

David J. Lee, Esq., State Bar No. 296294
david@davidjleelaw.com
DAVID LEE LAW, APC
515 S. Flower Street, Suite 1900
Los Angeles, California 90071
T: (213) 236-3536
F: (866) 658-4722

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

Attorneys for Plaintiff and the Class

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

KALUM VAUGHNS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BERRY GLOBAL, INC., a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVSB2129167

[Hon. David Cohn, Department S-26]

**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; David J. Lee;
Declaration of Kalum Vaughns; [Proposed]
Order]*

Date: May 10, 2023
Time: 8:30 a.m.
Department: S-26

Complaint Filed: November 24, 2021

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

2 **PLEASE TAKE NOTICE** that on May 10, 2023, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department S26 of the above-entitled court located at 247 West Third Street,
4 San Bernardino, California 92415, Plaintiff, Kalum Vaughns, will and hereby does move for an Order:

- 5 1. approving the Stipulation re: Settlement of Class Action (the “Agreement”) attached as
6 Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
 - 7 2. conditionally certifying the following Class for settlement purposes only: any and all persons
8 who are or have been employed by Defendant, Berry Global, Inc., in non-exempt positions in
9 the state of California from April 2, 2018, through September 30, 2022 (the “Class Period”),
10 except for those who worked only “Excluded Workweeks”—i.e., workweeks that were
11 already subject to settlement in (i) *Marco Rendon v. AEP Industries, Inc., et al.*, San
12 Bernardino County Superior Court Case No. CIVDS1621981, prior to May 8, 2018, (ii) *Huy*
13 *Trinh, et al. v. Berry Plastics Corporation*, Orange County Superior Court Case No. 30-
14 2015-00809744-CUOE-CXC, prior to April 1, 2018, and (iii) *Gonsales v. Berry Global*
15 *Films, LLC*, San Bernardino Superior Court Case No. CIVDS1928987, prior to December
16 20, 2020;
 - 17 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
18 Diversity Law Group, P.C. and David J. Lee of David Lee Law, APC as Class Counsel;
 - 19 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
20 Settlement Amount in the amount of \$1,665,000.00, the amounts requested for the Settlement
21 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
22 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
23 the range of reasonableness for a settlement that could ultimately be given final approval;
 - 24 5. appointing Phoenix Settlement Administrators as the Administrator;
 - 25 6. approving the distribution of the Notice to Class Members re: Pendency of a Class Action
26 and Notice of Hearing on Proposed Settlement attached as Exhibit A to the Agreement; and
27 7. scheduling a Final Approval Hearing.
- 28

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

6 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
7 and proposed Notice to Class Members re: Pendency of a Class Action and Notice of Hearing on
8 Proposed Settlement, the supporting Declarations of Larry W. Lee, Simon L. Yang, David J. Lee, and
9 Kalum Vaughns, all pleadings and papers on file herein, and any further oral and documentary evidence
10 as may be presented before or at the hearing of this matter.

11 DATED: February 24, 2023

DIVERSITY LAW GROUP, P.C.

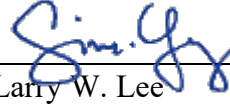
12 By: 
13 Larry W. Lee
14 Simon L. Yang
15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

State Cases

<i>Carter v. City of Los Angeles</i> , 224 Cal. App. 4th 808 (2014)	8
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	12
<i>City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	11
<i>Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America</i> , 141 Cal. App. 4th 46 (2006)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	4, 9, 10
<i>Global Mins. & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	9
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	12
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	10
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981)	10
<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	11
<i>Sevidal v. Target Corp.</i> , 189 Cal. App. 4th 905 (2010)	10
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	11
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	4, 9, 11

Federal Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 620 (1997).....	9
<i>Bellinghausen v. Tractor Supply Co.</i> , 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015).....	6
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	11
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	12
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	12
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990).....	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	10
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	5
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980).....	4
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	6
<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	4
<i>National Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	5
<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989)	4
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	5
<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	5
<i>Van Ba Ma v. Covidien Holding Inc.</i> , 2014 WL 2472316 (C.D. Cal. May 30, 2014)	6
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	11, 12

SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Kalum Vaughns, sues Defendant, Berry Global, Inc., for alleged violations of the California Labor Code. The operative complaint alleges claims under Labor Code sections 201-204, 218, 221-224, 226(a), 226.7, 246, 510, 512, 1174, 1182.12, 1197, 1198, 1198.5, and 2698 et seq., as well as Business and Professions Code sections 17200 et seq.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Stipulation re: Settlement of Class Action (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$1,665,000.00 for the classwide settlement of claims through September 30, 2022. Plaintiff and his counsel believe the settlement is an exceptional result for the Class; based on data available at mediation, **it is estimated that Defendant will have to pay nearly \$1,300, on average, per Class Member.** Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and his counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that 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 November 24, 2021, Plaintiff initiated this class action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. Upon the initiation of the Action, Plaintiff and Defendant met and conferred about the alleged claims. *Id.* Defendant also provided Plaintiff with information about various defenses, including those based on prior class actions in *Marco Rendon v. AEP Industries, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1621981; *Huy Trinh, et al. v. Berry Plastics Corporation*, Orange County Superior Court Case No. 30-2015-00809744-CUOE-CXC; *Gonsales v.*

Berry Global Films, LLC, San Bernardino Superior Court Case No. CIVDS1928987; and *Miller v. Berry Global, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-6547. *Id.*

Class Counsel continued investigating the alleged claims and also analyzed any defenses raised by Defendant. Yang Decl. ¶ 3. The Parties continued to exchange information and documentation pursuant to informal methods to assist them in exploring the possibility of a mediated resolution. *Id.* Defendants provided the relevant numbers of individuals, workweeks, shifts of varying lengths, and premiums paid, for example, among other things. *Id.* Defendant’s willingness to provide informal discovery on a classwide basis enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

On August 24, 2022, the Parties attended mediation with Tripper Ortman, an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue. Yang Decl. ¶ 4. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to negotiate the settlement terms in the Stipulation re: Settlement of Class Action. *Id.* Ex. 1 (the “Agreement”).

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class of “Class Members” includes any and all persons who are or have been employed by Defendant, Berry Global, Inc., in non-exempt positions in the state of California from April 2, 2018, through September 30, 2022 (the “Class Period”), except for those who worked only “Excluded Workweeks”—i.e., workweeks that were already subject to settlement in (i) *Marco Rendon v. AEP Industries, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1621981, prior to May 8, 2018, (ii) *Huy Trinh, et al. v. Berry Plastics Corporation*, Orange County Superior Court Case No. 30-2015-00809744-CUOE-CXC, prior to April 1, 2018, and (iii) *Gonsales v. Berry Global Films, LLC*, San Bernardino Superior Court Case No. CIVDS1928987, prior to December 20, 2020. Agreement §§ 1.4, 1.6, 1.11. The Settlement Period or Class Period is from April 2, 2018, through September 30, 2022. *Id.* § 1.7. Based on data available at mediation, it was estimated that there would be approximately 1,238 Class Members. Yang Decl. ¶ 5.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$1,665,000.00. Agreement § 1.13. From the Gross Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Settlement Administration Costs, Attorneys’ Fees and Costs Award, and Class Representative Award. *Id.* § 1.18. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* §§ 1.13. *After* all requested payments from the Gross Settlement Amount, it is expected that, on average, each Class Member would be allocated \$764.22 in settlement payments. Yang Decl. ¶ 7.

III. Released Claims

Only Plaintiff is subject to a general release. Agreement § 2.7.2. Settlement Class Members release only any and all claims that were or could have been asserted in the Lawsuit based on the facts alleged therein. *Id.* §§ 1.27, 2.7.1.

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 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

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

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

6 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
7 tentative settlement proposal ... may be set out in conditional orders granting tentative approval
8 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.

9 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
10 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
11 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
12 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
13 and reasonable”).

14 DISCUSSION

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

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

17 A trial court must determine and approve a class action settlement is fair to “prevent fraud,
18 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*
19 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
20 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
21 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
22 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
23 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
24 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act
25 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is
26 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

27 While the recommendations of counsel proposing the settlement are not conclusive, the Court
28 can properly take them into account, particularly where, as here, they have been involved in thorough

1 investigation, are experienced with this type of litigation, and agreed to a resolution through arm's
2 length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*,
3 221 F.R.D. at 528 (“So long as the integrity of the arm’s length negotiation process is preserved,
4 however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great
5 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts
6 of the underlying litigation.”) (citations omitted). In such circumstances, as here, courts do not substitute
7 their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
8 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990);
9 *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp.
10 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D.
11 Pa. 1978).

12 Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage
13 and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience
14 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
15 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of David J. Lee ¶¶ 5-8. Each side has
16 apprised the other of their respective factual contentions and legal theories, and each side has considered
17 the other’s contentions and theories. Defendant provided the relevant numbers of individuals,
18 workweeks, shifts of varying lengths, and premiums paid, for example, among other things—enabling
19 Plaintiff to assess the full value of Class Members’ claims and further enabling negotiations to take
20 place between the Parties. Yang Decl. ¶ 3. As further discussed below, the settlement is the result of
21 extensive arm’s length negotiations between the Parties and their counsel. *Id.* ¶ 9.

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

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

24 The Agreement requires Defendant to pay \$1,665,000.00—or approximately \$1,297.74, on
25 average, per Class Member. Yang Decl. ¶ 5. Plaintiff contends that this is an excellent result for Class
26 Members. Based on Plaintiff’s investigation, while some allegations had more merit than others,
27 Plaintiff contended that Defendant’s practices would result in class recoveries for failures to pay all
28

1 wages owed, failures to timely pay all owing wages, and failures to provide accurate wage statements.
2 *Id.*

3 Although actual underpayments of wages, overtime, missed meal and rest break premiums, sick
4 pay amounted to comparatively smaller sums, Plaintiff argued that underpaid wages resulted in Labor
5 Code section 203 penalties of up to 30 days wages. Lab. Code § 203.¹ With respect to wage statement
6 violations, Plaintiff contended that Defendant were liable for up to \$100 in penalties per wage statement
7 under Section 226(e)—and an additional \$250 in PAGA penalties per wage statement under Section
8 226.3. Also under PAGA, Plaintiff contended that Defendant also would be liable for an additional \$100
9 per pay period under either Sections 210 and 2699(f).

10 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
11 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with
12 respect to wage statement liability, Defendant contended that (i) liability under Section 226(e) would be
13 subject to additional defenses requiring proof of injuries resulting from knowing and intentional
14 violations. *Id.* Likewise, with respect to PAGA liability, Defendant contended that PAGA penalties
15 would be subject to discretionary reductions and that wage statement violations in any event would
16 permit a maximum recovery of \$100 per wage statement only. *Id.* With respect to liability from
17 underpaid wages, Defendant contended that they would not be subject to Section 203 penalties, based on
18 a good faith defense. *Id.*²

19 While the Parties disagree on the application of the law to the facts, each Party recognized in
20 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
21 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
22 Ultimately, based on data at mediation, Plaintiff argued that a representative trial would result in total
23 potential class recovery of at least \$6,495,229.72—which included \$2,722,079.72 in penalties under
24 Section 203, \$419,100.00 in penalties under Section 226(e), \$1,047,750.00 in penalties under Section
25 226.3, and \$2,306,300.00 in penalties under Section 210 or 2699(f). *Id.* Plaintiff contends that the Gross
26

27 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

28 ² With respect to meal and rest break violations, Defendant also contended that (i) there were no violations, (ii) if there were, they were individualized issues not amenable to a representative proceeding, and (iii) employees in any event were already paid premiums. Yang Decl. ¶ 6.

1 Settlement Amount of \$1,665,000.00—or 25.63% of the total potential recovery—is an excellent result.
2 *Id.*

3 Numerous courts have held that gross settlement amounts in these ranges of a defendant’s
4 potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454,
5 459 (9th Cir. 2000) (“It is well-settled law that a cash settlement amounting to only a fraction of the
6 potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the
7 adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment.”);
8 *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that
9 class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was
10 fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014)
11 (acknowledging risks of continued litigation and granting preliminary approval of wage and hour class
12 action settlement obtaining 9.1% of projected damages).

13 Although Plaintiff and his counsel are confident that litigation of the claims would result in a
14 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
15 specific risks that class certification could be denied, liability could not be established at trial, or the
16 applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair,
17 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
18 the costs of pursuing litigation. *Id.*

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

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

25 As discussed above, only Plaintiff is subject to a general release. Agreement § 2.7.2. Settlement
26 Class Members are only subject to a release of any and all claims that were or could have been asserted
27 in the Lawsuit based on the facts alleged therein. *Id.* §§ 1.27, 2.7.2. Plaintiff alleged limited claims based
28 on discovery in the Action, and any settlement releases also are specifically tailored to the facts alleged

1 and investigated. The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224
2 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been
3 raised in the suit—is common in class action settlements.”).

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

5 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
6 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
7 provide to the Administrator each Class Member’s last known address, among other information (the
8 “Class Data”), within 21 days of a Preliminary Approval Order. Agreement § 2.4.3. Within 15 days of
9 receiving the Class Data, the Administrator would mail the Notice to Class Members re: Pendency of a
10 Class Action and Notice of Hearing on Proposed Settlement (“Class Notice”) to each Class Member to
11 provide notice of settlement via First Class U.S. Mail, using the last known address for each Class
12 Member, based on the Class List, or an updated address based on the National Change of Address
13 Database. *Id.* §§ 2.4.1, 2.4.4. Any Class Notice returned to the Administrator as undeliverable would be
14 sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* 2.4.6.

15 The Class Notice accurately informs Class Members of the settlement and their rights.
16 Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The
17 Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the
18 settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v.*
19 *Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

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

21 The Agreement provides for a Gross Settlement Amount of \$1,665,000.00. Agreement § 1.13.
22 From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement
23 Amount (or \$555,000.00) and litigation costs will not exceed \$30,000.00. *Id.* The Class Representative
24 Award will be no more than \$10,000.00. *Id.* Settlement Administration Costs will be no more than
25 \$14,500.00. Yang Decl. ¶ 7. The PAGA Penalty Fund will be \$100,000.00, and pursuant to statute, 75%
26 of the PAGA Penalty Fund (or \$75,000.00) would constitute the LWDA Payment. Agreement § 1.13.³

27
28 ³ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 **1. Each Class Member, on Average, Would Receive More than \$750.**

2 It is expected that, on average, each Class Member would be allocated approximately \$764.22 in
3 Settlement Payments (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7.
4 The amount paid on average to each Class Member may increase, depending on how many Class
5 Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may
6 increase or decrease depending on his or her number of relevant pay periods during the Class Period. *Id.*
7 After deducting any approved payments for an Attorneys' Fees and Costs Award, Class Representative
8 Award, Settlement Administration Costs, and LWDA Payment from the Gross Settlement Amount, the
9 entire remainder would be allocated among Settlement Class Members.

10 The Net Settlement Amount generally shall be paid pro rata to each Settlement Class Member
11 based on the number of weeks worked by the Settlement Class Member as a percentage of the weeks
12 worked by all Class Members during the Class Period. Agreement §§ 1.35, 1.36. 15% of these
13 allocations shall be classified for tax reporting purposes as wages. *Id.* § 2.2.1.

14 None of the settlement funds will revert to Defendant. Agreement § 1.13. The principal for any
15 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
16 Fund in the name of the Class Member. *Id.* § 2.6.2.

17 **2. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

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

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

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

Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal 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 33⅓% of the Gross Settlement Amount. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs.

3. The Proposed Class Representative Award Is Reasonable.

Plaintiff and proposed Class Representative Kalum Vaughns requests a modest Class Representative Award of \$10,000.00. The request is reasonable in light of the general release that the Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Kalum Vaughns (“Vaughns Decl.”) ¶¶ 2-3.

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

6 In addition to the invaluable services that Plaintiff provided, Plaintiff also took a significant risk,
7 both professionally and monetarily. Vaughns Decl. ¶ 4. Because the alleged claims involve the payment
8 of costs to the prevailing party, Plaintiff could have possibly faced paying Defendant's costs had
9 Defendant prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other
10 potential employers that may be less willing to hire an individual who has filed suit against a prior
11 employer. Plaintiff took this risk upon himself and the whole class benefited. Class Members did not
12 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
13 have to face potential prejudice in future employment.

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

15 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
16 quoted Settlement Administration Costs not to exceed \$14,500.00 to send notices and administer the
17 settlement. Yang Decl. ¶ 7. The Settlement Administration Costs are reasonable and should be approved.

18 **II. The Class Meets All Requirements for Certification.⁴**

19 For purposes of settlement approval, a detailed analysis of the elements required for class
20 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
21 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
22 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.
23 App. 4th at 240 (explaining there is no "ironclad requirement" to conduct an evidentiary hearing to
24 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when
25 considering whether to certify a settlement class, the court is not faced with the case management issues
26

27 ⁴ 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 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
2 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to
3 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
4 lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

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

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

8 Class Members are identifiable from Defendant’s records. The class definition “is precise,
9 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
10 Indeed, there are approximately 1,238 Class Members. Yang Decl. ¶ 5. Numerosity thus is sufficiently
11 established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
12 number is required as a matter of law for the maintenance of a class action” and citing examples in
13 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
14 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

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

16 “The community of interest requirement involves three factors: ‘(1) predominant common
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
18 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
19 435 (2000).

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

21 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
22 failed to pay all wages, underpaid various wages based on Defendant’s failures to pay the regular rate of
23 pay, failed to provide meal and rest breaks, and failed to furnish lawful wage statements, among other
24 violations. With respect to typicality, Plaintiff—exactly like other members of the Class—was
25 compensated based on Defendant’s common payroll practices, and worked under Defendant’s common
26 pay and break practices. Vaughns Decl. ¶ 2.

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

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

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

15 With respect to adequate representation, Plaintiff does not have any interests adverse to the
16 Class, and no such issues have been raised or presented. Vaughns Decl. ¶ 3. Plaintiff has taken all
17 necessary steps to represent the interests of the Class, including by providing information and
18 documents to Class Counsel, making himself available to discuss the claims, providing wage statements
19 that he was issued, and answering questions about how he was paid or what his wage statements show or
20 meant. *Id.* Plaintiff understands that he is responsible to the Class with respect to trying the case,
21 appearing in court, and working with Class Counsel. *Id.* He is willing to act as a fiduciary for the Class
22 and remains willing to devote his time to this lawsuit for the benefit of the Class. *Id.* For such reasons,
23 Plaintiff has adequately represented the Class Members.

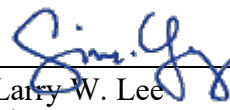
24 From the inception of the case, Class Counsel has zealously represented the interests of the
25 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
26 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
27 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
28 Yang Decl. ¶¶ 9-13; Declaration of David J. Lee ¶¶ 5-8.

1 **CONCLUSION**

2 The proposed settlement would result in substantial monetary benefits to class members. It was
3 the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour
4 class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to
5 believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
6 benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the
7 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
8 Approval Hearing.

9 DATED: February 24, 2023

DIVERSITY LAW GROUP, P.C.

10 By: 
11 Larry W. Lee
12 Simon L. Yang
13 Attorneys for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28