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

GILBERT PARAMO and ROSEMARIE
SANTOS, as individuals and on behalf of
all others similarly situated,

Plaintiffs,

vs.

WEEE LOGISTICS INC., a Delaware
corporation; WEEE! INC., a Delaware
corporation; WEEE! LOGISTICS LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0001129

(Assigned to the Honorable Jayne Lee, Dept. 10C)

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

Date: October 25, 26 or November 7, 8, 10, 2023

Time: 9:00 a.m.

Dept.: 10C

Complaint Filed: February 9, 2023

FAC Filed: August 1, 2023

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on October 25, 26 or November 7, 8, 10, 2023 at 9:00
3 a.m., or as soon thereafter as the matter may be heard, before the Honorable Jayne Lee, judge
4 presiding, in Department 10C of the above referenced Court, located at 180 E. Weber Avenue,
5 Stockton, California 95202, Plaintiffs Gilbert Paramo and Rosemarie Santos (together,
6 “Plaintiffs”) will seek an Order:

7 (1) Approving the Joint Stipulation of Class Action Settlement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”) entered into by Plaintiffs and Defendants Weee!
9 Logistics LLC (formerly known as Weee! Logistics, Inc.), Weee! Logistics Inc., Weee! Inc., and
10 Staffing Agencies as identified in Addendum A to the Settlement Agreement (collectively,
11 “Defendants”) in this matter;

12 (2) Conditionally certifying the following class for settlement purposes only: all
13 current and former non-exempt employees who worked for Defendants in California, including
14 all non-exempt employees who worked for Defendants in California under a contract with one or
15 more Staffing Agencies, during the period of July 26, 2017, through September 30, 2022 (the
16 “Settlement Class”);

17 (3) Appointing Plaintiffs Gilbert Paramo and Rosemarie Santos as Class
18 Representatives, and Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law
19 Group, P.C. as Class Counsel;

20 (4) Preliminarily approving the Settlement Agreement and the total Gross Settlement
21 Amount in the amount of Two Million Three Hundred Seventy-Five Thousand Dollars
22 (\$2,375,000.00);

23 (5) Finding on a preliminary basis that the Settlement Agreement appears to be within
24 the range of reasonableness of a settlement, including the amount of Plaintiffs’ service awards,
25 Class Counsel’s attorneys’ fees and costs, settlement administration costs, payment of PAGA
26 penalties (including payment to the California Labor & Workforce Department), and the
27 allocation of payments to Settlement Class Members, that could ultimately be given final
28 approval by this Court;

1 (6) Approving the Notice of Class Action Settlement to be sent to Settlement Class
2 Members;

3 (7) Appointing Phoenix Settlement Administrators as the Settlement Administrator;
4 and (8) setting the matter for a Final Fairness and Final Approval hearing.

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

8 The basis for this Motion, filed without any opposition from Defendants, is that the
9 proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
10 are adequate to ensure the opportunity of class members to participate in, opt-out of, or object to
11 the settlement.

12 This Motion will be based on the attached Memorandum of Points and Authorities, the
13 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of Larry
14 W. Lee, Max W. Gavron, Kwanporn "Mai" Tulyathan, Plaintiff Gilbert Paramo, and Plaintiff
15 Rosemarie Santos, and upon the oral arguments of counsel (should there be any) and on the
16 complete records and file herein.

17
18 DATED: September 19, 2023

DIVERSITY LAW GROUP, P.C.

19
20 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

21
22 Attorneys for Plaintiffs, the Class, and Aggrieved
23 Employees

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code.
4 Plaintiffs Gilbert Paramo and Rosemarie Santos (collectively, “Plaintiffs”) allege various wage
5 and hour violations in this lawsuit, including failure to pay all regular, minimum, and overtime
6 wages owed, failure to timely pay wages at separation of employment, failure to provide off-duty
7 meal and rest breaks and failure to pay premium compensation for the missed meal and rest
8 breaks, failure to reimburse business expenses, and failure to provide accurate itemized wage
9 statements and maintain accurate payroll records. Plaintiffs bring class and PAGA claims based
10 on these violations. The Parties have reached a proposed class and PAGA action settlement, the
11 terms of which are reflected in the Parties’ Joint Stipulation of Class Action Settlement¹
12 (“Settlement Agreement,” “Settlement,” or “Agreement”) entered into between Plaintiffs and
13 Defendants Weee! Logistics LLC (formerly known as Weee! Logistics, Inc.), Weee! Logistics
14 Inc., Weee! Inc., and Staffing Agencies as identified in Addendum A to the Settlement
15 Agreement² (collectively, “Defendants”).

16 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
17 to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal
18 principles applicable to the claims asserted against Defendants. Through the exchange of
19 informal discovery, Defendants provided necessary data pertaining to the number of putative
20 class members employed by Defendants and through staffing agencies, number of workweeks
21 and pay periods at issue, applicable rates of pay, a sample of time and pay records of the class
22 members, as well as information pertaining to Defendants’ payroll policies and practices.
23 Thereafter, the Parties attended private mediation with well-respected mediator Gig Kyriacou,

25 ¹ The Settlement Agreement is attached as **Exhibit A** to the Declaration of Mai Tulyathan
26 (“Tulyathan Decl.”).

27 ² The Staffing Agencies as identified in Addendum A to the Settlement Agreement include
28 Connect Staffing, Inc., MDRN Staffing Inc., Partners Personnel – Management Services, LLC,
 and SkillSet Group LLC.

Esq. After further arm's length negotiations facilitated by Mr. Kyriacou, the Parties were able to reach the current settlement of Plaintiffs' class and PAGA claims. The following represents the key terms of the settlement:

- Gross Settlement Amount of \$2,375,000.00, which will be paid by Defendants and distributed to the Settlement Class³ on a **non-reversionary** basis (*See* Agreement at ¶ 13);
- Estimated 8,155 individuals in the Settlement Class⁴ who worked an estimated 165,000 workweeks during the Class Period; (*Id.* at ¶ 52; Tulyathan Decl. at ¶ 40);
- Class members do not need to submit claim forms to participate in the settlement (Agreement at ¶¶ 58-59);
- Plaintiffs' Service Award of up to \$10,000.00 for each Plaintiff (*Id.* at ¶ 25);
- Class Counsel's attorneys' fees of up to \$791,666.67 (1/3 of Gross Settlement Amount) (*Id.* at ¶ 43);
- Class Counsel's litigation costs of up to \$25,000.00 (*Id.* at ¶ 43);
- Settlement Administration Costs of up to \$47,500.00 (*Id.* at ¶ 45);
- Payment to the LWDA of \$112,500.00, representing 75% of the total PAGA Payment of \$150,000.00 (*Id.* at ¶ 46);
- The amount of \$250,000.00 from the Gross Settlement Amount to be allocated to Waiting Time Penalty Sub-Class Members on a pro rata basis (*Id.* at ¶ 39, 47.b);
- Net Settlement Amount of approximately \$1,090,833.33, to be distributed to participating Settlement Class Members based on the number of workweeks each

³ The "Settlement Class" consists of all current and former non-exempt employees who worked for Defendants in California, including all non-exempt employees who worked for Defendants in California, including all non-exempt employees who worked for Defendants in California under a contract with one or more Staffing Agencies, during the period of July 26, 2017, through September 30, 2022. The Settlement Class also includes a sub-class entitled the "Waiting Time Penalty Sub-Class," which consists of all Settlement Class Members whose employment with Defendants ended at any time during the period of July 26, 2018, through September 30, 2022.

⁴ Based on Defendants' data, there is an estimated 6,553 individuals from the Settlement Class who are Waiting Time Penalty Sub-Class Members.

1 respective Settlement Class Member worked for Defendants during the Settlement
2 Period (*Id.* at ¶¶ 11, 15, 47.a; Tulyathan Decl. at ¶ 42); and

- 3 • Raw average of at least \$133.76 to each participating Settlement Class Member, and
4 at least \$38.15 to each participating Settlement Class Member who is also a
5 participating Waiting Time Penalty Sub-Class Member⁵.

6 The Parties believe that the settlement for the consideration and on the terms set forth in
7 the Agreement is fair, adequate, and reasonable, in light of all known circumstances and the
8 expenses and risks inherent in litigation. Although Plaintiffs and their counsel are confident that
9 they could prevail on class certification, as well as on the merits, they recognize the inherent
10 risks in drawn-out litigation and the specific risks that a class might not be certified, that
11 Plaintiffs could fail to establish liability, and/or that Plaintiffs would be unable to prove damages
12 in the amounts sought.

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

15 **II. PROCEDURAL HISTORY**

16 **A. The *Santos* Class and PAGA Cases**

17 On July 26, 2021, Rosemarie Santos (“Santos”) filed a class action complaint against
18 Weee Logistics Inc., Weee! Inc., and Personal Servicing Solutions LLC in the Superior Court of
19 the State of California for the County of Riverside on behalf of herself and all similarly situated
20 employees (“Riverside 1”). (Tulyathan Decl. at ¶ 4.) Santos asserted class claims for: (1) failure
21 to pay wages; (2) violation of Labor Code § 226.7; (3) violation of Labor Code § 226(a); (4)
22 violation of Labor Code § 2802; and (5) violation of Business and Professions Code § 17200, *et*
23 *seq.* (*Id.*)

24 On August 25, 2021, Santos filed a related complaint against Defendants in the Superior
25 Court of the State of California for the County of Riverside on behalf of herself and aggrieved
26 _____

27 ⁵ The amount of individual waiting time penalty payment to each participating Waiting Time
28 Penalty Sub-Class Member will be in addition to any individual settlement payment. (*See*
 Agreement at ¶ 47.b.)

employees (“Riverside 2”). (Tulyathan Decl. at ¶ 5.) The related action alleges a single cause of action for violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”), predicated on the same underlying violations as her class action. (*Id.*)

After commencement of the *Paramo* action, in March 2023, the Superior Court of the State of California for the County of Riverside stayed the Riverside 1 and 2 actions pending settlement approval in the *Paramo* action, as the Riverside 1 and 2 actions involved similar claims and parties and is wholly encompassed by the *Paramo* action. (*Id.* at ¶ 8.)

B. The *Paramo* Action

On January 3, 2023, Gilbert Paramo (“Paramo”) submitted his written notice to the California Labor & Workforce Development identifying alleged wage and hour violations committed by his former employers, under the PAGA, Labor Code § 2699. (Tulyathan Decl. at ¶ 6.) On February 9, 2023, Paramo and Santos filed a class and representative PAGA action complaint against Weee Logistics Inc., Weee! Inc., and Personal Servicing Solutions LLC in the Superior Court of the State of California for the County of San Joaquin (the “Action”). (*Id.* at ¶ 7.)

In connection with mediation and post-mediation negotiations, the Parties conducted informal discovery, including as to the correct entities who are employers of Plaintiffs and Settlement Class Members in this action. (*Id.* at ¶ 9.) As a result, on March 10, 2023, Plaintiffs submitted a request to dismiss Personal Servicing Solutions, LLC, without prejudice from this action. (*Id.*) Plaintiffs subsequently filed a First Amended Class and Representative Action Complaint (“FAC”) on August 1, 2023, adding Weee! Logistics LLC as a named Defendant in this action. (*Id.*) In connection with the above, Paramo and Santos also submitted supplemental notices to the LWDA on July 28, 2023. (*Id.* at ¶ 10.) On September 19, 2023, Plaintiffs filed amendments to the complaint adding the staffing agencies Connect Staffing, Inc., MDRN Staffing Inc., Partners Personnel – Management Services, LLC, and SkillSet Group LLC as named Defendants. (*Id.* at ¶ 11.)

The FAC is the operative complaint, and alleges claims for: (1) failure to pay wages in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (2) violation of Labor

1 Code § 226.7; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code §
2 226(a); (5) violation of Labor Code § 2802; (6) violation of Business and Professions Code §
3 17200, *et seq.*; and (7) violation of Labor Code § 2698, *et seq.* (Tulyathan Decl. at ¶ 12.)
4 Specifically, Plaintiffs’ class and PAGA claims as pled in the FAC are predicated upon the
5 following allegations. With respect to Plaintiffs’ failure to pay wages claims, Plaintiffs contend
6 that employees were not paid all wages owed to due off-the-clock work, including pre-shift and
7 post-shift tasks, as well as off-the-clock temperature checks, which were conducted once prior to
8 clocking in for work and again at the end of the workday after employees had clocked out.
9 Plaintiffs also allege that employees were underpaid wages, as overtime wages were not paid at
10 the correct rate of pay and that Defendants utilized an unlawful rounding practice. (*Id.* at ¶ 13.)

11 With respect to Plaintiffs’ meal and rest break claims, Plaintiffs contend that Defendants
12 failed to provide employees off-duty meal breaks of at least 30 minutes for shifts of 5 hours or
13 longer, and off-duty rest breaks of 10 minutes for each 3.5 hours worked. In this regard,
14 Plaintiffs allege that employees were required to remain on work premises under Defendants’
15 control and remain on-call on their breaks. As such, Plaintiffs allege that Defendants failed to
16 pay premium compensation appropriately in lieu of the off-duty meal and rest breaks. (*Id.* at ¶
17 14.)

18 With respect to Plaintiffs’ wage statement claims, Plaintiffs allege derivative and
19 independent wage statement violations. In this regard, as a result of the violations above, the
20 wage statements issued by Defendants inaccurately identified the gross wages earned, net wages
21 earned, rates of pay and hours worked. Moreover, as an independent violation, Plaintiffs allege
22 that the wage statements issued by Defendants identified an incorrect and nonexistent address for
23 the employer. (*Id.* at ¶ 15.)

24 With respect to Plaintiffs’ business reimbursement claims, Plaintiffs contend that
25 Defendants required employees to use their personal cell phones for work-related tasks,
26 including to use a mobile application—WEEE, for work purposes. However, Plaintiffs allege
27 that Defendants failed to reimburse them for the costs incurred in connection with said use.
28 Plaintiffs also allege as part of this claim that Defendants required employees to purchase tools

1 and clothing, in compliance with a dress code, which included purchasing shoes, gloves, and
2 masks. (Tulyathan Decl. at ¶ 16.)

3 Lastly, Plaintiffs contend that Defendants failed to pay all wages owed upon separation of
4 employment. As a result of the unpaid wages claims and allegations identified above, Plaintiffs
5 allege that Defendants failed to pay all wages owed at separation of employment, and thus owe
6 waiting time penalties under Labor Code § 203. (*Id.* at ¶ 17.)

7 As a result of the alleged violations above, Plaintiffs seek damages and penalties under
8 the California Labor Code, the California Business & Professions Code, and the PAGA, as well
9 as attorneys' fees and costs. (*Id.* at ¶ 18.)

10 **C. Mediation and Post-Mediation Negotiations**

11 After the Parties conferred regarding possible settlement discussions, they agreed to
12 exchange information informally to evaluate their respective claims and defenses. (*Id.* at ¶ 19.)
13 The Parties subsequently engaged in informal discovery for Plaintiffs to assess the claims, as
14 well as the maximum exposure of damages and penalties. (*Id.* at ¶ 20.) In this regard,
15 Defendants provided Plaintiffs with data pertaining to the number of putative class members
16 employed by Defendants and through staffing agencies, number for former employees allegedly
17 owed waiting time penalties, number of workweeks and pay periods at issue, applicable rates of
18 pay for class members, a sample of time and pay records of the class members, as well as
19 information pertaining to Defendants' payroll policies and practices at issue. Defendants'
20 production of informal discovery allowed Plaintiffs to conduct a damages analysis. (*Id.*)

21 After exchange of informal discovery, the Parties engaged in a full-day mediation with
22 well-respected wage-and-hour mediation, Gig Kyriacou, Esq. (Tulyathan Decl. at ¶ 21.) The
23 Parties continued negotiations following mediation facilitated by Mr. Kyriacou, and ultimately
24 reached the current settlement. (*Id.*)

25 **III. DISCUSSION**

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

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

2 Approval of class action settlements involves a two-step process. First, counsel
3 submits the proposed terms of settlement and the court makes a preliminary fairness
4 evaluation. If the preliminary evaluation of the proposed settlement does not
5 disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly
6 preferential treatment of class representatives or of segments of the class, or
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.

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

8 Thus, the preliminary approval by the trial court is simply a conditional finding that the
9 settlement appears to be within the range of acceptable settlements. As Professor Newberg
10 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
11 concerning a tentative settlement proposal may vary. The court may find that the settlement
12 proposal contains some merit, is within the range of reasonableness required for a settlement
13 offer, or is presumptively valid subject only to any objections that may be raised at a final
14 hearing.” (Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed.
15 2002).)

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

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

21 (*Id.* § 11.24.)

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

28 The parties also may, at the preliminary approval stage, request that the court

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

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal...may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic 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 § 11.26.)

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties stipulate to the Court’s provisional certification of the class for the purposes of this settlement only. (*See* Agreement ¶ 91.)

A. Proposed Class Definition

The current settlement is being settled on behalf of a main Settlement Class of all current and former non-exempt employees who worked for Defendants in California, including all non-exempt employees who worked for Defendants in California under a contract with one or more Staffing Agencies, during the period of July 26, 2017, through September 30, 2022 (“Settlement Class”). (*See* Agreement at ¶ 34.) Additionally, the Settlement Class includes a sub-class comprised of all Settlement Class Members whose employment with Defendants ended at any time during the period of July 26, 2018, through September 30, 2022 (“Waiting Time Penalty Sub-Class”). (*Id.* at ¶ 38.) Defendants estimate that there are approximately 8,155 individuals who are Settlement Class Members. Out of that number, Defendants estimate that approximately 6,553 individuals are Waiting Time Penalty Sub-Class Members. (Tulyathan Decl. at ¶ 40.)

1 **B. Numerosity**

2 Courts generally find that numerosity is satisfied if the class includes forty or more
3 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see*
4 *also Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court
5 “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39]
6 ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass’n*
7 *v. Bd. of Educ. of the Portland* (8th Cir. 1971) 446 F.2d 763, 765-66 (approving class of 20
8 members).) In this case, given the number of individual class members of at least 8,155,
9 numerosity is satisfied.

10 **C. Ascertainability**

11 Class members are ascertainable where they may be “readily identified without
12 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008)
13 166 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal.
14 App. 4th 220, 240.) Here, the identity of class members is clearly ascertainable from
15 Defendants’ payroll records and have already been identified by Defendants as part of informal
16 discovery.

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

18 **1. Class Representatives’ Claims are Typical of the Class**

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

(See *Stephens v. Montgomery Ward & Co.*, 193 Cal.App.3d 411, 421 (1987).)

In the present case, Plaintiffs allege that Defendants, as a matter of their corporate policy, practice, or procedure, violated the Labor Code by failing to pay all wages owed, failing to timely pay wages upon separation of employment, failing to provide off-duty meal and rest breaks or pay premium compensation appropriately in lieu thereof, failing to provide accurate itemized wage statements, and failing to reimburse business expenses. (Declaration of Gilbert Paramo (“Paramo Decl.”) at ¶¶ 3-6; Declaration of Rosemarie Santos (“Santos Decl.”) at ¶¶ 3-6.) As a result, Plaintiffs allege that they are owed unpaid wages and penalties for the above violations. (*Id.*)

In other words, Plaintiffs contend that they were subjected to the same policies and practices as other Settlement Class Members and that their claims are typical to those of the Settlement Class.

Moreover, Plaintiffs do not have any interests adverse to the Settlement Class, nor have any such issues been raised or presented. (Paramo Decl. at ¶ 7; Santos Decl. at ¶ 7.) Plaintiffs have taken all necessary steps to represent the interests of the Settlement Class, and by discussing the case and Defendants’ practices with counsel, and by gathering and providing information and documents to counsel. (Paramo Decl. at ¶ 8; Santos Decl. at ¶ 8.) For such reasons, Plaintiffs have adequately represented the Settlement Class Members and will continue to do so.

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

From the inception of the case, Class Counsel have zealously represented the interests of the Settlement Class. The settlement was obtained for the benefit of the Settlement Class, as opposed to the individual Class Representatives. Following an exchange of informal discovery and mediation data to assess potential class-wide damages, the Parties participated in private mediation with mediator Gig Kyriacou, Esq., and continued negotiations post-mediation. (Tulyathan Decl. at ¶ 21.)

Class Counsel have been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class.

(Declaration Larry W. Lee (“Lee Decl.”) at ¶¶ 7-8; Tulyathan Decl. at ¶¶ 57-58; Declaration of Max W. Gavron (“Gavron Decl.”) at ¶¶ 8-11.)

E. Superiority

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

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

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

The operative FAC alleges the following causes of action: (1) failure to pay wages; (2) violation of Labor Code § 226.7; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code § 226(a); (5) violation of Labor Code § 2802; (6) violation of Business and Professions Code § 17200, *et seq.*; and (7) violation of Labor Code § 2698, *et seq.* Defendants deny the allegations in the Action and are prepared to continue to defend the Action vigorously.

Here, the Parties agreed to participate in mediation and participate in an informal exchange of data and documents. As part of informal discovery for mediation, Defendants provided Plaintiffs with data pertaining to the number of putative class members employed by

1 Defendants and through staffing agencies, number for former employees allegedly owed waiting
2 time penalties, number of workweeks and pay periods at issue, applicable rates of pay for class
3 members, a sample of time and pay records of the class members, as well as information
4 pertaining to Defendants' payroll policies and practices at issue. (Tulyathan Decl. at ¶ 20.)
5 Thereafter, the Parties engaged in a full day mediation session with mediator Gig Kyriacou, Esq.
6 (*Id.* at ¶ 21.) Through continued negotiations with the assistance of the mediator, the Parties
7 were ultimately able to reach the instant settlement. (*Id.*)

8 Based on their own independent investigations and evaluations, 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
11 Settlement Class in light of all known facts and circumstances and the expenses and risks
12 inherent in litigation. (Tulyathan Decl. at ¶ 22.)

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

19 Prior to the mediation, Plaintiffs were provided with data pertaining to putative class
20 members during the relevant class period, as well as time and payroll records. (Tulyathan Decl.
21 at ¶ 23.) From this data, Plaintiffs were able to investigate the claims asserted and conduct an
22 exposure analysis that informed Plaintiffs' position at the mediation. (*Id.*)

23 Based on the class data provided by Defendants, Plaintiffs analyzed Defendants' potential
24 exposure as follows:

25 • Failure to pay wages: Plaintiffs estimated that the amount of unpaid wages owed
26 by Defendants is approximately \$683,890.00. This was calculated based on a modest
27 assumption of three minutes of off-the-clock work per day, based on the putative class members'
28 average hourly rate of pay of \$20.00, for 136,778 workweeks.

1 • Failure to provide meal and rest periods: Plaintiffs estimate exposure of
2 approximately \$1.367 million for unpaid premiums owed, based on one violation per workweek,
3 and applying a 50% violation rate based on sample time and payroll data of putative class
4 members which indicated that most putative class members worked shifts shorter than 3.5 hours.

5 • Failure to timely pay wages upon separation of employment: With respect to
6 waiting time penalties under Labor Code § 203, Plaintiffs estimated the potential penalties owed
7 was approximately \$15.727 million, which was calculated based on 6,553 former employees,
8 based on the average hourly rate of pay of \$20.00 (6,553 employees x 4 hours⁶ x 30 days x
9 \$20.00 per hour).

10 • Wage statement penalties: Plaintiffs also alleged that Defendants would be subject
11 to penalties for wage statement violations, pursuant to Labor Code § 226. Plaintiffs estimated
12 the penalties associated with this claim is approximately \$10.64 million⁷, which was based on
13 approximately 106,451 alleged pay periods at issue.

14 • Unreimbursed business expenses: Plaintiffs calculated the total exposure for this
15 claim as approximately \$683,890.00, which contemplates a \$5.00 per workweek reimbursement.
16 (Tulyathan Decl. at ¶ 24.)

17 While the total exposure of Plaintiffs' class claims based on the above amount to
18 approximately \$29.1 million, this analysis does not take into account Defendants' arguments to
19 liability and to class certification as further explained below. (*Id.* at ¶ 25.)

20 With respect to Plaintiffs' claim under the PAGA, Plaintiffs estimated that Defendants
21 could face civil penalties of at least \$10.71 million, in relation to the approximately 107,118 pay
22 periods at issue during the PAGA period. (*Id.* at ¶ 26.) Plaintiffs' analysis is based on the initial
23

24 ⁶ Based on the sample time and payroll records of putative class members provided by
25 Defendants, more than 95 percent of class members worked shorter shifts of under four hours.
26 Plaintiffs estimated the amount of waiting time penalties based on the average length of the shifts
as analyzed from the sample records. (Tulyathan Decl. at ¶ 24.)

27 ⁷ The amount of statutory penalties calculated here does not take into account the \$4,000 cap per
28 employee under Labor Code § 226(e). Applying the \$4,000 cap would likely lower the amount
of statutory penalties represented here significantly. (Tulyathan Decl. at ¶ 24.)

1 violation penalty amount, does not account for the imposition of the subsequent violation penalty
2 amount given recent authority indicating this increased penalty may only be available where
3 there is a prior citation for a Labor Code violation. (*See Bernstein v. Virgin Am., Inc.* (9th Cir.
4 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor
5 any court warned the defendant that it was subject to the Labor Code until the court handling the
6 case at issue).) Additionally, this analysis does not account for the possibility that the Court
7 would reduce the PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline
8 to award PAGA penalties where “if, based on the facts and circumstances of the particular case,
9 to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
10 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
11 *Corp.* (2018) 30 Cal.App.5th 504, while the plaintiff prevailed on his PAGA claim upon trial, the
12 trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
13 faith attempt at complying with the law. (*Id.* at p. 517.) Upon review, the Court of Appeal found
14 such reduction to be proper. (*Id.* at p. 539.)

15 Although Plaintiffs believe in the merits of the alleged claims and maintains that there is
16 no reason for reducing PAGA penalties, Plaintiffs are aware that Defendants may raise defenses
17 to the claims and further with respect to the reduction of PAGA penalties and that it could be
18 persuasive to the Court. (Tulyathan Decl. at ¶ 29.) Thus, even if Plaintiffs were to successfully
19 prove their claims at trial, there is a possibility that the Court may only award a small percentage
20 of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
21 premised with this risk in mind, associated with the possibility of the Court significantly
22 reducing Plaintiffs’ PAGA penalties, along with other attendant risks, even if Plaintiffs were to
23 prevail at trial. (*Id.*)

24 Further, Defendants raised several defenses that presented risks to succeeding on
25 Plaintiffs’ theories of liability. For example, Defendants contended that the time spent off-the-
26 clock, including undergoing any sort of temperature checks, was de minimis and did not require
27 compensation because employees were free to perform tasks of their own. Defendants also
28 argued that they maintained legally compliant meal and rest period policies, and that any

1 violations were not the result of employer-driven policies, but, rather, employee choice. With
2 respect to the 2802 claim, Defendants argued that they maintained a compliant reimbursement
3 policy, which facially provides for reimbursement of business-related expenses. Furthermore,
4 Defendants maintain that they did not require employees to use their personal cellular telephones
5 for work purposes. (Tulyathan Decl. at ¶ 30.)

6 Additionally, Defendants also argued that Plaintiffs cannot establish that Defendants
7 “willfully” failed to pay wages at separation of employment, and thus Plaintiffs cannot recover
8 waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, __
9 Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023 WL 3745105 (May
10 31, 2023), the court upheld an employer’s good faith defense to the plaintiff’s claim for waiting
11 time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal
12 defense, which precluded the imposition of waiting time penalties because its acts were not
13 “willful” within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut
14 the plaintiff’s claim for penalties, pursuant to Labor Code § 226. Should Defendants succeed on
15 these arguments, class members would recover \$0 for waiting time penalties under Labor Code §
16 203 and statutory penalties under Labor Code § 226. Taking these risks into account, Plaintiffs’
17 total exposure for class claims is estimated at a realistic **\$3.4 million**. (Tulyathan Decl. at ¶ 31.)

18 Significantly, Defendants also maintained that the case was not suited for class
19 certification. Specifically, Defendants argued that employees worked at various
20 warehouses/work sites and were staffed by multiple staffing agencies, and thus were governed by
21 different policies and practices. Should Defendants have succeeded in this theory, the liability
22 resulting from Plaintiffs’ claims would be significantly reduced, as class members would also not
23 be able to recover waiting time penalties and derivative 226 penalties. (Tulyathan Decl. at ¶ 32.)
24 Furthermore, as another defense to class certification, Defendants have also indicated that certain
25 employees have signed arbitration agreements that purported to waive class claims. (*Id.* at ¶ 33.)

26 Although Plaintiffs believe that Plaintiffs can succeed on class certification, Plaintiffs
27 also believe in the fairness of the settlement that is based on factoring in the uncertainty and risks
28 to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged

1 in the operative FAC, the possibility of non-certification, and the potential for appeals. (*Id.* at ¶
2 34.) These risks on class certification are compounded by the California Supreme Court’s
3 holding in *Duran v. U.S. Bank Nat’l Ass’n* (2014) 59 Cal. 4th 1. There, the plaintiffs obtained
4 class certification and subsequently prevailed at trial after eight years of litigation, but the
5 judgment and the certification ruling were reversed by the California Supreme Court after an
6 additional five years of litigation. The case was remanded to superior court where class
7 certification was denied and plaintiffs’ subsequent appeal also was denied.

8 Indeed, numerous courts have held that **gross** settlements approximating between only 8
9 and 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
10 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
11 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
12 settlement amounting to only a fraction of the potential recovery does not per se render the
13 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should
14 be assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
15 settlement is fair and adequate depends on the “the difficulties in proving the case”);
16 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D.
17 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
18 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
19 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class
20 settlement which obtained **only 9.1%** of projected damages, given the risks of continued
21 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
22 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
23 approximately 15% of the potential recovery was fair and reasonable; *Greko v. Diesel U.S.A.,*
24 *Inc.* (N.D. Cal. Apr. 26, 2013) No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (24 percent was
25 reasonable).)

26 Here, the total amount of class and PAGA penalties range from 14.11 million to 39.81
27 million. (Tulyathan Decl. at ¶ 35.) The Gross Settlement Amount is \$2.375 million. Thus, the
28 Gross Settlement Amount represents between 16.8% to 6% of the potential damages and

penalties at issue. (*Id.*) The Gross Settlement Amount of \$2.375 million is well within the range of reasonableness, given the risks of succeeding on liability and class certification as discussed above, and the Court should grant approval of this settlement. (*Id.*)

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*, at § 11.47; *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at p. 528 (“[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 Defendants’ counsel have a great deal of experience in wage and hour class action litigation. Plaintiffs’ counsel has been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. (Lee Decl. at ¶¶ 7-8; Gavron Decl. at ¶¶ 8-11; Tulyathan Decl. at ¶¶ 57-58.) Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking

1 place between the Parties. (Tulyathan Decl. at ¶¶ 19-22.)

2 The settlement for each Settlement Class Member is fair, reasonable, and adequate, given
3 the inherent risks of litigation, including the substantial risks relative to class certification, and
4 the costs of pursuing such litigation. The settlement is the result of extensive arm's length
5 negotiations between the Parties and their counsel, which was achieved after mediation and post-
6 mediation negotiations before a highly regarded mediator.

7 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the
8 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs
9 involved in not prevailing on one or more of the causes of action or theories alleged in the
10 operative FAC, the possibility of non-certification, and potential for appeals. (Tulyathan Decl. at
11 ¶ 34.)

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

19 **H. Settlement Terms and Evaluation**

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

21 This is a non-reversionary settlement wherein Settlement Class Members will be
22 automatically paid out of the settlement if they do not opt-out of the settlement. The key terms
23 of the settlement are as follows.

24 The Parties negotiated the amount to be paid to the Settlement Class for the Labor Code
25 violations and PAGA penalties, including the attorneys' fees and costs, Plaintiffs' Service
26 Awards, and Settlement Administration Costs. (Tulyathan Decl. at ¶ 41.) The Agreement
27 provides for a Gross Settlement Amount of Two Million Three Hundred Seventy-Five Thousand
28 Dollars (\$2,375,000.00). (Agreement at ¶ 13.) Attorneys' fees of up to one-third of the Gross

Settlement Amount, or \$791,666.67, will be paid to Class Counsel along with litigation costs of up to \$25,000.00. (Agreement at ¶ 43.) Plaintiffs' Service Award will be up to \$10,000.00 for each Plaintiff. (*Id.* at ¶ 44.) The Settlement Administrator will be paid up to \$47,500.00 for the costs of administering this settlement. (*Id.* at ¶ 45.) The LWDA will receive \$112,500.00 of the \$150,000.00 PAGA Payment. (*Id.* at ¶ 46.) The PAGA Payment is allocated as \$150,000.00, of which 75% shall be paid to the LWDA and 25% shall be paid to aggrieved employees, or PAGA Members, on a *pro rata* basis, based on the number of workweeks they worked during the PAGA Period. (*Id.* at ¶¶ 20, 47.c.) In addition, \$250,000.00 of the Gross Settlement Amount is allocated as a Waiting Time Penalty Payment for Waiting Time Penalty Sub-Class Members, to be allocated on a *pro rata* basis. (*Id.* at ¶¶ 39, 47.b.)

The Agreement provides that after the amounts above are deducted, each Settlement Class Member will receive a share of the Net Settlement Amount, which is calculated at approximately \$1,090,833.33. (Tulyathan Decl. at ¶ 42.) The Net Settlement Amount will be distributed to Settlement Class Members who do not opt-out of the Settlement Agreement by dividing the Net Settlement Amount by the total number of Eligible Workweeks for all Participating Class Members, then multiplying the value by the number of Eligible Workweeks worked by each Participating Class Member during the Settlement Period. (Agreement at ¶¶ 14, 47.a.) Eligible Workweeks for each Participating Class Members shall be calculated based on Defendants' records.

Settlement Class Members have the opportunity to challenge the amount of Individual Settlement Payments or Waiting Time Penalty Payments due to them. (Agreement at ¶ 77.) The Settlement Administrator shall consult with the Parties to resolve any disputes. (*Id.*)

2. Nature of Any Injunctive Relief

The Settlement Agreement does not provide for any injunctive relief.

3. Amount and Manner of Distribution of the Compensation to be Provided to Settlement Class Members, Including the Estimated Amount Each Settlement Class Member Will Receive

The Settlement Agreement provides for Two Million Three Hundred Seventy-Five Thousand Dollars (\$2,375,000.00) as the Gross Settlement Amount. (Agreement ¶ 13.) The Net

1 Settlement Amount (calculated after deduction of attorneys' fees (up to \$791,666.67), litigation
2 costs (up to \$25,000.00), Plaintiffs' Service Awards to both Plaintiffs (up to \$20,000.00),
3 Waiting Time Penalty Payment to be allocated to Waiting Time Penalty Sub-Class Members
4 (\$250,000.00), PAGA Payment (\$150,000.00), and Settlement Administration Costs (up to
5 \$47,500.00)) is estimated to be approximately \$1,090,833.33. (Agreement at ¶¶ 13, 15, 39, 43-
6 46; Tulyathan Decl. at ¶ 42.) From the Net Settlement Amount, the amount allocated to each
7 Settlement Class Member will be based on the number of Eligible Workweeks worked by each
8 Settlement Class Member during the Settlement Period. (Settlement Agreement at ¶ 47.a.)

9 Based thereon, on a raw average, each Settlement Class Member potentially may recover
10 at least \$133.76 ($\$1,090,833.00 \div 8,155$ Settlement Class Members). (Tulyathan Decl. at ¶ 43.)
11 The amount actually paid to each Settlement Class Member will increase or decrease depending
12 on the number of Eligible Workweeks he or she worked during the Settlement Period and the
13 number of putative class members who choose not to participate in the settlement. (*Id.*) In
14 addition to their individual settlement shares from the Net Settlement Amount, Settlement Class
15 Members who are Waiting Time Penalty Sub-Class Members will also receive a pro rata share of
16 the Waiting Time Penalty Payment. On a raw average, each Waiting Time Penalty Sub-Class
17 Member may potentially recover at least \$38.15 ($\$250,000.00 \div 6,553$ Waiting Time Penalty
18 Sub-Class Members). (Tulyathan Decl. at ¶ 44.) This amount could fluctuate depending on the
19 number of opt-outs. (*Id.*)

20 With respect to individual settlement shares to aggrieved employees under the PAGA,
21 25% percent of the PAGA Payment, or \$37,500.00, will be distributed to PAGA Members.
22 (Settlement Agreement at ¶ 19.) PAGA Members include all current and former non-exempt
23 employees who worked for Defendants, including all non-exempt employees who worked for
24 Defendants in California under a contract with one or more Staffing Agencies, during the time
25 period of June 21, 2020, through September 30, 2022. (*Id.* at ¶¶ 21, 35.) Each PAGA Member's
26 individual share of the PAGA Payment will be calculated based on the total number of
27 workweeks worked by all PAGA Members during the PAGA Period, as compared to the number
28 of workweeks worked by each PAGA Member during the PAGA Period. (*Id.* at ¶ 47.c.) This

amount will be in addition to any individual settlement shares from the Net Settlement Amount and Waiting Time Penalty Payment, and will be paid to PAGA Members regarding of whether the PAGA Member submits a Request for Exclusion. (*Id.*)

Finally, uncashed checks (upon the expiration date) shall be sent to the proposed *cy pres* recipient, Legal Aid at Work. (Agreement at ¶ 69.)

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

None of the settlement funds will revert to Defendants. (Agreement at ¶ 13.)

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

As a condition of participating in this class action settlement, Settlement Class Members shall waive and release Released Parties from the Released Claims. (Agreement at ¶¶ 27, 29, 73.) "Released Claims" as defined in the Settlement Agreement, includes:

[A]ny and all federal, state and local demands, rights, liabilities, claims and/or causes of action, known or unknown, that are alleged in the Action, or reasonably could have been alleged in the Action based on the facts alleged in the Action including claims for failure to provide meal and rest breaks, failure to pay for meal and rest break premiums pay in lieu thereof and at the correct rates paid for same, pay overtime wages and the correct rates paid for same, pay minimum or regular wages for all hours worked, pay timely wages during employment, pay all earned and accrued wages to discharged/separated employees, furnish accurate itemized wage statements, maintain required payroll records, and indemnify employees for business expenses in violation of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802, or Business and Professions Code § 17200, *et seq.*, which are premised on the same allegations.

(*Id.* at ¶ 27.)

In addition, aggrieved employees, or PAGA Members, will release claims arising under PAGA during the PAGA Period. (*Id.* at ¶¶ 28, 35.) The PAGA Released Claims encompass:

[A]ny and all federal, state and local demands, rights, liabilities, claims and/or causes of action, known or unknown, that are alleged in the Action, or reasonably could have been alleged in the Action based on the facts alleged in the Action pursuant to the Private Attorneys General Act ("PAGA"), Labor Code §§ 2698-2699.5, which accrued during the PAGA Period, including violations premised on violation of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802.

(*Id.* at ¶ 28.)

Here, the scope of the releases is limited by the allegations, facts, and/or legal theories that are pled in the Action. (Agreement at ¶¶ 27, 28, 73, 74.) Further, the scope of the Released Claims does not waive Civil Code § 1542 for Settlement Class Members.

6. Tax Treatment of Settlement Amounts

Each Individual Settlement Payment will be allocated as follows for tax purposes: twenty percent (20%) wages, for which IRS Forms W-2 will issue; eighty percent (80%) penalties and interest, for which IRS Forms 1099 will issue to the Settlement Class Members. (Agreement at ¶ 48.) The employer's share of payroll taxes will be paid by Defendants separate from and in addition to the Gross Settlement Amount. (*Id.* at ¶¶ 13, 48.)

Waiting Time Penalty Payments and Aggrieved Employee PAGA Payments will be allocated as one hundred percent (100%) penalties and interest. (*Id.* at ¶ 48.)

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

Settlement Class Members whose address information is known to Defendants will receive a Class Notice via U.S. mail. (Settlement Agreement at ¶ 58.) Class Notices will also be translated in Spanish and Mandarin. (*Id.*) Settlement Class Members will be informed that they need to keep their mailing address current with the Settlement Administrator in order to receive their share of the settlement funds. (*Id.*) This substantially decreases the amount of burden each Settlement Class Member must bear in order to receive their Individual Settlement Payment. If a Settlement Class Member does not wish to take part in this settlement and be bound by the release, he or she must submit an exclusion request. (*Id.* at ¶ 62.)

Defendants represent that there are a portion of Settlement Class Members whose identities are known, but address information is not known/cannot be ascertained by Defendants. (Tulyathan Decl. at ¶ 49.) For those Settlement Class Members, the Settlement Agreement provides that notice of the settlement shall be published via various major newspaper outlets across the State of California, specifically the Los Angeles Daily News, The San Francisco Chronicle, The Press-Enterprise, World Journal (in English and Mandarin), and La Opinion (in Spanish) in an effort to ascertain contact information of these Settlement Class Members (the "Publication Notice"). (*Id.* at ¶ 59; Ex. C to Tulyathan Decl.) The Publication Notice will

1 provide a means for these Settlement Class Members to verify their identities as Settlement Class
2 Members. In particular, the published notice will inform Settlement Class Members that they
3 must either call a 1-800 telephone number or submit an online form via the Settlement
4 Administrator's website to verify their status as Settlement Class Members and provide their
5 contact information. (*Id.*) Once their eligibility is verified, these Settlement Class Members will
6 be sent a Class Notice via U.S. mail and/or online process so that they may participate in the
7 settlement. (*Id.*) Settlement Class Members who respond to the Publication Notice will have 45
8 days after the Publication Notice stops running to either submit an exclusion request or to object
9 to the settlement. (*Id.*)

10 **I. Automatic Payment and Submission of Exclusions/Objections**

11 Only those Settlement Class Members whose mailing address is not known/cannot be
12 ascertained by Defendants will need to contact the Settlement Administrator via telephone or
13 online submission form to verify their eligibility to participate in the settlement and receive
14 compensation. (*Id.* at ¶ 59.) Other Settlement Class Members whose address information is
15 known to Defendants do not need to contact the Settlement Administrator to verify eligibility.
16 (*Id.*)

17 The Net Settlement Amount will be fully distributed to Settlement Class Members who
18 choose not to opt out of the Settlement. (Agreement at ¶ 47.a.) Likewise, the Waiting Time
19 Penalty Payment will be distributed to Waiting Time Penalty Sub-Class Members who choose
20 not to opt out of the Settlement. (*Id.* at ¶ 47.b.) Finally, the Aggrieved Employee PAGA
21 Payment (or 25% of the PAGA Payment) will be distributed to PAGA Members, regardless of
22 whether they submit an exclusion request. (*Id.* at ¶¶ 20, 47.c.)

23 Additionally, this is a non-reversionary settlement. (*Id.* ¶ 13.) Given that this is a non-
24 reversionary settlement, the Parties believe that 45 calendar days is sufficient time for Settlement
25 Class Members to object to or opt-out of the settlement. (*Id.* at ¶ 31.) Furthermore, Settlement
26 Class Members whose mailing address is not known/cannot be ascertained by Defendants will
27 also have 45 calendar days to object or opt-out of the settlement. (*Id.* at ¶ 59.)

28 //

1 **J. Code of Civil Procedure § 384**

2 Code of Civil Procedure § 384 mandates that unpaid cash residue and unclaimed or
3 abandoned funds in class action litigation are distributed, to the fullest extent possible, in a
4 manner designed either to further the purposes of the underlying class action or causes of action,
5 or to promote justice for all Californians.

6 Individual Settlement Payment and Waiting Time Penalty Payment checks issued to
7 Settlement Class Members and Aggrieved Employee PAGA Payment checks issued to PAGA
8 Members will be valid for one hundred and eighty (180) calendar days after such checks are
9 issued by the Settlement Administrator. (Agreement at ¶ 69.) Thereafter, the checks shall
10 become void, and the uncashed funds shall be sent to the proposed *cy pres* recipient Legal Aid at
11 Work. (*Id.*) Class Counsel do not have any relationship or conflicts of interest with the
12 designated recipient. (Lee Decl. at ¶ 9; Gavron Decl. at ¶ 13; Tulyathan Decl. at ¶ 47.)

13 **K. Notice to Settlement Class Members**

14 Should the Court grant the instant Motion, Defendants will provide the Settlement
15 Administrator with a list containing each Settlement Class Member's full name, employee
16 number, most recent mailing address, Social Security Number, number of workweeks worked by
17 each Settlement Class Member during the Class Period, the identity and number of Settlement
18 Class Members who separated employment during the Waiting Time Penalty Period (if
19 applicable), and number of workweeks worked by each Settlement Class Member during the
20 PAGA Period (if applicable) ("Class List"). (Agreement at ¶ 4.) Defendants shall provide this
21 information within forty-five (45) calendar days of Preliminary Approval. (*Id.* at ¶ 55.)

22 Upon receipt of the information and prior to mailing the Class Notice, the Settlement
23 Administrator shall perform a search based on the National Change of Address Database for
24 information to update and correct for any known or identifiable address changes. (*Id.* at ¶ 57.)
25 Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator shall also
26 cause the Publication Notice to be published in the Los Angeles Daily News, The San Francisco
27 Chronicle, The Press-Enterprise, World Journal (in English and Mandarin), and La Opinion (in
28 Spanish) for three times a week, for a four-week period, and in the World Journal daily for a

1 period of 30 days or 4 weeks (whichever is offered by the publication). (*Id.* at ¶¶ 17, 59.) The
2 Publication Notice will provide Settlement Class Members with information on how to verify
3 their eligibility to participate in the settlement and provide their contact information. (*Id.* at ¶
4 59.) Thereafter, within sixty-five (65) calendar days of receipt of the Class List, the Settlement
5 Administrator shall mail the Class Notice in English, Spanish, and Mandarin to all Settlement
6 Class Members. (*Id.* at ¶ 56.) Any Class Notice returned to the Settlement Administrator as
7 non-deliverable on or before the opt-out deadline shall be sent promptly via regular first-class
8 U.S. mail to the forwarding address affixed thereto and the Settlement Administrator shall
9 indicate the date of such re-mailing on the Class Notice. (Settlement Agreement at ¶ 61.) If no
10 forwarding address is provided, the Settlement Administrator shall promptly attempt to
11 determine the correct address using a skip trace and perform a re-mailing. (*Id.*)

12 The Class Notice will describe the terms of the settlement and advise Settlement Class
13 Members of their estimated Individual Settlement Payment, Waiting Time Penalty Payment,
14 and/or PAGA Penalty Payment and the formula for calculating those payments, if applicable;
15 and their opportunity to opt out of the Settlement, object to the Settlement, and/or dispute the
16 information attributed to them. (*Id.* at ¶¶ 58, 77; Ex. B to Tulyathan Decl.)

17 Based on the foregoing, the Class Notice procedures fully comply with California Rules
18 of Court Rule 3.766(d) and (e).

19 **L. Costs and Fees**

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

21 California state and federal courts have recognized that an appropriate method for
22 determining award of attorneys' fees is based on a percentage of the total value of benefits to
23 class members by the settlement. (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
24 (2001); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
25 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).) The purpose of
26 this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
27 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
28 burden alone." (*Vincent*, 557 F.2d at p. 769.)

1 Under California law, the award of attorneys' fees in common fund wage and hour class
2 action settlements should start with the percentage method. (*See Laffitte v. Robert Half Int'l*
3 (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in
4 holding that when class action litigation establishes a monetary fund for the benefit of the class
5 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
6 the court may determine the amount of a reasonable fee by choosing an appropriate percentage
7 of the fund created").)

8 Here, the Parties have agreed to a payment of a maximum one-third of the Gross
9 Settlement Amount (\$791,666.67) for payment to Class Counsel as attorneys' fees. (Agreement
10 at ¶ 43.) The fee award representing one-third of the Gross Settlement Amount clearly falls
11 within that range and is consistent with other comprehensive surveys of class action settlements
12 and fee awards. (*See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee*
13 *Award* (2010) 7 J. Empirical Leg. Stud. 811, 833 (analyzing 444 cases between 2006-2007 and
14 concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no
15 awards more than 35 percent."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements:*
16 *An Empirical Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent
17 studies of class action litigation nationwide conclude that fees representing one-third of the total
18 recovery is consistent with market rates).) The Parties have agreed to a payment of the foregoing
19 attorneys' fees and, thus, this payment should be presumed to be fair.

20 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs not
21 to exceed \$25,000.00. (Agreement at ¶ 43.) Class Counsel have, at their own risk, expended
22 costs, for example, to file this instant action and other pleadings in the case, effect service of
23 process, and pay mediation fees and other litigation-related costs. If Class Counsel's actual costs
24 are less than \$25,000.00, the remainder will go to the Class for distribution.

25 Based on the foregoing, the Court should preliminarily approve the attorneys' fees and
26 costs being requested by the Parties.

27 **2. Proposed Payment to the Class Representatives**

28 Class Representatives Gilbert Paramo and Rosemarie Santos each request a modest

1 enhancement of \$10,000.00. (Agreement at ¶ 44.) The Class Representatives met and conferred
2 with Class Counsel on a number of occasions to discuss the case, searched for and provided
3 documents and information to Class Counsel, and reviewed pleadings and documents, including
4 the PAGA letters, complaint, and the Settlement Agreement. (Paramo Decl. at ¶¶ 8-9; Santos
5 Decl. at ¶¶ 8-9.) As part of their duties as Class Representatives, Plaintiffs provided invaluable
6 information, evidence, and documents that resulted in this settlement. (Paramo Decl. at ¶¶ 8-9;
7 Santos Decl. at ¶¶ 8-9.) In addition to the invaluable services that they provided, Plaintiffs also
8 took significant risks, both professionally and monetarily, in acting as Class Representatives and
9 seeking benefits on behalf of the Settlement Class. Because the claims alleged by the Class
10 Representatives involved the payment of costs to the prevailing party, Plaintiffs could have
11 possibly faced paying the costs of Defendants, had they not prevailed in this action.

12 Furthermore, given that future employers are much less likely to hire individuals who
13 have filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face
14 prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves
15 and the Settlement Class benefited from these risks taken by them. Settlement Class Members
16 did not have to file individual lawsuits and bear the risks of payment of costs if they did not
17 prevail, nor did they have to face the potential for retaliation and not getting future employment
18 had they filed a public lawsuit.

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

1 1016 (affirming \$25,000 Incentive award to class representative in ERISA case).)

2 Here, each Plaintiff requests an enhancement of \$10,000.00, which is “presumptively
3 reasonable” and consistent with case law. As part of the final approval motion, Plaintiffs will
4 submit a detailed declaration to further support their requests for the enhancement.

5 **3. Settlement Administration Costs**

6 The Parties have agreed to an estimated payment not to exceed \$47,500.00 to the
7 Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer
8 this settlement. (Agreement at ¶¶ 32, 33.) The Parties have obtained a settlement administration
9 bid from Phoenix Settlement Administrators which includes printing, translating, and mailing
10 notices; publication of the notice in various newspapers for a 30-day and/or 4-week campaigns;
11 as well as the verification process for Settlement Class Members whose address/contact
12 information cannot be ascertained. (Tulyathan Decl. at ¶ 50, Ex. D.) Phoenix Settlement
13 Administrators is a well-recognized class action settlement administrator. The Parties believe
14 that the administration fee is reasonable and should be approved.

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

16 On September 19, 2023, Plaintiffs provided notice of this motion to the LWDA.
17 (Tulyathan Decl. at ¶ 61, Ex. F.)

18 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
19 **PRELIMINARY APPROVAL**

20 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
21 substantial monetary benefits to Settlement Class Members; it is non-collusive; and it was
22 achieved as the result of informed, extensive, and arm’s length negotiations conducted by
23 counsel for the respective parties who are experienced in wage and hour class action litigation.
24 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
25 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of
26 the proposed Class Notice and publication of the Publication Notice, and set a date for a final
27 approval hearing.

28 ///

1 DATED: September 19, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee

5 Max W. Gavron

6 Mai Tulyathan

7 Attorneys for Plaintiffs, the Class, and Aggrieved
8 Employees
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