

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Kwanporn “Mai” Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

Kelsey A. Webber (State Bar No. 303721)
Kelsey.Webber@WebberLawGroup.com
Shaelyn A. Stewart (State Bar No. 335149)
Shaelyn.Stewart@webberlawgroup.com
WEBBER LAW GROUP
1610 R. Street, Suite 300
Sacramento, California 95811
Telephone: (916) 588-0683

Attorneys for Plaintiff and the Class

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

SPENCER NORMAN, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

B & H GLOBAL MARKETING, LLC, a
California limited liability company;
GOLDEN STATE CRUSHING, a
business organization, form unknown; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 34-2022-00314707

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

Date: April 18, 2023

Time: 1:30 p.m.

Dept.: 53

Reservation No.: 2703958

Complaint Filed: January 26, 2022

Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 18, 2023, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Richard K. Sueyoshi, judge presiding, in Department 53 of the above referenced Court, located at 813 6th Street, Sacramento, California 95814, Plaintiff Spencer Norman (“Plaintiff”) will and hereby does move this Court for the following relief with respect to the Joint Stipulation and Settlement Agreement (the “Stipulation” or “Settlement Agreement”) entered into by Plaintiff and Defendants B&H Global Marketing, LLC and Golden State Crushing (together, “Defendants”) (collectively with Plaintiff, the “Parties”):

1. That the Court approve the Stipulation referenced above;

2. That the Court conditionally certify the following Class for settlement purposes only: All non-exempt employees who worked for Defendant B&H Global Marketing, LLC dba Golden State Crushing in the State of California from January 26, 2018 to February 17, 2023 (the “Class Period”). Further, the Class shall include all exempt employees who received allegedly defective wage statements during the Class Period;

3. That Plaintiff Spencer Norman be appointed as the Class Representative and Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law Group, P.C., and Kelsey A. Webber of Webber Law Group be appointed as Class Counsel;

4. That the Court preliminarily approve the Stipulation and the Gross Settlement Amount of One Hundred Sixty Thousand Dollars (\$160,000.00);

5. That the Court find on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, allocation of payments to Participating Class Members, Class Representative Enhancement Payment to Plaintiff, attorneys’ fees and costs, and the settlement administration costs, that could ultimately be given final approval by this Court;

6. That the Court approve the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) to be sent to Class Members;

7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

1 8. That the Court schedule the matter for a Final Approval Hearing.

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

5 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
6 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
7 Settlement Class Members to participate in, opt-out of, or object to the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the
9 Stipulation, the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Max W.
10 Gavron, Mai Tulyathan, Kelsey A. Webber, and Plaintiff Spencer Norman, upon the oral arguments
11 of counsel (should there be any), and on the complete records and file herein.

12
13 DATED: March 23, 2023

DIVERSITY LAW GROUP, P.C.

14
15 By: 
16 Larry W. Lee
17 Max W. Gavron
18 Mai Tulyathan
19 Attorneys for Plaintiff and the Class
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act (“PAGA”)
3 action. Plaintiff Spencer Norman (“Plaintiff”) alleges that Defendants B&H Global Marketing, LLC
4 and Golden State Crushing (collectively, “Defendants”) violated the California Labor Code by (1)
5 failing to provide compliant off-duty meal periods, or pay meal period premium compensation in lieu
6 thereof, in violation of Labor Code §§ 201-203, 226.7, and 512; (2) failing to provide compliant off-
7 duty rest periods, or pay rest period premium compensation in lieu thereof, in violation of Labor Code
8 §§ 201-203 and 226.7; and (3) failing to provide accurate itemized wage statements, in violation of
9 Labor Code § 226(a). Plaintiff brings class and PAGA claims based on these alleged violations.
10 Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard
11 to any of the claims alleged.

12 The Parties have now reached a class and PAGA action settlement as a result of private
13 mediation. The terms of the Parties’ settlement are reflected in the Parties’ Joint Stipulation and
14 Settlement Agreement (“Stipulation” or “Settlement Agreement”)¹. Plaintiff now seeks the Court’s
15 approval of the Stipulation.

16 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to
17 the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of the legal
18 principles applicable to the claims asserted against Defendants. Through the exchange of informal
19 discovery in advance of mediation, Defendants provided necessary data, including the number of
20 putative class members, the number of weeks worked and pay periods at issue, time and payroll
21 records, the number of wage statements at issue, as well as information pertaining to Defendants’
22 policies, practices, and procedures pertaining to meal and rest periods, timekeeping, and wage
23 statement practices. The information provided by Defendants allowed Plaintiff to review and analyze
24 the liability and potential exposure. Thereafter, the Parties participated in a full-day mediation with
25 Daniel J. Turner, Esq., a well-respected mediator with considerable experience mediating wage-and-
26 hour class actions. After further negotiations facilitated by Mr. Turner, the Parties ultimately reached

27 _____
28 ¹ The Parties’ Joint Stipulation and Settlement Agreement is attached to the Declaration of Mai Tulyathan as
 Exhibit A.

the current settlement. The following represents the key terms of the settlement:

- Gross Settlement Amount of \$160,000.00, which will be paid by Defendants on a **non-reversionary basis, such that no remaining monies will revert back to Defendants** (*See* Stipulation ¶ I.U);
- Class² of 58 non-exempt employees, and 5 exempt employees, during the Class Period (Tulyathan Decl. at ¶ 23);
- Class Members **do not need to submit claim forms** to participate in the settlement;
- Enhancement payment to the Class Representative of up to \$10,000.00 (*Id.* ¶ I.K);
- Class Counsel’s attorneys’ fees of up to one-third (1/3) of the Gross Settlement Amount, or up to \$53,333.33 (*Id.* ¶ I.C);
- Class Counsel’s actual litigation expenses of up to \$15,000.00 (*Id.* ¶ III.H.2);
- Settlement administration costs of up to \$8,000.00 (*Id.* ¶ III.H.4);
- PAGA penalties in the amount of \$10,000.00, of which 75%, or \$7,500.00, will go to the California Labor & Workforce Development Agency (“LWDA”), and 25%, or \$2,500.00, will be allocated to Eligible Aggrieved Employees³, pursuant to the PAGA (*Id.* ¶ I.AA);
- A payment of \$1,000.00 allocated to Participating Exempt Class Members to be distributed on a pro rata basis, based on the number of pay periods each Participating Exempt Class Member allegedly received defective wage statements during the Class Period (*Id.* ¶ III.H.5);
- Net Settlement Amount of approximately **\$62,666.67** to be allocated to Participating Non-Exempt Class Members on a pro rata basis based on the number of weeks worked

² The Class consists of all non-exempt employees of Defendants in the State of California from January 26, 2018 to February 17, 2023. The settlement also includes exempt employees of Defendants who allegedly received defective wage statements during the Class Period. Participating non-exempt class members will receive an individual share from the Net Settlement Amount. Participating exempt class members will be paid a proportional portion of the \$1,000.00 payment. (*See* Stipulation ¶ I.X.)

³ Eligible Aggrieved Employees will receive a proportional share of the 25% allocation of the PAGA Payment pursuant to Paragraph III.H.7 of the Stipulation.

as a California employee of Defendants during the Class Period (*Id.* ¶ III.G.1); and

- Raw average of at least **\$1,080.46 each** from the Net Settlement Amount to be paid to Participating Non-Exempt Class Members.

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Stipulation is fair, reasonable, and adequate in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability.

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

II. BACKGROUND

A. The Allegations in this Lawsuit.

On October 18, 2021, Plaintiff submitted his written notice to the LWDA of Defendants' violations of Labor Code §§ 201-203, 226, 226.7, and 512, pursuant to the PAGA, Labor Code § 2699.3. (Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 2.) Thereafter, on January 26, 2022, Plaintiff filed his Complaint against Defendants in the Sacramento County Superior Court, alleging causes of action for (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of Labor Code § 226(a); (4) violation of Business & Professions Code § 17200, *et seq.*; and (5) violation of the PAGA, Labor Code § 2698, *et seq.* (*Id.* at ¶ 3.)

Plaintiff's class and PAGA claims are predicated upon the following allegations. Plaintiff alleges that Defendants failed to provide off-duty meal and rest breaks or pay premium compensation in lieu of missed breaks, in violation of Labor Code §§ 226.7 and 512. In this regard, Plaintiff alleges that employees were required to remain on work premises, carry employer-issued radios, and respond to incoming calls – subject to an immediate return to work – during meal and rest breaks. Plaintiff alleges that employees were not paid premium pay in lieu of the missed breaks, were not paid such wages upon separation of employment, and are thus owed waiting time penalties. (*Id.* at ¶ 4.)

Moreover, Plaintiff asserts wage statement claims. As a result of the above alleged meal and

rest violations, the wage statements issued to employees allegedly failed to identify the correct applicable rates of pay for premium wages and gross and net wages earned. Additionally, as a separate violation of Labor Code § 226(a), the wage statements issued to employees allegedly failed to identify the address of the employer. (*Id.* at ¶ 5.)

Based on the alleged violations above, Plaintiff seeks damages and penalties under the California Labor Code and PAGA, as well as attorneys' fees and costs. (*Id.* at ¶ 6.)

B. Defendants' Position

Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Class Action is not appropriate for class or PAGA treatment. Defendants have asserted several defenses to the claims.

C. The Parties Participate in Private Mediation.

After the filing of the Complaint, Plaintiff served his initial round of written discovery. (Tulyathan Decl. at ¶ 7.) In connection with discovery meet and confer discussions, the Parties agreed to participate in private mediation. (*Id.*)

In preparation for mediation, Defendants informally provided data and documents to Plaintiff, including the number of putative class members, the number of weeks worked and pay periods at issue, time and payroll records, the number of wage statements at issue, as well as information pertaining to Defendants' policies, practices, and procedures pertaining to meal and rest periods, timekeeping, and wage statement practices. (*Id.* at ¶ 8.) The information provided to Plaintiff allowed Plaintiff's counsel to assess the claims and liability, as well as conduct an exposure analysis. (*Id.*)

On December 19, 2022, the Parties participated in a full-day mediation with mediator Daniel J. Turner, Esq. (*Id.* at ¶ 9.) After thorough investigation and evaluation of the facts and claims, and arm's-length negotiations facilitated by Mr. Turner, the Parties and their counsel reached a settlement in principle. The Parties negotiated the terms of the settlement over the course of subsequent weeks and ultimately entered into the Joint Stipulation and Settlement Agreement in resolution of Plaintiff's class and PAGA claims in this lawsuit. A true and correct copy of the Settlement Agreement is attached as **Exhibit A** to the Declaration of Mai Tulyathan. (*Id.*)

1 The Parties recognize the risk, expense, and delay in continuing litigation with the class and
2 PAGA claims, and believe the Settlement to be fair, reasonable, and adequate. (Tulyathan Decl. at
3 ¶ 10.) Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims
4 arising from or relating to the class and PAGA claims as set forth in the Settlement Agreement.

5 **III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

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

10 Approval of class action settlements involves a two-step process. First,
11 counsel submits the proposed terms of settlement and the court makes
12 a preliminary fairness evaluation. If the preliminary evaluation of the
13 proposed settlement does not disclose grounds to doubt its fairness or
14 other obvious deficiencies, such as unduly preferential treatment of
15 class representatives or of segments of the class, or excessive
16 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.

17 (Fed. Jud. Ctr., 4th ed. 2004).

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

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

27 When the parties to an action reach a monetary settlement, they will
28 usually prepare and execute a joint stipulation of settlement, which is
submitted to the court for preliminary approval. The stipulation should

1 set forth the central terms of the agreement, including but not limited
2 to, the amount of settlement, form of payment, manner of determining
the effective date of settlement and any recapture clause.

3 *Id.* § 11.24.

4 Here, the Parties have reached such an agreement and have submitted to this Court in
5 connection with this Motion a copy of the Stipulation fully setting forth the agreement reached among
6 the Parties. The Stipulation sets forth all terms of the agreement reached by the Parties, which include,
7 among other things, the method for calculating the Settlement Class Members' individual settlement
8 payments. (*See* Stipulation ¶¶ III.G.1, III.H.5, III. H.7.)

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. Apple*
12 *Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
13 1794, 1803 (1996) (although the settlement was reached before any “adversary certification,” the
14 court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105
15 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial
16 efficiency in order to facilitate apparently beneficial settlement proposals”). As further explained by
17 Professor Newberg:

18 The strength of the findings made by a judge at a preliminary hearing
19 or conference concerning a tentative settlement proposal...may be set
20 out in conditional orders granting tentative approval to the various
21 items submitted to the court. Three basic rulings are often conditionally
22 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.

23 *4 Newberg on Class Actions* § 11.26.

24 In addition to such terms as settlement class identification, settlement amount, and payment
25 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to
26 which the Parties stipulate to the Court’s provisional certification of the Class for the purposes of this
27 settlement only. (*See* Stipulation ¶ III.C.)

1 **A. Proposed Class**

2 The current settlement is being settled on behalf of the Class. The Class includes “All non-
3 exempt employees who worked for Defendant B&H Global Marketing, LLC dba Golden State
4 Crushing in the State of California from January 26, 2018 to either 60-days after the date of the
5 mediation (Friday, February 17, 2023) or the date of preliminary approval, whichever is sooner (the
6 “Class Period”).” (Stipulation ¶ I.E.) Further, the Class also includes “all exempt employees who
7 received allegedly defective wage statements during the Class Period.” (*Id.*) Given that February
8 17, 2023 is the sooner date as contemplated by the definition in the Stipulation, the Class Period is
9 from January 26, 2018 to February 17, 2023. (*Id.* ¶ I.I.) According to Defendant, there are 58 non-
10 exempts and 5 exempts that comprise the Class. (Tulyathan Decl. at ¶ 23.)

11 **B. Settlement Terms and Evaluation**

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

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

1 recommendations of counsel, who are most closely acquainted with the facts of the underlying
2 litigation”).

3 Here, both Plaintiff’s and Defendants’ counsel have a great deal of experience in wage and
4 hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of
5 wage and hour class actions and have extensive litigation experience. (Declaration of Larry W. Lee
6 (“Lee Decl.”) at ¶¶ 5-7; Declaration of Max W. Gavron (“Gavron Decl.”) at ¶¶ 7-10; Tulyathan Decl.
7 at ¶¶ 34-37; Declaration of Kelsey A. Webber (“Webber Decl.”) at ¶¶ 7-8.) Each side has apprised
8 the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations
9 taking place between the Parties. (Tulyathan Decl. at ¶ 11.)

10 Moreover, Plaintiff conducted extensive investigation and analysis into his claims. Prior to
11 the mediation, Plaintiff was provided with informal discovery from Defendants in order to fully
12 evaluate exposure and liability, including data pertaining to putative class members, and time and
13 payroll records. (Tulyathan Decl. at ¶ 8.) Defendants also provided information on the wage and
14 hour policies, practices, and procedures pertinent to the claims in the lawsuit, including meal and rest
15 periods, timekeeping, and wage statement practices. (*Id.*) Plaintiff subsequently reviewed the data
16 and performed an analysis of Defendants’ maximum exposure of damages and penalties. (*Id.*)

17 Based on the data and records provided by Defendants, Plaintiff’s counsel estimated the
18 potential exposure for class claims to be at least \$687,723.60. (Tulyathan Decl. at ¶ 12.) The
19 following represents a breakdown of the estimated class-wide damages/penalties based on data and
20 records provided by Defendants:

- 21 • \$353,528.00 in unpaid meal and rest period premiums (calculated based on 8,800
22 shifts based on an assumption of one meal and one rest violation per shift);
- 23 • \$230,745.60 in waiting time penalties under Labor Code § 203 (calculated based on
24 48 former employees and an average hourly rate of pay of \$20.03);
- 25 • \$103,450.00 for Labor Code § 226(e) penalties (calculated based on 1,059 pay
26 periods).

27 (*Id.*)

28 With respect to potential liability of Plaintiff’s PAGA claim, Plaintiff’s counsel estimated that

1 Defendants could face civil penalties of at least \$524,700.00 if Plaintiff were successful at trial on all
2 claims. (*Id.* at ¶ 13.) However, even assuming Plaintiff ultimately prevails on his PAGA claims, the
3 Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the
4 Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the
5 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
6 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*
7 (2018) 30 Cal.App.5th 504, while the plaintiff prevailed on his PAGA claim upon trial, the trial court
8 reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at
9 complying with the law. (*Id.* at p. 517.) Upon review, the Court of Appeal found such reduction to
10 be proper. (*Id.* at p. 539.)

11 Although Plaintiff believes in the merits of the alleged claims and maintains there is no reason
12 for reducing PAGA penalties, Plaintiff is aware that Defendants may raise defenses to the claims and
13 further with respect to the reduction of PAGA penalties and that it could be persuasive to the Court.
14 (Tulyathan Decl. at ¶ 14.) Thus, even if Plaintiff were to successfully prove his claims at trial, there
15 is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court
16 has discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated
17 with the possibility of the Court significantly reducing Plaintiff’s PAGA penalties, along with other
18 attendant risks, even if Plaintiff was to prevail at trial. (*Id.*)

19 Further, Defendants raised several defenses that presented risk as to liability on the claims.
20 In this regard, Defendants assert that they maintained lawful policies and practices in place.
21 Defendants also argue that the meal and rest period claims are not suitable for class treatment because
22 there is no common method of proof to establish liability. Additionally, it is also Defendants’ position
23 that Plaintiff cannot prove willfulness and thus it would not be subject to waiting time penalties under
24 Section 203. With respect to the wage statement claim, it is Defendants’ position that its wage
25 statements complied with the law, and that employees did not suffer any injury as defined by Labor
26 Code § 226(e). Defendants further maintain that it would be unjust for the Court to award maximum
27 PAGA penalties as it has made good faith efforts to comply with the Labor Code. (Tulyathan Decl.
28 at ¶ 15.)

1 In light of the above, the settlement for each Class Member is fair, reasonable, and adequate,
2 given the inherent risks of litigation, including the substantial risks relative to class certification and
3 the merits of the case, and the costs of pursuing such litigation. The settlement is the result of
4 extensive arm's length negotiations between the Parties and their counsel and was facilitated by an
5 experienced and neutral mediator. (*Id.* at ¶¶ 8-9.)

6 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness
7 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
8 prevailing on one or more of the causes of action or theories alleged in the lawsuit, the possibility of
9 non-certification, and the potential for any appeals. (*Id.* at ¶ 16.) These risks on class certification
10 are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59
11 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial
12 after eight years of litigation, but the judgment and the certification ruling were reversed by the
13 California Supreme Court after an additional five years of litigation. The case was remanded back to
14 superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

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

1 class action settlement of approximately 15% of the potential recovery was fair and reasonable).

2 Here, the total amount of class and PAGA penalties estimated by Plaintiff's counsel amount
3 to approximately \$1,212,423.60, without discounting for potentially losing on any of the causes of
4 action or discounting for reduction of PAGA penalties. (Tulyathan Decl. at ¶ 17.) The Gross
5 Settlement Amount is \$160,000.00. Thus, the Gross Settlement Amount is fair and reasonable as it
6 is approximately **13.2%** of the potential recovery of Plaintiff's class and PAGA claims if Plaintiff
7 were to fully succeed at trial. (*Id.* at ¶ 18.)

8 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action
9 Settlement ("Class Notice"), should any Class Member wish to pursue his or her own case for the
10 claims being released herein, each Class Member has the right to submit a Request for Exclusion Form
11 (*i.e.*, opt-out) from the settlement. (*See* Class Notice, attached as **Exhibit B** to Tulyathan Decl.)
12 Moreover, as set forth in the Notice, Class Members are advised of their right to object to any of the
13 terms contained in the Stipulation (with the exception of the PAGA portion of the Settlement) and
14 attend the final approval hearing. (*Id.*)

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

17 The Stipulation provides for \$160,000.00 as the Gross Settlement Amount. (Stipulation ¶
18 I.U.) Attorneys' fees will be no more than one-third (1/3) of the Gross Settlement Amount, which
19 amounts to \$53,333.33. (*Id.* ¶ I.C.) Litigation costs will be no more than \$15,000.00. (*Id.* ¶ III.H.2.)
20 The Settlement Administrator's costs to administer this settlement will be no more than \$8,000.00.
21 (*Id.* ¶ III.H.4.) The enhancement payment to Plaintiff for prosecuting this case on behalf of the Class
22 and for providing a general release of all claims, including a California Civil Code § 1542 waiver,
23 will be no more than \$10,000.00. (*Id.* ¶¶ I.K and III.M.) Finally, \$10,000.00 of the Gross Settlement
24 Amount will be allocated to penalties under the PAGA, of which 75%, or \$7,500.00, will be paid to
25 the LWDA as a beneficiary. (*Id.* ¶ III.H.8.) The remaining 25%, or \$2,500.00, will be paid to Eligible
26
27
28

Aggrieved Employees⁴ on a pro rata basis. (*Id.* ¶ III.H.7.)

The Net Settlement Amount, calculated after deduction of attorneys’ fees (up to \$53,333.33), litigation costs (up to \$15,000.00), Class Representative Enhancement Payment to Plaintiff (up to \$10,000.00), PAGA Payment (\$10,000.00), allocation to Participating Exempt Class Members (\$1,000.00), and Administration Costs (up to \$90,000.00), is estimated to be approximately \$62,666.67. (Stipulation ¶¶ I.X, I.AA, III.A, III.H.1, III.H.2, III.H.4.) Each Participating Non-Exempt Class Member will be awarded a portion of the Net Settlement Amount on a pro rata basis, based on the number of weeks each Class Member worked as a California employee of Defendants during the Class Period. (*Id.* ¶ III.G.1.)

Based on the Net Settlement Amount, each Participating Non-Exempt Class Member will be entitled to recover on average \$1,080.46 each. (Tulyathan Decl. at ¶ 24.) The amount any particular Participating Non-Exempt Class Member will be entitled to recover will be greater or lower than this average depending on the number of weeks worked by the Class Member during the Class Period, with some entitled to receive more, and others less. (*Id.*) With respect to Participating Exempt Employees, each Participating Exempt Employee will be entitled to recover on average \$200.00 from the \$1,000.00 allocation. (Tulyathan Decl. at ¶ 25.) The amount each Participating Exempt Class Member will be entitled to recover will be greater or lower than this average depending on the number of pay periods each Class Member received allegedly defective wage statements during the Class Period. (*Id.*) This is fair, as it directly allocates greater recovery to individual class members who have allegedly suffered greater harm. (*Id.* at ¶ 26.)

Additionally, \$10,000.00 of the Gross Settlement Amount is allocated to the resolution of any Class Members’ claims arising under PAGA. (Stipulation at ¶¶ I.AA, III.H.7, III.H.8.) Pursuant to the PAGA, 75% of the PAGA Payment, *i.e.*, the sum of \$7,500.00, shall be paid to the LWDA. The remaining 25% of the PAGA Payment, *i.e.*, the sum of \$2,500.00, shall be paid to Eligible Aggrieved

⁴ Eligible Aggrieved Employees include “All non-exempt employees who worked for Defendant B&H Global Marketing, LLC dba Golden State Crushing in the State of California from October 18, 2020 to either 60-days after the date of the mediation (Friday, February 17, 2023) or the date of preliminary approval, whichever is sooner (the “PAGA Timeframe”). Further, the aggrieved employees shall include all exempt employees who received allegedly defective wage statements during the PAGA Timeframe.” (Stipulation ¶ I.R.)

Employees for release of PAGA claims. (*Id.*) The individual PAGA payment to Eligible Aggrieved Employees who are non-exempt employees will be calculated based on the number of pay periods each aggrieved employee worked as a California employee of Defendants during the PAGA Period of October 18, 2020, to February 17, 2023. (*Id.*) For Eligible Aggrieved Employees who are exempt employees, their individual PAGA payment will be based on the total number of pay periods each Eligible Aggrieved Employee received allegedly defective wage statements during the PAGA Period of October 18, 2020, to February 17, 2023. (*Id.*)

Finally, the terms of the settlement provide that uncashed checks (upon the expiration date) shall be distributed to California State Controller: Unpaid Wage Fund. (Stipulation ¶ III.J.10.)

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

This settlement is non-reversionary, meaning that none of the settlement funds will revert to Defendants. (Stipulation ¶ I.U.)

3. Scope of the Release Under the Settlement

The scope of the release applicable to Class Members, as listed below, is identified in the Stipulation at Sections I.GG and III.K. Section I.GG provides as follows:

Upon Defendants’ fulfillment of its payment obligations pursuant to Section III (J)(9)(a) below, the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by this Agreement are all claims alleged in the operative complaint, all claims alleged in the PAGA notice, as well as all claims that could have been pled arising out of the same operative facts of the complaint and PAGA notice, including, but not limited to, meal and rest breaks; failure to keep time records; wage statement violations; separation pay violations; untimely payment of wages; failure to maintain records; unfair business practices; and PAGA penalties premised on violations of Labor Code §§ 201-203, 226, 226.7, and 512 (“Released Claims”).

(Stipulation ¶ I.GG.)

In consideration of the PAGA payment portion attributable to the aggrieved employees, Eligible Aggrieved Employees will also provide a release of the following claims (“PAGA Released Claims”):

1 Upon Defendants' fulfillment of its payment obligations pursuant to
2 Section III (J)(9)(a) below, the claims that Plaintiff and the other
3 Eligible Aggrieved Employees are releasing in exchange for the consideration
4 provided for by this Agreement are all PAGA claims alleged in the operative
5 complaint, all claims alleged in the PAGA notice, as well as all claims that
6 could have been pled arising out of the same operative facts of the complaint
7 and PAGA notice, including, but not limited to for PAGA penalties premised
8 on violations of Labor Code §§ 201-203, 226, 226.7, and 512 ("PAGA
9 Released Claims").

10 (Stipulation at ¶ I.BB.)

11 Given that the releases above are tailored to only claims that are part of the operative
12 complaint and PAGA notice, the releases are appropriately limited. Further, the scope of the release
13 does not include any waiver under California Civil Code § 1542 for Class Members.

14 **4. Tax Treatment of Settlement Amounts Paid to Participating Class**
15 **Members**

16 Each individual settlement payment paid to Participating Non-Exempt Class Members will
17 be allocated as follows for tax purposes: 30% as wages, as to which IRS Forms W-2 will issue, and
18 70% as penalties and interest, as to which IRS Forms 1099 will issue. (Stipulation ¶ III.G.2.) For
19 Participating Exempt Class Members, 100% of their individual settlement payment shall be allocated
20 as penalties and interest, as to which IRS Forms 1099 will issue. (*Id.*) Individual PAGA Payments
21 will also be allocated as 100% penalties and interest, as to which IRS Forms 1099 will issue. (*Id.*)

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

24 Class Members do not need to do anything should they wish to receive their share of the
25 settlement funds. In other words, because this is not a claims-made settlement, Class Members will
26 not be required to make a submission to participate in the settlement or to receive their share of the
27 settlement funds. No claim forms are required. (Stipulation ¶ I.V.) Thus, this substantially decreases
28 the amount of burden each Class Member must bear in order to receive their settlement share.

If a Class Member does not wish to take part in this settlement and be bound by the release,
the Class Member must submit a request for exclusion form that will be included in their notice
packet. (*Id.* ¶ I.S.)

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1 **C. Notice to Class Members**

2 Within twenty-one (21) calendar days after the Court grants preliminary approval of this
3 settlement, Defendants will transmit to the Settlement Administrator the following information for
4 each Class Member: the full name, last known mailing address, Social Security number, the total
5 number of weeks during the Class Period that each non-exempt Class Member performed any actual
6 work for Defendants as a California employee, the total number of weeks during the Class Period
7 during which each exempt Class Member received allegedly defective wage statements, the total
8 number of pay periods during the PAGA Period that each non-exempt Class Member performed any
9 actual work for Defendants as a California employee, and the total number of pay periods during the
10 PAGA period that each exempt Class Member received allegedly defective wage statements (“Class
11 Data”). (Stipulation ¶ III.J.2.)

12 Upon receipt of the information and prior to mailing the Class Notice, the Settlement
13 Administrator shall perform reasonable verification addresses search for information to update and
14 correct any known or identifiable address changes. In this regard, the Settlement Administrator will
15 process the Class Data against the National Change of Address database maintained by the United
16 States Postal Service and perform a skip trace for the addresses of all former employee Class
17 Members. (*Id.* ¶¶ III.J.2.a, III.J.2.b.) Within fourteen (14) calendar days of receiving the Class Data
18 from Defendants, the Settlement Administrator shall mail out Class Notices to all Class Members
19 using the most current addresses identified. (*Id.* ¶ III.J.2.b.) For any notices that are returned to the
20 Settlement Administrator, the Settlement Administrator will promptly perform a skip-trace or
21 equivalent search to obtain alternative addresses and perform a re-mailing. (*Id.* ¶ III.J.2.c.)

22 As set forth in the Class Notice, Class Members will be allowed to opt out of the settlement,
23 or object to the settlement in writing, by a certain deadline. (*Id.* ¶¶ III.J.3, III.J.4.) Class Members
24 who have had their Class Notices re-mailed will have their deadlines extended by ten (10) calendar
25 days from the original deadline. (*Id.* ¶ III.J.2.c.)

26 **D. Class Certification**

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

28 The commonality requirement is met when there are questions of law and fact common to the

1 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal
2 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple
3 with disparate legal remedies within the class”). Commonality requires only that some common legal
4 or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical.
5 *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendants’ conduct is central to
6 the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez*
7 *v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed
8 at a class of employees, as it is here, the class wide impact of the defendant’s policies satisfies the
9 commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421
10 (1987).

11 In the present case, Plaintiff alleges that Defendants are liable to the Class for failing to
12 provide compliant off-duty meal periods or pay meal period premium compensation in violation of
13 Labor Code §§ 201-203, 226.7, and 512, failing to provide compliant off-duty rest periods or pay rest
14 period premium compensation in violation of Labor Code §§ 201-203 and 226.7, and failing to
15 provide accurate itemized wage statements in violation of Labor Code § 226(a). Like all Class
16 Members, Plaintiff was subjected to these same alleged policies and practices. (*See Declaration of*
17 *Spencer Norman* (“Norman Decl.”) at ¶¶ 3-4.) Specifically, during meal and rest breaks, Plaintiff
18 alleges he was required to remain on work premises, carry a radio, and respond to incoming calls
19 subject to an immediate return to work. (*Id.* at ¶ 3.) Plaintiff was not paid premium pay in lieu of
20 the allegedly missed breaks and was not paid all wages owed upon separation of employment. (*Id.*)
21 Plaintiff also alleges that he received inaccurate wage statements that did not comply with Labor
22 Code § 226(a). (*Id.* at ¶ 4.) In other words, Plaintiff was subjected to the same policies and practices
23 as other Class Members and thus, his claims are typical to those of the Class.

24 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues
25 been raised or presented. (Norman Decl. at ¶ 6.) Plaintiff has taken all necessary steps to represent
26 the interests of the Class, including by providing information and documents to Class Counsel and
27 by reviewing the pleadings and documents in the lawsuit. (*Id.* at ¶ 5.) For such reasons, Plaintiff
28 has adequately represented the Class Members and will continue to do so.

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

3 From the inception of the case, Class Counsel has zealously represented the interests of the
4 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
5 Representative. (Tulyathan Decl. at ¶ 30.) Further, Class Counsel has been approved as class counsel
6 on a number of prior cases, has litigated numerous other class action cases, and is competent to
7 represent the Class. (Lee Decl. at ¶¶ 5-7; Gavron Decl. at ¶¶ 7-10; Tulyathan Decl. at ¶¶ 34-37;
8 Webber Decl. at ¶¶ 7-8.)

9 **3. The Proposed Class Settlement Meets the *Kullar* Factors**

10 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
11 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted
12 sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims.
13 As discussed herein and above, Plaintiff's counsel has conducted sufficient discovery and
14 investigation, including through informal discovery. In light of the strength and weaknesses of
15 Plaintiff's claims, Plaintiff's attorneys submit that this settlement is fair pursuant to *Kullar*.

16 The Parties informally exchanged information, including obtaining and analyzing class data,
17 sample time and payroll records, and Defendants' pertinent wage and hour policies regarding meal
18 and rest periods and wage statement practices. (Tulyathan Decl. at ¶ 8.) The Parties have also
19 attended mediation, which has involved lengthy, arm's length negotiations over the terms and
20 conditions of this settlement, as well as continued negotiations facilitated by the mediator. (*Id.* at ¶
21 9.) Based on all of the data and records provided by Defendants, Plaintiff's counsel was able to
22 perform calculations and value the maximum damages and penalties at issue as discussed above. (*Id.*
23 at ¶¶ 8-9, 12-13.)

24 **E. Costs and Fees**

25 **1. Attorneys' Fees and Costs**

26 California state and federal courts have recognized that an appropriate method for determining
27 award of attorneys' fees is based on a percentage of the total value of benefits to class members by
28 the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*,
20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes*

1 *Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid
2 unjust enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries
3 so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F. 2d at 769.

4 The common fund doctrine is predicated on the principle of preventing unjust enrichment.
5 When a litigant’s efforts create or preserve a fund from which others derive benefits, he may require
6 the passive beneficiaries to compensate those who created the fund. Both California state and federal
7 courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly,
8 in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme
9 Court recognized that the common fund doctrine has been applied “consistently in California when
10 an action brought by one party creates a fund in which other persons are entitled to share.” The reasons
11 for applying the common fund doctrine include: “fairness to the successful litigant, who might
12 otherwise receive no benefit because his recovery might be consumed by the expenses; correlative
13 prevention of an unfair advantage to the others who are entitled to share in the fund and who should
14 bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant
15 who will be more willing to undertake and diligently prosecute proper litigation for the protection or
16 recovery of the fund if he is assured that he will be properly and directly compensated should his
17 efforts be successful.” *Id.*

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

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

multiplier within a justifiable range.” *Id.* at 505.

Here, the Parties have agreed to a payment of a maximum of one-third (1/3) of the Gross Settlement Amount, or \$53,333.33, for payment to Class Counsel as attorneys’ fees. (*See* Stipulation ¶ III.H.2.) As the Parties have agreed to a payment of the foregoing attorney’s fees, this amount should be presumed to be fair.

Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs of up to \$15,000.00. (*See id.*) Class Counsel has, at its own risk, expended costs, for example, to file this instant action and other pleadings, effect service of process, advance court costs, pay mediation costs, and pay other litigation-related costs. (Tulyathan Decl. at ¶ 39.) Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and costs being requested by the Parties.

2. Proposed Payment to the Class Representative

Class Representative requests a modest enhancement of \$10,000.00. (Stipulation ¶ III.H.1.) The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, searched for and provided documents and information to Class Counsel, and reviewed the pleadings and documents in this case, including the PAGA letter, Settlement Agreement, and his declaration. (Norman Decl. at ¶ 5.) As part of his duties as Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that Plaintiff provided, he also took significant risks, both professionally and monetarily, in acting as the Class Representatives and seeking benefits on behalf of the Class. Because the claims alleged in this lawsuit involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendants in the event that he does not prevail in this action. (*Id.* at ¶ 9.)

Furthermore, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff assumed these risks and the whole Class benefited from these risks taken by Plaintiff. 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 the potential for retaliation and not getting future employment had they filed a public lawsuit. (*Id.* at ¶ 9.)

1 Finally, as part of this settlement, Plaintiff has executed a general release, including as to
2 California Civil Code § 1542, which is something that Class Members did not have to provide.
3 (Norman Decl. at ¶ 10; Stipulation ¶ III.M.) Plaintiff's sacrifice for the benefit of the Class further
4 warrants the requested enhancement amount.

5 Notably, courts have routinely granted approval of representative enhancements for far
6 greater amounts than the \$10,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v. Atlantic*
7 *Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun*
8 *& Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive
9 awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d
10 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia*
11 *Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class
12 representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52
13 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action);
14 *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class
15 representative in ERISA case). Here, Plaintiff requests a modest incentive award of \$10,000.00,
16 which is presumptively reasonable and consistent with case law.

17 3. Settlement Administration Fees

18 The Parties have agreed to a payment of a maximum of \$8,000.00 to the Settlement
19 Administrator, Phoenix Settlement Administrators, to administer this settlement. (See Stipulation ¶¶
20 I.KK, III.H.4.) Phoenix Settlement Administrators is a well-recognized class action settlement
21 administrator. The Parties believe that the administration fee is reasonable and should be approved.

22 IV. LWDA HAS BEEN PROVIDED WITH CLASS NOTICE OF THIS MOTION

23 Concurrent with the filing of this Motion, on March 24, 2023, Plaintiff provided notice of this
24 Motion and the Settlement to the LWDA. (Tulyathan Decl. at ¶ 40.)

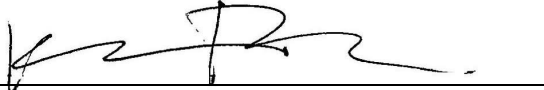
25 V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR 26 PRELIMINARY APPROVAL

27 Here, the proposed settlement is fair, adequate, and reasonable. It will result in substantial
28 monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed,

1 extensive, and arm's length negotiations conducted by counsel for respective parties who are
2 experienced in wage and hour class action litigation and facilitated by a neutral and experienced
3 mediator. For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
4 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the
5 proposed Class Notice, and set a date for a final approval hearing.

6
7 DATED: March 23, 2023

DIVERSITY LAW GROUP, P.C.

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9 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiff and the Class
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