

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSHUA GIBBS, as an individual and on
behalf of all others similarly situated, and
as a private attorney general,

Plaintiff,

vs.

SWIFT TRANSPORTATION CO. OF
ARIZONA, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 3:24-cv-02209-LL-DEB

[Assigned to Hon. Linda Lopez]

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

*[Filed concurrently with Declaration of
Simon L. Yang; Declaration of Larry W.
Lee; Declaration of William L. Marder;
Declaration of Joshua Gibbs; [Proposed]
Order]*

Date: September 30, 2026
Time: N/A
Courtroom: 14B

Complaint Filed: April 2, 2024
FAC Filed: May 31, 2024

***PER CHAMBERS RULES, NO ORAL
ARGUMENT UNLESS SEPARATELY
ORDERED BY THE COURT***

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

2 **PLEASE TAKE NOTICE** that on September 30, 2026, or as soon thereafter as
3 the matter may be heard in Courtroom 14B of the above-entitled court located at 333
4 West Broadway, San Diego, California 92101, Plaintiff, Joshua Gibbs, will and hereby
5 does move for an Order:

- 6 1. approving the Settlement Agreement of Class Action and Private Attorneys
7 General Act Claims (the “Agreement”) attached as Exhibit 1 to the concurrently
8 filed Declaration of Simon L. Yang;
- 9 2. conditionally certifying the following Class for settlement purposes only: all
10 persons who worked for Defendant, Swift Transportation Co. of Arizona, LLC,
11 as an over-the-road driver while assigned to a Swift Transportation terminal in
12 California and who took Sick Leave¹ at any time from April 2, 2020 through
13 February 9, 2026 (the “Class”);
- 14 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L.
15 Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law
16 Group as Class Counsel;
- 17 4. approving the Agreement on a preliminary basis and finding that it, the total
18 Gross Settlement Amount in the amount of \$550,000.00, the amounts requested
19 for the Administration Costs, Attorneys’ Fees and Costs Award, Named
20 Plaintiff’s General Release Payment, PAGA Payment, and the allocation of
21 payments to Class Members appear to be within the range of reasonableness for
22 a settlement that could ultimately be given final approval;
- 23 5. appointing Phoenix Settlement Administrators. as the Administrator;
- 24 6. approving the distribution of the Notice of Class Action Settlement attached as
25 Exhibit A to the Agreement; and
- 26 7. scheduling a Final Approval Hearing.

27
28 ¹ “Sick Leave” means sick leave paid by Defendant and which is designated as “D-Driver Sick Pay” in Defendant’s payroll data.

1 The motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 allows the Court to preliminarily certify a class for settlement purposes and to approve a
3 class action settlement. The basis for the Motion is that the proposed settlement is fair,
4 reasonable, and adequate, and the procedures proposed by the Parties are adequate to
5 ensure class members are able to participate in, opt out of, or object to the settlement.

6 This motion is made following the conference of counsel that took place on August
7 14, 2026.

8 This motion is unopposed and made on the grounds that the proposed settlement is
9 within the range of possible final approval and notice should therefore be provided to the
10 Class. The motion is based on this notice, the memorandum of points and authorities, the
11 Agreement and proposed Notice of Class Action Settlement, the supporting Declarations
12 of Larry W. Lee, Simon L. Yang, William L. Marder, and Joshua Gibbs, all pleadings
13 and papers on file herein, and any further oral and documentary evidence as may be
14 presented before or at the hearing of this matter.

15 DATED: August 26, 2026

DIVERSITY LAW GROUP, P.C.

16 By: /s/ Simon L. Yang

17 Simon L. Yang
18 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Joshua Gibbs, sued Defendant, Swift Transportation Co. of Arizona, LLC, for allegedly underpaying sick pay wages. Specifically, Plaintiff alleges that when he and other drivers were paid sick pay wages in workweeks in which they earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example production pay and performance pay, Defendant underpaid those sick pay wages. Defendant alleges that it paid sick pay wages at the appropriate rate, and denies that it violated the law.

Based on their own independent investigations and evaluations, the Parties have agreed to a class and PAGA-wide resolution. The Settlement Agreement of Class Action and Private Attorneys General Act Claims (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay a gross settlement sum of \$550,000.00 for the class and PAGA-wide settlement of claims through February 6, 2026. The settlement requires a gross payment of approximately \$201.54, on average, per Class Member. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and his counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that the Court could determine that Plaintiff’s class claims are precluded by *Hirdman v. Charter Communications, LLC*, 113 Cal. App. 5th 376 (2025), that the Court could not grant class certification, that liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On April 2, 2024, Plaintiff filed the original complaint initiating the Action on behalf of a putative class of current and former employees of Defendant in the State of California. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. The Action pursued class action claims for Defendant’s alleged underpayments of sick pay wages. *Id.* On May 31, 2024, Plaintiff filed a first amended complaint that also pursued representative PAGA action claims. *Id.* Upon the initiation of the Action, Plaintiff and Defendant met and conferred about the alleged claims. *Id.* Defendant also provided Plaintiff with information about various defenses, including those that disputed both the accuracy of Plaintiff’s factual allegations and the viability of the legal theories asserted. *Id.*

Class Counsel continued investigating the alleged claims and also analyzed any defenses asserted by Defendant, including those arising from *Hirdman v. Charter Communications, LLC*, 113 Cal. App. 5th 376 (2025), which Defendant argued would provide the basis for a dispositive motion. Yang Decl. ¶ 3. In addition to engaging in formal written discovery, Plaintiff conducted the deposition of Defendant’s corporate designee, and Defendant conducted the deposition of Plaintiff. *Id.* The Parties continued to exchange information and documents using both informal methods and formal discovery to assist them in exploring the possibility of a mediated resolution. *Id.* Defendant provided the relevant numbers of individuals and workweeks in which individuals earned sick leave which Plaintiff alleged was underpaid, for example, among other things. *Id.* Defendant’s willingness to provide this information on a classwide basis enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

On January 6, 2026, the Parties attended mediation with Judge Peter Kirwan. Yang Decl. ¶ 4. Despite the Parties’ good-faith efforts, the Parties strongly disagreed about both the merits of the claims and the certifiability of the putative class, and the Parties were unable to come to an agreement to resolve the matter. *Id.* The Parties continued to negotiate after the mediation. *Id.* Ultimately, with the mediator’s assistance and based

upon a mediator’s proposal, the Parties were able to agree to settlement terms, which were negotiated in light of all known facts and circumstances—including the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. *Id.* The settlement terms were memorialized in the Settlement Agreement of Class Action and Private Attorneys General Act Claims. *Id.* Ex. 1 (the “Agreement”).

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class of “Class Members” includes all persons who worked for Defendant Swift Transportation Co. of Arizona, LLC as an over-the-road driver while assigned to a Swift Transportation terminal in California and who took Sick Leave¹ during the Class Period. Agreement § I.B. The Class Period is from April 2, 2020 through February 9, 2026. *Id.* § I.D. There are approximately 2,729 Class Members. *Id.* § I.B.²

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$550,000.00. Agreement § III.B.1. From the Gross Settlement Amount, the Parties will request that the Court approve a PAGA Payment, Settlement Administration Costs, an Attorneys’ Fees and Costs Award, and Named Plaintiff’s General Release Payment. *Id.* § I.N. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* § I.B. Based on data available at mediation, *after* all requested payments from the Gross

¹ “Sick Leave” means sick leave paid by Defendant and which is designated as “D-Driver Sick Pay” in Defendant’s payroll data.

² The settlement also defines a group of PAGA Aggrieved Employees, which includes all persons who worked for Defendant Swift Transportation Co. of Arizona, LLC as over-the-road driver while assigned to a Swift Transportation terminal in California and who took Sick Leave during the PAGA Period. Agreement § I.U. The PAGA Period is from April 2, 2023 through February 9, 2026. *Id.* § I.X.

Settlement Amount, it is expected that, on average, each Class Member will be allocated approximately \$99.35 in settlement payments. Yang Decl. ¶ 7.

III. Released Claims

Only Plaintiff is subject to a general release. Agreement § III.E.3. Settlement Class Members release only “any and all claims during the Class Period that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein” *Id.* § III.E.1.³

LEGAL STANDARD

Any settlement of a class action lawsuit must be reviewed and approved by the district court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to class members for their comment or objections. As the Manual for Complex Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation”:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly 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.

Manual for Complex Litigation (Third) § 30.41.

A preliminary approval by the trial court thus is a conditional finding that the settlement does not appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference 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,

³ The LWDA releases “all claims under the PAGA, Labor Code §§ 2698 *et seq.*, associated with any and all claims that arose during the PAGA Period based on the facts, factual predicates, theories, transactions or occurrences, and primary rights alleged in the Lawsuit” Agreement § III.E.2.

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

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

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

13 4 Newberg on Class Actions, at § 11.26. Accordingly, a court should grant preliminary
14 approval of a class action settlement where it is within the “range of reasonableness.”

15 Preliminary approval thus does not require the Court to make a final determination
16 that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at
17 the final approval stage, after notice of the settlement has been given to the class
18 members and they have had an opportunity to voice their views of the settlement or to
19 exclude themselves from the settlement. 5 James Wm. Moore et al., *Moore’s Federal*
20 *Practice* § 23.165 (3d ed. 2010). In considering the settlement, the Court need not reach
21 any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute and need not engage in a trial on the merits. *Officers for Justice v. Civil Serv.*
23 *Comm’n of City & County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

24 Preliminary approval is merely the prerequisite to giving notice so that “the proposed
25 settlement ... may be submitted to members of the prospective class for their acceptance
26 or rejection.” *Philadelphia Hous. Auth. v. Am. Radiator & Standard. Sanitary Corp.*, 323
27 F. Supp. 364, 372 (E.D. Pa. 1970).

28 As a matter of public policy, settlement is a strongly-favored method for resolving
disputes. *Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir.

1 1989). This is especially true in complex class actions such as this case. *Officers for*
2 *Justice*, 688 F.2d at 625.

3 DISCUSSION

4 **I. The Proposed Settlement Class Satisfies the Elements for Class Certification.**

5 As discussed above, the Parties may at the preliminary approval stage request that
6 the court provisionally approve certification of the class—conditional upon final approval
7 of the settlement. For purposes of settlement approval, a detailed analysis of the elements
8 required for class certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S.
9 620, 622-27 (1997); *accord Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
10 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different
11 standards to determine the propriety of a settlement class, as opposed to a litigation class
12 certification. Specifically, a lesser standard of scrutiny is used for settlement cases.”)
13 (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1807 n.19 (1996).

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

17 **A. FED. R. CIV. P. 23(a)(1): The Class Is Sufficiently Numerous (and Is** 18 **Ascertainable).**

19 The numerosity requirement is satisfied if the proposed class is “so numerous that
20 joinder of all members is impracticable.” FED. R. CIV. P. 23(a)(1). Impracticable does not
21 mean impossible, only that it would be difficult or inconvenient to join all members of
22 the class. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir.
23 1964). Here, there are 2,729 Class Members. Agreement § I.B. Accordingly, the Class is
24 sufficiently numerous and satisfies the numerosity requirement.

25 Moreover, the class definition “is precise, objective and presently ascertainable.”
26 *Accord Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Because Class
27 Members are identifiable from Defendant’s records, the Class is also ascertainable.
28

1 **B. FED. R. CIV. P. 23(a)(2): The Commonality Requirement Is Met.**

2 Commonality relates to whether there are “questions of law or fact common to the
3 class.” FED. R. CIV. P. 23(a)(2). Commonality requires only that some common legal or
4 factual questions exist; the plaintiffs need not show that all issues in the litigation are
5 identical. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of
6 shared legal issues with divergent legal factual predicates is sufficient, as is a common
7 core of salient facts couple with disparate legal remedies within the class”). Defendant’s
8 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12
9 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where
10 the employer’s conduct is uniformly directed at a class of employees, as it is here, the
11 class wide impact of the Defendant’s policies satisfies the commonality requirement. *See*
12 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

13 Here, Plaintiff contends Defendant’s common payroll practices and calculations
14 resulted in underpayments of sick pay wages. As discussed further below, common proof
15 of those practices predominate on a classwide basis. *E.g., Howell v. Advantage RN, LLC*,
16 2018 WL 3437123, at *8 (S.D. Cal. July 17, 2018) (explaining common questions
17 regarding a Defendant’s policy regarding wage payment calculations predominate).

18 **C. FED. R. CIV. P. 23(a)(3): The Typicality Requirement Is Met.**

19 Typicality under Rule 23(a)(3) is satisfied if the representative plaintiff’s claims
20 share a common element with the class: i.e., those claims arise from the same course of
21 conduct that gave rise to the claims of other settlement class members. *In re United*
22 *Energy Corp. Solar Power Modules Tax Shelter Invs. Sec. Litig.*, 122 F.R.D. 251, 256
23 (C.D. Cal. 1988); *see also* FED. R. CIV. P. 23(a)(3).

24 Here, Plaintiff submits that his claims are typical of those of other Class Members
25 because he alleges that he suffered injury from the same specific actions that he alleges
26 harmed other members of the class. Specifically, Plaintiff alleges that when he and other
27 drivers were paid sick pay wages in workweeks in which they earned non-base hourly
28

wages or other non-hourly, non-discretionary remuneration, including for example production pay and performance pay, Defendant underpaid those sick pay wages.

With respect to typicality, Plaintiff—exactly like other members of the Class—were compensated based on Defendant’s common payroll practices. Declaration of Joshua Gibbs (“Gibbs Decl.”) ¶ 2. It is Plaintiff’s position that his claims are typical of the class as a whole because they arise from the same factual basis and are based on the same legal theory as those applicable to the Class Members.

D. FED. R. CIV. P. 23(a)(4): The Adequacy Requirement Is Met.

Adequacy under Rule 23(a)(4) is satisfied if the named plaintiffs have no disabling conflicts of interest with other members of the class and Class Counsel are competent and well qualified to undertake the litigation. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978); *see also* FED. R. CIV. P. 23(a)(4).

Plaintiff submits that no conflict exists between Plaintiff and the Class because Plaintiff allegedly has suffered the same alleged violations as all Class Members and has the incentive to fairly represent all Class Members’ claims. Gibbs Decl. ¶ 4. Despite the settlement, Plaintiff remains willing to vigorously prosecute this action to the benefit of the class. *Id.*

Furthermore, Plaintiff is represented by attorneys who have extensive experience in complex wage and hour litigation as is detailed in each of their declarations supported herewith. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 4-11.

E. FED. R. CIV. P. 23(b)(3): Common Questions of Law and Fact Predominate.

Plaintiff contends that common questions of law or fact predominate over individual questions under Rule 23(b)(3). FED. R. CIV. P. 23(b)(3). These issues of fact and law raised in this action are common to all members of the classes and predominate in this case. Here, Plaintiff contends that Defendant failed to properly calculate the rate at which sick pay should be paid. Based on discovery of Defendant’s commonly applicable

1 payment calculation policies, Plaintiff believes and asserts that Defendant committed
2 these violations against Plaintiff and other Class Members in the same manner.

3 Federal courts in California have consistently held that where an employer applies
4 a uniform pay calculation policy to all class members, the common legal question of
5 whether that policy violates the California Labor Code predominates over individualized
6 damages inquiries. *E.g., Magadia v. Wal-Mart Assocs., Inc.*, 324 F.R.D. 213, 221-26
7 (N.D. Cal. 2018) (granting class certification of claims alleging miscalculation of meal
8 period premiums); *Adoma v. Univ. of Phoenix, Inc.*, 270 F.R.D. 543, 552 (E.D. Cal.
9 2010) (granting class certification of claims alleging miscalculation of overtime
10 payments).

11 **F. FED. R. CIV. P. 23(b)(3): Class Resolution Is Superior.**

12 Plaintiff submits that the final requirement for class certification—“that a class
13 action [be] superior to other available methods for fairly and efficiently adjudicating the
14 controversy”—is also met. FED R. CIV. P. 23(b)(3). Courts have recognized that the class
15 action device is superior to other available methods for the fair and efficient adjudication
16 of controversies involving large number of employees in wage and hour disputes. *See*
17 *Hanlon*, 150 F.3d at 1022. Without classwide relief in this action, Class Members would
18 be forced to litigate numerous cases on a piecemeal basis.

19 **II. The Settlement Is Fair, Reasonable, and Adequate.**

20 The law and public policy strongly favor settlement prior to trial, particularly in
21 class actions and other complex cases where substantial resources can be conserved by
22 avoiding the time, expense, and rigors of litigation. *Churchill Village v. General Electric*,
23 361 F.3d 566, 576 (9th Cir. 2004); *In re Pac. Enters. Securities Litig.*, 47 F.3d 373, 378
24 (9th Cir. 1995). The settlement here satisfies all of the legal standards for preliminary
25 approval.

26 **A. The Settlement Is Entitled to a Presumption of Fairness.**

27 Courts presume the absence of fraud or collusion in the negotiation of a settlement
28 unless there is evidence to the contrary. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.

1 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677,
2 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga.
3 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
4 through arm's length bargaining; (ii) investigation is sufficient to allow counsel and the
5 court to act intelligently, (iii) counsel is experienced in similar litigation, and (iv) the
6 percentage of objectors is small. *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 323 (C.D.
7 Cal. 2016); *see also Hanlon*, 150 F.3d at 1027 (explaining a court's inquiry "into what is
8 otherwise a private consensual agreement negotiated between parties to a lawsuit must be
9 limited to the extent necessary to reach a reasoned judgment that the agreement is not the
10 product of fraud or overreaching by, or collusion between, the negotiating parties, and
11 that the settlement, taken as a whole is fair, reasonable and adequate to all concerned").

12 **1. The settlement was reached through arm's length bargaining.**

13 The Ninth Circuit has repeatedly ruled that courts "put a good deal of stock in
14 [class settlements that are] the product of arms-length, non-collusive, negotiated
15 resolution." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009);
16 *Hanlon*, 150 F.3d at 1027. Here, the settlement is the result of extensive arm's length
17 negotiations between the Parties and their counsel. The Parties strongly disagreed about
18 both the merits of the claims and the certifiability of the putative class, and the Parties
19 were unable to come to an agreement to resolve the matter at the mediation with the Hon.
20 Peter Kirwan. Yang Decl. ¶ 4. Only after the Parties continued to negotiate after the
21 mediation were the Parties able to reach a resolution with the mediator's assistance and
22 based upon a mediator's proposal. *Id.*

23 **2. Extensive discovery permitted counsel to act intelligently.**

24 The settlement in this matter was the result of informed decision making only after
25 extensive discovery was conducted. In addition to engaging in formal written discovery,
26 Plaintiff conducted the deposition of Defendant's corporate designee, and Defendant
27 conducted the deposition of Plaintiff. Yang Decl. ¶ 3. The Parties continued to exchange
28 information and documentation pursuant to both informal methods and formal discovery

1 to assist them in exploring the possibility of a mediated resolution. *Id.* Defendant
2 provided the relevant numbers of individuals and workweeks in which Plaintiff alleged
3 sick pay was underpaid, for example, among other things. *Id.* Defendant's willingness to
4 provide this information on a classwide basis enabled Plaintiff to evaluate the full scope
5 of Defendant's potential liability. *Id.*

6 **3. Counsel is experienced in similar litigation.**

7 While the recommendations of counsel proposing the settlement are not
8 conclusive, the Court can properly take them into account, particularly where counsel
9 have conducted thorough investigation, are experienced with this type of litigation, and
10 agreed to a resolution through arm's length negotiation. See Newberg on Class Actions,
11 *supra*, at § 11.47; *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
12 528 (C.D. Cal. 2004) ("So long as the integrity of the arm's length negotiation process is
13 preserved, however, a strong initial presumption of fairness attaches to the proposed
14 settlement ... and 'great weight' is accorded to the recommendations of counsel, who are
15 most closely acquainted with the facts of the underlying litigation.") (citations omitted).
16 In such circumstances, courts do not substitute their judgment for that of the proponents.
17 *National Rural Telecomms. Coop.*, 221 F.R.D. at 528; *accord Hammon v. Barry*, 752 F.
18 Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re*
19 *Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham*
20 *Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

21 Here, Plaintiff's counsel have a great deal of experience in wage and hour class
22 action litigation. Plaintiff's counsel have extensive class action and litigation experience
23 and have been approved as class counsel in numerous wage and hour class actions.
24 Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of
25 William L. Marder ("Marder Decl.") ¶¶ 4-11. Each side has apprised the other of their
26 respective factual contentions and legal theories, and each side has considered the other's
27 contentions and theories. Defendant provided its written policies and classwide data,
28

1 among other things—enabling Plaintiff to assess the value of Class Members’ claims and
2 further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3.

3 **B. The Settlement Is Within the Range of Reasonableness.**

4 The standard of review for class settlements is whether the settlement is within a
5 range of reasonableness. As Professor Newberg comments:

6 Recognizing that there may always be a difference of opinion as to the appropriate
7 value of settlement, the courts have refused to substitute their judgment for that of
8 the proponents. Instead the courts have reviewed settlements with the intent of
determining whether they are within a range of reasonableness

9 4 Newberg on Class Actions, at § 11.45.

10 Here, particularly given the California Court of Appeal’s decision in *Hirdman v.*
11 *Charter Communications, LLC*, 113 Cal. App. 5th 376 (2025), which was issued during
12 the pendency of this matter, the settlement obtains an excellent result for class members
13 that is certainly within the range of reasonableness. Specifically, Defendant argues that
14 *Hirdman* entirely preempts Plaintiff’s claims for underpaid sick pay wages, which creates
15 a significant possibility that Class Members could have recovered nothing on their claims
16 if Defendant were to have filed and prevailed on a motion for summary judgment.

17 **1. The settlement amount is reasonable.**

18 The Agreement requires Defendant to pay \$550,000.00—or approximately
19 \$201.54 gross, on average, per Class Member. Yang Decl. ¶ 5. Although this amounts to
20 approximately 4.12% of Defendant’s potential liability, it is an excellent result for Class
21 Members, particularly in light of the California Court of Appeal’s decision in *Hirdman*.
22 *Id.*

23 To wit, Plaintiff alleges that Defendant underpaid sick pay wages to Class
24 Members. Yang Decl. ¶ 5. With respect to Defendant’s potential liability, Plaintiff
25 contends that the significance of such underpayments is the ability to recover Section 203
26 penalties of up to 30 days wages for the untimely payment of wages. *Id.*⁴ On the other
27

28 ⁴ Except as otherwise noted, all “Section” references are to the Labor Code.

1 hand, Defendant contests the merits and denies it is liable at all (as *Hirdman* could be
2 argued to exempt Defendant from paying Plaintiff and other drivers' sick pay wages at a
3 heightened rate). *Id.* Moreover, even if Plaintiff prevails on the merits, Defendant
4 contests the extent of liability. *Id.* Specifically, Defendant contends that it would not be
5 subject to any Section 203 penalties, based on a good-faith defense. *Id.*

6 While the Parties disagree on the application of the law to the facts, each Party
7 recognized in negotiations that, if taken to trial, the other Party would at least have
8 reasonable arguments, such that the Gross Settlement Amount to which the Parties
9 ultimately agreed was reasonable. Yang Decl. ¶ 6. Ultimately, based on classwide data
10 available at mediation, Plaintiff argued that the potential total Section 203 recovery
11 amounted to approximately \$13,338,144.00. *Id.* Plaintiff contends that the Gross
12 Settlement Amount of \$550,000.00—approximately 4.12% of the potential total Section
13 203 recovery of \$13,338,144.00—is an excellent result. *Id.*

14 Numerous courts have held that gross settlement amounts of less than 20%—and
15 as little as 8%—of a defendant's potential exposure are fair and reasonable. *See, e.g., In*
16 *re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class
17 action settlement recovering 16% of potential exposure was fair and reasonable; "It is
18 well-settled law that a cash settlement amounting to only a fraction of the potential
19 recovery does not per se render the settlement inadequate or unfair. Rather, the fairness
20 and the adequacy of the settlement should be assessed relative to risks of pursuing the
21 litigation to judgment."); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6
22 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5%
23 and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding*
24 *Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014) (acknowledging risks of
25 continued litigation and granting preliminary approval of wage and hour class action
26 settlement obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*,
27 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action
28 settlement of approximately 15% of the potential recovery was fair and reasonable).

1 This settlement amount is further warranted given the significant risks presented by
2 *Hirdman*. Although Plaintiff and his counsel believe that they have reasonable arguments
3 for why *Hirdman* does not preclude a classwide recovery in this matter, they recognize
4 the inherent risks in litigation, including the specific risks that the Court could determine
5 that Plaintiff's class claims are precluded by *Hirdman* because Defendant is not obligated
6 to pay sick leave at a heightened rate. In addition, there is a risk that the Court could not
7 grant class certification, that liability could not be established at trial, or that the
8 applicable law could change. Yang Decl. ¶ 8. The Parties and their counsel are of the
9 opinion that the settlement on the terms set forth in the Agreement would be fair,
10 reasonable, and adequate. *Id.*

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

17 **2. The settlement releases are appropriate.**

18 As discussed above, only Plaintiff is subject to a general release. Agreement §
19 III.E.3. Settlement Class Members release only “any and all claims during the Class
20 Period that were pled in the operative complaint in the Action, or which could have been
21 pled in the operative complaint in the Action based on the factual allegations therein”
22 *Id.* § III.E.1.⁵ In sum, Plaintiff alleged targeted claims in the Action, and any settlement
23 releases also are specifically tailored to the targeted allegations. The settlement releases
24 are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820
25

26 ⁵ The LWDA releases “all claims under the PAGA, Labor Code §§ 2698 *et seq.*,
27 associated with any and all claims that arose during the PAGA Period based on the facts,
28 factual predicates, theories, transactions or occurrences, and primary rights alleged in the
Lawsuit” Agreement § III.E.2.

(2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”).

C. The Class Notice Is Adequate.

“For any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B). “The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal or compromise.” FED. R. CIV. P. 23(e)(B).

Here, the terms of the Agreement provide for a notice distribution plan that is designed to achieve the best notice that is practicable under the circumstances. The Settlement Administrator will send Class Members the Court-approved Notice of Class Action Settlement (“Class Notice”) by first-class mail after inquiring with the National Change of Address Database information to update and correct for any known or identifiable address changes and, if necessary, perform reasonable skip-tracing efforts to locate Class Members. Agreement § III.G.3.

The Class Notice provides Class Members with the information needed to make an informed decision. Agreement, Ex. A. It provides a brief summary of the proposed settlement and information about the lawsuit, a summary of the allocations under the settlement, the number of relevant workweeks worked by each Class Member, an estimate of each Class Member’s payment under the settlement, the scope of the Class Member’s potential release of claims, and the Class Member’s options in response to the preliminary approval (including procedures on how to object or opt out of the settlement). *Id.* It also provides procedures on how to obtain more information, Class Counsel and the Settlement Administrator’s contact information for any questions, as well as information regarding the final approval hearing and how to appear. *Id.* It also explains that those who do not opt out will be bound by the settlement. *Id.*

1 In sum, the Class Notice is adequate as it “present[s] a fair recital of the subject
2 matter and proposed terms” of the settlement. *E.g., Mendoza v. United States*, 623 F.2d
3 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177
4 (9th Cir. 1977)). As such, the Agreement satisfies the requirement to provide the best
5 notice practicable.

6 **D. The Requested Payments and Allocations Are Within the Range of**
7 **Reasonableness.**

8 The Agreement provides for a Gross Settlement Amount of \$550,000.00.
9 Agreement § III.B.1. From the Gross Settlement Amount, attorneys’ fees will be no more
10 than 33⅓% of the Gross Settlement Amount (or \$183,333.33) and litigation costs that are
11 currently estimated to be \$14,046.74. *Id.* § III.C.2; Yang Decl. ¶ 7. The Named Plaintiff’s
12 General Release Payment will be no more than \$10,000.00. Agreement § I.S. Settlement
13 Administration Costs will be no more than \$45,000.00. *Id.* § III.C.4. The PAGA Payment
14 will be \$50,000.00, and pursuant to statute, 75% of the PAGA Payment (or \$37,500.00)
15 would constitute a payment to the LWDA while 25% of the PAGA Payment (or
16 \$12,500.00) would constitute a payment to PAGA Aggrieved Employees. *Id.* § III.C.3.⁶

17 **1. Each Class Member, on average, would receive approximately**
18 **\$100.**

19 It is expected that, on average, each Class Member would be allocated
20 approximately \$99.35 in Settlement Payments (*after* all requested payments from the
21 Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class
22 Member may increase, depending on how many Class Members opt out of the class
23 action settlement. *Id.* The amount actually paid to any Class Member may increase or
24 decrease depending on his or her number of relevant workweeks. *Id.* After deducting any
25 approved payments for an Attorneys’ Fees and Costs Award, Named Plaintiff’s General
26 Release Payment, Settlement Administration Costs, and PAGA Payment from the Gross

27 ⁶ Plaintiff files this motion with the Court and with the LWDA via online submission.
28 Yang Decl. ¶ 14.

1 Settlement Amount, the entire remainder would be allocated among Settlement Class
2 Members.

3 None of the settlement funds will revert to Defendant. Agreement § I.N. The
4 principal for any uncashed checks (upon the expiration date) would escheat to the State
5 Controller Unclaimed Property Fund in the name of the Class Member. *Id.* § III.C.8.

6 **2. The requested attorneys’ fees and costs awards are reasonable.**

7 California state and federal courts have recognized that an appropriate method for
8 determining award of attorneys’ fees is based on a percentage of the total value of
9 settlement benefits to Class Members. *E.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
10 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
11 of the equitable doctrine is to “spread litigation costs proportionally among all the
12 beneficiaries so that the active beneficiary does not bear the entire burden alone” so as to
13 avoid unjust enrichment. *Vincent*, 557 F. 2d at 769. Under the percentage of the fund
14 method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See*
15 *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a
16 court rather than by contract, the object is to set it at a level that will approximate what
17 the market will set The judge, in other words, is trying to mimic the market in legal
18 services.”).

19 Attorneys’ fees awards of 35% of the fund are within the expected range in the
20 “market in legal services. *See* Fitzpatrick, *An Empirical Study of Class Action Settlements*
21 *and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases
22 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and
23 35 percent”). An attorneys’ fees award of 35% of the fund mimics the market and “is
24 supported by the fact that typical contingency fee agreements provide that class counsel
25 will recover 33% if the case is resolved before trial and 40% if the case is tried.”
26 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July
27 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers:*
28 *Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n.

11). Indeed, an attorneys' fees award of 35% of the fund is consistent with "empirical studies [that] show that ... fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

3. The proposed Named Plaintiff's General Release Payment is reasonable.

Plaintiff and proposed class representative Joshua Gibbs will request a Named Plaintiff's General Release Payment of \$10,000.00. The request is reasonable in light of the general release that the Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is appropriate in recognition of Plaintiff's efforts on behalf of the Class. Gibbs Decl. ¶¶ 2-3. Indeed, named plaintiffs in class action litigation are eligible for reasonable service payments. *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). Service payments are intended to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the class action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)

As part of his duties as the proposed Class Representatives, Plaintiff provided the necessary information and evidence that resulted in this settlement. Gibbs Decl. ¶¶ 2-3. Plaintiff met and conferred with Class Counsel on a number of occasions to discuss the case. Gibbs Decl. ¶ 3. Plaintiff provided information and documents to Class Counsel and made himself available to answer any questions during litigation, to appear for deposition, and to be available for mediation. *Id.* Ultimately, Plaintiff's efforts secured an exceptional result for the Class.

1 **4. The Settlement Administration Costs are reasonable.**

2 Phoenix Settlement Administrators, a well-recognized class action settlement
3 administrator, has quoted Settlement Administration Costs not to exceed \$21,500.00 to
4 send notices and administer the settlement. Yang Decl. ¶ 7. The bid was the lowest
5 obtained from potential administrators. *Id.* The Settlement Administration Costs are
6 reasonable and should be approved.

7 **CONCLUSION**

8 The proposed settlement would result in monetary benefits to Class Members that
9 they otherwise would likely not receive. It was the result of informed, arm's length
10 negotiations conducted by counsel experienced in wage and hour class action litigation.
11 Its terms appear to be fair, reasonable, and adequate, and there is no reason to believe the
12 proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
13 benefit of the Class, Plaintiff requests that the Court (i) grant preliminary approval of the
14 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii)
15 schedule a Final Approval Hearing.⁷

16 DATED: August 26, 2026

DIVERSITY LAW GROUP, P.C.

17
18 By: /s/ Simon L. Yang
19 Simon L. Yang
20 Attorneys for Plaintiff
21
22
23
24
25
26

27 _____
28 ⁷ Plaintiff has met and conferred with Defendant regarding its obligation to provide
notice of this settlement under CAFA pursuant to 28 U.S.C. ¶ 1715. Yang Decl. ¶ 15.