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 10 **situated current and former employees**

11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**

13 **ANGELA FLORES, individually and on behalf**
 14 **of other similarly situated current and former**
 15 **employees,**

16 **Plaintiff,**

17 **v.**

18 **DART CONTAINER CORPORATION, a**
 19 **Nevada corporation; DART CONTAINER**
 20 **CORPORATION OF CALIFORNIA, a**
 21 **Michigan corporation; and DOES 1-100,**
 22 **inclusive,**

23 **Defendants.**

Case No.: 2:19-cv-00083-WBS-JDP

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

Date: January 11, 2021
 Time: 1:30 p.m.
 Dept.: Courtroom 5, 14th Floor
 Judge: Senior United States District Judge
 William B. Shubb

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1 **I. INTRODUCTION**

2 Plaintiff Angela Flores (“Flores”) seeks preliminary approval of the Parties’ Settlement¹ which
3 will provide a Maximum Settlement Amount of \$411,000 (“MSA”) to more than 500 current and
4 former non-exempt employees of Dart Container Corporation of California (“Dart CA”) and Dart
5 Container Corporation (“Dart”) (collectively “Defendants”). Because of the narrow legal and factual
6 bases of the claims advanced in this action, and because of a prior overlapping class action, *Alvarado v.*
7 *Dart Container Corporation of California*, Riverside County Superior Court Case No. RIC1211707
8 (the “*Alvarado* Class Action”)², the Settlement implicates claims for three distinct and narrow groups:

- 9 - All current and former non-exempt California employees of Defendants who were eligible
10 for an used paid sick leave during a workweek when he/she also earned shift differentials,
11 non-discretionary bonuses, commissions, or other remuneration between January 11, 2015
12 and November 30, 2020 (the “**Sick Pay Class**”);
- 13 - All Sick Pay Class Members who separated from employment at any time between January
14 11, 2016 and November 30, 2020 and who did not participate in the class action settlement
15 in the *Alvarado* Class Action (the “**Former Employee Sub-Class**”); and
- 16 - All current and former hourly, non-exempt California employees of Defendants who
17 received a wage statement between January 11, 2018 and November 30, 2020 and 1)
18 worked at least one shift during which he/she both worked overtime and earned a shift
19 differential, and 2) did not participate in the class action settlement in the *Alvarado* Class
20 Action (the “**Non-Exempt Wage Statement Class**”)

21 The NSA to be distributed to Class Members, after the deduction of Settlement Administrator
22 costs (\$8,850), payment to the LWDA (\$11,250), the Service Payment to Flores (\$2,500), and Class
23 Counsel’s attorney’s fees and costs (\$137,000 and \$7,500), is \$243,900. SA ¶ 16. This will be
24 allocated \$25,000 to the Sick Pay Class, \$109,450 to the Former Employee Sub-Class, and \$109,450 to
25

26 ¹ A copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Settlement” or “SA”) is
27 attached as **Exhibit A** to the Declaration of Jenny D. Baysinger in Support of Plaintiff’s Motion for Preliminary Approval of
28 Class Action Settlement (“JDB Dec.”) filed concurrently herewith. All capitalized terms shall have the same meanings
given those terms in the Settlement.

² A settlement was reached in the *Alvarado* Class Action which was preliminarily approved by the Riverside County
Superior Court on August 5, 2020. **Exhibit 1** to Request for Judicial Notice (“RJN”) filed concurrently herewith.

1 the Non-Exempt Wage Statement Class. SA ¶ 32. The Settlement proceeds will be 1) distributed on a
2 pro-rata basis to Non-Exempt Wage Statement and Sick Pay Class Members based on total workweeks
3 worked within the respective class period, and 2) divided equally amongst Former Employee Sub-Class
4 Members. SA ¶ 32(i)-(iii). Each Non-Exempt Wage Statement Class Member is expected to receive
5 \$258.74, each Former Employee Sub-Class Member is expected to receive \$835.49, and each Sick Pay
6 Class Member is expected to receive \$49.80—an amount that exceeds the actual wage loss believed to
7 have been suffered because of sick pay underpayments. JDB Dec. ¶¶ 45, 62. In addition to the
8 monetary recovery, this class action motivated Defendants to modify the format of wage statements and
9 re-tool how redeemed paid sick leave is calculated and paid to their California employees. SA ¶ 11.

10 Flores and Defendants negotiated the Settlement at arm’s length with the assistance of
11 experienced wage and hour mediator Kim Deck, Esq. during a full-day mediation, after engaging in
12 both formal and informal discovery and significant motion practice relating to the scope of the Class’
13 available claims. The Settlement provides relief that is fair, adequate, and reasonable in light of the
14 risks, costs, and delays inherent in litigation, particularly considering the difficulties and challenges
15 facing plaintiffs in wage and hour litigation, and the narrow scope of the claims advanced. Through
16 this Settlement, Class Members will receive cognizable, timely, and guaranteed monetary benefit
17 without having to bear the risk of class certification being denied or of Defendants prevailing at trial.
18 For these and other reasons, the Settlement satisfies all criteria for provisional class certification, is in
19 the collective best interest of the Class Members and should be preliminarily approved.

20 **II. SUMMARY OF THE CASE**

21 **A. Brief Procedural History and The Current Class Claims**

22 On January 11, 2019, Flores the initial Class Action Complaint for Damages in this court. Dkt.
23 1. Initially, only a class claim for failure to furnish accurate wage statements, a class claim for unfair
24 business practices, and a claim to assess and collect civil penalties pursuant to the PAGA were asserted.
25 *Id.* Thereafter, the Parties exchanged required initial disclosures and engaged in formal written
26 discovery, including the provision and exchange of policy documents. JDB Dec. ¶¶ 16-17, 27. After
27 reviewing the documents provided, Flores identified an additional potential widespread problem,
28 namely a failure to compensate employees for redeemed sick leave at the requisite “regular rate of

1 pay.” Cal. Lab. Code § 246(1)(1)-(2); JDB Dec. ¶¶ 18-19. Flores sought, and was granted, leave to file
2 a First Amended Class Action Complaint (the “FAC”), which was lodged March 12, 2020. Dkt. 22-23.
3 Defendants moved to dismiss the newly added claims in the FAC, which the Court granted in part and
4 denied in part. Dkt. 31. Presently, the operative claims in the FAC are 1) failure to furnish accurate
5 wage statements, 2) failure to pay all wages due and owing on separation, 3) unfair business practices
6 based on failure to properly calculate and pay sick leave, and 4) a claim to assess and collect civil
7 penalties pursuant to the PAGA. Dkt. 23, 31.

8 **1. Classes and Subclasses**

9 Plaintiff negotiated the Settlement on behalf of, and seeks to represent, two distinct classes; the
10 Sick Pay Class and the Non-Exempt Wage Statement Class, and one (1) subclass of the Sick Pay Class,
11 the Former Employee Sub-Class. SA ¶¶ 1.16, 1.20, 1.37, 32. There are approximately 423 Non-
12 Exempt Wage Statement Class Members, 502 Sick Pay Class Members, and 131 Former Employee
13 Sub-Class Members. SA ¶ 12.a. Flores and Class Counsel negotiated an escalator clause to protect
14 Class Members such that if the number of Class Members in any respective class increases by more
15 than 5%, the MSA will increase by a proportional amount. SA ¶ 17.

16 **B. Plaintiff’s Individual FEHA Case**

17 In addition to this case, Plaintiff filed a separate lawsuit against Defendants in San Joaquin
18 County Superior Court case no. STK-CV-UOE-2019-6564 (the “Individual FEHA Case”) asserting
19 individual claims for alleged sexual harassment, retaliation, and failure to prevent
20 harassment/retaliation. See **Exhibit 2** to RJN. During the mediation, Flores separately negotiated and
21 resolved the Individual FEHA Case in exchange for a payment separate from the MSA. SA ¶ 1.17;
22 JDB Dec. ¶¶ 12, 35, 38, 79; Declaration of Angela Flores (“Flores Dec.”) at ¶¶ 10-11. The Class
23 Notice informs Class Members about the existence of Flores’ individual settlement. SA, Exh. 1. ¶ 4.F.

24 **C. Other Related Cases**

25 There are two (2) other pending cases with class claims that potentially overlap the instant case
26 to some degree; the *Alvarado* Class Action and a class action titled *Miguel Prado v. Dart Container*
27 *Corporation of Cal., et al.* pending in Santa Clara County Superior Court case no. 18CV336217 (the
28 “*Prado* Class Action”). The *Alvarado* Class Action was recently settled and participants in that

1 settlement are expressly excluded from the SA in connection with the wage statement and waiting time
2 penalty claims as those claims potentially overlap. SA ¶¶ 1.15, 1.20. The Class Notice specifically
3 informs Class Members about the existence of the *Prado* Class Action and the fact some of the claims
4 may overlap with claims being resolved by the SA and thus some claims in the *Prado* Class Action
5 may be eliminated or otherwise affected by this Settlement. SA Exh. 1, ¶ 2.

6 **D. Defendants Vigorously Deny Plaintiff’s Allegations**

7 Defendants vigorously deny Plaintiff’s allegations in their entirety, contend they complied with
8 the law, and assert numerous affirmative defenses. Specifically, Defendants contend they properly
9 calculated the redeemed sick leave wages of their California non-exempt employees. Perhaps more
10 importantly, Defendants contend any technical mistakes in calculating redeemed sick leave were made
11 based on a good faith misinterpretation of the law and thus were not sufficiently willful to justify the
12 imposition of waiting time penalties under Labor Code section 203. JDB Dec. ¶¶ 56, 60. In addition,
13 Defendants challenged (and were expected to engage in motion practice to defeat) Flores’ standing to
14 bring claims on behalf of the Non-Exempt Wage Statement Class based on the contention the technical
15 failure to identify “total hours worked” as its own wage statement line item lacks any “real world
16 consequence” and Plaintiff suffered no “injury-in-fact” as a result. See *Spokeo v. Robins*, 136 S.Ct.
17 1540, 1543-1544 (2016); JDB Dec. ¶¶ 54, 59. Defendants also contend the wage statements technically
18 comply with Labor Code section 226(a)(2) because the number identified as “shift prem” happens to
19 (almost always) coincide with the total number of hours. JDB Dec. ¶¶ 61-62. Defendants also intended
20 to contest class certification and seek summary adjudication which, if successful, could have
21 eviscerated Plaintiff’s claims and significantly reduced any possible recovery for the Class.

22 **E. Identifying the Claims, Marshalling the Evidence, Creating a Damages Model, and**
23 **Developing a Strategy for Mediation**

24 Through independent inquiry, research, and informal discovery, Class Counsel thoroughly and
25 diligently investigated and pursued the Class Claims. This process has included, but not been limited
26 to, (1) obtaining and reviewing Plaintiff’s personnel file, payroll records, and time records; (2)
27 researching Defendants, their relationship organization, the location and size of Dart’s facilities and
28 affiliated entities; (3) reviewing other pending actions and related settlements to determine the scope

1 and impact on this matter; (4) identifying, researching, and pleading the appropriate claims, including
2 amending the Lawsuit to assert additional claims as they ripened and/or were discovered; (5)
3 exhausting administrative remedies; (6) identifying, requesting, securing, and reviewing pertinent
4 policies, practices, and procedures; (7) identifying, requesting, and securing the payroll records for the
5 entire Sick Pay Class from September, 2015 through August, 2020; (8) propounding formal discovery
6 to secure relevant policy documents and numerical information regarding the size of the classes and the
7 scope of the claims, (9) retaining an expert to analyze the payroll data provided by Defendants and
8 personally conducting spot checks to ensure the accuracy of the damages calculations; (10) creating a
9 reliable damages model; and (11) developing and implementing a strategy for mediation and
10 settlement. JDB Dec. ¶ 28; Declaration of Robert J. Wasserman (“RJW Dec.”) ¶ 2.

11 **F. Settlement Negotiations**

12 Between June 2019 and the mediation, as part of the Parties’ formal and informal discovery,
13 Defendants provided critical numerical information, thousands of pages of documents, and time and
14 payroll data for putative class members. JDB Dec. ¶¶ 29-30. Specifically, Defendants produced all of
15 Plaintiff’s records, extensive payroll data for Sick Pay members (tens of thousands of line items), a
16 sampling of wage statements, and applicable written policies. Counsel investigated the applicable law
17 as applied to the facts discovered regarding Plaintiff’s claims, the defenses thereto, and the damages
18 and penalties potentially available. In conjunction with those same negotiations, the Parties spoke at
19 length about the strengths and weaknesses of each sides’ claims and defenses, the certifiability of the
20 class, and the scope of Defendants’ potential liability. Plaintiff retained an expert to examine the data
21 and determine the extent of potential damages. JDB Dec. ¶¶ 31-33, 43; RJW Dec. 3-7.

22 On August 31, 2020, the Parties participated in good faith in arms’ length settlement discussions
23 at a remote mediation with Kim Deck, Esq. After the Parties reached an impasse regarding the Class
24 claims, Ms. Deck made a mediator’s proposal that was ultimately accepted. On November 13, 2020,
25 after months of further negotiations, the Parties executed the Settlement Agreement. JDB Dec. ¶ 34,
26 36, 38, 39, Exh. A³; RJW Dec. ¶ 9-13.

27 _____
28 ³ There was no fraud or collusion at the mediation with Kim Deck or the in the subsequent settlement negotiations, all of which were adversarial and conducted at arms’ length. JDB Dec. ¶40.

1 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

2 **A. Monetary and Non-Monetary Relief Under the Settlement**

3 Pursuant to the SA, Defendants will pay \$411,00 (“MSA”) to resolve the claims of Participating
4 Class Members. The MSA will be deposited into a Qualified Settlement Fund within 10 business days
5 of the Effective Date and does not include Employer-side Taxes, which will be separately paid by
6 Defendants. After deducting the costs of administering the Settlement, the payment to the LWDA,
7 Service Payment to Plaintiff, and fees and costs of Class Counsel, \$243,900, is expected to be available
8 for distribution to Participating Class Members. SA ¶¶ 16. Additionally, as a result of the Class
9 Action, Defendants (a) revised their wage statements as of November 2020 and (b) revised the policies,
10 practices, and procedures associated with the calculation and payment of sick pay. SA ¶ 11. Thus,
11 Defendants’ California employees will receive additional wages in the future because of the efforts of
12 Flores and Class Counsel, regardless of whether they participate in the Settlement. JDB Dec. ¶ 64.

13 **B. Notice to Class**

14 The Class Notice will be mailed to Class Members within 20 business days after the Court’s
15 entry of the Order of Preliminary Approval. SA ¶¶ 28-29; Exhibit 1.

16 **C. Participation in the Settlement**

17 Each Participating Class Member is entitled to a share of the NSA without the need to complete
18 a claim form. Class Members will receive a Class Notice informing them of the terms of the
19 Settlement, the right to opt-out or object, and an estimate of his/her share. All Class Members will be a
20 Participating Class Member and receive a payment unless he/she opts out. SA ¶¶ 1.26, 31, 37.

21 **D. Calculation and Taxation of Settlement Shares**

22 Within 10 business days of the Court’s entry of the Order of Preliminary Approval, Defendants
23 shall provide the Settlement Administrator with each Class Member’s: (i) name, (ii) last known address
24 and telephone number, (iii) social security number, (iv) dates of employment, and (v) pay period data.
25 SA ¶ 28. Settlement Shares shall be based upon the number of pay periods worked by Participating
26 Sick Pay and Non-Exempt Wage Statement Class Members during each respective class period. SA ¶¶
27 32(i)-(ii). Former Employee Sub-Class Members will each receive an equal share of the portion of the
28 NSA allocated to that Class. SA ¶ 32(iii).

1 For purposes of taxes and required withholdings, the Parties have agreed that (1) 100% of the
2 amount distributed to each Participating Non-Exempt Wage Statement Class Member who is
3 not a member of any other subclass shall constitute penalties (for which an IRS Form 1099 shall be
4 issued); (2) 100% of the amount distributed to each Former Employee Subclass Member shall
5 constitute penalties (for which an IRS Form 1099 shall be issued); (3) 33 1/3% of each Participating
6 Sick Pay Class Member's Settlement Share shall constitute wages (for which an IRS Form W-2 shall be
7 issued), 33 1/3% shall constitute interest, and 33 1/3% shall constitute penalties (for which an IRS
8 Form 1099 shall be issued). SA ¶ 22. Employer-side Taxes will be paid separately by Defendants (in
9 addition to the MSA). SA ¶¶ 1.11, 15.

10 **IV. SCOPE OF RELEASE AND FINAL JUDGMENT**

11 As of the Effective Date, and in exchange for the consideration provided herein, the
12 Participating Class Members, and their respective heirs, beneficiaries, devisees, executors,
13 administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and
14 assigns, shall forever and completely release and discharge Defendant and Released Parties from the
15 Released Claims.⁴ SA ¶ 37.

16 Additionally, Flores, on behalf of herself, the LWDA, and the Class, releases Defendants and
17 Released Parties from the Released PAGA Claims.⁵ SA ¶ 38. The Released Claims and Released
18 PAGA Claims were narrowly tailored to track the factual basis of claims advanced and do not include a
19 Civil Code section 1542 waiver. JDB Dec. ¶ 65.

20
21 ⁴ Participating Non-Exempt Wage Statement Class Members release Defendants and the Released Parties of any and all
22 claims for failure to furnish accurate itemized wage statements in violation of Labor Code section 226(e), which arose at any
23 point between January 11, 2018 and November 30, 2020 that are or could have been pled based on the facts asserted in the
FAC on behalf of the Non-Exempt Wage Statement Class.

24 Participating Sick Pay Class Members release Defendants and the Released Parties of any and all claims for failure
25 to pay sick pay under Labor Code section 218.5 and all claims for restitution and other equitable relief, liquidated damages, or
penalties for unfair business practices in violation of Business and Professions Code section 17200, et seq., which arose at any
26 point between January 11, 2015 and November 30, 2020 that are or could have been pled based on the facts asserted in the
FAC on behalf of the Sick Pay Class.

26 Participating Former Employee Sub-Class Members release Defendants and the Released Parties of any and all
27 claims for failure to timely pay all wages due and owing at the end of their employment in violation of Labor Code section
201-203, including without limitation alleged underpaid sick pay wages, which arose at any point between January 11, 2016
28 and November 30, 2020 that are or could have been pled based on the facts asserted in the FAC on behalf of the Former
Employee Sub-Class. SA ¶¶ 37(i)-(iii).

⁵ The Released PAGA Claims are defined as any and all PAGA Claims based upon Defendant's alleged violation of Labor
Code sections 201 – 203, 221, 226 and 226.3, between January 11, 2018 and November 30, 2020. SA ¶ 38.

V. SETTLEMENT ADMINISTRATION

Class Counsel solicited bids from several national settlement administration companies. After negotiating to obtain the most reliable and cost-effective service possible, the Parties selected Phoenix Class Action Administration Solutions as Administrator. JDB Dec. ¶¶ 71-72. The Administrator’s declared fees and costs will be paid out of the MSA and shall not exceed \$8,850. SA ¶ 72.

VI. PAYMENT TO THE LWDA

The Settlement contemplates a PAGA allocation of \$15,000, of which 75% (\$11,250) will be paid to the LWDA and the remaining 25% (\$3,750) will be part of the NSA. SA ¶ 19.

VII. SERVICE PAYMENT TO PLAINTIFF FOR HER SERVICE TO THE CLASS

Flores will apply for a service payment in the amount of \$2,500, or 0.60% of the MSA. Class Members will be apprised of Plaintiff’s request, the ability to review moving papers on the Court’s and the Administrator’s websites, and the right to object. SA ¶ 20; Exh. 1.

VIII. CLASS COUNSEL’S ATTORNEYS’ FEES AND COSTS

Class Counsel will request attorneys’ fees in the amount of one-third of the MSA, or \$137,000, as well as declared litigation costs not more than \$7,500. Class Members will be apprised of Class Counsel’s request, the ability to review the moving papers on the Court’s and the Administrator’s websites, and the right to object to the request if they so desire. SA ¶ 21; Exh. 1.

IX. FINAL APPROVAL HEARING

The Settlement contemplates a Final Approval Hearing and that, if the Court is satisfied the SA is fair, adequate, and reasonable, it will enter an Order of Final Approval approving the Settlement in a manner substantially consistent with the its terms and intent and enter Judgment. SA ¶ 39.

X. PROPOSED IMPLEMENTATION SCHEDULE.

Defendant to provide Class List to the Administrator.	Within 10 business days of the Court’s entry of the Order of Preliminary Approval.
Administrator to mail Class Notice.	Within 10 business days of its receipt of the Class List.
Deadline for Class Members to object to or opt out of the Settlement.	Within 45 calendar days after the mailing of the Class Notice.
Plaintiff to file Motion for Attorneys’ Fees, Costs and Service Payment.	Not less than 35 calendar days after the mailing of the Notice.
Deadline for Plaintiffs to file Motion for Final Approval.	Not less than 28 calendar days before the Final Approval hearing.

1 Final Approval Hearing.

2 Not less than 95 days after the Court's execution of the
3 Order Granting Preliminary Approval.

4 **XI. PROVISIONAL AND CONDITIONAL CERTIFICATION OF THE CLASS IS**
5 **APPROPRIATE**

6 Federal Rule of Civil Procedure ("FRCP") 23 requires that all class action settlements satisfy
7 two primary prerequisites before a court may grant certification for purposes of preliminary approval:
8 (1) that the settlement class meets the requirements for class certification if it has not yet been certified
9 (Fed. R. Civ. P. 23(a) and (b); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)); and (2)
10 that the settlement is fair, reasonable, and adequate (Fed. R. Civ. P. 23(e)(2)). Here, both requirements
11 for preliminary approval of this class action settlement are satisfied.

12 **A. The Settlement Class Satisfies FRCP 23(a) and (b)**

13 To be certified, a settlement class must meet the following criteria: (1) numerosity, (2) typicality
14 of the class representatives' claims, (3) adequacy of representation, (4) predominance of common
15 issues, and (5) superiority. Fed. R. Civ. P. 23(a); see also *Hanlon*, 150 F.3d at 1019. Here, all of these
16 factors for provisional certification of the Class are met.

17 **1. Rule 23(a)(1) - Numerosity**

18 Whenever a class is so numerous that joinder of individual members would be impracticable,
19 the numerosity requirement is met. While there is no hard and fast threshold, federal courts generally
20 find the numerosity requirement satisfied when a class includes at least forty individuals. *Rannis v.*
21 *Recchia*, 380 Fed.Appx. 646, 651 (9th Cir, 2010). There are an estimated 423 Non-Exempt Wage
22 Statement Class Members, 502 Sick Pay Class Members, and 131 Former Employee Sub-Class
23 Members—each class far exceeds the 40-person threshold. SA ¶ 8(a). Numerosity is met.

24 **2. Rule 23(a)(2) – Commonality**

25 The commonality requirement is met if there are questions of law and fact common to the class.
26 *Hanlon*, 150 F.3d at 1019. Here, the claims of Flores and the Class Members all flow from the same
27 factual and legal issues, i.e., Defendants' alleged uniform failure to include other remuneration when
28 calculating sick pay, resultant failure to timely pay all wages due and owing at separation, and
provision of uniform itemized wage statements missing critical necessary information required by
Labor Code section 226(a)(2).

1 **3. Rule 23(a)(3) – Typicality**

2 The typicality requirement is met if the named representative’s claims are typical of those of the
3 class, though “they need not be substantially identical.” *Hanlon*, 150 F. 3d at 1020. Flores’s claims are
4 typical of the claims of the Class because they arise from the same factual basis and are based upon the
5 same legal theories. SA ¶ 11d; *see also Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).
6 Flores worked for Defendants during the relevant time period, was subjected to the same uniform
7 policies and, if she were not serving as Class Representative, would be a member of each of the Non-
8 Exempt Wage Statement Class, Sick Pay Class, and Former Employee Sub-Class.

9 **4. Rule 23(a)(4) – Adequacy**

10 In order for class certification to be proper, it must be shown the class representative can and
11 will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of
12 two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any
13 conflicts of interest with other class members and (2) will the named plaintiffs and their counsel
14 prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020; *Staton v. Boeing*
15 *Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *Lao v. H&M Hennes & Mauritz, L.P.*, 2018 WL 3753708 * 9
16 (N.D. Cal. 2018). Here, Flores has no conflicts of interest with other class members, she is a member
17 of all Classes, and she and Class Counsel have and will vigorously pursue the collective interests of the
18 Classes. JDB Dec. at ¶¶ 78-81.

19 While Flores possessed individual claims pending in the State FEHA Action, unique from those
20 held by the Class and negotiated and resolved separately from the Class Claims, such fact does not
21 render her an inadequate representative. *Roberts v. Electrolux Home Products, Inc.*, 2014 WL 4568632
22 *9 (C.D. Cal. 2014) (noting that individual settlement amounts paid to named class representatives for
23 unique harms suffered did not undermine adequacy); *Campbell v. Best Buy Stores, L.P.*, 2015 WL
24 12744268 * 5 (C.D. Cal. 2015). Foundationally, adequacy does not preclude a class representative
25 from having interests unique to those of other Class Members; only *adverse* interests are prohibited.
26 *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 168 (9th Cir. 2004). It is routinely recognized that a
27 class representative’s pursuit and settlement of separate individual claims is not inherently incompatible
28 with his/her adequate representation of class interests. *Roberts*, 2014 WL 4568632 at * 9. There is

1 nothing inappropriate about Flores’ individual settlement here. The individual claims arise out of
2 circumstances unique to Flores and *not* suitable for class treatment. Flores negotiated her individual
3 claim separately from the Settlement, although both claims were discussed at mediation. JDB Dec. at
4 ¶¶ 35, 38, 79. Flores did not attempt to leverage the Class Claims to improve her individual settlement.
5 Class Members will be fully informed of the existence of the Individual Settlement and will have the
6 opportunity to opt-out and/or object to the Settlement, including to Flores’ adequacy, and to protect
7 his/her individual interest by doing so. *Hanlon*, 150. F.3d at 1021. Throughout this case Flores and
8 Class Counsel have demonstrated their commitment to vigorously prosecuting this lawsuit on behalf of
9 the Class. Adequacy is further underscored by Class Counsel’s experience in wage and hour cases and
10 reflected in the substantial benefits they have and will continue to confer upon Class Members through
11 this litigation, including securing the MSA and the revisions to Defendants’ policies and practices.
12 JDB Dec. ¶¶ 64, 78-87; RJW Dec. ¶ 18-24.

13 **B. Common Issues Predominate and Classwide Treatment is Superior**

14 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
15 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2), or (3).”
16 *Hanlon*, 150 F.3d at 1022. Rule 23(b)(3) outlines the propriety of class certification whenever common
17 questions of law and fact predominate over questions affecting only individual class members and class
18 action treatment is superior to other methods for fairly and efficiently adjudicating the controversy.
19 Fed. R. Civ. P. 23(b)(3). “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are
20 sufficiently cohesive to warrant adjudication by representation.” *Amchem Products, Inc. v. Windsor*,
21 521 U.S. 591, 622 (1997). Factually the policies and practices alleged to underscore the Class Claims
22 of each respective Class apply class-wide and Defendants’ liability can be determined by facts, and
23 applicable law, common to all Class Members—common issues undeniably predominate.

24 There is similarly no question that resolving the claims of Class Members through this single
25 action is superior to individual litigation or any alternative resolution methods that may exist. The
26 value of each individual claim, particularly for the Sick Pay Class, is relatively insignificant and is
27 likely not enough to incentivize individual action. *Wolin v. Jaguar Land Rover N.A., LLC*, 617 F.3d
28 1168, 1175-1176 (9th Cir. 2010); JDB Dec. ¶ 63, fn. 1. Even if an individual was a member of all three

1 (3) classes, his/her maximum recovery would not approach \$10,000 (\$33.19 average Sick Pay damages
2 + \$4,000 maximum 226 penalties + \$4,548 in 203 penalties [\$18.95 avg. pay rate x 8 x 30] =
3 \$8,581.19)—such a small amount is not likely to motivate individual representation and/or prosecution.
4 Class treatment is, by far, the superior procedure in this case. Class treatment provides the best, most
5 cognizable avenue for all class members to secure fair, adequate, and reasonable recovery.

6 **XII. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED**

7 **A. Legal Standards for Preliminary Approval of Class Action Settlements**

8 The purpose of the preliminary evaluation of a proposed class action settlement is to determine
9 whether it is within the range of possible approval, and thus whether notice to the class of its terms and
10 conditions and the scheduling of a formal fairness hearing are warranted. *Spann v. J.C. Penney Corp.*,
11 314 F.R.D. 312, 319 (C.D. Cal. 2016); William B. Rubenstein, 4 Newberg on Class Actions § 11:25
12 (5th Ed. 2014). In assessing class action settlements, this Court has broad discretion to determine
13 whether a settlement is fair under the circumstances of the case. *Class Plaintiffs v. City of Seattle*, 955
14 F.2d 1268, 1276 (9th Cir. 1992). Indeed, the Court need only find that the settlement falls within the
15 range of possible final approval, also described as the “reasonable range.” *Cordy v. USS-Posco Indus.*,
16 2013 WL 4028627 *3 (N.D. Cal. 2013); Rubenstein, supra at § 11:25. To make this fairness
17 determination, courts consider several relevant factors, including “the strength of the plaintiffs’ case;
18 the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class
19 action status throughout the trial; the amount offered in settlement; the extent of discovery completed
20 and the stage of the proceedings; [and] the experience and views of counsel . . .” *Hanlon*, 150 F.3d at
21 1026 (citations omitted). The Settlement here satisfies all of the legal standards for preliminary
22 approval.

23 **B. The Settlement Terms are Fair, Reasonable, and Adequate**

24 A number of factors, including (1) the extent of discovery completed and stage of the
25 proceedings, (2) the strength of Plaintiff’s case and the risk, expense, complexity, and likely duration of
26 further litigation, (3) the risk of maintaining class action status throughout trial, (4) the value offered
27 through the Settlement, and (5) the experience and views of Class Counsel inform a Court’s evaluation
28 of whether a proposed class action settlement is fundamentally fair, adequate, and reasonable. See

1 *Staton*, 327 F.3d at 959, citing *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003). “A presumption of
2 fairness arises where (1) settlement is reached through arms-length negotiations; (2) investigation and
3 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
4 similar litigation; and (4) the percentage of objectors is small. *In re Heritage Bond Litig.*, 2004 WL
5 7339813 * 2 (C.D. Cal. 2004), citing *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801-1802 (Cal.
6 1996). Here, the Settlement was the product of protracted arm’s length negotiations after formal
7 discovery and provision of payroll data for all Class Members, and affords each Class Member a net
8 recovery of more than 37% of his/her realistic damages. JDB Dec. ¶¶ 56, 58. It should be approved as
9 fair, adequate, and reasonable.

10 **1. The Settlement Was Negotiated After Formal Discovery And A Thorough**
11 **Investigation of The Issues**

12 Flores and her counsel conducted formal, substantive discovery, informal receipt of payroll
13 records for 685 individuals between September 25, 2015 and August 7, 2020, and engaged an expert to
14 assist in analyzing the data prior to engaging in any settlement negotiations with Defendants. JDB Dec.
15 ¶¶ 29-33. There can be no question that “meaningful discovery” was completed and Class Counsel had
16 sufficient information to fully evaluate the claims and make competent, informed decisions regarding
17 the benefits and burdens of continued litigation versus settlement. *In re Heritage Bond Litig.*, 2004 WL
18 7339813 at *3. The level of discovery completed prior to the Settlement operates in favor of approval.

19 **2. The Settlement Resulted From Non-Collusive, Arm’s Length Negotiations**

20 Settlement in this matter was only reached after a full-day mediation, provision of a mediator’s
21 proposal at the end of that session, *and* more than two months of additional discussion thereafter. See
22 *In re Apple Computer, Inc. Derivative Litig.*, 2008 WL 4820784 * 3 (N.D. Cal. 2008). Ms. Deck’s
23 involvement in the settlement negotiation process as a neutral mediator “weighs considerably against
24 any inference of a collusive settlement.” *Ibid.* The adversarial and protracted nature of the negotiation
25 process further supports the fairness, adequacy, and reasonableness of the Settlement. Class Counsel’s
26 extensive experience in wage and hour class action matters and opinion regarding the propriety of the
27 Settlement also weighs strongly in favor of its approval. JDB Dec. ¶¶ 64, 84-87; RJW 15-24;
28 *Bellinghausen v Tractor Supply Co.*, 306 F.R.D. 245, 257 (N.D. Cal. 2015).

1 **3. Considering the Strengths of The Class Claims Balanced Against The Risks**
2 **and Expense of Litigation, The Settlement Is Fair, Adequate, and**
3 **Reasonable**

4 The Settlement provides for the cognizable payment of \$396,000 in resolution of the Released
5 Claims. SA ¶¶ 12, 37(i)-(iii), 53. The MSA represents real and appreciable recovery, particularly
6 considering the Released Claims are limited to alleged failures to calculate and pay sick leave, a
7 technical failure to identify total hours worked on wage statements, and asserted derivative waiting
8 time penalty claims. SA ¶ 37(i)-(iii). The MSA represents 34.6% of the *maximum* recovery available
9 to the Classes; 100% of the *maximum* available to the Sick Pay Class, 34.12% of the *maximum*
10 exposure to the Non-Exempt Wage Statement Class, and 31.8% of the *maximum* exposure to the
11 Former Employee Sub-Class. JDB Dec. at ¶¶ 45, 47, 51, 53. More tellingly, the Settlement affords the
12 Non-Exempt Wage Statement Class and the Former Employee Sub-Class with 67.88% and 63.27% of
13 their respective realistic recoveries. *Id.* at ¶ 58. These percentage recoveries are substantial and well
14 within the range routinely approved by courts reviewing negotiated class action settlements.

15 Defendants asserted and would have continued to assert numerous legal and factual grounds to
16 defend against the claims of each Class and/or certification of such claims, including, but not limited to,
17 1) that Flores lacked standing to bring the wage statement claim, 2) that the wage statements actually
18 comply with Labor Code section 226(a)(2), 3) that no one was injured by any technical omission on the
19 wage statements, and 4) that waiting time penalties are unavailable because failures to pay were not
20 “willful” in light of the limited legal authority relating to whether redeemed sick pay constitutes wages
21 and because Defendant’s policy was facially compliant and thus any underpayments/miscalculations
22 were wholly inadvertent. JDB Dec. ¶¶ 56-62. While Class Counsel is confident certification and
23 success on the merits could have been attained, continued litigation was guaranteed to be costly, time
24 consuming, and uncertain in outcome. By contrast, the Settlement ensures timely relief and substantial
25 recovery for Class Members and is superior to other recently approved settlements. Accordingly, the
26 Settlement is well within the range of reasonableness. JDB ¶¶ 64, 88; RJW Dec. ¶ 15-16.

27 ***a. Defendants’ Maximum and Realistic Liability To Each Class***

28 With the help of an expert, performing individual calculations and spot checks to ensure the
 accuracy of those results, and accounting for various litigation risks and the defenses and arguments of

1 Defendants, Class Counsel developed a damages model illustrating both Defendants’ maximum
2 exposure and the realistic potential recovery for the claims asserted by each respective Class. Under
3 Class Counsel’s damages model, Defendants face a maximum of \$16,622.51 in underpaid sick pay
4 wages and interest, \$583,212 in statutory waiting time penalties, and \$543,550 in Labor Code section
5 226(e) penalties. JDB Dec. at ¶¶ 44-46, 48-50. In total, Defendants face \$1,143,384.51 in potential
6 damages and statutory penalties to the Classes—the Settlement requires payment of nearly 35% of that
7 *maximum* exposure. JDB Dec. ¶¶ 52-53.

8 Because 100% success in litigation is unrealistic, Class Counsel also determined a reasonable,
9 but much more realistic estimate, for the potential recovery of each Class. Under this more measured
10 approach, Class Counsel (1) applied no discount to the underpaid sick pay claim because it is plain that
11 Dart simply used the base hourly rate, as opposed to the “regular rate of pay” when calculating
12 redeemed paid sick leave for the Sick Pay Class, leaving \$16,622.51 (\$33.19 average per each of 502
13 Sick Pay Class Members), (2) applied a 50% discount to the waiting time penalty claim based upon
14 Dart’s contentions that redeemed sick pay cannot underscore a waiting time penalty claim (this Court
15 already determined such payments are wages, but a CA court decision could come down in the interim
16 undermining that ruling) and that any failures to properly calculate and pay redeemed sick leave were
17 not willful, but instead were the product of a good faith mistake because the language of the Healthy
18 Workplaces Healthy Families Act was changed shortly before it became effective to include the
19 “regular rate of pay” language and Dart’s failure to identify the change was excusable, leaving
20 \$291,606, and (3) applied a 50% discount to the wage statement claims based on Dart’s contentions
21 that the federal court lacks jurisdiction because Flores does not have Article III standing, that the wage
22 statements actually identify a number that equates to total hours worked (even though it is not labeled
23 as such), that Flores and the other Non-Exempt Class Members were not injured by any technical
24 omissions on the wage statements, and that any omissions/errors were not “knowing and intentional”,
25 leaving \$271,775.⁶

26
27
28 ⁶ In order to reflect the relative risks of the claims and provide fair distribution to the Classes based on those risks, the NSA is allocated \$25,000 to the Sick Pay Class (which has the only potential recovery of actual wages and the strongest claims), then 50% to the Non-Exempt Wage Statement Class, and 50% to the Former Employee Sub-Class. SA ¶ 32.

1 The MSA represents a lofty 67.93% of Defendants’ realistic exposure; 100%, 37.53%, and
2 40.27% *actual net recovery* to each of the Sick Pay Class, Former Employee Sub-Class, and Non-
3 Exempt Wage Statement Class, respectively. JDB Dec. ¶ 58. This is an extremely positive result and
4 District courts have found settlements substantially less favorable to be fair and reasonable, especially
5 when taking into account the uncertainties involved with litigation. *See e.g., Rodriguez v. West*
6 *Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement amounting to 30% of the
7 realistic damages estimated by the class expert; court noted that even if the plaintiffs were entitled to
8 treble damages that settlement would be approximately 10% of estimated damages); *In re Mego Fin.*
9 *Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (settlement equal to 16.67% of potential recovery
10 was fair). Indeed, “it is well-settled law that a cash settlement amounting to only a fraction of the
11 potential recovery does not . . . render the settlement inadequate or unfair.” *Officers for Justice v. Civil*
12 *Service Com’n of City and County of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Of course,
13 “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest
14 hopes.’” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). As such, “[t]he fact
15 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of
16 itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Id.*

17 Considering the nature of the claims, the damages, and the risks attendant to further litigation,
18 the Settlement fairly, adequately, and reasonably serves the collective best interests of each Class.

19 **C. The Court Should Order Dissemination of the Notice**

20 FRCP Rule 23(c)(2)(B) mandates the Court direct the best notice practicable under the
21 circumstances to class members, including individual notice to all members who can be identified
22 through reasonable effort. Rule 23(e) requires a settlement notice inform class members of: (1) the
23 nature of the pending litigation; (2) the general terms of the proposed settlement; (3) that complete
24 information is available from the court files; and (4) that any class member may appear and be heard at
25 the fairness hearing. William B Rubenstein, 3 Newberg on Class Actions § 8:32 (5th Ed. 2013).

26 **1. The Class Notice is Accurate and Informative**

27 The Class Notice, Exhibit 1 to the Settlement, will be sent to all Class Members, will inform
28 them of the terms of the Settlement, and is neutrally worded so as to avoid prejudice. The Class Notice

1 meets all requirements of procedural due process and Rule 23(e) by (1) identifying the Parties; (2)
2 describing the claims and the Class Action in a straightforward manner; (3) succinctly describing the
3 essential terms of the Settlement, including Flores' proposed Service Payment and the amount Class
4 Counsel will request for attorneys' fees and costs; (4) disclosing that Flores also received a separate
5 amount in resolution of individual claims; (5) identifying the existence of other cases; (6) identifying
6 the claims to be released; (7) identifying all parties against whom claims are being released; (8)
7 providing information on how to participate in, opt out of or object to the Settlement; (9) clearly
8 providing all applicable deadlines for such action; (10) informing Class Members of the consequences
9 of excluding themselves; and (11) advising Class Members that, if they choose to participate and the
10 Settlement is approved, they will be bound by the resulting judgment. Further, the Class Notice clearly
11 explains the manner in which Class Members can obtain further information (e.g., from Class Counsel,
12 through the Court's website, or the Administrator's website) and that the Final Approval Hearing may
13 be moved without further notice. SA ¶¶ 34-35, 39; Exh. 1. In short, the Class Notice provides Class
14 Members with all of the necessary information to make an informed decision.

15 **2. The Class Notice Satisfies Due Process**

16 Courts are vested with broad discretion to fashion an appropriate notice program, which must be
17 the best notice practicable under the circumstances. Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B). The
18 Settlement provides for direct mail notice to each Class Member at his/her last known address based
19 upon Defendant's records, performing additional skip traces as necessary. SA ¶¶ 25, 28-29. Because
20 all Class Members are current or former employees of Defendants, for whom Defendants have current
21 or last known addresses as well as SSNs, notice here is simpler and more reliable than in other types of
22 class actions that require published notice to reach unidentifiable class members. The Class Notice and
23 notice plan are consistent with class notices approved by state and federal courts, and under the
24 circumstances here, constitute the best notice practicable. *Spann*, 314 F.R.D. at 331.

25 **D. The PAGA Allocation and Payment to the LWDA is Reasonable**

26 The Settlement contemplates \$15,000 allocated to PAGA claims. 75% (\$11,250) of this amount
27 will be paid to the LWDA and the remaining 25% (\$3,750) will be returned to the NSA for distribution.
28 SA ¶ 19. The Parties negotiated this resolution in good faith, intending to ensure it serves the deterrent

1 and punitive purposes of the PAGA. Defendants’ revision of their wage statements and policies,
2 practices, and procedures associated with the calculation and payment of sick pay were also considered
3 by Class Counsel. JDB Dec. ¶ 68. The allocation proposed in the Settlement is within the range of 0%
4 and 2% approved by state and federal courts in other hybrid class action/PAGA cases.⁷ The LWDA
5 has been notified of the Settlement as required by law. JDB Dec. ¶ 77; Exh. E.

6 **E. The Settlement Administrator’s Fees are Reasonable**

7 The Parties selected Phoenix Class Action Administration Solutions to serve as Administrator.
8 SA ¶¶ 1.35, 18. Phoenix Class Action Administration Solutions has substantial experience in
9 administering class action settlements and will, among other things, distribute the Court-approved Class
10 Notice, distribute notice to state Attorney General’s pursuant to the CAFA, calculate Participating
11 Class Members’ shares, prepare and mail settlement checks, respond to Class Member
12 inquiries/disputes, setup and administer an information-only website, prepare appropriate tax forms,
13 and perform all normal and customary duties associated with the administration of the Settlement.
14 Plaintiff seeks preliminary approval of Administrator fees and costs of up to \$8,850. SA ¶¶ 18, 25.

15 **F. The Service Payment to Plaintiff is Reasonable**

16 Named plaintiffs in class action litigation are eligible for reasonable service payments. *Staton*,
17 327 F.3d at 977. Service payments are intended to “compensate class representatives for work done on
18 behalf of the class, to make up for financial or reputational risk undertaken in bringing the class action,
19 and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563
20 F.3d at 958-959; *see also In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1394 (2010).
21 The amount of any service payment, however, is within the sound discretion of the district court. *In re*
22 *Mego*, 213 F.3d at 454. Service payments are particularly appropriate in wage and hour class actions
23 where a plaintiff undertakes significant reputational risk by bringing suit against a former employer.
24 *Rodriguez*, 563 F.3d at 958-959. In deciding whether to approve a service payment, a court should

25 _____
26 ⁷ *See, e.g., Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018) (trial court reduced the maximum PAGA penalty by
27 90% after Plaintiff prevailed at trial because of the employer’s good faith attempt at complying with the law); *Nordstrom*
28 *Comm’n Cases*, 186 Cal.App.4th 576, 589 (2010) (approving a PAGA settlement allocating \$0 to the LWDA); *Hopson v.*
Hanesbrands, Inc., 2008 WL 338542 *1 (N.D. Cal. 2008) (approving PAGA settlement of .03% or \$1,500); *In re M.L. Stern*
Overtime Litig., 2009 WL 995864 *1 (S.D. Cal. 2009) (approving PAGA Settlement of 2% or \$20,000); *Munoz v. UPS*
Ground Freight, Inc., 2009 WL 1626376 *1 (N.D. Cal. 2009) (approving PAGA settlement of 2% or \$60,000).

1 consider: “(1) the risk to the class representative in commencing suit, both financial and otherwise; (2)
2 the notoriety and personal difficulty encountered by the class representative; (3) the amount of time and
3 effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or
4 lack thereof) enjoyed by the class representative as a result of the litigation.” *In re Cellphone Fee*
5 *Termination Cases*, 186 Cal. App.4th at 1394-95 (internal quotation marks omitted); *see also Van*
6 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (applying similar factors).

7 All of the aforementioned factors support the \$2,500 service payment requested here. The
8 sought service payment is (a) below amounts commonly awarded by courts in similar wage and hour
9 class actions;⁸ (b) below the \$5,000 Ninth Circuit benchmark⁹, (c) just 0.6% of the \$411,000 MSA; and
10 (d) fair, reasonable and appropriate under the circumstances of this case. JDB Dec. ¶ 82. Plaintiff
11 worked diligently with Class Counsel throughout this entire litigation, including taking numerous calls,
12 participating in formal discovery and the Parties’ informal information exchange, and participating in
13 the mediation and settlement negotiations and should be rewarded for taking the initiative to pursue
14 these claims on behalf of her coworkers, and for her role in reaching a substantial settlement providing
15 for valuable monetary and non-monetary relief to the Class. JDB Dec. ¶¶ 78-83.

16 **G. Class Counsel’s Attorneys’ Fees and Costs are Reasonable, Fair, and Appropriate**

17 Flores, in the settlement of this wage and hour class action, is entitled to payment of attorneys’
18 fees and costs. Cal. Lab. Code §§ 218.5, 226(e)(1), 1194, and 2699(g); *Early v. Sup. Ct.*, 79
19 Cal.App.4th 1420, 1427 (2000). An attorneys’ fee award is justified where the legal action has
20 produced benefits by way of a voluntary settlement. *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91
21 (1987); *Westside Cmty. For Indep. Living, Inc. v. Obledo*, 33 Cal. 3d 348, 352-53 (1983). At the Final
22 Approval Hearing, Flores will seek an award of Class Counsel’s fees under the common fund doctrine,
23 which is customarily used in Labor Code class actions and an approved method under both California
24 and federal law. *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224, 254 (2001); *Lealao v.*
25 *Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 26-30 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *see*

26 _____
27 ⁸ See e.g. *Bond v. Ferguson Enterprises, Inc.*, 2011 WL 2648879 (E.D. Cal. 2011) (approving \$11,250 service award each to
28 two class representatives in a meal break class action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal.
2010) (approving service awards of \$10,000 each from a \$300,000 settlement in a wage and hour class action)

⁹ See *Harris v. Vector Mktg. Corp.*, 2012 WL 381202 * 7 (N.D. Cal. 2012).

1 also *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers for a common
2 fund . . . is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Hanlon*, 150 F.3d. at
3 1029. Courts customarily approve attorney’s fees of one-third to forty percent of the common fund in
4 comparable wage and hour class actions.¹⁰

5 Here, Flores will seek attorneys’ fees of one-third of the MSA, or \$137,000, and declared
6 litigation costs of up to \$7,500. Because these fees and costs are reasonable, within the range
7 commonly awarded in wage and hour class actions, and because Flores and Class Counsel have
8 conveyed and will convey significant monetary and nonmonetary benefits upon the Class, the Court
9 should preliminarily approve Flores’s requested fee and cost award as fair and reasonable.

10 **XIII. A FINAL APPROVAL HEARING AND RELATED DEADLINES SHOULD BE SET**

11 Flores respectfully requests that the Court set a date for the Final Approval Hearing and all
12 appurtenant deadlines. Plaintiff requests that the date for the Final Approval Hearing be set not less
13 than 95 days after the Court’s execution of the Order Granting Preliminary Approval.

14 **XIV. CONCLUSION**

15 For all the reasons stated above, Plaintiff’s unopposed Motion should be granted.

16 DATED: November 16, 2020

MAYALL HURLEY P.C.

17 By /s/ Jenny D. Baysinger

18 ROBERT J. WASSERMAN

JENNY D. BAYSINGER

19 Attorneys for Plaintiffs and the Putative Class

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26 ¹⁰ See, e.g., *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826 *29 (N.D. Cal. 2011) (approving 42% fee); *Birch v. Office*
27 *Depot, Inc.*, 2007 WL 9776717 *13 (S.D. Cal. 2007) (awarding a 40% fee); *Singer v. Becton Dickinson and Co.*, 2010 WL
28 *2196104*, at *8 (S.D. Cal. 2010) (approving fee award of one-third; award was similar to awards in other cited wage and hour
class action cases where fees ranged from 30% to 40%); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D.
Cal. 2010) (citing 5 recent wage and hour class actions where district courts approved attorney fee awards ranging from 30%
to 33%); *Cicero v. Directv, Inc.*, 2010 WL 2991486 *6 (C.D. Cal. 2010) (noting that fees of one-third are common in wage
and hour settlements below \$10 million).