

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Max W. Gavron (State Bar No. 291697)
Kwanporn “Mai” Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
kagnew@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

KALU EKEH, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

QUALITY TECHNOLOGY SERVICES,
LLC, a Delaware limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV019854

(Assigned to the Hon. Jill H. Talley, Dept. 23)

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

Date: November 14, 2025

Time: 9:00 a.m.

Dept.: 23

Reservation No.: A-19854-001

Action Filed: September 30, 2024

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on November 14, 2025, at 9:00 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Jill H. Talley, in Department 23 of
4 the above referenced Court located at 720 Ninth Street, Sacramento, CA 95814, Plaintiff Kalu
5 Ekeh (“Plaintiff”) will seek an Order: (1) approving the Joint Stipulation of Class Action
6 Settlement and Release (“Agreement” or “Settlement Agreement”) in this matter;
7 (2) conditionally certifying the following Settlement Class for settlement purposes only: all non-
8 exempt employees in California at any time between September 30, 2020 and March 24, 2025¹;
9 (3) appointing Plaintiff as Class Representative and the law firms of Diversity Law Group, P.C.
10 and Polaris Law Group as Class Counsel; (4) preliminarily approving the Settlement Agreement
11 and the total Gross Settlement Amount in the amount of Three Hundred Thousand Dollars
12 (\$300,000.00); (5) finding on a preliminary basis that the Settlement Agreement appears to be
13 within the range of reasonableness of a settlement, including the amount of Plaintiff’s service
14 award, attorneys’ fees and costs, settlement administration expenses, and the allocation of
15 payments to Settlement Class Members that could ultimately be given final approval by this
16 Court; (6) approving the Class Notice to be sent to Settlement Class Members; (7) appointing
17 Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for
18 a Final Fairness and Final Approval hearing.

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

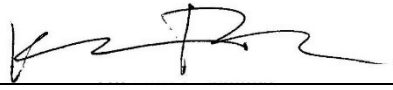
22 The basis for this Motion, filed without any opposition from Defendant Quality
23 Technology Services, LLC (“Defendant”), is that the proposed settlement is fair, adequate, and
24 reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of
25 Settlement Class Members to participate in, opt-out of, or object to the settlement. This Motion
26

27 _____
28 ¹ The Class Period end date may be adjusted pursuant to the Settlement Agreement’s escalator
clause.

1 will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement
2 and the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Mai Tulyathan,
3 William L. Marder, Plaintiff Kalu Ekeh, Jodey Lawrence of Phoenix Settlement Administrators,
4 and upon the oral arguments of counsel (should there be any) and on the complete records and
5 file herein.

6
7 DATED: October 22, 2025

DIVERSITY LAW GROUP, P.C.

8
9 By:  _____

10 Larry W. Lee
11 Mai Tulyathan
12 Attorneys for Plaintiff, the Class, and Aggrieved
13 Employees
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	9
II. PROCEDURAL HISTORY	11
A. Litigation.....	11
B. Mediation	11
C. Second Amended Complaint.....	12
III. DISCUSSION	13
A. Proposed Class Definition	15
B. Settlement Terms and Evaluation	16
1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive	22
2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant....	23
3. Scope of the Release of Class Members' Claims	23
4. Tax Treatment of Settlement Amounts.....	23
5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations	24
C. Notice to Class Members	24
D. Typicality and Adequacy of Representation	25
1. Class Representative's Claims are Typical of the Class.....	25
2. Class Counsel Have Adequately Represented the Settlement Class and Have Experience with Wage and Hour Class Action	26
E. Costs and Fees	27

1	1. Attorneys' Fees and Costs	27
2	2. Proposed Payment to the Class Representative	29
3	3. Settlement Administration Expenses	29
4		
5	IV. NOTICE TO THE LWDA	30
6	V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR	
7	PRELIMINARY APPROVAL	30
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008)	19
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	20
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	27, 28
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	26
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	14
<i>Duran v. U.S. Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014).....	20
<i>Laffitte v. Robert Half Int’l</i> , 1 Cal. 5th 480 (2016).....	28
<i>Naranjo v. Spectrum Security Services, Inc.</i> , 88 Cal. App. 5th 937 (2023).....	18
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981).....	26
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	27
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	26
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971).....	26
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001).....	14, 27

Federal Cases

<i>Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.</i> 2009 WL 2448430 (S.D. Cal. Aug. 10, 2009)	19
<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015)	21
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	19
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	27
<i>Greko v. Diesel U.S.A., Inc.</i> , No. 10-cv-02576 NC, 2013 WL 1789602 (N.D. Cal. Apr. 26, 2013)	21
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	16
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	25
<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128 (N.D. Cal. 2009).....	18

1	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	16
2	<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475 (S.D.N.Y. 1984).....	14
3	<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980).....	16
4	<i>Lesevic v. Spectraforce Techs., Inc.</i> , 2021 WL 1599310 (N.D. Cal. Apr. 23, 2021)	21
5	<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987) 16	
6	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	16
7	<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989).....	16
8	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978)	16
9	<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979).....	16
10	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) 21	
11	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390 (N.D.	
12	Cal. Nov. 21, 2012).....	21
13	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	27
14	Statutes	
15	Business and Professions Code § 17200, <i>et seq.</i>	11, 13, 23
16	Civil Code § 1542	29
17	Labor Code § 1194.....	11, 23
18	Labor Code § 203.....	17, 18
19	Labor Code § 218.5.....	23
20	Labor Code § 226.....	11, 18, 23
21	Labor Code § 226(a)	11
22	Labor Code § 226(e)	17
23	Labor Code § 226.7.....	11, 23
24	Labor Code § 246.....	11, 23
25	Labor Code § 2698, <i>et seq.</i>	11, 13, 23
26	Labor Code § 510.....	11, 23
27	Labor Code § 512.....	11, 23
28	Labor Code § 558.....	11, 23

1 Labor Code §§ 201-203 11, 23

2 **Other Authorities**

3 *4 Newberg on Class Actions* § 11.47 16

4 Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002)..... 14, 15

5 *The Manual for Complex Litigation, Third* § 30.41, (Fed. Jud. Ctr., 3rd ed. 1995)..... 13

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. Plaintiff
4 Kalu Ekeh (“Plaintiff”) alleges that Defendant Quality Technology Services, LLC (“Defendant”)
5 (together with Plaintiff, the “Parties”) failed to provide off-duty meal and rest periods and/or pay
6 premium wages at the regular rate of pay, failed to pay overtime and/or double time wages at the
7 regular rate of pay, failed to pay sick pay at the regular rate of pay, failed to provide accurate,
8 itemized wage statements, and engaged in unfair business practices. Plaintiff brings class and
9 PAGA claims based on these violations. The Parties have reached a proposed class and PAGA
10 action settlement, the terms of which are reflected in the Parties’ Joint Stipulation of Class
11 Action Settlement and Release (“Agreement” or “Settlement Agreement”)².

12 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
13 to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal
14 principles applicable to the claims asserted against Defendant. Through the exchange of
15 informal discovery, Defendant provided necessary data pertaining to the number of putative class
16 members, number of shifts, workweeks, and pay periods at issue, hourly rates of pay, data
17 pertaining to the aggrieved employees, as well as information pertaining to Defendant’s payroll
18 policies and practices. Thereafter, on June 12, 2025, the Parties attended a full day of mediation
19 with the Honorable Peter H. Kirwan (Ret.). As a result of the mediation, the Parties reached the
20 current settlement of Plaintiff’s class and PAGA claims. The following represents the key terms
21 of the settlement:

- 22 • Gross Settlement Amount of \$300,000.00, which will be paid by Defendant and
23 distributed to the Settlement Class on a **non-reversionary** basis (*See Agreement*
24 ¶¶ 2.10, 3.2);
- 25 • Settlement Class of 44 individuals, subject to any increase pursuant to an agreed-
26

27
28 ² The Settlement Agreement is attached to the Declaration of Kwanporn “Mai” Tulyathan
 (“Tulyathan Decl.”) as Exhibit B.

upon escalator clause (*Id.* ¶ 2.27, ¶ 3.3);

- Class members do **not** need to submit claim forms to participate in the settlement (Tulyathan Decl. ¶ 24);
- Plaintiff’s service award of up to \$10,000.00 (Agreement ¶ 2.24);
- Class Counsel’s attorneys’ fees of up to \$105,000.00 (35% of the Gross Settlement Amount) (*Id.* ¶ 2.2);
- Class Counsel’s litigation costs of up to \$15,000.00 (*Id.* ¶ 2.2);
- Settlement administration expenses of up to \$5,200.00 (*Id.* ¶ 2.26);
- PAGA penalties of \$30,000.00, of which 65% (or \$19,500.00) will be allocated to the California Labor and Workforce Development Agency, and 35% of which (or \$10,500.00) will be distributed to the aggrieved employees known as the PAGA Group³ (*Id.* ¶ 2.18);
- Net Settlement Amount of approximately \$134,800.00 (*Id.* ¶¶ 2.2, 2.10, 2.13, 2.18, 2.24, 2.26); and
- Raw average of approximately **\$3,063.64** to each Settlement Class Member who does not opt out of the settlement ($\$134,800.00 \div 44$ class members).

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and his counsel are confident that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified, that Plaintiff could fail to establish liability, and/or that Plaintiff would be unable to prove damages in the amounts sought. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

³ The “PAGA Group” or “PAGA Group Members” are defined as “all non-exempt employees in California at any time between September 16, 2023 and March 24, 2025.” Agreement ¶ 2.16. The PAGA Period is the period between September 16, 2023 and March 24, 2025, although the end date may be adjusted pursuant to the escalator clause. *Id.* ¶¶ 2.16, 3.3.

II. PROCEDURAL HISTORY

A. Litigation

On or about September 16 and 30, 2024, Plaintiff submitted written notices to the California Labor and Workforce Development Agency (“LWDA”), alleging violations by Defendant of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194, pursuant to the Private Attorneys General Act, Labor Code § 2699 (the “PAGA Letters”). Tulyathan Decl. ¶ 2.

On September 30, 2024, Plaintiff filed a class action complaint against Defendant in the Superior Court of the State of California for the County of Sacramento on behalf of himself and all similarly situated employees (the “Action”). *Id.* ¶ 3. Plaintiff asserted claims for:

(1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of Labor Code §§ 510, 558, and 1194; (4) violation of Labor Code §§ 201-203; (5) violation of Labor Code § 226(a); and (6) violation of Business and Professions Code § 17200, *et seq.* *Id.*

On January 24, 2025, Plaintiff filed a first amended complaint against Defendant, adding a cause of action for violation of Labor Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 201-203, 226, 226.7, 246, 510, 512, 558, and 1194. *Id.* ¶ 4.

B. Mediation

During litigation of the Action against Defendant, the Parties conferred regarding possible settlement discussions. Tulyathan Decl. ¶ 5. The Parties agreed to exchange information informally to evaluate their respective claims and defenses. *Id.* The Parties subsequently engaged in informal discovery for Plaintiff to assess the claims. Defendant provided Plaintiff’s counsel with informal data and information pertaining to the number of putative class members, number of shifts, workweeks, and pay periods at issue, hourly rates of pay, data pertaining to the aggrieved employees, as well as information pertaining to Defendant’s payroll policies and practices. *Id.* ¶ 6. Based on Defendant’s informal production and data, Plaintiff’s counsel analyzed the maximum exposure of damages and penalties. *Id.*

On June 12, 2025, the Parties engaged in a full-day mediation with the Honorable Peter H. Kirwan (Ret.). Tulyathan Decl. ¶ 7. After thorough investigation and evaluation of the facts and claims at issue, and arm’s length negotiations facilitated by Judge Kirwan, the Parties

1 reached a settlement of the Action. *Id.* The Parties memorialized the terms of their settlement in
2 the Joint Stipulation of Class Action Settlement and Release. *Id.* ¶ 7; Ex. B.

3 **C. Second Amended Complaint**

4 Pursuant to the Parties' agreement and for the purposes of settlement, the Parties agreed
5 to the filing of a second amended complaint in this Action to amend the class definition.
6 Tulyathan Decl. ¶ 8. The operative complaint originally defined four overlapping subclasses of
7 non-exempt employees based on meal period, rest period, overtime/double time, and sick pay
8 practices. For purposes of settlement, the Parties agreed to simplify the class definition to
9 encompass all current and former non-exempt employees of Defendant in California at any time
10 from September 30, 2020, through March 24, 2025. The March 24, 2025 end date reflects the
11 date through which Defendant ran its payroll data for settlement and mediation purposes, and is
12 subject to an escalator clause. This amended settlement class therefore captures the same
13 population of employees alleged in the original complaint, but ending on the date that reflects the
14 data available at the time of settlement. *Id.* ¶ 9.

15 On September 11, 2025, Plaintiff filed the Second Amended Class and Representative
16 Action Complaint ("SAC" or "operative Complaint"). *Id.* ¶ 10. The SAC is the operative
17 Complaint. *Id.*

18 Plaintiff's class and PAGA claims are predicated upon the following allegations. *Id.* ¶
19 11. With respect to Plaintiff's meal and rest period claims, Plaintiff contends that employees did
20 not receive proper off-duty meal and rest breaks during their shifts. He alleges that employees
21 were required to keep their phones on and respond to work-related calls during breaks.
22 Defendant failed to pay premium compensation for missed, late, or interrupted breaks. On
23 occasions when premium compensation was paid, Plaintiff contends that Defendant failed to pay
24 the meal and rest premium compensation at the correct, regular rate of pay. In this regard,
25 Plaintiff alleges that Defendant failed to include all non-discretionary remuneration into the
26 calculation of the regular rate of pay for the purpose of paying said meal and rest period
27 premium compensation. *Id.* Similarly, Plaintiff alleges that Defendant failed to pay overtime
28 and/or double time wages and sick pay wages at the regular rate of pay, during pay periods when

1 employees earned non-discretionary remuneration and were paid said wages in the same pay
2 period. *Id.* ¶ 12. To date, Plaintiff has yet to receive payment of all wages owed. *Id.* With
3 respect to Plaintiff's wage statement claims, Plaintiff contends that Defendant issued deficient
4 wage statements, as said wage statements do not correctly identify all applicable rates of pay and
5 gross and net wages earned as a result of the underpayment and/or nonpayment of
6 overtime/double time wages, meal and rest period premiums, and sick pay. *Id.* ¶ 13. As a result
7 of the alleged violations above, Plaintiff seeks damages and penalties under the California Labor
8 Code, the California Business & Professions Code, and the PAGA, as well as attorneys' fees and
9 costs. *Id.* ¶ 14.

10 Defendant denies Plaintiff's allegations and has asserted factual and legal defenses to the
11 above claims, including that Defendant maintained policies and procedures that comply with
12 California law, that individualized issues predominate, and that trial on a class or representative
13 basis would be unmanageable. *Id.* ¶ 15.

14 **III. DISCUSSION**

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

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

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

Thus, the preliminary approval by the trial court is simply a conditional finding that the
settlement appears to be within the range of acceptable settlements. As Professor Newberg

1 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
2 concerning a tentative settlement proposal may vary. The court may find that the settlement
3 proposal contains some merit, is within the range of reasonableness required for a settlement
4 offer, or is presumptively valid subject only to any objections that may be raised at a final
5 hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed.
6 2002).

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

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

14 *Id.* § 11.24.

15 Here, the Parties have reached such an agreement and have submitted to this Court in
16 connection with this Motion a copy of the Settlement Agreement fully setting forth the
17 agreement reached among the Parties. The Settlement Agreement sets forth all terms of the
18 agreement reached by the Parties, which include, among other things, the method for calculating
19 the Settlement Class Members’ Individual Settlement Payments.

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

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

9 *4 Newberg on Class Actions* § 11.26.

10 In addition to such terms as class identification, settlement amount, and payment
11 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
12 to which the Parties stipulate to the Court's provisional certification of the Settlement Class for
13 the purposes of this settlement only. Agreement ¶ 4.2. Defendant has reserved its right to
14 contest class certification in the event that the settlement is not approved and litigation resumes.

15 **A. Proposed Class Definition**

16 The current settlement is being settled on behalf of all non-exempt employees in
17 California at any time during the Class Period ("Settlement Class" or "Settlement Class
18 Members"). See Agreement ¶¶ 2.27, 3.3. The Class Period is defined as the period between
19 September 30, 2020 and March 24, 2025, although the end date may be adjusted pursuant to
20 the Parties' escalator clause. *Id.* As explained above, the March 24, 2025 end date represents
21 the date through which Defendant ran its payroll data for purposes of mediation and settlement.

22 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned
23 among the Class Members on a *pro rata* basis, based on the number of Workweeks worked by
24 each Settlement Class Member during the Class Period, as compared to the total number of
25 Workweeks worked by all Settlement Class Members during the Class Period. See Agreement ¶
26 9.3.

27 Defendant estimates that there are approximately 44 individuals that comprise the
28 Settlement Class, who worked no more than 4,054 Workweeks during the Class Period. *Id.* ¶¶
2.27, 3.3. Pursuant to the escalator clause, if the number of Workweeks exceeds 4,054 by more
than 5% (or if the number of Workweeks exceeds 4,257) at the time of preliminary approval,
Defendant may increase the Gross Settlement Amount on a *pro rata* basis, based on the same

1 Workweek value for any additional Workweeks over 4,257, and extend the Class Period and
2 PAGA Period end dates through the date of preliminary approval. *Id.* ¶ 3.3.

3 **B. Settlement Terms and Evaluation**

4 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
5 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
6 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In*
7 *re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
8 judgment for that of the proponents, particularly where, as here, settlement has been reached
9 with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms.*
10 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
11 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
12 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
13 *& Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

14 While the recommendations of counsel proposing the settlement are not conclusive, the
15 court can properly take them into account, particularly where, as here, they have been involved
16 in informal discovery and negotiations for some period of time, appear to be competent, have
17 experience with this type of litigation, and have exchanged substantial evidence from the
18 opposing party. *See 4 Newberg on Class Actions, supra* § 11.47; *Nat’l Rural Telecomms. Coop.*,
19 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length negotiation process is
20 preserved, however, a strong initial presumption of fairness attaches to the proposed
21 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
22 are most closely acquainted with the facts of the underlying litigation”).

23 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
24 and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a
25 number of wage and hour class actions and have extensive litigation experience. Tulyathan
26 Decl. ¶¶ 59-62; Declaration Larry W. Lee (“Lee Decl.”) ¶ 8; Declaration of William L. Marder
27 (“Marder Decl.”) ¶ 10-13. Each side has apprised the other of their respective factual
28 contentions, legal theories, and defenses, resulting in negotiations taking place between the

Parties. Tulyathan Decl. ¶ 17.

Prior to the mediation, Plaintiff was provided with data pertaining to putative class members and aggrieved employees during the relevant class and PAGA periods, as well as information and documents pertaining to Defendant's pertinent payroll policies and practices. Tulyathan Decl. ¶ 32. From this data, Plaintiff was able to investigate the claims asserted and conduct an exposure analysis that informed Plaintiff's position at the mediation. *Id.* Based on the data provided by Defendant, Plaintiff analyzed Defendant's potential class exposure as follows:

- Meal break violations: \$510,069.35, based on, based on 16,430 shifts at issue during the class period at an average rate of \$44.35 per hour (assumes 70% violation rate⁴);
- Rest break violations: \$517,706.42, based on 16,676 shifts at issue during the class period at an average rate of \$44.35 per hour (assumes 70% violation rate);
- Waiting time penalties for meal and rest break premiums: \$202,236.00, based on 19 former employees x \$44.35 per hour x 8 hours per day x 30 days;
- Waiting time penalties for underpayment of overtime and double time wages:⁵ \$191,592.00, based on 18 former employees within the overtime group x \$44.35 per hour x 8 hours per day x 30 days;
- Waiting time penalties for underpayment of sick pay: \$182,049.60, based on 17 former employees within the sick pay group x \$44.35 per hour x 8 hours per day x 30 days;
- Derivative wage statement penalties under Labor Code § 226(e): approximately \$83,300.00, calculated based on approximately 855 pay periods at issue during the 226 one-year statutory period.

⁴ Plaintiff applied a 70% violation rate to the meal and rest period claims based on Defendant's facially compliant meal and rest policies and to account for Defendant's changes to its regular rate calculations beginning in January 2025.

⁵ Overtime underpayments are typically minimal, as overtime regular rate miscalculations generally result in small underpayments per workweek/pay period. Accordingly, the primary recovery associated with the overtime regular rate underpayments arises from the waiting time penalties under Labor Code § 203.

1 Tulyathan Decl. ¶ 33.

2 The total theoretical exposure of Plaintiff’s class claims based on the above amount to
3 approximately \$1,686,953.37. However, Defendant has raised several legal and factual defenses
4 that present substantial risks to Plaintiff’s prevailing on his theories of liability. For example,
5 Defendant asserts that it maintained legally compliant meal and rest break policies and obtained
6 valid meal period waivers where applicable, and that any missed or late breaks were due to
7 employee choice rather than employer-driven practices. Defendant further represents that it
8 conducted an internal audit of its regular rate calculations and corrected any regular rate issues as
9 of January 2025. Accordingly, any potential exposure for regular rate underpayments would be
10 limited to periods prior to January 2025 and further limited by any overpayments pursuant to
11 Defendant’s pre-January 2025 practices. Tulyathan Decl. ¶ 35.

12 Additionally, Defendant also argued that Plaintiff cannot establish that Defendant
13 “willfully” failed to pay wages at separation of employment, and thus Plaintiff cannot recover
14 waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, 88
15 Cal. App. 5th 937 (2023), the court upheld an employer’s good faith defense to the plaintiff’s
16 claim for waiting time penalties, pursuant to Labor Code § 203. The employer argued that it had
17 a viable legal defense, which precluded the imposition of waiting time penalties because its acts
18 were not “willful” within the meaning of the statute. *Naranjo* also permitted a good faith
19 defense to rebut the plaintiff’s claim for penalties, pursuant to Labor Code § 226. Should
20 Defendant succeed on these arguments, class members would recover \$0 for waiting time
21 penalties under Labor Code § 203 and statutory penalties under Labor Code § 226. Tulyathan
22 Decl. ¶ 36.

23 Defendant also argued that the violation was not “knowing and intentional” and thus
24 would not warrant Section 226(e) penalties. See *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d
25 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding
26 its conduct was not “knowing and intentional”). Defendant argued that it was entitled to a “good
27 faith” defense on this claim, too. See, e.g., *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.
28 5th 1056, 1065 (2024) (“if an employer reasonably and in good faith believed it was providing a

complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law”).

With respect to Plaintiff’s claim under the PAGA, Plaintiff estimated that Defendant could face civil penalties of at least \$166,700.00⁶. *Id.* ¶ 38. Defendant contends that the imposition of multiple penalties for overlapping violations during the same pay period is not permitted under the PAGA, and that only a single \$100 penalty per pay period may be awarded. While Plaintiff disputes this interpretation, some courts have exercised discretion under Labor Code § 2699(e)(2) to avoid stacking penalties for multiple violations within the same pay period. Plaintiff’s analysis is also based on the initial violation penalty amount, which does not account for the imposition of the increased subsequent violation penalty amount given recent authority indicating this increased penalty is only available where there is a prior citation for a Labor Code violation. *See Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor any court warned the defendant that it was subject to the Labor Code until the court handling the case at issue). Courts are also hesitant to award the subsequent amount where there has not been a prior violation of the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”). Defendant argued that no such prior violation occurred here, warranting only the initial penalty, if any penalty at all. Moreover, in this case there is no indication that Defendant had received a prior notice or citation from the Labor Commissioner regarding the alleged violations at issue. Finally, Defendant contends that it would benefit from recent amendments to the PAGA statute, including provisions capping penalties when reasonable steps are taken to avoid Labor Code violations. Tulyathan Decl. ¶ 41.

⁶ This is calculated based on 406 pay periods worked during the PAGA Period that were eligible for meal and rest periods, 376 pay periods worked during the PAGA Period with payment for overtime or double time, and 73 pay periods during the PAGA Period with payment for sick pay.

1 Additionally, this analysis does not account for the possibility that the Court would
2 reduce the PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to
3 award PAGA penalties where “if, based on the facts and circumstances of the particular case, to
4 do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
5 Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal.
6 App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court
7 reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt
8 at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such
9 reduction to be proper. *Id.* at p. 539.

10 Although Plaintiff believes in the merits of the alleged claims and maintains that there is
11 no reason for reducing PAGA penalties, Plaintiff is aware that Defendant has raised defenses to
12 the claims and further with respect to the reduction of PAGA penalties and that those defenses
13 could persuade the Court. Thus, even if Plaintiff were to successfully prove his claims at trial,
14 there is a possibility that the Court may only award a small percentage of PAGA penalties, as the
15 Court has discretion to do so. The Gross Settlement Amount was premised with this risk in
16 mind, associated with the possibility of the Court significantly reducing PAGA penalties.
17 Tulyathan Decl. ¶ 43.

18 The settlement is the result of extensive arm’s length negotiations between the Parties
19 and their counsel and was facilitated by an experienced and neutral mediator. The Parties
20 reached the current settlement as a result of mediation. Although Plaintiff believes that the
21 Settlement Class can be certified, Plaintiff also believes in the fairness of the settlement that is
22 based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or
23 more of the causes of action or theories alleged in the operative Complaint, the possibility of
24 non-certification, and the potential for appeals. Tulyathan Decl. ¶ 44. These risks on class
25 certification are compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank*
26 *Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and
27 subsequently prevailed at trial after eight years of litigation, but the judgment and the
28 certification ruling were reversed by the California Supreme Court after an additional five years

1 of litigation. The case was remanded to superior court where class certification was denied and
2 plaintiffs' subsequent appeal also was denied.

3 Indeed, numerous courts have held that **gross** settlements approximating between only 8
4 and 25% of the defendant's potential exposure are fair and reasonable. *See Lesevic v.*
5 *Spectraforce Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and
6 hour class fund of \$600,000 that compensated for 7% of maximum potential recovery was
7 reasonable); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at
8 p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5%
9 and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*,
10 U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage
11 and hour class settlement which obtained **only 9.1%** of projected damages, given the risks of
12 continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012
13 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
14 approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A.,*
15 *Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was
16 reasonable).

17 Here, based on the above, the total amount of class and PAGA penalties amount to
18 approximately \$1,853,653.37. Tulyathan Decl. ¶ 45. The Gross Settlement Amount is
19 \$300,000.00, which is approximately **16.18%** of the class and PAGA penalties. *Id.* Thus, the
20 settlement was negotiated at arm's length and the settlement percentage-to-recovery further
21 supports that the settlement is fair and reasonable.

22 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
23 Proposed Class Action Settlement ("Class Notice"), should any Settlement Class Member wish
24 to pursue his or her own case for the claims being released herein, each Settlement Class
25 Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement, with
26 the exception of the PAGA claims. *See* Class Notice. Moreover, as set forth in the Class Notice,
27 Settlement Class Members are advised of their right to object to any of the terms contained in the
28 Settlement Agreement and attend the final approval hearing. *Id.* As provided in the Class

1 Notice, the final judgment will be posted on the Settlement Administrator’s website. *Id.*, pg. 7.

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

5 The Settlement Agreement provides for Three Hundred Thousand Dollars (\$300,000.00)
6 as the Gross Settlement Amount. Agreement ¶ 2.10. The Net Settlement Amount [calculated
7 after deduction of attorneys’ fees (up to \$105,000.00), litigation costs (up to \$15,000.00), service
8 award to Plaintiff (up to \$10,000.00), payment of PAGA penalties (\$30,000.00), and settlement
9 administration expenses (up to \$5,200.00)] is estimated to be approximately \$134,800.00.
10 Agreement ¶¶ 2.2, 2.10, 2.13, 2.18, 2.24, 2.26.

11 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned
12 among the Settlement Class Members on a *pro rata* basis, based on the number of Workweeks
13 worked by each Settlement Class Member during the Class Period, as compared to the total
14 number of Workweeks worked by all Settlement Class Members during the Class Period. *See*
15 Agreement ¶ 9.3. Based thereon, on a raw average, each Settlement Class Member may
16 potentially recover approximately **\$3,063.64** ($\$134,800.00 \div 44$ Settlement Class Members).
17 Based on the total number of Workweeks of 4,054, the per Workweek value is approximately
18 **\$33.25** ($\$134,800.00 \div 4,054$ Workweeks). The amount actually paid to each Settlement Class
19 Member will increase or decrease depending on the number of Workweeks he or she worked
20 during the Class Period. Tulyathan Decl. ¶ 49.

21 Additionally, as part of the payment of PAGA penalties, 35% of the PAGA Payment, or
22 \$10,500.00, shall be paid to PAGA Group Members on a *pro rata* basis, based on the number of
23 Workweeks worked by each PAGA Group Member during the PAGA Period as compared to the
24 total number of Workweeks worked by all PAGA Group Members during the PAGA Period.
25 Agreement ¶ 9.2.

26 Finally, the funds from uncashed checks (upon the expiration date of 180 calendar days
27 after issuance) shall be sent to the designated *cy pres* recipient: Legal Aid at Work. *See*
28 Agreement ¶¶ 2.29, 10.5. Legal Aid at Work is a non-profit legal services organization that
provides legal services and policy advocacy for and on behalf of California low-income

1 individuals and/or low-wage earners. Tulyathan Decl. ¶ 52.

2 **2. Whether, and Under What Circumstances, Amounts Available for**
3 **Payment in Settlement Might Not Be Paid to Class Members or Might**
4 **Revert to the Defendant**

5 None of the settlement funds will revert to Defendant. Agreement ¶ 3.2.

6 **3. Scope of the Release of Class Members' Claims**

7 As a condition of participating in this class action settlement, Settlement Class Members
8 who do not opt out of the settlement ("Remaining Class Members") will provide a limited
9 release of the following claims against the Released Parties. *See* Agreement ¶ 9.3. Remaining
10 Class Members will release the following claims:

11 [A]ny and all claims for damages and/or penalties that accrued
12 during the Class Period, based on the facts and claims alleged in the
13 Action, including but not limited to any and all claims arising under
14 Cal. Labor Code §§ 201-203, 218.5, 226, 226.7, 246, 510, 512, 558,
15 1194; the applicable IWC Wage Orders, and Cal. Bus. & Prof. Code
16 §§ 17200, *et seq.* ("Released Class Claims").

17 *See id.* ¶ 8.1.

18 In addition, regardless of their decision to participate in the settlement, PAGA Group
19 Members will release the following claims:

20 [A]ny and all claims for PAGA penalties arising from the facts and
21 theories alleged in the Action or the PAGA Letters that accrued
22 during the PAGA Period, based on the facts and claims alleged in
23 the Action, including but not limited to claims arising under Cal.
24 Labor Code §§ 201-203, 218.5, 226, 226.7, 246, 510, 512, 558, 1194
25 and 2698, *et seq.* ("Released PAGA Claims").

26 *Id.* ¶ 8.2.

27 Given that the releases above are tailored to only claims pled or that could arise out of the
28 facts alleged in the operative Complaint and Plaintiff's PAGA letters, that accrued during limited
periods of time, the releases are appropriately tailored.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that the settlement payments ("Individual Settlement Payments")
to Remaining Class Members from the Net Settlement Amount shall be allocated as follows:
eighty percent (80%) interest and penalties, for which an IRS Form 1099 will issue, and twenty

1 percent (20%) wages, for which an IRS Form W-2 will issue and from which payroll taxes will
2 be deducted. Agreement ¶¶ 9.3, 10.4.1. Defendant will be liable for employer side payroll
3 taxes. *Id.*

4 The settlement payments to PAGA Group Members (or “PAGA Group Member Payment
5 Amount”) from the PAGA Payment will be deemed one hundred percent (100%) penalties and
6 be accompanied by an IRS Form 1099-MISC. *Id.* ¶ 9.2.

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

9 As stated above, Settlement Class Members do **not** need to do anything should they wish
10 to receive their share of the settlement funds. In other words, because this is **not** a claims-made
11 settlement, Settlement Class Members will not be required to make a submission to participate in
12 the settlement. Thus, this substantially decreases the burden each Settlement Class Member
13 must bear in order to receive their Individual Settlement Payment. If a Class Member does not
14 wish to take part in this settlement and be bound by the Released Class Claims, the Settlement
15 Class Member must submit a request for exclusion. Agreement ¶ 6.1.

16 **C. Notice to Class Members**

17 Should the Court grant the instant Motion, Defendant will provide the Settlement
18 Administrator with a list containing each Settlement Class Member’s full name, last known
19 mailing address, last four digits of the Social Security number, and number of qualifying
20 Workweeks (“Class Information”). Agreement ¶ 2.3. Defendant shall provide this information
21 within fourteen (14) calendar days of preliminary approval of this settlement. *Id.* ¶ 5.1. Upon
22 receipt of the information and prior to mailing the Class Notice, the Settlement Administrator
23 shall perform a search based on the National Change of Address Database for information to
24 update and correct for any known or identifiable address changes. *Id.* ¶ 5.3. Within ten (10)
25 calendar days of receipt of the Class Information, the Settlement Administrator shall mail the
26 Class Notice to all Settlement Class Members. *Id.* Any notices returned to the Settlement
27 Administrator as non-deliverable on or before the opt-out deadline shall be sent promptly via
28 regular first-class U.S. mail to the forwarding address affixed thereto. *Id.* ¶ 5.4. If no forwarding

1 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
2 address using a skip trace or other search and perform a re-mailing. *Id.*

3 The Parties have agreed to the language of the Class Notice. Tulyathan Decl. ¶ 31. The
4 Class Notice will describe the terms of the settlement and advise Settlement Class Members of
5 their opportunity to opt out of the settlement, object to the settlement, and/or dispute the number
6 of Workweeks credited to them. Agreement ¶ 5.2. Settlement Class Members will have sixty
7 (60) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to
8 opt out of the settlement, object to the settlement, and/or submit a dispute regarding the number
9 of Workweeks. *Id.* Settlement Class Members who receive a re-mailed Class Notice will have
10 an additional fifteen (15) calendar days to respond to the Class Notice. *Id.* Settlement Class
11 Members can submit objections to the settlement in writing to the Settlement Administrator, as
12 well as object at the Final Approval Hearing regardless of whether he/she submitted a written
13 objection. Class Notice, pp. 5.

14 For disputes regarding the calculation of number of Workweeks, Settlement Class
15 Members may produce evidence to the Settlement Administrator. The Parties will work in good
16 faith to resolve the dispute, and if the Parties are unable to come to a resolution, then the
17 Settlement Administrator shall examine all evidence submitted and make a decision, which will
18 be final. Agreement ¶ 5.2. The Class Notice provides instructions to Settlement Class Members
19 on how to submit a Workweek dispute. Class Notice, pp. 3.

20 If Settlement Class Members need further information about the settlement and/or the
21 lawsuit, Class Counsel's contact information and the Settlement Administrator's contact
22 information are provided in the Class Notice. *See* Class Notice.

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

24 **1. Class Representative's Claims are Typical of the Class**

25 The commonality requirement is met when there are questions of law and fact common to
26 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
27 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
28 facts couple with disparate legal remedies within the class"). Commonality requires only that

1 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
2 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981).
3 Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
4 *Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
5 Where the employer's conduct is uniformly directed at a class of employees, as alleged here, the
6 class wide impact of the Defendant's policies satisfies the commonality requirement. *See*
7 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

8 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
9 violated the Labor Code by failing to provide off-duty meal and rest breaks or pay meal and rest
10 period premiums at the regular rate of pay, failing to pay overtime and/or double time wages at
11 the regular rate of pay, failing to pay sick pay wages at the regular rate of pay, failing to timely
12 pay all wages upon separation of employment, failing to provide accurate itemized wage
13 statements, and engaging in unfair business practices. Declaration of Kalu Ekeh ("Ekeh Decl.")
14 ¶¶ 3-5. As a result, Plaintiff alleges that he is owed unpaid wages and penalties for the above
15 violations. In other words, Plaintiff contends that he was subjected to the same policies and
16 practices as other Settlement Class Members and that his claims are typical of those of the
17 Settlement Class.

18 Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor have
19 any such issues been raised or presented. *Id.* ¶ 6. Plaintiff has taken all necessary steps to
20 represent the interests of the Settlement Class, and by providing information and documents to
21 Plaintiff's counsel. *Id.* ¶¶ 6, 8. For such reasons, Plaintiff has adequately represented the
22 Settlement Class and will continue to do so.

23 **2. Class Counsel Have Adequately Represented the Settlement Class and Have**
24 **Experience with Wage and Hour Class Action**

25 From the inception of the case, Class Counsel have zealously represented the interests of
26 the Settlement Class. Class Counsel have engaged in significant investigation and meet and
27 confer discussions with Defendant's counsel to obtain informal data and documents and to
28 discuss the merits of the claims on behalf of the Class. Tulyathan Decl. ¶¶ 54-55. The

1 settlement was obtained for the benefit of the Settlement Class, as opposed to the individual
2 Class Representative. Further, Class Counsel have been approved as class counsel on a number
3 of prior cases, have litigated numerous other class action cases, and are competent to represent
4 the Class. Lee Decl. ¶ 8; Tulyathan Decl. ¶¶ 59-62; Marder Decl. ¶¶ 10-13.

5 **E. Costs and Fees**

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

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 benefits to
9 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
10 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
11 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of
12 this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
13 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
14 burden alone." *Vincent*, 557 F.2d at 769.

15 The common fund doctrine is predicated on the principle of preventing unjust
16 enrichment. When a litigant's efforts create or preserve a fund from which others derive
17 benefits, she may require the passive beneficiaries to compensate those who created the fund.
18 Both California state and federal courts have embraced this doctrine. *Serrano v. Priest*, 20 Cal.
19 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*,
20 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund
21 doctrine has been applied "consistently in California when an action brought by one party creates
22 a fund in which other persons are entitled to share." The reasons for applying the common fund
23 doctrine include:

24 Fairness to the successful litigant, who might otherwise receive no
25 benefit because his recovery might be consumed by the expenses;
26 correlative prevention of an unfair advantage to the others who are
27 entitled to share in the fund and who should bear their share of the
28 burden of its recovery; encouragement of the attorney for the
successful litigant who will be more willing to undertake and
diligently prosecute proper litigation for the protection or recovery
of the fund if he is assured that he will be properly and directly

1 compensated should his efforts be successful.

2 *Id.*

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

10 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
11 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that
12 required a multiplier of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is
13 "extraordinarily high or low [should] the trial court [] consider whether the percentage method
14 should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at p.
15 505.

16 Here, the Parties have agreed to a payment of a maximum thirty-five percent (35%) of
17 the Gross Settlement Amount (or \$105,000.00) for payment to Class Counsel as of attorneys'
18 fees. Agreement ¶ 2.2. Defendant has agreed that Plaintiff may request the payment of the
19 foregoing attorneys' fees and, thus, this payment should be presumed to be fair. Class Counsel
20 disclose their fee-splitting arrangement in their declarations. Tulyathan Decl. ¶¶ 67-68; Marder
21 Decl. ¶¶ 16-17.

22 Further, Defendant has agreed that Plaintiff may request reimbursement of Class
23 Counsel's litigation costs up to \$15,000.00. *Id.* ¶ 2.2. Class Counsel have, at their own risk,
24 expended costs to prosecute the Action, including filing the instant Action and other pleadings,
25 effecting service of process, participating in mediation, and paying other litigation-related
26 costs. If Class Counsel's actual costs are less than \$15,000.00, the remainder will be allocated
27 to the Net Settlement Amount for distribution to the Settlement Class. *Id.* ¶¶ 2.2.

28 Based on the foregoing, the Court should preliminarily approve the attorney's fees and

costs as requested by the Parties.

2. Proposed Payment to the Class Representative

Plaintiff and Class Representative Kalu Ekeh requests a modest enhancement of \$10,000.00. Agreement ¶ 2.24. The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, searched for and provided documents and information to Class Counsel, attended and participated in mediation, and reviewed the pleadings and the Settlement Agreement. As part of his duties as Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. Ekeh Decl. ¶ 8.

In addition to the invaluable services that he provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as Class Representative and seeking benefits on behalf of the Settlement Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action. *Id.* ¶ 11.

Plaintiff estimates that he spent between 35-40 hours in connection with the litigation of this Action. *Id.* ¶ 8. For example, Plaintiff met with his attorneys to discuss the facts supporting the theories of liability in this action and apprised his attorneys of his understanding of Defendant's policies and practices. *Id.* Plaintiff also searched for and provided documents to his attorneys to evaluate the claims in the case, including, but not limited to, payroll and employment documents, and wage statements received throughout his employment with Defendant. *Id.* Plaintiff also attended and participated in a full-day of mediation. *Id.* Plaintiff also conferred with his attorneys regarding the terms of the proposed settlement, reviewed the proposed settlement agreement, and assisted in reviewing the documents including his PAGA Letters and his declaration. *Id.* Finally, Plaintiff agreed to provide a general release of claims and waiver of the protections of Civil Code § 1542, which is something that was not required of Class Members. Agreement ¶ 2.24; Ekeh Decl. ¶ 12. For these reasons and those articulated in the Motion, the Court should preliminarily approve the service award.

3. Settlement Administration Expenses

The Parties have agreed to an estimated payment of \$5,200.00 to the Settlement

1 Administrator, Phoenix Settlement Administrators (“Phoenix”), to send notices and to administer
2 this settlement. Agreement ¶¶ 2.25, 2.26; Tulyathan Decl. ¶ 51. Phoenix is a well-recognized
3 class action settlement administrator. The Parties believe that the administration fee is
4 reasonable and should be approved.

5 **IV. NOTICE TO THE LWDA**

6 Concurrently with the filing of this motion, Plaintiff submitted the Settlement Agreement
7 and supporting documents to the LWDA. Tulyathan Decl. ¶ 69; Ex. F.

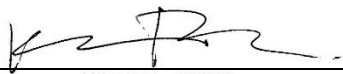
8 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
9 **PRELIMINARY APPROVAL**

10 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
11 substantial monetary benefits to the Settlement Class; it is non-collusive; and it was achieved as
12 the result of informed, extensive, and arm’s length negotiations conducted by counsel for the
13 respective parties who are experienced in wage and hour class action litigation.

14 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
15 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of
16 the proposed Class Notice, and set a date for a final approval hearing.

17 DATED: October 22, 2025

DIVERSITY LAW GROUP, P.C.

19 By: 
20 Larry W. Lee
21 Mai Tulyathan
22 Attorneys for Plaintiff, the Class, and Aggrieved
23 Employees
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On October 22, 2025, I served the following document(s) described as:

- 11 1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR**
- 12 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- 13 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 14 2. **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
- 15 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 3. **DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF**
- 17 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS**
- 18 **ACTION SETTLEMENT**
- 19 4. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
- 20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 21 **SETTLEMENT**
- 22 5. **DECLARATION OF KWANPORN "MAI" TULYATHAN IN SUPPORT**
- 23 **OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF**
- 24 **CLASS ACTION SETTLEMENT**
- 25 6. **DECLARATION OF KALU EKEH IN SUPPORT OF PLAINTIFF'S**
- 26 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 27 **SETTLEMENT**
- 28 7. **DECLARATION OF JODEY LAWRENCE**

the interested parties in this action as follows:

Kelsey A. Israel-Trummel kitrummel@jonesday.com JONES DAY 555 California Street, 26th Floor San Francisco, CA 94104	<i>Agent for Service of Process for Defendant Quality Technology Services, LLC</i>
Niyyah S. Barber niyyahbarber@jonesday.com JONES DAY 555 South Flower Street, 50th Floor Los Angeles, CA 90071	<i>Agent for Service of Process for Defendant Quality Technology Services, LLC</i>

1 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
2 entitled document(s) to be served through the ACE E-Filing System at the website
3 www.efile.acelegal.com, addressed to all parties appearing on the electronic service list for the
4 above-entitled case. The service transmission was reported as complete and a copy of the filing
5 receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this
6 office.

7 I declare under penalty of perjury under the laws of the State of California that the above
8 is true and correct. Executed on October 22, 2025, at Los Angeles, California.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Erika Mejia