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

CHARLES HARRIS and YASEEN
ABDULRAHMAAN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

AMERICAN FREIGHT MANAGEMENT
COMPANY LLC, a Corporation, AMERICAN
FREIGHT MANAGEMENT CO., a
Corporation, and DOES 1 through 100,
inclusive,

Defendants.

Case No. 34-2022-00329805

[Assigned for All Purposes to Honorable Lauri
Damrell in Department 28]

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

Date: January 19, 2024
Time: 9:00 a.m.
Dept.: 28

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

2 **PLEASE TAKE NOTICE** that on January 19, 2024 at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Lauri Damrell, judge presiding, in Department 28
4 of the above referenced Court located at 720 9th Street, Sacramento, CA 92415, Plaintiffs
5 CHARLES HARRIS and YASEEN ABDULRAHMAAN (collectively “Plaintiffs”) will seek an
6 Order: (1) preliminarily approving the Class Action and Private Attorneys General Act (Labor
7 Code § 2698, et seq.) Settlement Agreement (“Settlement Agreement” or “Settlement”); (2)
8 conditionally certifying the following Class for settlement purposes only: a person employed by
9 Defendant in California as a non-exempt employee during the Class Period (November 10, 2018
10 to July 26, 2023); (3) appointing Plaintiffs as the Class Representatives, and Edward W. Choi of
11 the Law Offices of Choi & Associates, P.C., David J. Lee of David Lee Law, P.C. and Brandon
12 M. Banks of Brandon Banks Law, P.C. as Class Counsel; (4) preliminarily approving the
13 Settlement Agreement and the Class Settlement Amount of \$370,000.00; (5) finding on a
14 preliminary basis that the Settlement Agreement appears to be within the range of reasonableness
15 of a settlement, including the amount of the Class Representatives’ Enhancement Payments, Class
16 Counsel’s fees and costs, the settlement administration fees, and the allocation of payments to
17 Class Members, that could ultimately be given final approval by this Court; (6) approving the
18 Notice of Class and PAGA Action Settlement (“Class Notice”) to be sent to Class Members,
19 which is attached as Exhibit A to the Settlement Agreement; (7) approving the distribution of the
20 Class Notice to Class Members substantially in the manner and form set forth in the Settlement
21 Agreement; (8) appointing Phoenix Settlement Administrators as the Settlement Administrator;
22 and (9) setting the matter for a Final Fairness and Final Approval hearing.

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

26 The basis for this Motion, filed without any opposition from Defendant American Freight
27 Management Company, LLC. (“AFM” or “Defendant”), is that the proposed settlement is fair,
28 adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the

1 opportunity of class members to participate in, opt-out of, or object to the settlement.

2 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
3 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for
4 the department may be downloaded off the court's website. If the party does not have online
5 access, they may call the dedicated phone number for the department as referenced in the local
6 telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the
7 hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00
8 p.m. the court day before the hearing, no hearing will be held.

9 This Motion will be based on the attached Memorandum of Points and Authorities, the
10 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Edward W.
11 Choi, David J. Lee, Brandon M. Banks, Charles Harris, Yaseen Abdulrahmaan, and upon the oral
12 arguments of counsel (should there be any) and on the complete records and file herein.

13
14 DATED: December 22, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

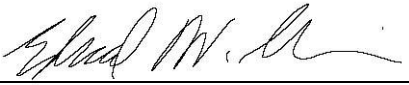
15 By: 
16 Edward W. Choi
17 Attorneys for PLAINTIFF and the CLASS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On October 28, 2022, Plaintiffs CHARLES HARRIS and YASEEN ABDULRAHMAAN
4 (collectively “Plaintiffs”) mailed a notice pursuant to the Private Attorneys General Act (the
5 “PAGA”), to the Labor Workplace Development Agency (“LWDA”) alleging that Defendants
6 AMERICAN FREIGHT MANAGEMENT COMPANY LLC, a Corporation, and AMERICAN
7 FREIGHT MANAGEMENT CO., a Corporation (collectively “Defendants”) violated Labor Code
8 §§ 201-203, 226, 226.7, 510, 512, 558, 1194. (Declaration of Edward W. Choi (“Choi Decl.”) ¶2,
9 Ex. A).

10 On November 10, 2022, Plaintiffs filed their Complaint as a class action against Defendants
11 alleging: (1) violation of Labor Code §§ 510, 558 & 1194; (2) violation of Labor Code §§ 226.7
12 and 512; (3) violation of Labor Code § 226; and (4) violation of Cal. Bus. Prof. Code § 17200, *et*
13 *seq.* (Choi Decl. ¶3). On January 11, 2023, Plaintiffs filed a First Amended Class Action
14 Complaint adding a fifth cause of action for violation of Labor Code § 2698, *et seq.* Private
15 Attorneys General Act (the “PAGA”). On October 4, 2023, the Parties filed a Stipulation for Leave
16 to File a Second Amended Complaint which was granted on October 10, 2023. (*Id.* at ¶4). On
17 October 12, 2023, Plaintiff filed the Second Amended Complaint (“Operative Complaint”), which
18 by operation of law, dismissed Defendant AMERICAN FREIGHT MANAGEMENT CO, *without*
19 *prejudice* and added factual allegations that Defendant failed to provide rest breaks and/or pay rest
20 break premiums at the regular rate of pay. (*Id.*).

21 Since the filing of the case, the Parties engaged in formal and informal discovery resulting
22 in the production of data necessary for Plaintiffs to calculate the potential exposure for this matter.
23 (*Id.* at ¶5). Thereafter, the parties engaged in mediation with well-respected mediator, Todd A.
24 Smith, Esq., on July 26, 2023, which ultimately led to this settlement. (*Id.* at ¶6). The terms of the
25 settlement provide that Defendant shall pay the Gross Settlement Amount of Three Hundred
26 Seventy Thousand Dollars (\$370,000.00) which will be distributed to the class on a **non-**
27 **reversionary** basis without the need to submit claim forms. (Class Action and Private Attorneys
28 General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (“Settlement Agreement” or

1 “Settlement”) ¶13). Thus, the entire settlement amount will be distributed and no remaining
2 amounts, *i.e.* unclaimed funds, will revert back to Defendant. (*Id.*)

3 Plaintiffs respectfully submit that this amount is fair, adequate, and reasonable, especially
4 given the substantial risks and uncertainty of class certification and liability on the merits.
5 Although Plaintiffs and their counsel have always believed that they can prevail on class
6 certification, as well as on the merits, they recognize the inherent risk in further drawn-out
7 litigation and the specific risks that a class might not be certified and/or that Plaintiffs could fail to
8 establish liability. Based on their own independent investigation and evaluation, Plaintiffs and their
9 counsel are of the opinion that settlement for the consideration and on the terms set forth in the
10 Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Settlement
11 Class in light of all known facts and circumstances and the expenses and risks inherent in litigation.

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

14 **II. DISCUSSION**

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

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

25 Thus, the preliminary approval by the trial court is simply a conditional finding that the
26 settlement appears to be within the range of acceptable settlements. As Professor Newberg
27 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
28 concerning a tentative settlement proposal may vary. The court may find that the settlement
proposal contains some merit, is within the range of reasonableness required for a settlement offer,

1 or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4
2 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

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

5 When the parties to an action reach a monetary settlement, they will usually prepare
6 and execute a joint stipulation of settlement, which is submitted to the court for
7 preliminary approval. The stipulation should set forth the central terms of the
8 agreement, including but not limited to, the amount of settlement, form of payment,
9 manner of determining the effective date of settlement and any recapture clause.

10 *Id.* at § 11.24.

11 Here, the Parties have reached such an agreement and Plaintiff is concurrently filing a copy
12 of the Settlement Agreement which is attached as Exhibit B to the Choi Decl., fully setting forth the
13 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
14 agreement reached by the Parties, which include, among other things, the method for calculating
15 the Class Members’ Individual Settlement Payments.

16 The parties also may, at the preliminary approval stage, request that the court provisionally
17 approve certification of the class – conditional upon final approval of the settlement. “[P]re-
18 certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v.*
19 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk v. Ford Motor Co.*, 48 Cal.
20 App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary
21 certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-*
22 *United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in
23 the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).
24 As further explained by Professor Newberg:

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

4 *Newberg on Class Actions*, at §11.26

In addition to such terms as class identification, settlement amount and payment procedures,

1 the Settlement Agreement reached among the Parties contains a provision pursuant to which the
2 Parties stipulate to the Court’s provisional certification of the Class, but do so for the purposes of
3 this settlement only. The Settlement Agreement further provides that if, for any reason, the
4 Settlement is not approved, the stipulation to certification will be void and Defendant has reserved
5 all rights to challenge certification.

6 **A. PROPOSED CLASS DEFINITION**

7 The current settlement is being settled on behalf of the following Class:

8 “Person employed by Defendant in California as a non-exempt employee during the
9 Class Period (November 10, 2018 to July 26, 2023).”

10 (Settlement Agreement ¶¶1.5 and 1.12).

11 **B. NUMEROSITY**

12 Courts generally find that numerosity is satisfied if the class includes forty or more
13 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see also*
14 *Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court “would
15 be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained
16 class members”), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass’n v. Bd. of Educ.*
17 *of the Portland* (8th Cir. 1971) 446 F.2d 763, 765-66 (approving class of 20 members).)

18 In this case, there are approximately 900 class members, therefore, numerosity is satisfied.
19 (Choi Decl. ¶7).

20 **C. ASCERTAINABILITY**

21 Class members are ascertainable where they may be “readily identified without
22 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
23 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th
24 220, 240.)

25 Here, for settlement purposes, the identity of class members is clearly ascertainable from
26 Defendant’s employment and payroll records and have already been identified during the informal
27 discovery and mediation process.

28 ///

1 **D. TYPICALITY AND ADEQUACY OF REPRESENTATION**

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

3 The commonality requirement is met when there are questions of law and fact common to
4 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
5 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
6 couple with disparate legal remedies within the class”). Commonality requires only that some
7 common legal or factual questions exist; the Plaintiff need not show that all issues in the litigation
8 are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s
9 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Ca1. 3d
10 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s
11 conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the
12 Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward &*
13 *Co.*, 193 Cal. App. 3d 411, 421 (1987).

14 Plaintiffs allege that Defendant violated Labor Code §510, 558 and 1194 by failing to
15 correctly calculate the regular rate of pay by not including all non-discretionary remuneration in the
16 regular rate of pay, including without limitation, “Sales Bonus”. Specifically, whenever non-
17 discretionary “Sales Bonus” wages were paid to the employees, such amounts were not
18 included/factored into the regular rate of pay for purposes of overtime wages. Plaintiffs further
19 allege that they were not provided with proper meal and rest breaks and whenever meal and/or rest
20 break premium wages were paid, they were not paid at the regular rate of pay. Based on the
21 foregoing, Plaintiffs seek derivative waiting time and wage statement penalties. Plaintiffs were
22 subject to the foregoing policies, practices and payment procedures and therefore are typical of the
23 class. (Declaration of Yaseen Abdulrahmaan (“Abdulrahmaan Decl.”) ¶3; Declaration of Charles
24 Harris (“Harris Decl.”) ¶3).

25 Plaintiffs do not have any interests adverse to the Class, nor has any such issues been raised
26 or presented. (Abdulrahmaan Decl. ¶4; Harris Decl. ¶4). Plaintiffs have taken all necessary steps
27 to represent the interests of the Class, by providing information and documents. (Abdulrahmaan
28 Decl. ¶ 6; Harris Decl. ¶6). For such reasons, Plaintiffs have adequately represented the Class

1 Members and will continue to do so.

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

4 From the inception of the case, Class Counsel have solely represented the interest of the
5 Class. For example, Plaintiffs conducted informal discovery was directed to Defendant regarding
6 Plaintiffs, the Class, and towards Class issues. (Choi Decl. ¶5). Class counsel also engaged in
7 numerous meet and confers with opposing counsel and obtained the Class data prior to mediation.
8 (*Id.*) The mediation and settlement were also obtained for the benefit of the Class, not for the
9 individual Plaintiff. Finally, Class counsel have been approved as class counsel on a number of
10 prior cases and are competent to represent the class. (Choi Decl. at ¶11; Declaration of David J.
11 Lee (“Lee Decl.”) at ¶8; Declaration of Brandon Banks (“Banks Decl.”) at ¶6).

12 **E. SUPERIORITY**

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

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

1 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY, AND**
2 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF**
3 **RECOVERY**

4 As discussed above, the Operative Complaint alleges that Defendant violated Labor Code
5 §510, 558 and 1194 by failing to correctly calculate the regular rate of pay by not including all non-
6 discretionary remuneration in the regular rate of pay, including without limitation, “Sales Bonus”.
7 Specifically, whenever non-discretionary “Sales Bonus” wages were paid to the employees, such
8 amounts were not included/factored into the regular rate of pay for purposes of overtime wages.
9 Plaintiffs further allege that they were not provided with proper meal and rest breaks and whenever
10 meal and/or rest break premium wages were paid, they were not paid at the regular rate of pay.
11 Based on the foregoing, Plaintiffs seek derivative waiting time and wage statement penalties.

12 Defendant denies liability was and is prepared to continue to defend the action vigorously
13 through denial of class certification, summary judgment, and/or trial.

14 Plaintiffs engaged in extensive meet and confers with Defendant to obtain the putative class
15 members’ pay data. (Choi Decl. at ¶5). Thereafter, the parties engaged in a full-day mediation
16 with mediator Todd Smith, Esq., which ultimately resulted in this settlement. (*Id.* at ¶6).

17 Based on their own independent investigations and evaluations, the Parties and their
18 respective counsel are of the opinion that settlement for the consideration and on the terms set forth
19 in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the
20 Class and Defendant in light of all known facts and circumstances and the expenses and risks
21 inherent in litigation, and is designed so that the Parties may buy their peace and avoid continuing
22 litigation and costs. (Choi Decl. ¶¶9-10).

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

1 Based on the data provided, Plaintiffs estimated that the maximum Labor Code §§510, 558
2 and 1194 damages could amount to \$80,003.08. (Choi Decl. ¶7) Plaintiffs estimated that the
3 maximum meal and rest break penalties could amount to approximately \$10,462.50. (*Id.*).
4 Further, the maximum Labor Code §226 penalties for failure to provide accurate wage statements
5 could amount to \$149,470.96. (*Id.*). Finally, Plaintiffs estimate that the maximum waiting time
6 penalties amount could amount to \$112,731.84. (*Id.*). Based on the foregoing, the total amount of
7 penalties for the class could amount to \$352,668.38. (*Id.*).

8 Further, Plaintiffs estimated the total potential PAGA penalties for unpaid overtime wages
9 could amount to approximately \$23,600.00. (*Id.* at ¶8). The total potential PAGA penalties meal
10 and rest break violations to amount to \$19,200.00. (*Id.*). Finally, the total potential PAGA
11 penalties for violation of Labor Code §226 amounted to \$438,300.00. (*Id.*). The total PAGA
12 penalties, if stacked, amounted to \$481,100.00. (*Id.*).

13 Thus, the current settlement is 41% of the total maximum exposure (\$370,000 divided by
14 \$906,469.96). (*Id.* at ¶8).

15 Numerous courts have held that gross settlements approximating between only 8 and 25%
16 of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
17 *Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of
18 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
20 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
21 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
22 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
23 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding
24 that class action settlement recovering between 8.5% and 25% of the defendant's potential
25 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161
26 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which
27 obtained **only 9.1%** of projected damages, given the risks of continued litigation) *Villegas v. J.P.*
28 *Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21,

2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10–cv–02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

Based on the foregoing a 41% recovery when compared to the total exposure is a good result for the class.

G. SETTLEMENT WAS NEGOTIATED AT ARMS-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 formal and 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*, at § 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 Plaintiffs’ and Defendant’s counsel have a great deal of experience in wage and

1 hour class action litigation. Plaintiffs' counsel have been approved as class counsel in a number of
2 wage and hour class actions and have extensive litigation experience. (Choi Decl. at ¶12; Lee Decl.
3 at ¶8; Banks Decl. ¶6). Moreover, as discussed above, Plaintiffs' counsel conducted a thorough
4 investigation of the allegations involved in this case since the inception. Each side has apprised the
5 other of their respective factual contentions, legal theories and defenses, resulting in extensive
6 arms' length negotiations taking place among the Parties.

7 The settlement for each participating Class Member is fair, reasonable and adequate, given
8 the inherent risks of litigation, including the substantial risks relative to class certification, and the
9 costs of pursuing such litigation. The settlement is the result of extensive arms' length negotiations
10 between the Parties and their counsel, which was achieved after a full day of mediation before a
11 highly regarded mediator.

12 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the fairness
13 of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs in not prevailing
14 on one or more of the causes of action or theories alleged in the Operative Complaint, the
15 possibility of non-certification, adverse disposition, and potential for appeals by one or both sides.
16 (Choi Decl. at ¶¶9-10). Despite the asserted fairness of the settlement terms, as set forth in the
17 *Class Notice*, should any Class Member wish to pursue his or her own case for the claims being
18 released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out)
19 from the settlement. Moreover, as set forth in the Class Notice, Class Members are advised of their
20 right to attend the final approval hearing and object to any of the terms contained in the proposed
21 Settlement Agreement, provided that they give proper notice to the Parties and the Court.

22 H. SETTLEMENT TERMS AND EVALUATION

23 1. Proposed Terms of the Settlement

24 This is a non-reversionary settlement wherein Class Members will be automatically paid out
25 of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement are as
26 follows.

27 The Settlement Agreement provides for a Class Settlement Amount of Three Hundred and
28 Seventy-Thousand Dollars (\$370,000.00). (Settlement Agreement ¶1.22). Attorney's fees of up to

1 33 1/3% or \$123,333.33 will be paid to Class Counsel, along with costs of up to \$30,000.00.
2 (Settlement Agreement ¶3.2.2). Plaintiffs will seek a Class Representative Service Payments up to
3 \$10,000.00 each. (Settlement Agreement ¶ 3.2.2). The Settlement Administrator will be paid up to
4 \$13,750.00 for costs of administering this settlement. (Settlement Agreement ¶ 3.2.3). After
5 deduction of the foregoing, the remainder will be distributed to Class Members who do not opt-out
6 of the Settlement Agreement based on the number of pay periods worked by a Class Member
7 during the Class Period. (Settlement Agreement ¶ 3.2.4).

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

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

10 **3. Amount and Manner of Distribution of the Compensation to be**
11 **Provided to Class Members Including the Amount, or an Estimate, of**
12 **What Each Class Member Will Receive**

13 The Net Settlement Amount (calculated after deduction of attorneys' fees, costs, class
14 representative service payment, and claims administration costs) shall be paid to all Class Members
15 who do not opt out of the settlement. (Settlement Agreement ¶3.2.4). The amount allocated to
16 each Class Member will be based on the number of pay periods each Participating Class Member
17 received during the Class Period. (Settlement Agreement ¶3.2.4). The reason for such allocation is
18 so that the Class Members who suffered higher damages will be allocated greater recovery. Class
19 Members may opt-out of the Settlement if they so choose. (Settlement Agreement ¶ 7.5). Based
20 on the Net Settlement Amount, on a pure raw average, each class member will receive
21 approximately \$174.07. (Choi Decl. ¶8). Such amounts for each person could increase or decrease
22 depending on a number of factors, including the amount of wage statements received by each Class
23 Member. The actual amount each person will be entitled to will not be known until the class data is
24 transferred to the Settlement Administrator for processing.

25 **4. Whether, and Under What Circumstances, Amounts May Revert to**
26 **Defendant, Disposition of Any Un-cashed Checks**

27 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
28 paid out. Settlement checks will remain valid for a period of 180 calendar days after they issue. Any

1 check not cashed within 180 calendar days will be distributed to the California Controller's
2 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
3 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement
4 Agreement ¶4.4.3).

5 **5. Scope of the Release of Class Members' Claims**

6 **Release by Participating Class Members:**

7 Upon the Effective Date, all Participating Class Members, on behalf of
8 themselves and their respective former and present representatives, agents,
9 attorneys, heirs, administrators, successors, and assigns, release Released Parties
10 from all claims that were alleged, based on the Class Period factual allegations in
11 the Operative Complaint, including, any and all claims involving including meal
and rest breaks; wages at the regular rate of pay, overtime and double time wages;
wage statement violations; separation pay violations; unfair business practices;
and applicable IWC Wage Order(s).

12 (Settlement Agreement ¶5.2).

13 **Release by Aggrieved Employees**

14
15 Upon the Effective Date, Plaintiff as an individual and on behalf of the LWDA and
16 Aggrieved Employees, the Released Parties from all claims for PAGA penalties that
17 were alleged, or reasonably could have been alleged, based on the factual allegations
18 in the Operative Complaint and the PAGA Notice, including, any claims involving
meal and rest breaks; wages at the regular rate of pay, overtime and double time
wages; wage statement violations; separation pay violations; unfair business
practices; and PAGA.

19 (Settlement Agreement ¶5.3)

20
21 As shown, the scope of the releases are narrow and is limited by the claims asserted in the
22 Operative Complaint. Further, the Scope of the Release does not waive Civil Code §1542 for Class
23 Members, it does so only for and with regard to the named Class Representative.

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

25 All Individual Settlement Payments are allocated as 20% wages subject to reporting on an
26 IRS Form W-2 and 80% penalties and interest and subject to reporting on an IRS Form 1099.
27 (Settlement Agreement ¶ 3.2.4.1).

28 ///

1 **7. Affirmative Obligations to be Undertaken by Class Members or Class**
2 **Counsel and the Reasons for Any Such Obligations**

3 As stated above, Class Members do not need to do anything should they wish to receive
4 their share of the settlement funds. Thus, this substantially decreases the amount of burden each
5 Class Member must bear in order to receive their settlement share. If a Class Member does not
6 wish to take part in this settlement and be bound by the release, he/she must submit an exclusion
7 request.

8 Such obligations are thoroughly identified in each class member's Class Notices.
9 (Settlement Agreement, Ex. A, pages 3-5).

10 **I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS**

11 Class Members will not be required to submit a claim form to receive compensation.
12 Instead, this is a non-reversionary Settlement Agreement. Class Members will be provided 45
13 calendar days to opt out or object to the settlement. (Settlement Agreement ¶ 1.43). Class
14 Members to whom notices are resent will be provided with an additional fourteen (14) calendar
15 days. (*Id.*). Any Class Member who does not opt-out of the settlement will be automatically issued
16 his/her share of the settlement proceeds. Given that this is a non-reversionary settlement, the
17 parties believe that 45 calendar days is sufficient time for class members to object or opt-out of the
18 settlement. Further, Class Members will be notified of the Fairness/Final Approval hearing and
19 will have an opportunity to appear at the Fairness hearing.

20 **J. NOTICE TO CLASS MEMBERS**

21 Within fifteen (15) calendar days of preliminary approval of this settlement, Defendant will
22 provide the Class Data to the Settlement Administrator. (Settlement Agreement ¶4.2). Within
23 fourteen (14) days of receipt of the Class Data, the Settlement Administrator will mail a Class
24 Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known
25 mailing addresses identified in the Class Data. (*Id.* at ¶7.4.2). Prior to mailing, the Settlement
26 Administrator will perform a search based on the National Change of Address Database for
27 information to update and correct for any known or identifiable address changes. (*Id.*). If a Notice
28 is returned as non-deliverable but with a forwarding address, the Settlement Administrator shall

1 resend the Notice to the forwarding address. (*Id.* at ¶7.4.3) If a Notice is returned as non-
2 deliverable with no forwarding address, the Settlement Administrator shall conduct a skip trace to
3 locate the most current address of the person to whom the Notice was addressed and shall resend
4 the Notice to any updated address. (*Id.*) Each Class Notice will provide: (i) information regarding
5 the nature of the Action; (ii) a summary of the Settlement’s principal terms; (iii) the Settlement
6 Class definition; (iv) the total number of pay periods worked by each respective Class Member
7 received during the Class Period; (v) each Class Member’s estimated Individual Settlement
8 Payments and the formula for calculating Individual Settlement Payments; (vi) the dates which
9 comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or Notices of
10 Objection; (viii) the deadlines by which the Class Member must postmark any requests for
11 exclusions/opt-outs; and (ix) the claims to be released. (*Id.* Ex. A)

12 Based on the foregoing, the notice procedures fully comply with California Rules of Court
13 Rule 3.766 (d) & (e).

14 **K. COSTS AND FEES**

15 **1. Attorneys’ Fees and Costs**

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

24 Under California law, the award of attorneys’ fees in common fund wage and hour class
25 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal.
26 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state courts in
27 holding that when class action litigation establishes a monetary fund for the benefit of the class
28 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the

1 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
2 fund created.”). Under the percentage of the fund method, the Court’s objective remains to “mimic
3 the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J.
4 Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level that
5 will approximate what the market will set... The judge, in other words, is trying to mimic the
6 market in legal services.”).

7 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
8 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
9 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high
10 or low [should] the trial court [] consider whether the percentage method should be adjusted so as
11 to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

12 Moreover, in the *Laffitte* intermediate court decision, the court observed that “35 percent of
13 the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
14 *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing
15 35% of the fund clearly falls within that range, and is consistent with other comprehensive surveys
16 of class action settlements and fee awards. *See Fitzpatrick, An Empirical Study of Class Action*
17 *Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases
18 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35
19 percent, with almost no awards more than 35 percent.”); Eisenberg & Miller, *Attorney Fees in*
20 *Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,
21 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees
22 representing one-third of the total recovery is consistent with market rates).

23 The results delivered by Plaintiffs’ Counsel also support the requested percentage of the
24 fund. Here, the Parties have agreed to a payment of a maximum of 33 1/3% of the settlement
25 (\$123,333.33) for payment to Class Counsel as attorneys’ fees. (Settlement Agreement ¶3.2.2).
26 Further, the parties have agreed to reimbursement of class counsel’s reasonable and actual litigation
27 costs incurred of up to \$20,000.00. (*Id.*) Class counsel have, at their own risk, expended costs, for
28 example, to file this instant action, service of process, payment of mediation fees, and other

1 litigation related costs and will be submitting detailed cost sheets for the respective costs incurred
2 prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily
3 approve the attorney's fees and costs being requested by the parties.

4 **2. Proposed Payment to Class Representative**

5 Plaintiffs requests a Class Representative Service Payment of \$10,000.00 each. (Settlement
6 Agreement ¶3.2.1). Plaintiffs conferred with Class Counsel about the case, provided documents and
7 information to Class Counsel, and reviewed and signed the Settlement Agreement. (Abdulrahmaan
8 Decl. ¶3; Harris Decl. ¶3). Moreover, as part of Plaintiffs' duties as the representative, Plaintiffs
9 provided invaluable information, evidence, and documents that resulted in this settlement. (*Id.*)

10 Given that future employers are much less likely to hire individuals who have filed suit
11 against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice in the
12 future from other potential employers. Plaintiffs assumed these risks from which the whole class
13 benefited. Class members did not have to file individual lawsuits and bear the risks of payment of
14 fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not
15 getting future employment had they filed a public lawsuit.

16 Notably, courts have routinely granted approval of representative enhancements for far
17 greater amounts than the \$10,000.00 each sought by Plaintiffs in this case. *See, e.g., Van Vranken*
18 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
19 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
20 incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*,
21 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*
22 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
23 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
24 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
25 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
26 \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiffs request an
27 enhancement of \$10,000.00 each, which is "presumptively reasonable" and consistent with case
28 law.

1 **3. Settlement Administration Fees**

2 The Settlement Administration Costs are currently estimated to Thirteen Thousand Seven
3 Hundred Fifty Dollars (\$13,750). (Settlement Agreement ¶ 3.2.3). The Parties have agreed to
4 Phoenix Settlement Administrators, for administering this Settlement, including, but not limited to,
5 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the
6 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties.
7 (*Id.*). Phoenix is a well-recognized class action Settlement Administrator. The parties believe that
8 the administration fee is reasonable and should be approved.

9 **III. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION**

10 Plaintiff uploaded a copy of this Motion, Settlement Agreement and Proposed Order to the
11 LWDA. (Choi Decl. ¶13)

12 **IV. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT,**
13 **MOTION FOR APPROVAL, ATTORNEY’S FEES, AND FINAL ACCOUNTING**

Description	Date	Details	Settlement Agreement
Preliminary Approval Date	1/19/2024		
Class Data to Administrator	2/6/2024	15 calendar days	¶4.2
Class Notice Distribution	2/19/2024	10 calendar days	¶45
Opt Out/Objection		45 days from	¶1.43
Deadline	4/4/2024	Notice Mailing	
	On or after June		
Final Approval	7, 2024		

22 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
23 **PRELIMINARY APPROVAL**

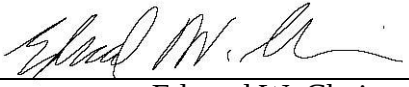
24 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
25 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result
26 of informed, extensive, and arms’ length negotiations conducted by counsel for respective parties
27 who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff
28 respectfully request that the Court grant preliminary approval of the proposed settlement, sign the

1 proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a
2 final approval hearing on or after June 7, 2024, or a later date that is convenient for the Court.

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DATED: December 22, 2023

LAW OFFICES OF CHOI AND ASSOCIATES

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS