

Edward W. Choi, Esq. SBN 211334
LAW OFFICES OF CHOI & ASSOCIATES, APLC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, APC
515 South Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Attorneys for Plaintiff and the Class

(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ALEXIS LAKEY, on behalf herself and on of all
others similarly situated,

Plaintiff,

vs.

POSHMARK, INC., a California Corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 22CV395084

[Assigned to Hon. Sunil R. Kulkarni]

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

Date: March 23, 2023
Time: 1:30 p.m.
Department: 1

Complaint Filed: March 8, 2022

ADDITIONAL COUNSEL

David Lee, Esq. (SBN: 296294)
DAVID LEE LAW, A.P.C.
515 South Flower Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 236-3536
Facsimile: (866) 658-4722

Brandon M. Banks, SBN 314667
BRANDON BANKS LAW, APC
3223 Webster Street
San Francisco, California 94123
Phone: (415) 289-9494
Email: brandon@brandonbanksllaw.com

Attorneys for Plaintiff and the Class

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

2 **PLEASE TAKE NOTICE** that on March 23, 2023, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 1 of the above-entitled court located at 191 North First Street, San
4 Jose, California 95113, Plaintiff Alexis Lakey, will and hereby does move for an Order:

- 5 1. approving the Class and Representative Action Settlement Agreement and Release (the
6 “Agreement”) attached as Exhibit 1 to the concurrently filed Declaration of Edward W. Choi;
- 7 2. conditionally certifying the following Class for settlement purposes only: (1) all current and
8 former non-exempt employees of Defendant who worked more than eight hours in any work
9 shift during the Class Settlement Period (the “Overtime Class Members”); (2) all current and
10 former non-exempt employees of Defendant who worked more than five hours in any work
11 shift during the Class Settlement Period (the “Meal Break Class Members”); and (3) all
12 current and former non-exempt employees who were paid salary wages during the Class
13 Settlement Period (the “Wage Statement Class Members”);
- 14 3. appointing Plaintiff as the Class Representative and Larry W. Lee of Diversity Law Group,
15 P.C.; Edward W. Choi of Law Offices of Choi & Associates, P.C.; David J. Lee of David
16 Law Lee, P.C.; Brandon Banks of Brandon Banks Law, APC; as Class Counsel;
- 17 4. approving the Agreement on a preliminary basis and finding that it, the Total Settlement
18 Amount in the amount of \$450,000.00, the amounts requested for the Administration Costs,
19 Attorneys’ Fees and Costs Award, Class Representative Enhancement Award, LWDA
20 Payment, and the allocation of payments to Class Members appear to be within the range of
21 reasonableness for a settlement that could ultimately be given final approval;
- 22 5. appointing Phoenix Settlement Administrators as the Administrator;
- 23 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
24 the Agreement; and
- 25 7. scheduling a Final Approval Hearing.

26 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
27 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
28 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the

1 procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt
2 out of, or object to the settlement.

3 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
4 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Edward
5 W. Choi, David J. Lee, Brandon M. Banks and Alexis Lakey, all pleadings and papers on file herein,
6 and any further oral and documentary evidence as may be presented before or at the hearing of this
7 matter.

8
9 DATED: February 28, 2023

LAW OFFICES OF CHOI & ASSOCIATES, APLC

10 By: 
11 Edward W. Choi
12 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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Defendant denies all of Plaintiff's allegations in their entirety and any liability of wrongdoing of any kind. Defendant denies that this case is appropriate for class certification other than for purposes of settlement as Plaintiff would have difficulty proving class certification is proper.

Although Plaintiff and her 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.

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RELEVANT BACKGROUND

On March 8, 2022, Plaintiff initiated this class action. (Choi Decl. ¶ 2). On July 5, 2022, Plaintiff filed a First Amended Complaint adding a representative cause of action under the Private Attorney General Act, Labor Code §2698, *et seq.* (*Id.* at ¶ 2).

Shortly after the filing and service of this matter, Plaintiff and Defendant met and conferred about the alleged claims. (Choi Decl. ¶ 3). The Parties conducted informal discovery by continuing to exchange information and documentation pursuant to informal methods to assist the Parties in exploring the possibility of a mediated resolution. (*Id.*). Defendant's willingness to provide informal discovery enabled Plaintiff to evaluate the full scope of Defendant's potential liability. (*Id.*). Ultimately, the Parties agreed to schedule a mediation. (*Id.*).

On December 8, 2022, the Parties attended mediation with Mark Peters, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue. (Choi Decl. ¶ 4). With the mediator's assistance, the Parties were able to negotiate the settlement terms in the Settlement Agreement. (*Id.* Ex. 1).

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class includes (1) all current and former non-exempt employees of Defendant who worked more than eight hours in any work shift during the Class Settlement Period (the "Overtime Class Members"); (2) all current and former non-exempt employees of Defendant who worked more than five hours in any work shift during the Class Settlement Period (the "Meal Break Class Members"); and (3) all current and former non-exempt employees who were paid salary wages during the Class Settlement Period (the "Wage Statement Class Members"). (Agreement ¶ I.5). The Class Period is from March 8, 2018, through March 1, 2023. (*Id.* ¶ I.6). The PAGA Settlement Period is from March 8, 2021, through March 1, 2023. (*Id.* ¶ I.27). Through October 9, 2022, there were approximately 410 Class Members and 16,926 pay periods worked by Class Members. (Choi Decl. ¶15).

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Total Settlement Amount of \$450,000.00. (Agreement ¶ I.41). From the Total Settlement Amount, the Parties will request that the

1 Court approve allocations for an LWDA Payment, Administration Costs, Attorneys' Fees and Costs
2 Award, and Class Representative Enhancement Award. (*Id.* ¶ I.21). Except for these allocations
3 requiring Court approval, the entirety of the remainder of the Total Settlement Amount will be allocated
4 to Class Members. (*Id.* ¶ I.18). It is expected that, on average, each Class Member would be allocated
5 \$577.44 (*after* all requested payments from the Total Settlement Amount). (Choi Decl. ¶ 16).

6 **III. Released Claims**

7 Plaintiff is subject to a general release. (Agreement ¶ I.9).

8 PAGA Members are subject to a release of claims during the PAGA Settlement Period for
9 alleged civil penalties pleaded in the Action or that could have been pleaded based on the facts alleged
10 in the Action and preceding PAGA notices to the LWDA ("PAGA Notice Letters"). (*Id.* ¶ I.34).

11 Participating Class Members are subject to a release of claims for (i) any and all claims for
12 unpaid or underpaid overtime wages; (ii) any and all claims for failure to provide meal periods; (iii) any
13 and all claims for improper or inaccurate itemized wage statements, including any alleged violations of
14 Labor Code §226(a)(1)-(9) based on the facts and legal theories contained in the Action, and including
15 claims for injuries suffered therefrom; (iv) any and all claims for the untimely payment of final wages
16 and associated waiting time penalties under Labor Code §203 based on the facts, claims, causes of
17 action, or legal theories alleged in the Action; (v) any and all claims under the Business & Professions
18 Code (including Section 17200 *et seq.*) premised on the facts, claims, or legal theories described herein
19 or in the Action; any other claims or penalties under the wage and hour laws pleaded in the Action; and
20 all damages, penalties, interest and other amounts recoverable under all Claims under California and
21 federal law, to the extent permissible, including but not limited to the California Labor Code as to the
22 facts and theories alleged in the Action, and the applicable Wage Orders as to the facts and theories
23 alleged in the Action (collectively, the "Released Claims.") (*Id.* ¶ I.33).

24 **LEGAL STANDARD**

25 Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is
26 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
27 has been distributed to class members for their comment or objections. As the Manual for Complex
28

1 Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the
2 court makes a preliminary fairness evaluation”:

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

9 Manual for Complex Litigation (Third) § 30.41.

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

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

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

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

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DISCUSSION

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

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

Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience

1 and have been approved as class counsel in numerous wage and hour class actions. (Declaration of Larry
2 W. Lee (“Lee Decl.”) ¶¶ 5-6; Choi Decl. ¶ 22; Declaration of David J. Lee (“D. Lee Decl.”) ¶ 8;
3 Declaration of Brandon M. Banks (“Banks Decl.”) ¶ 6. Each side has apprised the other of their
4 respective factual contentions and legal theories, and each side has considered the other’s contentions
5 and theories. Defendant provided time records and corresponding payroll data for a 25% sampling of the
6 putative class members enabling Plaintiff to assess the full value of Class Members’ claims and further
7 enabling negotiations to take place between the Parties. (Choi Decl. ¶¶ 5-6). As further discussed below,
8 the settlement is the result of extensive arm’s length negotiations between the Parties and their counsel.
9 (*Id.* ¶¶ 5-14).

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

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

12 Based on the data provided before mediation, Total Settlement Amount is approximately \$26.59
13 per pay period worked by class members. (Choi Decl. ¶ 15). This is an excellent result for Class
14 Members.

15 Plaintiff contended that Defendant failed to pay all overtime wages earned based on the rounded
16 hours that were present on her wage statements. (*Id.* at ¶ 6) Defendant produced the raw time records
17 and corresponding pay records for a 25% sampling of the putative class members. (*Id.* at ¶ 5) Utilizing
18 this data, Plaintiff’s expert determined that although the hours were rounded to the nearest half hour, the
19 time records corresponded to the pay records. (*Id.* at ¶ 6). Thus, there was zero value for this claim. (*Id.*
20 at ¶ 6).

21 Plaintiff contended that Defendant failed to provide compliant meal periods. (*Id.* at ¶ 7).
22 Plaintiff contended that meal breaks that were not provided within the first 5 hours of work, less than 30
23 minutes in length or a second meal break that was not provided for shifts over 10 hours were non-
24 compliant. (*Id.*). For each such meal break, Plaintiff assessed 1 hour of pay at the regular rate for meal
25 break damages. (*Id.*). Plaintiff’s expert calculated potential exposure of meal break damages to amount
26 to approximately \$280,777.88. (*Id.*). Plaintiff also contended that PAGA penalties for non-compliant
27 meal breaks result in up \$100 per pay period which resulted in a potential PAGA exposure for non-
28 compliant meal breaks of up to \$84,900.00. (*Id.*). Further, based on the foregoing, Plaintiff calculated

1 derivative waiting time penalties pursuant to Labor Code §203 to be approximately \$684,531.65 and
2 PAGA penalties of up to \$4,900.00. (*Id.*).

3 Wage statement claims under Labor Code §226(e) result in a \$50 penalty for the first non-
4 compliant wage statement to each Class Member and a \$100 penalty for each additional non-compliant
5 wage statement to the Class Member, up to a maximum of \$4,000 per class member. Labor Code
6 §226(e). Plaintiff alleged that the wage statements were noncompliant because they displayed an
7 employee's biweekly salary rate of pay instead of their hourly rate of pay. (Choi Decl. ¶ 8). Plaintiff's
8 expert calculated Labor Code §226(e) penalties in the amount of \$1,083,510.00. (*Id.*). Plaintiff also
9 contended PAGA penalties result in up to \$250 per violation. Labor Code §226.3 which resulted in a
10 potential PAGA exposure of up to \$1,953,450.00. (*Id.*).

11 Defendant contested the merits and denied it was liable at all. (Choi Decl. ¶ 9). Moreover, even if
12 Plaintiff prevailed on the merits, Defendant contested the extent of liability. (*Id.*). With respect to meal
13 break penalties, Defendant alleged that their meal break policies were compliant and whenever meal
14 breaks were missed that it paid meal break premium wages. (*Id.* at ¶ 10). Further, even utilizing
15 Plaintiff's alleged non-compliant formula, there would be individualized issues. (*Id.*). For example,
16 although a meal break may not have been taken within the first 5 hour of a shift, an employee could
17 have chosen not to take the meal at within the first 5 hours due to preference of taking a later meal
18 break. (*Id.*). Likewise, with respect to waiting time penalties, Defendant contended that it would not be
19 subject to Section 203 penalties, based on a good faith defense since its policy was compliant. (*Id.*).

20 With respect to wage statement liability, Defendant contended that (i) PAGA penalties would
21 enable up to \$100 (not \$250) per violation, (ii) PAGA penalties in any event be subject to discretionary
22 reductions, and (iii) liability under Section 226(e) would be subject to additional defenses requiring
23 proof of injuries resulting from knowing and intentional violations. (*Id.* at ¶ 11)

24 While the Parties disagree on the application of the law to the facts, each Party recognized in
25 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
26 Total Settlement Amount to which the Parties ultimately agreed was reasonable. (Choi Decl. ¶ 12).
27 Ultimately, the Total Settlement Amount of \$450,000 obtains a settlement 10.99% of the potential total
28 recovery of \$4,092,069.54. (*Id.*).

1 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
2 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
3 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
4 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
5 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
6 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
7 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
8 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
9 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
10 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
11 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
12 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
13 action settlement of approximately 15% of the potential recovery was fair and reasonable).

14 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
15 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
16 specific risks that class certification could be denied, liability could not be established at trial, or the
17 applicable law could change. (Choi Decl. ¶ 13). The settlement for each participating Class Member is
18 fair, reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals
19 and the costs of pursuing litigation. (*Id.*)

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

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

26 As discussed above, Participating Class Members are only subject to a release of claims during
27 the Class Settlement Period expressly pleaded in the Action and all other claims that could have been
28 pleaded based on the facts pleaded in the Action. (Agreement ¶ I.33). Similarly tailored, PAGA

Members are subject to a release of claims during the PAGA Settlement Period for alleged civil penalties pleaded in the Action or that could have been pleaded based on the facts alleged in the Action and preceding PAGA notices to the LWDA. (Agreement ¶ I.34). Only Plaintiff is subject to a general release. (*Id.* at ¶ I.9)

The settlement releases are thus appropriate. *E.g.*, *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”). Moreover, the settlement releases apply to claims arising during the Class Settlement Period or PAGA Settlement Period only. (Agreement ¶ I.33-34). In sum, because Plaintiff alleged targeted claims in the Action, any settlement releases also are specifically tailored to the facts alleged.

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to provide to the Administrator each Class Member’s last known address, among other information (the “Class Data”), within 21 days of a Preliminary Approval Order. (Agreement ¶¶ I.4, III.5). Within 30 days of a Preliminary Approval, the Administrator would mail the Notice of Class Action Settlement (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last known address for each Class Member, based on Class Data. (*Id.* ¶ III.6). Any Class Notice returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. (*Id.* at ¶ III.6.b.) If no forwarding address is provided, the Administrator would promptly attempt to determine the correct address using a single skip-trace search and then promptly send a single re-mailing. (*Id.*)

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

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

2 The Agreement provides for a Total Settlement Amount of \$450,000.00. (Agreement ¶ I.41).
3 From the Total Settlement Amount, attorneys' fees will be no more than 33⅓% of the Total Settlement
4 Amount (or \$150,000.00) and litigation costs are not expected to exceed \$25,000. (*Id.* ¶ III.12). The
5 Class Representative Enhancement Award will be no more than \$10,000.00. (Agreement ¶ III.11).
6 Settlement Administrator Costs will be no more than \$9,500.00. (*Id.* at ¶ III.16). The PAGA Payment
7 will be \$25,000.00, and pursuant to statute, 75% of the PAGA Payment (or \$18,750.00) would
8 constitute the LWDA PAGA Payment. (*Id.* at ¶ III.10)¹

9 **1. Each Participating Class Member, on Average, Would Receive More than**
10 **\$825.**

11 It is expected that, on average, each Participating Class Member would be allocated
12 approximately \$577.44 (*after* all requested payments from the Total Settlement Amount). (Choi Decl. ¶
13 16). The amount paid on average to each Participating Class Member may increase, depending on how
14 many Class Members opt out of the settlement. (*Id.*) The amount actually paid to any Participating
15 Class Member may increase or decrease depending on his or her number of relevant pay periods during
16 the Class Period. (*Id.*) After deducting any approved payments for an Attorneys' Fees and Costs Award,
17 Class Representative Enhancement Award, Settlement Administrator Costs, and PAGA Payment from
18 the Total Settlement Amount, the entire remainder would be allocated among Settlement Class Members
19 on a pro rata basis based on the total number of pay periods for each Settlement Class Member. 10% of
20 Individual Settlement Payments shall be allocated to wages and subject to IRS Form W-2 reporting; the
21 remainder of Individual Settlement Payments shall be allocated to interest and penalties and subject to
22 IRS Form 1099 reporting. *Id.*²

23 None of the settlement funds will revert to Defendant. (*Id.* at ¶ III.8). The principal for any
24 uncashed checks (upon the expiration date) would be paid to Legal Aid at Work. (*Id.* at ¶ III.15). Legal
25 Aid at Work is a nonprofit legal services organization that has been assisting low-income working
26

27 ¹ Plaintiff files this motion with the Court and with the LWDA via online submission. Choi Decl. Ex. 2.

28 ² 25% of the PAGA Payment would be allocated among PAGA Members on a pro rata basis based on
the number of relevant pay periods with overtime for each PAGA Member. Agreement ¶¶ I.17, III.10.
All such payments will be subject to IRS Form 1099 reporting, if required. *Id.* at III.13.

families for more than 100 years. (Choi Decl. ¶ 18). Thus, pursuant to C.C.P. §384, Legal Aid at Work furthers the purpose of the underlying class action because it promotes workers' rights. (*Id.* at ¶ 19). Plaintiff and her counsel do not have any interests or involvement with the Legal Aid at Work. (Lakey Decl. ¶ 9; Choi Decl. ¶ 20; Lee Decl. ¶ 7; D. Lee Decl. ¶ 11; Banks Decl. ¶ 9).

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

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

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

Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent"). An attorneys' fees award of 35% of the fund mimics the market and "is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried."

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

6 Here, Plaintiff will request an attorneys' fees award of 33⅓% of the Total Settlement Amount.
7 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class Counsel
8 have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation
9 fees, and payment of other litigation related costs.

10 **3. The Proposed Class Representative Enhancement Award Is Reasonable.**

11 Plaintiff and proposed Class Representative Alexis Lakey requests a modest Class
12 Representative Enhancement Award of \$10,000.00. The request is reasonable in light of the general
13 release that the Agreement requires of Plaintiff but not of any other Participating Class Member.
14 Independently, the request is appropriate in recognition of Plaintiff's efforts on behalf of the Class.
15 (Declaration of Alexis Lakey ("Lakey Decl.") ¶¶ 6-7).

16 As part of her duties as the Class Representative, Plaintiff provided all necessary information and
17 evidence that resulted in this settlement. (Lakey Decl. ¶¶ 6-7). Plaintiff met and conferred with Class
18 Counsel on a number of occasions to discuss the case. (*Id.* at ¶ 6). She provided information and
19 documents to Class Counsel and made herself available to answer any questions during litigation. (*Id.*).
20 She also attended the mediation that lead to the settlement of this case. (*Id.* at ¶ 7). Ultimately,
21 Plaintiff's efforts secured an exceptional result for the Class.

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

1 the risks of payment of costs if they did not prevail, nor did they have to face potential prejudice in
2 future employment.

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

4 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
5 quoted Administration Costs not to exceed \$9,500.00 to send notices and administer the settlement.
6 (Agreement, Ex. B). The Settlement Administrator Costs are reasonable and should be approved.

7 **II. The Class Meets All Requirements for Certification.³**

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

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

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

22 Class Members are identifiable from Defendant’s records. The class definition “is precise,
23 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
24 Indeed, there are approximately 410 Class Members. Agreement Numerosity thus is sufficiently
25 established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
26 number is required as a matter of law for the maintenance of a class action” and citing examples in

27 ³ Defendant expressly reserves its objections and does not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

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 overtime and furnished unlawful wage statements. With respect to typicality, Plaintiff—
11 exactly like other members of the Class—was subject to Defendant’s meal break practices, and was
12 provided wage statements based on Defendant’s common payroll practices. (Lakey Decl. ¶ 4).

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

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

24 **3. Plaintiff and Her Counsel Adequately Represent the Class.**

25 With respect to adequate representation, Plaintiff does not have any interests adverse to the
26 Class, and no such issues been raised or presented. (Lakey Decl. ¶5). Plaintiff has taken all necessary
27 steps to represent the interests of the Class, including by providing information and documents to Class
28 Counsel, making herself available to discuss the claims, providing wage statements that she was issued,

1 reviewing wage statements while the lawsuit was pending, answering any questions and attending
2 mediation. (*Id.* at ¶ 7). For such reasons, Plaintiff has adequately represented the Class Members and
3 will continue to do so.

4 From the inception of the case, Class Counsel has zealously represented the interests of the
5 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
6 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
7 litigated numerous other class action cases, and are competent to represent the Class. (Choi Decl. ¶ 22,
8 26; Lee Decl. ¶ 2-3; D. Lee Decl. ¶ 8-10; Banks Decl. ¶ 6-8).

9 CONCLUSION

10 The proposed settlement would result in substantial monetary benefits to class members. It was
11 the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour
12 class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to
13 believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
14 benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the
15 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
16 Approval Hearing on or after July 27, 2023.

17
18 DATED: February 28, 2023

LAW OFFICES OF CHOI & ASSOCIATES, APLC

19 By: 
20 Edward W. Choi
21 Attorneys for Plaintiff
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