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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

AMIN AHMED, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAREDX, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22-CIV-02294

(Assigned to the Hon. Marie S. Weiner, Dept. 2)

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

Date: April 25, 2023

Time: 2:00 p.m.

Dept.: 2

Complaint Filed: June 6, 2022

FAC Filed: December 27, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on April 25, 2023, at 2:00 p.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Marie S. Winter, judge presiding, in Department
4 2 of the above referenced Court, located at 400 County Center, Redwood City, California 94063,
5 Plaintiff Amin Ahmed (“Plaintiff”) will seek an Order:

6 (1) preliminarily approving the Stipulation of Class Action and PAGA Settlement and
7 Release (“Settlement,” “Stipulation,” “Agreement,” or “Settlement Agreement”);

8 (2) conditionally certifying the following Class for settlement purposes only: all
9 current and former hourly employees of Defendant, who worked in California and were paid
10 shift differential wages at any time during the Class Period;

11 (3) appointing Amin Ahmed as Class Representative and Larry W. Lee, Max W.
12 Gavron, and Kwanporn “Mai” Tulyathan of Diversity Law Group, P.C.; and William L. Marder
13 of Polaris Law Group as Class Counsel;

14 (4) preliminarily approving the Settlement Agreement and the total Maximum
15 Settlement Amount in the amount of Seventy Thousand Dollars (\$70,000.00);

16 (5) finding on a preliminary basis that the Settlement Agreement appears to be within
17 the range of reasonableness of a settlement, including the amount of the PAGA penalties, Class
18 Representative Enhancement Payment, attorneys’ fees and costs, settlement administration costs,
19 and the allocation of payments to Class Members, that could ultimately be given final approval
20 by this Court;

21 (6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to
22 Class Members, which is attached as **Exhibit A** to the Settlement Agreement;

23 (7) approving the distribution of the Class Notice to Class Members substantially in
24 the manner and form set forth in the Settlement Agreement;

25 (8) appointing Phoenix Settlement Administrators as the Settlement Administrator;
26 and

27 (9) setting the matter for a Final Fairness and Final Approval hearing.

28 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which

1 provides for court approval of the settlement of a purported class action and allows the Court to
2 preliminarily certify a class for settlement purposes.

3 The basis for this Motion, filed without any opposition from Defendant CareDx, Inc.
4 (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and the
5 procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to
6 participate in, opt-out of, or object to the settlement.

7 This Motion will be based on the attached Memorandum of Points and Authorities, the
8 Settlement Agreement and the proposed Class Notice, the supporting Declarations of Larry W.
9 Lee, Max W. Gavron, Kwanporn “Mai” Tulyathan, William L. Marder, and Plaintiff Amin
10 Ahmed, and upon the oral arguments of counsel (should there be any), and on the complete
11 records and file herein.

12
13 DATED: April 3, 2023

DIVERSITY LAW GROUP, P.C.

14
15 By: 
16 Larry W. Lee
17 Max W. Gavron
18 Kwanporn “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 action seeking statutory and civil
3 penalties for alleged wage statement violations committed by Defendant CareDx, Inc.
4 (“Defendant”). Plaintiff Amin Ahmed (“Plaintiff”) brought claims on a class and PAGA wide
5 basis for violations of Labor Code § 226. Defendant denies each, every, and all of the allegations
6 in the operative Complaint.

7 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
8 to the claims alleged in the complaints and engaged in a thorough study of the legal principles
9 applicable to the claims asserted against Defendant. Defendant provided information related to
10 the number of wage statements issued to the class that Plaintiff alleged violated the Labor Code,
11 its defenses to the claims, exemplar arbitration agreements, and authorities which purportedly
12 supported same. Thereafter, the Parties commenced settlement negotiations and were ultimately
13 able to reach the current settlement of \$70,000.00. Significantly, this entire amount is non-
14 reversionary, such that no monies will revert back to Defendant. Further, Class Members do not
15 need to file a claim to benefit from the settlement because all Class Members will automatically
16 receive a payment unless they affirmatively opt-out. There are approximately 90 Class Members,
17 and the average payment to participating Class Members is projected to be approximately \$363.

18 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
19 risks and uncertainty of class certification and the merits of this case. Although Plaintiff and his
20 counsel are confident that they can prevail on class certification, as well as on the merits, they
21 recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be
22 certified and/or that Plaintiff could fail to establish liability. Based on their own independent
23 investigation and evaluation, the Parties and their respective counsel are of the opinion that the
24 settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
25 reasonable, and adequate and is in the best interests of the Class and Defendant in light of all
26 known circumstances and the expenses and risks inherent in litigation. Therefore, Plaintiff
27 respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action
28 and PAGA Settlement.

II. PROCEDURAL HISTORY

On or about May 27, 2022, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2698, *et seq.*, the California Private Attorneys General Act (“PAGA”), setting forth Plaintiff’s allegation that Defendant had violated Labor Code § 226. The LWDA did not respond to Plaintiff’s notice. Declaration of Larry W. Lee (“Lee Decl.”) ¶ 2. On June 6, 2022, Plaintiff filed a class action complaint against Defendant in the Superior Court of the State of California for the County of San Mateo, alleging a single cause of action for violation of California Labor Code § 226 (the “Action”). On December 27, 2022, Plaintiff amended his complaint to add a cause of action for violation of Labor Code § 2698, *et seq.* Lee Decl. ¶ 4. The amended complaint is the operative complaint (“Complaint”).

The Complaint is premised on the allegation that the wage statements issued to Plaintiff and other employees incorrectly identified the total hours worked whenever shift differential wages were paid. Lee Decl. ¶ 5. The PAGA claim is predicated on the same factual allegations, which Plaintiff contends support a violation of Labor Code § 226. *Id.* After Plaintiff filed the initial complaint, Plaintiff and Defendant (together, the “Parties”) met and conferred regarding the merits of Plaintiff’s claims and ultimately agreed to engage in informal settlement discussions. Lee Decl. ¶ 8. In connection therewith, Defendant produced data relating to the number of allegedly deficient wage statements issued to the putative class members and represented that there were approximately 90 putative class members who received 1,830 wage statements wherein a shift differential was paid. *Id.* After thorough investigation and evaluation of the facts and claims and negotiations conducted over the course of months, the Parties reached the current proposed settlement. *Id.* ¶ 8. In resolution of Plaintiff’s class and PAGA claims, the Parties entered into the Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Stipulation,” “Agreement,” or “Settlement Agreement”), a true and correct copy of which is attached as **Exhibit A** to the Declaration of Larry W. Lee. Lee Decl. ¶ 9.

III. DISCUSSION

Any settlement of a class action lawsuit must be reviewed and approved by the Court.

1 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
2 review after notice has been distributed to the class members for their comment or objections.

3 The *Manual for Complex Litigation, Third* § 30.41 states:

4 Approval of class action settlements involves a two-step process.
5 First, counsel submits the proposed terms of settlement and the court
6 makes a preliminary fairness evaluation. If the preliminary
7 evaluation of the proposed settlement does not disclose grounds to
8 doubt its fairness or other obvious deficiencies, such as unduly
9 preferential treatment of class representatives or of segments of the
10 class, or excessive compensation for attorneys, and appears to fall
11 within the range of possible approval, the court should direct that
12 notice ... be given to the class members of a formal fairness hearing,
13 at which arguments and evidence may be presented in support of
14 and in opposition to the settlement.

15 (Fed. Jud. Ctr., 3rd ed. 1995).

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

24 Here, the Parties have reached such an agreement and have submitted to this Court in
25 connection with this Motion a copy of the Settlement Agreement fully setting forth the
26 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
27 agreement reached by the Parties, which include, among other things, the method for calculating
28 the Class Members’ individual settlement payments.

 The parties also may, at the preliminary approval stage, request that the court
provisionally approve certification of the class for purposes of settlement—conditional upon
final approval of the settlement. “[P]re-certification settlements are routinely approved if found
to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);

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

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

14 *4 Newberg on Class Actions* § 11.26.

15 In addition to such terms as class identification, settlement amount, and payment
16 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
17 to which the Parties stipulate to the Court’s provisional certification of the Class for the purposes
18 of this settlement only.

19 **A. Proposed Class Definition**

20 The current settlement is being settled on behalf of “all current and former hourly
21 employees of Defendant, who worked in California and were paid shift differential wages at any
22 time during the Class Period.” Settlement Agreement ¶ 1.2.

23 **B. Numerosity**

24 Courts generally find that numerosity is satisfied if the class includes forty or more
25 members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see*
26 *also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir. 1982) (noting, in dicta, that the court
27 “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39]
28 ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982). In this case,
29 Defendant provided data for approximately 90 Class Members, therefore, numerosity is satisfied.
30 Lee Decl. ¶8.

31 **C. Ascertainability**

1 Class members are ascertainable where they may be “readily identified without
2 unreasonable expense or time by reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal.
3 App. 4th 1325, 1334 (2008); *see also Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th
4 220, 240 (2013). Here, the identity of Class Members is clearly ascertainable from Defendant’s
5 payroll records and have already been identified.

6 **D. Typicality and Adequacy of Representation**

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

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

19 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
20 violated the Labor Code by issuing inaccurate itemized wage statements. Declaration of Amin
21 Ahmed (“Ahmed Decl.”) ¶ 4. In other words, Plaintiff was subjected to the same policy and
22 practice as other Class Members. Thus, Plaintiff’s claims are typical to those of Class Members.

23 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
24 issues been raised or presented. Ahmed Decl. ¶ 5. Plaintiff has taken all necessary steps to
25 represent the interests of the Class, and by providing information and documents to Plaintiff’s
26 counsel. *Id.* ¶¶ 6-7. For such reasons, Plaintiff has adequately represented the Class Members
27 and will continue to do so.

28 **2. Class Counsel Have Adequately Represented the Class and Have
Experience with Wage and Hour Class Actions**

1 From the inception of the case, Class Counsel have zealously represented the interests of
2 the Class. For example, the informal discovery exchanged by the Parties allowed Class Counsel
3 to evaluate the total estimated exposure on Plaintiff's claims if litigated through certification,
4 trial, and judgment. Lee Decl. ¶ 19. Class Counsel also obtained sufficient class data in order to
5 evaluate the class claims at issue. *Id.* The settlement was obtained for the benefit of the Class, not
6 for the individual Plaintiff. *Id.* Finally, Class Counsel have been approved as class counsel on a
7 number of prior cases and are competent to represent the Class. Lee Decl. ¶ 25; Declaration of
8 Max W. Gavron ("Gavron Decl.") ¶¶ 10-11; Declaration of Kwanporn "Mai" Tulyathan
9 ("Tulyathan Decl.") ¶¶ 8-10; Declaration of William L. Marder ("Marder Decl.") ¶ 11.

10 **E. Superiority**

11 Class treatment is clearly superior to any other method of resolving Plaintiff's claims.
12 *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). In employment actions,
13 class actions are in fact encouraged. *Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1308
14 (2010) ("In light of the numerous common issues of fact and law that predominate in this
15 lawsuit, we conclude that proceeding by way of class action is the superior method of
16 adjudication. Doing so would further judicial economy by avoiding repetitious suits, would unify
17 what would otherwise be a series of small claims so as to enhance the class members' access to
18 redress...").

19 Here, Plaintiff's claims are based on system-wide policies, procedures, and practices that
20 apply to all class members and can be most efficiently litigated on a class-wide basis; *i.e.*,
21 Defendant's issuance of wage statements. The alternative would be the unrealistic filing of
22 numerous individual claims, which would have a maximum potential value of \$4,000. *See* Lab.
23 Code § 226(e). Since the putative class members are employees with relatively modest
24 individual claims and limited resources, there is a strong likelihood that individual claims would
25 never be brought. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund*, 244 F.3d 1152,
26 1163 (9th Cir. 2001) (superiority requirement met where class members would recover, at most,
27 about \$1,330); *see also Gentry v. Sup. Ct.*, 42 Cal. 4th 443, 462 (2007).

28 **F. Summary of the Case, Investigation, and Discovery and Reasonable Estimate of the Nature and Amount of Recovery**

1 As discussed above, the Action alleges the following causes of action: (1) violation of
2 Labor Code § 226; and (2) violation of Labor Code § 2698, *et seq.* Lee Decl. ¶ 4. Specifically,
3 Plaintiff alleges that Defendant failed to identify the correct total hours worked whenever shift
4 differential wages were paid on wage statements provided to Class Members. *Id.* ¶ 5. Defendant
5 denies the allegations in the Action and is prepared to continue to defend the action vigorously.
6 *Id.*

7 After Plaintiff filed the initial complaint, the Parties met and conferred regarding the
8 merits of Plaintiff's claims and ultimately agreed to engage in informal settlement discussions.
9 Lee Decl. ¶ 8. In connection therewith, Defendant produced data relating to the number of
10 allegedly deficient wage statements issued to the putative class members and represented that
11 there were approximately 90 putative class members who received 1,830 allegedly violative
12 wage statements. *Id.* After thorough investigation and evaluation of the facts and claims and
13 negotiations conducted over the course of months, the Parties reached the current proposed
14 settlement. *Id.* ¶ 8.

15 Based on their own independent investigations and evaluations, the Parties and their
16 respective counsel are of the opinion that settlement for the consideration and on the terms set
17 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
18 the Class and Defendant in light of all known facts and circumstances and the expenses and risks
19 inherent in litigation. Lee Decl. ¶ 18.

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

26 In the present case, the gross settlement of \$70,000.00 is for approximately 1,830 pay
27 periods during which defective wage statements issued to the Class Members during the Class
28 Period. Settlement Agreement ¶ 1.19.

1 With respect to Plaintiff's Labor Code § 226 claim, it arises from Plaintiff's allegations
2 that Defendant's wage statements failed to identify the correct total hours worked whenever shift
3 differential wages were paid. Lee Decl. ¶ 5. Plaintiff calculated maximum exposure for Labor
4 Code § 226 penalties to be approximately \$178,500.00 ((1,830 wage statements x \$100) – (90 x
5 \$50)) = \$178,500.00) and maximum derivative PAGA penalties of \$183,000.00 (1,830 x \$100 =
6 \$183,000.00), if the Court were to award \$100 per pay period. See Cal. Lab. Code §§ 226(e);
7 2699(f). If the Court awarded the higher \$250 penalty set forth in Labor Code § 226.3 on
8 Plaintiff's PAGA claim, the PAGA penalties could be as \$457,500. Compare *Raines v Coasta*
9 *Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667 (2018) (holding appropriate penalty was
10 \$250) with *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355-56 (2021) (declining to
11 apply heightened penalty of \$250).

12 In either case, the Court retains the discretion to reduce the PAGA penalties awarded. See
13 Cal. Labor Code § 2699(e). Pursuant to Labor Code § 2699(e)(2), the Court can decline to
14 award PAGA penalties where "if, based on the facts and circumstances of the particular case, to
15 do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
16 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the
17 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
18 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
19 Cal. App. 5th 504 (2018). Upon review, the Court of Appeal found such reduction to be proper.
20 *Id.* at 539. Thus, while Plaintiffs estimate PAGA penalties to be awarded by the court at \$100 per
21 pay period, pursuant to Labor Code Section 2699(f), if the Court were to reduce the penalties by
22 90%, as was done in *Carrington*, the potentially available penalties would be greatly reduced and
23 only after expending significant time and effort in litigating the case through trial.

24 Based on the above, the \$70,000.00 settlement comprises approximately 19% of the
25 realistic exposure if Plaintiff was successful in obtaining Labor Code § 226(e) penalties and the
26 Court awarded \$100 per pay period. Lee Decl. ¶ 16. This exceeds many settlements approved
27 by numerous courts. See, e.g., *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th
28 Cir.2000); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at

*6 (N.D. Cal. Mar. 20, 2015); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014).

G. The Settlement Was Negotiated at Arm's Length and is Not Collusive

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *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). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *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).

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 informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("[s]o 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...[citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation")).

Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Lee Decl. ¶ 25; Gavron Decl. ¶¶ 10-11; Tulyathan Decl. ¶¶ 8-10; Marder Decl. ¶ 11. As discussed above, Plaintiff's counsel conducted a thorough investigation of the allegations involved in this case

1 since the inception. Each side has apprised the other of their respective factual contentions, legal
2 theories, and defenses, resulting in extensive arm's length negotiations taking place among the
3 Parties.

4 The settlement for each participating Class Member is fair, reasonable, and adequate,
5 given the inherent risks of litigation, including the substantial risks relative to class certification,
6 and the costs of pursuing such litigation. The settlement is the result of extensive arm's length
7 negotiations between the Parties and their counsel. Although Plaintiff believes that a class can
8 be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in
9 the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of
10 action or theories alleged in the operative Complaint, the possibility of non-certification, and
11 potential for appeals. Lee Decl. ¶ 17.

12 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
13 Action Settlement ("Class Notice"), should any Class Member wish to pursue his or her own
14 case for the claims being released herein, each Class Member has the right to submit a Request
15 for Exclusion (*i.e.*, opt-out) from the settlement. Moreover, as set forth in the Class Notice, Class
16 Members are advised of their right to attend the final approval hearing and object to any of the
17 terms contained in the proposed Settlement Agreement, provided that they give proper notice to
18 the Parties and the Court.

19 **H. Settlement Terms and Evaluation**

20 **1. Proposed Terms of the Settlement**

21 This is a non-reversionary settlement wherein Class Members will be automatically paid
22 out of the settlement if they do not opt-out of the settlement. The Settlement Agreement provides
23 for a Maximum Settlement Amount of Seventy Thousand Dollars (\$70,000.00). Settlement
24 Agreement ¶ 1.19. Attorneys' fees of up to one-third (1/3) of the Maximum Settlement Amount,
25 or \$23,333.00, will be paid to as the Class Counsel Award, along with Class Counsel Costs of up
26 to \$4,000.00. *Id.* ¶ 3.14. An Enhancement Award to the Class Representative of up to \$5,000.00
27 will be paid to Plaintiff. *Id.* ¶ 3.13. The Settlement Administrator will be paid up to \$5,750.00 for
28 the costs of administering this settlement. *Id.* ¶ 3.17. The payment of PAGA penalties, or PAGA

1 Payment, is Five Thousand Dollars (\$5,000.00), of which 75% (\$3,750.00) shall be paid to the
2 LWDA and 25% (\$1,250.00) shall be paid to the Class Members. *Id.* ¶ 3.15. The resulting
3 approximate net settlement amount to be distributed to class members is \$32,667.00.

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

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

6 **3. Amount and Manner of Distribution of the Compensation**

7 Each Class Member who does not request exclusion from the settlement shall receive a
8 Class Settlement Payment and, if applicable, a PAGA Penalties Payment. The Class Settlement
9 Payment shall be calculated based on the number of pay periods during which Class Members
10 worked for Defendant in California and were paid a shift differential during the Class Period.
11 Settlement Agreement ¶¶ 1.10, 3.12.2.

12 Class Members will also receive a PAGA Penalties Payment, which shall be paid from
13 the 25% portion of the PAGA Payment set aside for employees. Settlement Agreement ¶ 3.15.
14 The Individual PAGA Penalties Payment will be calculated based on the number of pay periods
15 during which Class Members worked for Defendant in California and were paid a shift
16 differential during the Class Period. *Id.* ¶¶ 1.10, 3.12.4. Class Members shall receive the PAGA
17 Penalties Payment regardless of their decision to request exclusion from the Class. *Id.* ¶ 3.7.

18 Based on the Net Settlement Amount, on a pure raw average, each Class Member will
19 receive approximately \$363 (\$32,667 / 90 class members). Lee Decl. ¶ 11. Such amounts for
20 each person could increase or decrease depending on a number of factors, including the number
21 of opt outs received. The approximate amount each person will be entitled to will not be known
22 until the class data is transferred to the Settlement Administrator for processing.

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

24 This is a non-reversionary settlement, as the entirety of the settlement amount will be
25 fully paid out. Funds represented by Class Settlement Payment and PAGA Penalties Payment
26 checks remaining un-cashed for more than 180 days after issuance will be distributed in
27 accordance with California Code of Civil Procedure § 384(b) to the designated *cy pres* recipient
28 Legal Aid at Work. Settlement Agreement ¶¶ 3.10, 3.12.5.

1 **5. Scope of the Release of Class Members’ Claims**

2 Class Members shall release the following claims that arose during the Class Period
3 (“Released Class Claims”):

4 any and all California state law wage-and-hour claims, rights,
5 demands, liabilities, and/or causes of action of every nature and
6 description, arising from or related to any and all claims that were
7 asserted or could have been asserted based on the facts alleged in
8 the Operative Complaint on file with the court in the Lawsuit during
9 the Class Period, including, without limitation, claims for penalties,
10 attorneys’ fees, and litigation costs.

11 Settlement Agreement ¶¶ 1.29, 3.2.1.

12 Class Members shall also release the following claims that arose during the Class Period
13 (“Released PAGA Claims”), regardless of their decision to request exclusion from the Class:

14 any and all individual and representative claims that could have been
15 assessed upon and collected from the Released Parties under
16 California Labor Code section 2698, et seq. based on the factual
17 allegations contained in the PAGA notices and Operative Complaint
18 on file with the court in this action during the Class Period, including
19 but not limited to California Labor Code sections 226 and 226.3 and
20 any resulting claim for attorneys’ fees and costs under PAGA.

21 Settlement Agreement ¶¶ 1.30, 3.2.1, 3.7. The release is appropriately limited, as it only applies
22 during the time period of June 6, 2021, through and including October 7, 2022.

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

24 Class Settlement Payments shall be allocated as interest, penalties, and non-wage
25 damages, for which an appropriate IRS Form 1099 shall issue. Settlement Agreement ¶ 3.12.3.
26 PAGA Penalties Payments shall be allocated as penalties, for which an appropriate IRS Form
27 1099 shall issue. *Id.* ¶ 3.12.4.

28 **7. Affirmative Obligations to be Undertaken by Class Members or Class**

 As stated above, Class Members do not need to do anything should they wish to receive
their share of the settlement funds. Thus, this substantially decreases 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, he/she must submit an exclusion
request. Such obligations are thoroughly identified in the Class Notice. Settlement Agreement,

1 Ex. A.

2 **I. Submission of Claims, Exclusions, Objections**

3 Class Members will not be required to submit a claim form to receive compensation.
4 Instead, this is a non-reversionary Settlement Agreement. Settlement Agreement, Ex. A. Class
5 Members will be provided 45 calendar days to opt out or object to the settlement. Settlement
6 Agreement ¶ 1.33. Any Class Member who does not opt-out of the settlement will be
7 automatically issued his/her share of the settlement proceeds. Given that this is a non-
8 reversionary settlement, the Parties believe that 45 calendar days is sufficient time for Class
9 Members to object or opt-out of the settlement. Further, Class Members will be notified of the
10 Fairness/Final Approval hearing and will have an opportunity to appear at the Fairness hearing.

11 **J. Notice to Class Members**

12 Within twenty (20) business days after entry of the Preliminary Approval Order,
13 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
14 sending the Class Notice to Class Members. Settlement Agreement ¶ 3.5.2. Within fourteen (14)
15 calendar days after receipt of the Class Information from Defendant, the Settlement
16 Administrator will mail the Class Notice to Class Members. *Id.* ¶ 3.5.4. Before the initial mailing
17 of the Class Notice, the Settlement Administrator shall make a good-faith attempt to obtain the
18 most-current names and postal mail addresses for all Class Members to receive such postal mail,
19 including reviewing the addresses with the National Change of Address Database. *Id.* If any
20 Class Notice sent via U.S. mail to any Class Member is returned to the Settlement Administrator
21 with a forwarding address, the Settlement Administrator shall forward the postal mailing to that
22 address. *Id.* ¶ 3.5.5. If the returned Class Notice does not include a forwarding address, the
23 Settlement Administrator shall attempt to locate a current mailing address for the Class Member
24 by performing a single skip trace and remail the Class Notice to the updated address identified.
25 *Id.* The Class Notice will include the material terms of the proposed settlement and an estimate
26 of the expected Class Settlement Payment and PAGA Penalties Payment amounts. Settlement
27 Agreement, Ex. A. Based on the foregoing, the notice procedures fully comply with California
28 Rules of Court Rule 3.766 (d) & (e).

1 **K. Costs and Fees**

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

3 California state and federal courts have recognized that an appropriate method for
4 determining award of attorneys' fees is based on a percentage of the total value of benefits to
5 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
6 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
7 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of
8 this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
9 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
10 burden alone." *Vincent*, 557 F.2d at 769.

11 Under California law, the award of attorneys' fees in common fund wage and hour class
12 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1
13 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state
14 courts in holding that when class action litigation establishes a monetary fund for the benefit of
15 the class members, and the trial court in its equitable powers awards class counsel a fee out of
16 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
17 percentage of the fund created."). Under the percentage of the fund method, the Court's objective
18 remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
19 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is
20 to set it at a level that will approximate what the market will set....The judge, in other words, is
21 trying to mimic the market in legal services.").

22 An award of one-third of the fund in attorneys' fees mimics the marketplace as it "is
23 supported by the fact that typical contingency fee agreements provide that class counsel will
24 recover 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*
25 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing
26 *Brickman, Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
27 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, "empirical studies [that]
28 show that...fee awards in class actions average around one-third of the recovery." *Chavez v.*

1 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

2 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
4 required a multiplier of 2.13. *Id.* at 487. The results delivered by Plaintiff's counsel also support
5 the requested percentage of the fund. Here, the Parties have agreed to a payment of a maximum
6 of one-third of the settlement (\$23,333.00) for payment to Class Counsel as attorneys' fees.
7 Settlement Agreement ¶ 3.14. The Parties have agreed to a payment of the foregoing attorneys'
8 fees and, thus, this payment should be presumed to be fair.

9 Further, the Parties have agreed to reimbursement of class counsel's litigation costs of up
10 to \$4,000.00. Settlement Agreement ¶ 3.14. Class counsel have, at their own risk, expended
11 costs, for example, to file this instant action, effect service of process, and pay other litigation-
12 related costs, and will be submitting detailed cost sheets for the respective costs incurred prior to
13 the Motion for Final Approval.

14 **2. Proposed Payment to the Class Representative**

15 Plaintiff requests a modest enhancement of \$5,000.00. Settlement Agreement ¶ 3.13.
16 Plaintiff provided documents and information to Class Counsel and reviewed the Settlement
17 Agreement and declaration. Ahmed Decl. ¶¶ 2, 6, and 7. Moreover, as part of his duties as the
18 representative, Plaintiff provided invaluable information, evidence, and documents that resulted
19 in this settlement. *Id.* ¶ 6.

20 Given that future employers are much less likely to hire individuals who have filed suit
21 against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the
22 future from other potential employers. Plaintiff also faced the risk of being subjected to
23 Defendant's costs had Plaintiff lost this case. Plaintiff assumed these risks and the whole Class
24 benefited from these risks taken by Plaintiff. Class Members did not have to file individual
25 lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have
26 to face the potential for retaliation and not getting future employment had they filed a public
27 lawsuit. Finally, as part of this settlement, Plaintiff has agreed to provide a full, complete, and
28 general release of his individual claims, including any rights under Civil Code § 1542, which

1 was not required of Class Members.

2 Courts have routinely granted approval of representative enhancements for far greater
3 amounts than the \$5,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v. Atlantic*
4 *Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re*
5 *Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
6 incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*,
7 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter.*
8 *Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)
9 (\$50,000 awarded to each class representative).

10 **3. Settlement Administration Costs**

11 The Parties have agreed to payment of a maximum of \$5,750.00 to the Settlement
12 Administrator, Phoenix Settlement Administrators, for administering this settlement, including,
13 but not limited to, printing, distributing, and tracking documents for this settlement, tax
14 reporting, distributing the Maximum Settlement Amount, and providing necessary reports and
15 declarations, as requested by the Parties. Settlement Agreement ¶¶ 1.36, 3.17. Phoenix
16 Settlement Administrators is a well-recognized class action settlement administrator. The Parties
17 believe that the administration fee is reasonable and should be approved.

18 **IV. THE LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION**

19 Concurrent with the filing of this Motion, Plaintiff uploaded this motion and proposed
20 order to the LWDA's website. Lee Decl. ¶ 26; Ex. B.

21 **V. CONCLUSION AND PROPOSED SCHEDULE**

22 For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary
23 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of
24 the proposed Class Notice, and set a date for a final approval hearing 5 months after the hearing
25 on Plaintiff's Motion for Preliminary Approval.
26
27
28

1 DATED: April 3, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 

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