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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOSEPH GUEVARA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GLOBAL MAIL, INC., an Ohio corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21STCV12053

[Hon. David S. Cunningham, Dept. 11]

**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 Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Dennis S. Hyun; [Proposed] Order]*

Date: August 1, 2022
Time: 10:00 a.m.
Department: 11

Complaint Filed: March 29, 2021

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

2 **PLEASE TAKE NOTICE** that on August 1, 2022, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 11 of the above-entitled court located at 312 N. Spring Street, Los
4 Angeles, California 90012, Plaintiff, Joseph Guevara, will and hereby does seek an Order:

- 5 1. approving the Class Action and PAGA Settlement (the “Agreement”) attached as Exhibit 1 to
6 the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all current and
8 former non-exempt or hourly employees of Defendant, Global Mail, Inc., that worked in the
9 State of California at any time from August 19, 2020, through December 31, 2021;
- 10 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
11 Diversity Law Group, P.C. and Dennis S. Hyun of Hyun Legal, APC as Class Counsel;
- 12 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
13 Settlement Amount of \$550,000.00, the amounts requested for the Settlement Administration
14 Costs, Class Counsel Award, Enhancement Payment, PAGA Payment, and the allocation of
15 payments to Class Members appear to be within the range of reasonableness for a settlement
16 that could ultimately be given final approval;
- 17 5. appointing Phoenix Settlement Administrators as the Administrator;
- 18 6. approving the distribution of the Court Approved Notice of Class Action Settlement and
19 Hearing Date for Final Court Approval attached to the Agreement; and
- 20 7. scheduling a Final Approval Hearing.

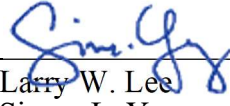
21 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
22 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
23 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and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

26 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
27 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
28

1 Yang, Dennis S. Hyun, and Joseph Guevara, all pleadings and papers on file herein, and any further oral
2 and documentary evidence as may be presented before or at the hearing of this matter.

3 DATED: July 8, 2022

DIVERSITY LAW GROUP, P.C.

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5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Dennis S, Hyun
9 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

This class action alleges Defendant, Global Mail, Inc., utilizes two common practices that result in Labor Code violations against Plaintiff, Joseph Guevara, and other non-exempt employees. First, Defendant's check in and check out procedures result in off-the-clock work. Second, Defendant independently fails to comply with wage statement requirements when paying "Surge Pay" wages without showing applicable hourly rates of pay and the corresponding number of hours worked. On those bases, Plaintiff sues both 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") for alleged Labor Code violations. Defendant denies the allegations.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Class Action and PAGA Settlement Agreement ("Agreement"), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$550,000.00 for the classwide settlement of claims from August 19, 2020, through December 31, 2021. Plaintiff and his counsel believe the settlement is an exceptional result for the Class; the negotiated gross settlement amount would require Defendant to pay approximately \$267.90 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 class certification could be denied, 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 or about March 25, 2021, Plaintiff notified Defendant and the Labor and Workforce Development Agency ("LWDA") that Defendant's check in procedures and wage statement practices violate the Labor Code. Declaration of Simon L. Yang ("Yang Decl.") ¶ 2. On that basis, on March 29,

2021, Plaintiff initiated this class action. *Id.* ¶ 2. On behalf of all current and former non-exempt employees in California since August 19, 2020,¹ the initial complaint alleged classwide claims for Defendant’s failure to pay for off-the-clock work and failure to provide lawful wage statements. *Id.* On May 28, 2021, Plaintiff filed a first amended complaint to also seek PAGA penalties as a proxy for the State of California. *Id.*

Specifically, the operative complaint alleges that Defendant utilizes two common practices that result in various Labor Code violations: *First*, Plaintiff alleges that Defendant does not pay for all hours worked. Unpaid wages and overtime result from uncompensated time imposed on Plaintiff and other employees whenever Plaintiff and other employees arrive at work due to Defendant’s check in procedures, which allegedly require Plaintiff and other employees to wait to be let into the workplace, sign in for security purposes, and go through security inspections. *Second*, Plaintiff alleges that Defendant fails to comply with wage statement requirements. In addition to failures to accurately show the applicable hours worked, total hours worked, and gross and net wages earned resulting from off-the-clock work, Defendant separately issues wage statements to employees earning “Surge Pay” that allegedly fail to show the applicable hourly rate of pay and corresponding number of hours worked for the wages.

Defendant’s counsel promptly contacted Plaintiff’s counsel to investigate Plaintiff’s allegations and to provide Plaintiff’s counsel with information regarding the alleged violations. Yang Decl. ¶ 3. The Parties engaged in a thorough study of the legal principles and facts applicable to the claims Plaintiff alleged and defenses Defendant might assert. *Id.* Defendant provided information related to the time period that Plaintiff’s allegations applied, the number of employees, and the number of wage statements they were issued, among other items. *Id.*

After approximately nine months of litigation, the Parties commenced settlement negotiations through a well-respected mediator, Steve Pearl. Yang Decl. ¶ 4. Defendant’s willingness to engage in informal discovery enabled Plaintiff to evaluate the full scope of potential liability. *Id.* Following the mediation, the Parties were ultimately able to agree to the current settlement in the Agreement. *Id.*

¹ On October 9, 2020, the Los Angeles Superior Court approved a class action settlement in *Mayca v. Global Mail, Inc.*, which released claims through August 18, 2020. Yang Decl. ¶ 2.

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class includes all current and former non-exempt or hourly employees of Defendant that worked in the State of California at any time during the Class Period. Agreement §§ 1.5, 1.12. The Class Period is from August 19, 2020, through December 31, 2021. *Id.* § 1.12. There are approximately 2,053 Class Members. *Id.* § 10. They worked approximately 25,492 pay periods. *Id.*

II. Settlement Payments

The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of \$550,000.00. Agreement § 1.24. From the Gross Settlement Amount, the Parties will request that the Court approve allocations for a PAGA Payment, Settlement Administration Costs, Class Counsel Award, and Enhancement Payment. *Id.* Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount (as well as the employees' share of the PAGA Payment) will be allocated to Class Members. *Id.* §§ 1.25, 1.30. *After* all requested payments from the Gross Settlement Amount, it is estimated that each Class Member, on average, would be allocated more than \$125. Yang Decl. ¶ 6.

III. Released Claims

Plaintiff is subject to a general release. Agreement § 7.1. Participating Class Members release claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. *Id.* § 7.2. As "Aggrieved Employees," Class Members release claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts contained in Plaintiff's March 25, 2021 notice to the LWDA and the Operative Complaint during the PAGA Period. *Id.* §§ 7.3, 7.4.²

LEGAL STANDARD

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

² The PAGA Period and Class Period (like "Aggrieved Employees" and "Class Members") are identically defined. Agreement §§ 1., 1.5, 1.12, 1.32.

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

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

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

4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement before any “adversary certification” may be approved if it is “fair, adequate and reasonable”).

DISCUSSION

I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

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

A trial court must determine and approve a class action settlement is fair to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*

1 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
2 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
3 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
4 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
5 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
6 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
7 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
8 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

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

21 Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage
22 and hour class 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. Declaration of Larry
24 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 7-11; Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ 3-6.
25 Each side has apprised the other of their respective factual contentions and legal theories, and each side
26 has considered the other’s contentions and theories. Defendant provided the numbers of individuals, pay
27 periods, and Surge Pay wage statements, among other things, relevant to Plaintiff’s allegations—
28 enabling Plaintiff to assess the full value of Class Members’ claims and further enabling negotiations to

1 take place between the Parties. Yang Decl. ¶¶ 4-5. As further discussed below, the settlement is the
2 result of extensive arm's length negotiations between the Parties and their counsel. *Id.*

3 **B. The Settlement Obtains an Excellent Result for Class Members.**

4 **1. The Settlement Amount Is Reasonable.**

5 Based on data provided before mediation, the Gross Settlement Amount of \$550,000.00 requires
6 Defendant to pay a gross amount of approximately \$267.90 per Class Member. This is an excellent
7 result for Class Members.

8 Based on an average workweek of four days per week and average hourly rate of \$18.78, an
9 additional one minute of pay for off-the-clock check-in procedures was estimated at mediation to result
10 in approximately \$54,544.63 in unpaid wages to Class Members under Section 1194³—and an equal
11 amount in liquidated damages under Section 1197.1. Lab. Code §§ 1194, 1197.1; Yang Decl. ¶ 6. For
12 former employees, Defendant is also potentially liable for waiting time penalties under Section 203.
13 Lab. Code § 203. Based on 1,069 formerly employed Class Members and an estimated average workday
14 of six hours, waiting time penalties would amount to \$3,613,647.60. *Id.*

15 For wage statement violations, Plaintiff contended that class claims under Section 226(e) result
16 in a \$50 penalty for the first non-compliant wage statement to each Class Member and a \$100 penalty
17 for each additional non-compliant wage statement to the Class Member, up to a maximum of \$4,000 per
18 class member. Lab. Code § 226(e). Based on 891 wage statements showing payment for Surge Pay
19 wages, wage statement penalties would amount to approximately \$89,100. Yang Decl. ¶ 6.

20 Ultimately, Plaintiff contended that Defendant would be liable to Class Members for
21 \$3,811,836.86 in class claims. At mediation, Plaintiff also argued that a \$100 penalty under PAGA for
22 each pay period would additionally impose up to \$2,178,300 in liability for a total potential liability of at
23 least \$5,990,136.86. Lab. Code § 2699(f); Yang Decl. ¶ 6.

24 Defendant contested the merits, asserted various defenses, denied it was liable for any damages
25 or penalties, and contested the extent of any liability. Yang Decl. ¶ 4. For example, Defendant contended
26 that PAGA penalties would be subject to discretionary reductions and that liability under Section 226(e)
27 would be subject to proof of injuries resulting from knowing and intentional violations. *Id.* As for
28

³ Except as otherwise noted, all "Section" references are to the Labor Code.

1 potential liability for off-the-clock work, Plaintiff expected that Defendant would further contend that
2 the bulk of such liability—approximately \$3,613,647.60 under Section 203—would be subject to
3 defenses based on Defendant’s good faith. *Id.*

4 While the Parties disagree on the application of the law to the facts, each Party recognized in
5 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
6 Gross Settlement Amount to which the Parties ultimately agreed at mediation was reasonable. Yang
7 Decl. ¶ 6. Ultimately, the Gross Settlement Amount secures \$550,000.00—an excellent result that
8 obtains approximately 14.43% of the potential class recovery of \$3,811,836.86. *Id.*

9 Numerous courts have held that gross settlement amounts of as little as 8% of a defendant’s
10 potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454,
11 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure was fair
12 and reasonable; “It is well-settled law that a cash settlement amounting to only a fraction of the potential
13 recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the
14 adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment.”);
15 *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that
16 class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was
17 fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014)
18 (acknowledging risks of continued litigation and granting preliminary approval of wage and hour class
19 action settlement obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012
20 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
21 approximately 15% of the potential recovery was fair and reasonable).

22 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
23 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
24 specific risks that class certification could be denied, liability could not be established at trial, or the
25 applicable law could change. Yang Decl. ¶ 7. The settlement for each participating Class Member is fair,
26 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
27 the costs of pursuing litigation. *Id.*

1 Class Members would not need to do anything to receive their share of settlement funds. This
2 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
3 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the
4 claims proposed to be settled and released, each Class Member has the right to object or to submit a
5 request for exclusion (i.e., opt out) from the settlement. Agreement §§ 9.5, 9.7.

6 **2. The Settlement Releases Are Appropriate.**

7 Because Plaintiff alleged targeted claims in the Action, any settlement releases also are
8 specifically tailored. As discussed above, Participating Class Members are subject only to a release of
9 claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated
10 in the Operative Complaint. Agreement § 7.2. Similarly tailored, as Aggrieved Employees, Class
11 Members release claims for PAGA penalties that were alleged, or reasonably could have been alleged,
12 based on the PAGA Period facts contained in Plaintiff's March 25, 2021 notice to the LWDA and the
13 Operative Complaint during the PAGA Period. *Id.* §§ 7.3, 7.4.

14 Moreover, the settlement releases apply to claims arising during the Class Period only.
15 Agreement §§ 7.2, 7.3, 7.4. The settlement releases are thus appropriate. *E.g., Carter v. City of Los*
16 *Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or
17 could have been raised in the suit—is common in class action settlements.”).

18 **3. The Class Notice Is Adequate.**

19 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
20 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
21 provide to the Administrator each Class Member's last known address and number of pay periods,
22 among other information (the “Class Data”), within 10 days of a Preliminary Approval Order.
23 Agreement § 4. No later than 14 days after receiving the Class Data, the Administrator would mail the
24 Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class
25 Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail (and only after
26 performing a search based on the National Change of Address Database for information to update and
27 correct for any known or identifiable address changes. *Id.* § 9.4.2. Any Class Notice returned to the
28 Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding

1 address affixed thereto. *Id.* § 9.4.3. If no forwarding address is provided, the Administrator would
2 promptly attempt to determine the correct address using a skip-trace search and then promptly send a
3 single re-mailing. *Id.*

4 The Class Notice accurately informs Class Members of the settlement and their rights. For
5 example, Class Members are informed of their rights to object or to opt out. The Class Notice is
6 adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the settlement. *E.g.*,
7 *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*,
8 550 F.2d 1173, 1177 (9th Cir. 1977)). Indeed, the Class Notice is based off of the Court’s model notice
9 for class action and PAGA settlements.

10 **C. The Requested Payments and Allocations Are Reasonable.**

11 The Agreement provides for a Gross Settlement Amount of \$550,000.00. Agreement § 1.24.
12 From the Gross Settlement Amount, attorneys’ fees will be no more than one-third of the Gross
13 Settlement Amount (or \$183,333.33) and litigation costs are not expected to exceed \$30,000.00. *Id.* §
14 3.2.2. The Enhancement Payment will be no more than \$25,000.00. *Id.* § 3.2.1. Settlement
15 Administration Costs are expected to be no more than \$16,000.00. *Id.* § 3.2.3. A PAGA Payment will be
16 \$50,000.00, which pursuant to statute would be split \$37,500.00 to the LWDA and \$12,500.00 to
17 Aggrieved Employees. *Id.* § 3.2.5.⁴

18 **1. Each Class Member, on Average, Would Be Allocated More than \$125.**

19 After deducting any approved payments for a Class Counsel Award, Enhancement Payment,
20 Settlement Administration Costs, and PAGA Payment from the Gross Settlement Amount, the entire
21 remainder would be allocated among Participating Class Members on a pro rata basis based on the
22 number of pay periods worked by each Participating Class Member. Agreement § 1.25; *see also* Class
23 Notice. These Individual Settlement Payments will be characterized 80% as penalties and interest and
24 20% as wages subject to an IRS Form W-2. *Id.* § 3.2.4.1. The entire remainder of PAGA Penalties after
25 payment to the LWDA also would be allocated among Aggrieved Employees on a pro rata basis based
26 on the number of pay periods worked by each Aggrieved Employee. *Id.* § 3.2.5.1. These Individual
27 PAGA Payments will be characterized entirely as penalties. *Id.* § 3.2.5.2.

28 ⁴ Plaintiff files this motion and also submits it to the LWDA via online submission. Yang Decl. ¶ 12.

1 It is expected that, on average, each Class Member would be allocated more than \$125 (*after* all
2 requested payments from the Gross Settlement Amount). Yang Decl. ¶ 6. The amount paid on average to
3 each Class Member may increase, depending on how many Class Members opt out of the class action
4 settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on
5 his or her number of relevant pay periods during the Class Period. *Id.* The principal for any uncashed
6 checks (upon the expiration date) would be transferred to the California Secretary of State Controller’s
7 Office—Office of Unclaimed Property Fund under the unclaimed property laws in the name of the Class
8 Member. Agreement § 6.2.3.

9 **2. The Requested Class Counsel Award Is Reasonable.**

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

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

27 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal
28 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.

Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the fund mimics the market and “is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: 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 one-third 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 Enhancement Payment Is Reasonable.

Proposed Class Representative Joseph Guevara requests an Enhancement Payment of \$25,000. Although the proposed enhancement is a significant sum, the Court retains the discretion to determine the appropriate enhancement. Plaintiff contends the request is quite reasonable in light of the general release that the Agreement requires of him but not of any other Class Member. Independently, the request is additionally appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Joseph Guevara (“Guevara Decl.”) ¶¶ 2-3.

As part of his duties as the Class Representative, Plaintiff met and conferred with Class Counsel on a number of occasions to discuss the case. Guevara Decl. ¶¶ 2-3. He provided all necessary documents to Class Counsel, made himself available to answer any questions during litigation, and ultimately provided all necessary information and evidence that resulted in this settlement. *Id.*

In addition to the invaluable services that Plaintiff provided, he also took a significant risk, both professionally and monetarily. Guevara Decl. ¶ 4. Because the alleged claims involve the payment of costs to the prevailing party, Plaintiff could have possibly faced paying Defendant’s costs had Defendant prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential

1 employers that may be less willing to hire an individual who has filed suit against a prior employer.
2 Plaintiff took this risk upon himself and the whole class benefited.

3 Class Members did not have to file individual lawsuits and bear the risks of payment of costs if
4 they did not prevail, nor did they have to face potential prejudice in future employment. Ultimately,
5 Plaintiff's efforts secured an exceptional result for the Class.

6 **4. The Settlement Administration Costs Are Reasonable.**

7 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
8 estimated Settlement Administration Costs not to exceed \$16,000.00 to send notices and administer the
9 settlement. Agreement § 3.2.3. The estimate for administering a settlement for approximately 2,000
10 Class Members is reasonable and should be approved.

11 **II. The Class Meets All Requirements for Certification.⁵**

12 For purposes of settlement approval, a detailed analysis of the elements required for class
13 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
14 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
15 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.
16 App. 4th at 240 (explaining there is no "ironclad requirement" to conduct an evidentiary hearing to
17 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when
18 considering whether to certify a settlement class, the court is not faced with the case management issues
19 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
20 App. 4th 836, 859 (2003) ("[I]t is well established that trial courts should use different standards to
21 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
22 lesser standard of scrutiny is used for settlement cases.") (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

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

25
26
27 ⁵ Defendant expressly reserves its objections and does not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

1 **A. The Class Is Ascertainable and Sufficiently Numerous.**

2 Class Members are identifiable from Defendant’s records. The class definition “is precise,
3 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
4 Indeed, there are approximately 2,053 Class Members. Agreement § 10. Numerosity thus also is easily
5 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
6 number is required as a matter of law for the maintenance of a class action” and citing examples in
7 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
8 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

9 **B. The Class Establishes a Community of Interest.**

10 “The community of interest requirement involves three factors: ‘(1) predominant common
11 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
12 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
13 435 (2000).

14 **1. Plaintiff’s Claims Are Typical of Those of the Class.**

15 Plaintiff alleges that as a matter of corporate policy, practice, or procedure fails to pay for all
16 hours worked and fails to furnish employees with compliant wage statements. With respect to typicality,
17 Plaintiff—exactly like other members of the Class—was subject to Defendant’s check-in procedures and
18 subject to Defendant’s standard wage statement format. Guevara Decl. ¶ 2.

19 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

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

1 impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery*
2 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

3 It is well settled that security check claims are aptly suited for class certification. *See, e.g., Greer*
4 *v. Dick's Sporting Goods, Inc.*, 2017 U.S. Dist. LEXIS 57165, at *4 (E.D. Cal. Apr. 12, 2017)
5 (certifying a "security check class" of "all non-exempt or hourly paid employees who worked for
6 Defendant in its DSG retail stores"); *Rodriguez v. Nike Retail Servs.*, 2016 U.S. Dist. LEXIS 110961, at
7 *24 (N.D. Cal. Aug. 19, 2016) (granting motion for class certification; "Nike's arguments that
8 employees are not suffered or permitted to work when they have clocked out and are waiting for an exit
9 inspection, and that this time is not compensable as work, are unpersuasive"); *Miranda v. Coach, Inc.*,
10 No. 14-CV-02031-JD, 2015 WL 1788955, at *2 (N.D. Cal. Apr. 17, 2015) (holding that the "plaintiffs'
11 claims under the California Labor Code are viable and will go forward"; the plaintiffs alleged that all
12 employees were required to undergo security checks before leaving the store).

13 Likewise, courts have repeatedly held that Labor Code § 226(a) requires an employer to specify
14 all applicable hourly rates and number of hours worked on a wage statement. *See, e.g., Soto v. Motel 6*
15 *Operating, L.P.*, 4 Cal. App. 5th 385, 392-93 (2016); *McKenzie v. Federal Exp. Corp.*, 765 F. Supp. 2d
16 1222, 1231 (C.D. Cal. 2011) (granting plaintiff's motion for summary judgment on Labor Code § 226(a)
17 claim; holding that the employer's failure to list all applicable hourly rates and hours worked at the rate
18 violated Section 226(a), as a matter of law); *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL
19 2839417, *5 (S.D. Cal. 2010) (in granting plaintiff's motion for summary judgment on Labor Code §
20 226(a) claim, court noted that "[i]t is undisputed that GAT's paychecks do not indicate the applicable
21 hourly rate of pay for the employee's regular rate, overtime rate, or double-time rate of pay. Plaintiffs'
22 paychecks included only the total number of hours worked and the total amount paid. Therefore,
23 Plaintiffs had to perform mathematical calculations to determine if their paychecks were accurate. The
24 failure to provide this information violates Section 226(a).") (citing *Cicairos v. Summit Logistics, Inc.*,
25 133 Cal. App. 4th 949 (2005) ("If it is left to the employee to add up the daily hours shown on the time
26 cards or other records so that the employee must perform arithmetic computations to determine the total
27 hours worked during the pay period, the requirements of section 226 would not be met.")).

1 Thus, Plaintiff submits that predominant questions of fact and law exist as to whether
2 Defendant's security check and wage statement claims are lawful.

3 **3. Plaintiff and His Counsel Adequately Represent the Class.**

4 With respect to adequate representation, Plaintiff does not have any interests adverse to the
5 Class, and no such issues been raised or presented. Guevara Decl. ¶ 3. Plaintiff has taken all necessary
6 steps to represent the interests of the Class, including by providing information and documents to Class
7 Counsel, making himself available to discuss the claims, providing wage statements and documents, and
8 answering any questions. *Id.* For such reasons, Plaintiff has adequately represented the Class Members
9 and will continue to do so.

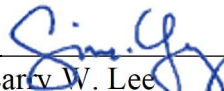
10 From the inception of the case, Class Counsel has zealously represented the interests of the
11 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
12 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
13 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
14 Yang Decl. ¶¶ 7-11; Hyun Decl. ¶¶ 3-6.

15 **CONCLUSION**

16 The proposed settlement was the result of informed, arm's length negotiations conducted by
17 counsel experienced in wage and hour class action litigation. Its terms appear to be fair, adequate, and
18 reasonable, and there is no reason to believe the proposal is outside the range of reasonableness for such
19 a settlement. For the benefit of the Class, Plaintiff respectfully requests that the Court (i) grant
20 preliminary approval of the settlement, (ii) approve and authorize the mailing of the proposed Class
21 Notice, and (iii) schedule a Final Approval Hearing.

22 DATED: July 8, 2022

DIVERSITY LAW GROUP, P.C.

23 By: 
24 Larry W. Lee
25 Simon L. Yang
26 Dennis S. Hyun
27 Attorneys for Plaintiff
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 July 8, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
- 12 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **4. DECLARATION OF DENNIS S. HYUN IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **5. DECLARATION OF JOSEPH GUEVARA IN SUPPORT OF**
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT
- 16 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT

17 on the interested parties in this action as follows:

18 Christopher J. Boman
19 cboman@fisherphillips.com
20 Shaun J. Voigt
21 svoigt@fisherphillips.com
22 Fisher & Phillips LLP
23 444 S. Flower Street, Suite 1500
24 Los Angeles, CA 90071
25 *Attorney for Defendant Global Mail, Inc.*

X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a court order I caused the above-entitled document(s) to be served through Case Anywhere at the website www.caseanywhere.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 8, 2022, at Los Angeles, California.


Erika Mejia