Agreement § 3.2. Within seven days
26 of receipt of the Class Data, the Administrator would mail the Notice of Class Action Settlement (“Class
27 Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last
28 known address for each Class Member, based on the Class List. *Id.* § 3.3. Any Class Notice returned to

1 the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding
2 address affixed thereto. *Id.* If no forwarding address is provided, the Administrator would promptly
3 attempt to determine the correct address using a single skip-trace search and then promptly send a single
4 re-mailing. *Id.*

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

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

11 The Agreement provides for a Gross Settlement Amount of \$140,000.00. Agreement § 5.1. From
12 the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement
13 Amount (or \$46,666.67) and litigation costs of up to \$10,000.00. *Id.* § 5.1.1. The Class Representative
14 Award will be no more than \$10,000.00. *Id.* § 5.1.2. Administration Costs will be no more than
15 \$6,500.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be \$14,000.00, and pursuant to statute, 75% of the
16 PAGA Penalty Fund (or \$10,500.00) would constitute the LWDA Payment, and 25% of the PAGA
17 Penalty Fund shall be payable to PAGA Employees on a pro rata basis. *Id.* §§ 5.1.4, 5.3.1.⁷

18 **1. Each Class Member, on Average, Would Receive Nearly \$445.**

19 It is expected that, on average, each Class Member would be allocated approximately \$443.57
20 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on
21 average to each Class Member may increase, depending on how many Class Members opt out of the
22 class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease
23 depending on his or her number of relevant workweeks during the Class Period. *Id.*

24 To wit, after deducting any approved payments for an Attorneys’ Fees and Costs Award, Class
25 Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement
26 Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis,
27

28 ⁷ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 based on the number of relevant workweeks they worked. Agreement § 5.3.2. 33% of these allocations
2 shall be classified for tax reporting purposes as wages. *Id.*

3 None of the settlement funds will revert to Defendant. Agreement § 5.1. The principal for any
4 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
5 Fund in the name of the Class Member. *Id.* § 5.6.

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

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

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

24 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
25 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
26 *Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
27 "[m]ost fee awards were between 25 percent and 35 percent"). An attorneys' fees award of 35% of the
28 fund mimics the market and "is supported by the fact that typical contingency fee agreements provide

1 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
2 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
3 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
4 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%
5 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
6 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

7 Here, Plaintiff will request an attorneys’ fees award of 33½% of the Gross Settlement Amount.
8 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class Counsel
9 have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation
10 fees, and payment of other litigation related costs.

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

12 Proposed Class Representative Antonio Jesus Jaramillo De La Cruz requests a modest Class
13 Representative Award of \$10,000.00. The request is reasonable in light of the general release that the
14 Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is
15 appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Antonio Jesus
16 Jaramillo De La Cruz (“De La Cruz Decl.”) ¶¶ 2-3.

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

22 In addition to the invaluable services that Plaintiff provided, he also took a significant risk, both
23 professionally and monetarily. De La Cruz Decl. ¶ 4. Because the alleged claims involve the payment of
24 costs to the prevailing party, Plaintiff could have possibly faced paying Defendant’s costs had Defendant
25 prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential
26 employers that may be less willing to hire an individual who has filed suit against a prior employer.
27 Plaintiff took this risk upon himself and the whole class benefited. Class Members did not have to file
28

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 \$6,500.00 to send notices and administer the settlement. Agreement §§ 3.1, 5.1.3. The Administration Costs are reasonable and should be approved.

II. The Class Meets All Requirements for Certification.⁸

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.

A. The Class Is Ascertainable and Sufficiently Numerous.

Class Members are identifiable from Defendant’s records. The class definition “is precise, objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Indeed, there are approximately 127 Class Members. Agreement § 1.5. Numerosity thus is sufficiently established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples in

⁸ Defendant expressly reserve its objections to class certification outside of the settlement context.

1 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
2 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

4 “The community of interest requirement involves three factors: ‘(1) predominant common
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
6 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
7 435 (2000).

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

9 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
10 underpaid sick pay and overtime, failed to provide meal and rest periods, furnished unlawful wage
11 statements, and failed to reimburse business expenses. With respect to typicality, Plaintiff was not paid
12 timely during employment, and he was not fully paid at the end of his employment. De La Cruz Decl. ¶
13 2. Plaintiff also was regularly required to use his personal cell phone for work-related purposes,
14 including to perform daily COVID health screenings before work, but was not reimbursed for cell phone
15 related expenses. *Id.* He also was not provided with accurate itemized wage statements. *Id.* In sum,
16 Plaintiff was employed under the same policies as others.

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

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

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

2 With respect to adequate representation, Plaintiff does not have any interests adverse to the
3 Class, and no such issues have been raised or presented. De La Cruz Decl. ¶ 3. Plaintiff has taken all
4 necessary steps to represent the interests of the Class, including by providing information and
5 documents to Class Counsel, making himself available to discuss the claims, and answering any
6 questions. *Id.* Moreover, Plaintiff is willing to devote his time to the lawsuit for the benefit of the Class
7 and to act as a fiduciary for the Class. *Id.* For such reasons, Plaintiff has adequately represented the
8 Class Members and will continue to do so.

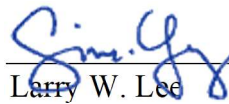
9 From the inception of the case, Class Counsel has zealously represented the interests of the
10 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
11 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
12 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
13 Yang Decl. ¶¶ 9-13; Webber Decl. ¶¶ 2-7.

14 **CONCLUSION**

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

22 DATED: July 11, 2023

DIVERSITY LAW GROUP, P.C.

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

1 **PROOF OF SERVICE**

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

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

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

10 On July 11, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **4. DECLARATION OF ANTONIO JESUS JARAMILLO DE LA CRUZ IN**
SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. DECLARATION OF KELSEY A. WEBBER IN SUPPORT OF**
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT
- 16 **6. [PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF**
CLASS ACTION SETTLEMENT

17 on the interested parties in this action as follows:

18 George W. Abele *Attorneys for Defendant Weidner*
19 Jennifer Milazzo *Property Management, LLC*
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1 Kelsey A. Webber
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7 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
8 the above-described document(s) to the party(ies) listed above or on the attached mailing list
9 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
10 indicated above or on the attached mailing list. I certify that said electronic transmission was
11 completed and that all pages were received by the party(ies) identified herein or on the attached
12 mailing list.

13 I declare under penalty of perjury under the laws of the State of California that the above
14 is true and correct. Executed on July 11, 2023, at Los Angeles, California.

15 
16 Erika Mejia