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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

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

Plaintiff,

vs.

DAL-TILE SERVICES, INC., a Delaware
corporation; MOHAWK INDUSTRIES, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. RG20071668

[Hon. Evelio Grillo, Department 21]

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

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

Date: February 21, 2023
Time: 10:00 a.m.
Department: 21

Reservation ID: 602110108426

Complaint Filed: August 25, 2020

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

2 **PLEASE TAKE NOTICE** that on February 21, 2023, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 21 of the above-entitled court located at 1221 Oak Street, Oakland,
4 California 94612, Plaintiff, Janele Aldana, will and hereby does move for an Order:

- 5 1. approving the Joint Stipulation of Class Action Settlement (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: all current or
8 former employees of Dal-Tile Services, Inc. or Mohawk Industries, Inc. in the State of
9 California who from April 6, 2019, through November 29, 2022 (the “Class Period”), either
10 was (i) an employee who received wage statements that did not include the pay period start
11 date or (ii) a non-exempt employee who received wage statements that showed overtime or
12 meal period premium hours that resulted in an inaccurate total hours worked;
- 13 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
14 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
- 15 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
16 Settlement Amount in the amount of \$1,575,000.00, the amounts requested for the
17 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
18 LWDA Payment, and the allocation of payments to Class Members appear to be within the
19 range of reasonableness for a settlement that could ultimately be given final approval;
- 20 5. appointing Phoenix Settlement Administrators as the Administrator;
- 21 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
22 the Agreement; and
- 23 7. scheduling a Final Approval Hearing.

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

1 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
2 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
3 Yang, William L. Marder, and Janele Aldana, all pleadings and papers on file herein, and any further
4 oral and documentary evidence as may be presented before or at the hearing of this matter.

5 DATED: January 26, 2023

DIVERSITY LAW GROUP, P.C.

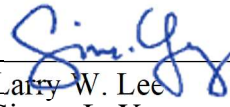
6 By: 
7 Larry W. Lee
8 Simon L. Yang
9 Attorneys for Plaintiff
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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Janele Aldana, sues Defendants Dal-Tile Services, Inc. and Mohawk Industries, Inc. for alleged failures to furnish lawful wage statements. Plaintiff alleges that employees are furnished wage statements that fail to show the pay period start date. Plaintiff also alleges that non-exempt employees who are paid overtime or meal period premiums are furnished wage statements that fail to show the total hours worked. Defendants deny the allegations.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendants to pay at least \$1,575,000.00 for the classwide settlement of wage statement claims. Plaintiff and her counsel believe the settlement is an exceptional result for the Class. Defendants will have to pay around **\$46.90 for each of approximately 33,583 relevant wage statements** from April 6, 2019, through November 29, 2022. Each of approximately **579 Class Members will, on average, receive \$1,533.68** (*after* all requested payments from the Gross Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendants.

Although Plaintiff and her counsel are confident that litigation of the claims would result in a classwide judgment against Defendants, 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 August 25, 2020, Plaintiff initiated this class and private attorney general action that seeks to remedy Defendants’ alleged failure to furnish lawful wage statements. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. Upon the filing of the Action, Plaintiff and Defendants met and conferred about the alleged claims. *Id.* On November 16, 2020, Plaintiff served initial written discovery on Defendants. *Id.*

1 On December 21, 2020, Defendants served initial written discovery on Plaintiff. *Id.* On January 13,
2 2021, Defendants served responses to Plaintiff’s discovery. *Id.* On February 15, 2021, Plaintiff served
3 responses to Defendants’ discovery. *Id.* The Parties continued engaging in additional informal
4 discovery, and Defendants provided Plaintiff with additional information about various wage statement
5 formats at issue.

6 On or about May 10, 2022, Plaintiff filed the operative first amended complaint to allege
7 additional theories for Defendants’ wage statement failures. Yang Decl. ¶ 3. *First*, the operative
8 complaint alleges that whenever employees were paid, Defendants issued wage statements that failed to
9 show the start date for the period being paid. *Id.* *Second*, the operative complaint alleges that whenever
10 non-exempt employees earned certain wages, like overtime or missed meal premiums, Defendants
11 issued wage statements that inaccurately stated the total hours worked. *Id.* *Third*, the operative
12 complaint alleges that whenever non-exempt employees earned overtime wages, Defendants issued
13 wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay. *Id.*

14 Class Counsel continued investigating the alleged claims and also analyzed any defenses raised
15 by Defendants. Yang Decl. ¶ 4. The Parties supplemented formal discovery by continuing to exchange
16 information and documentation pursuant to informal methods to assist them in exploring the possibility
17 of a mediated resolution. *Id.* Defendants’ willingness to supplement formal discovery with informal
18 discovery enabled Plaintiff to evaluate the full scope of Defendants’ potential liability. *Id.* Ultimately,
19 the Parties agreed to schedule a mediation. *Id.*

20 On November 29, 2022, the Parties attended a mediation with Gig Kyriacou, an experienced
21 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
22 issue in the Action. Yang Decl. ¶ 5. With the mediator’s assistance and based on a mediator’s proposal,
23 the Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action
24 Settlement. *Id.* Ex. 1 (the “Agreement”).

25 SUMMARY OF PROPOSED SETTLEMENT

26 I. Class Definition

27 The proposed settlement class of “Class Members” includes (i) any current or former exempt
28 employee of Defendants in the State of California who at any time during the Class Period received

1 wage statements that did not include the pay period start date and (ii) any current or former non-exempt
2 employee of Defendants in the State of California who at any time during the Class Period received
3 wage statements that either did not include the pay period start date or showed overtime or meal period
4 premiums hours that resulted in an inaccurate total hours worked. Agreement § 1.5. The Class Period is
5 from April 6, 2019, through November 29, 2022. *Id.* § 1.7. There are approximately 579 Class Members
6 who received approximately 33,583 relevant wage statements. *Id.* § 1.5.¹

7 **II. Settlement Payments**

8 The Agreement requires Defendants to pay a non-reversionary Gross Settlement Amount of
9 \$1,575,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the
10 Court approve allocations for an LWDA Payment, Administration Costs, Attorneys' Fees and Costs
11 Award, and Class Representative Award. *Id.* §§ 1.15, 1.16. Except for these allocations requiring Court
12 approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class
13 Members. *Id.* ¶¶ 1.14, 1.15. It is expected that each Class Member, on average, will be allocated
14 \$1,533.68 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8.

15 **III. Released Claims**

16 Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members release “any
17 and all claims arising during the Class Period that were alleged in any operative complaint or that could
18 have been alleged based on the factual allegations in any operative complaint.” *Id.* § 6.1. The LWDA
19 releases “any and all claims for civil penalties for violations of Labor Code sections 226(a) and 226.3
20 during the PAGA Period that were alleged in the Action or that reasonably could have been alleged
21 based on the facts alleged in the Action.” *Id.* § 6.2.

22 **LEGAL STANDARD**

23 Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is
24 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
25 has been distributed to class members for their comment or objections. As the Manual for Complex
26

27
28 ¹ All Class Members are also Aggrieved Employees. Agreement § 1.5. The PAGA Period is the same as
the Class Period. *Id.* § 1.7.

1 Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the
2 court makes a preliminary fairness evaluation”:

3 If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its
4 fairness or other obvious deficiencies, such as unduly preferential treatment of class
5 representatives or of segments of the class, or excessive compensation for attorneys, and appears
6 to fall within the range of possible approval, the court should direct that notice ... be given to the
7 class members of a formal fairness hearing, at which arguments and evidence may be presented
8 in support of and in opposition to the settlement.

7 Manual for Complex Litigation (Third) § 30.41.

8 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
9 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
10 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may
11 find that the settlement proposal contains some merit, is within the range of reasonableness required for
12 a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final
13 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

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

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

22 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
23 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
24 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
25 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
26 and reasonable”).

DISCUSSION

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

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

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

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

Here, both Plaintiff’s counsel and Defendants’ counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry

1 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 10-14; Declaration of William L. Marder (“Marder Decl.”)
2 ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and
3 each side has considered the other’s contentions and theories. Defendants provided the relevant numbers
4 of individuals and wage statements, among other things—enabling Plaintiff to assess the full value of
5 Class Members’ claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶
6 4. As further discussed below, the settlement is the result of extensive arm’s length negotiations between
7 the Parties and their counsel. *Id.* ¶¶ 4-5.

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

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

10 The Agreement requires Defendants to pay at least \$1,575,000.00. Agreement § 5.1. This is an
11 excellent result for Class Members. This amounts to approximately 14.70% of Defendants’ potential
12 liability and is an excellent result for Class Members. Yang Decl. ¶ 6.

13 To wit, Plaintiff contended that class claims under Section 226(e) result in a \$50 penalty for the
14 first non-compliant wage statement to each Class Member and a \$100 penalty for each additional non-
15 compliant wage statement to the Class Member, up to a maximum of \$4,000 per class member. Yang
16 Decl. ¶ 6.² Plaintiff also contended that PAGA penalties under Section 226.3 also result in up to \$250
17 per non-compliant wage statement. *Id.*

18 Defendants contested the merits and denied it was liable at all. Yang Decl. ¶ 7. Moreover, even if
19 Plaintiff prevailed on the merits, Defendants contested the extent of liability. *Id.* For example,
20 Defendants contended that liability under Section 226(e) would be subject to additional defenses
21 requiring proof of injuries resulting from knowing and intentional violations. *Id.* Likewise, Defendants
22 contended that PAGA penalties would amount to only \$100 per non-compliant wage statement under
23 Section 2699(f). *Id.* Defendants also contended that PAGA penalties in any event would be subject to
24 discretionary reductions. *Id.*

25 While the Parties disagree on the law and its application to the facts, each Party recognized in
26 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
27 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 8.

28 ² Except as otherwise noted, all “Section” references are to the Labor Code.

1 Ultimately, Plaintiff argued that the potential total recovery amounted to \$10,711,750.00—which
2 included \$2,316,000.00 in penalties under Section 226(e)³ and \$8,395,750.00 in penalties under Section
3 226.3.⁴ *Id.* Plaintiff contends that the Gross Settlement Amount of \$1,575,000.00—approximately
4 14.70% of the potential total recovery of \$10,711,750.00—is an excellent result. *Id.*

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

18 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
19 classwide judgment against Defendants, they recognize the inherent risks in litigation, including the
20 specific risks that class certification could be denied, liability could not be established at trial, or the
21 applicable law could change. Yang Decl. ¶ 9. The settlement for each Class Member is fair, reasonable,
22 and adequate, given the inherent risks of litigation, as well as the potential for appeals and the costs of
23 pursuing litigation. *Id.*

24 Class Members would not need to do anything to receive their share of settlement funds. This
25 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
26 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the

27 ³ The statutory cap of \$4,000.00 for each of 579 Class Members = \$2,316,000.00.

28 ⁴ \$250.00 for each of 35,583 wage statements = \$8,395,750.00.

claims proposed to be settled and released, each Class Member has the right to object or to submit a request for exclusion (i.e., opt out) from the settlement.

2. The Settlement Releases Are Appropriate.

As discussed above, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement Class Members are only subject to a release of claims that were alleged in any operative complaint or that could have been alleged based on the factual allegations in any operative complaint. *Id.* § 6.1. Moreover, the settlement releases apply to claims arising during the Class Period only. *Id.* Similarly tailored, the LWDA releases only claims for civil penalties for violations of Sections 226(a) and 226.3 during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action. *Id.* § 6.2.

In sum, because Plaintiff alleged targeted claims in the Action, any settlement releases also are specifically tailored to the facts alleged. The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action settlements.”).

3. The Class Notice Is Adequate.

A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendants to provide to the Administrator each Class Member’s last known address, among other information (the “Class Data”), within 14 days of a Preliminary Approval Order. Agreement § 3.2. Within 21 days of a Preliminary Approval Order, the Administrator would mail the Notice of Class Action Settlement (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last known address for each Class Member, based on Class Data. *Id.* §§ 3.3, 3.4. Any Class Notice returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. *Id.* § 3.4. If no forwarding address is provided, the Administrator would promptly attempt to determine the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The

1 Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the
2 settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v.*
3 *Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

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

5 The Agreement provides for a Gross Settlement Amount of \$1,575,000.00. Agreement ¶ 5.1.
6 From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement
7 Amount (or \$525,000.00) and litigation costs are not to exceed \$20,000.00. *Id.* ¶ 5.1.1. The Class
8 Representative Award will be no more than \$10,000.00. Agreement ¶ 5.1.2. Administration Costs will
9 be no more than \$12,000.00. *Id.* ¶ 5.1.3. The PAGA Penalty Fund will be \$160,000.00, and pursuant to
10 statute, 75% of the PAGA Penalty Fund (or \$120,000.00) would constitute the LWDA Payment, and
11 25% of the PAGA Penalty Fund (or \$40,000.00) would be payable to Aggrieved Employees on a pro
12 rata basis, based on the number of relevant wage statements they received. *Id.* § 5.1.4.⁵

13 **1. Each Class Member, on Average, Would Receive More than \$1,500.**

14 It is expected that, on average, each Class Member would be allocated approximately \$1,533.68
15 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8. The amount paid on
16 average to each Class Member may increase, depending on how many Class Members opt out of the
17 class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease
18 depending on his or her number of relevant wage statements during the Class Period. *Id.* After deducting
19 any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Award,
20 Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder
21 would be allocated among Settlement Class Members on a pro rata basis, based on the number of
22 relevant wage statements they received. Agreement § 5.2.

23 As Plaintiff’s lawsuit sought penalties only, 100% of Class Members’ Individual Settlement
24 Payments would be characterized as penalties. Agreement ¶ 5.5. None of the settlement funds will revert
25 to Defendants. *Id.* ¶ 5.1. Instead, the principal for any uncashed checks (upon the expiration date) would
26 be distributed as directed by any order granting final approval of the settlement. *Id.* ¶ 5.4.

27
28

⁵ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 15.

1 **2. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

2 California state and federal courts have recognized that an award of attorneys’ fees is
3 appropriately determined based on a percentage of the total value of settlement benefits to Class
4 Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing*
5 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
6 Cir. 1997). Indeed, under California law, the award of attorneys’ fees in common fund wage and hour
7 class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal.
8 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that
9 when class action litigation establishes a monetary fund for the benefit of the class members, and the
10 trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine
11 the amount of a reasonable fee by choosing an appropriate percentage of the fund created”). Under the
12 percentage of the fund method, a court’s objective remains to “mimic the market” in fixing a reasonable
13 fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court
14 rather than by contract, the object is to set it at a level that will approximate what the market will set
15 The judge, in other words, is trying to mimic the market in legal services.”).

16 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal
17 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
18 *Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
19 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the
20 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide
21 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
22 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
23 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
24 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%
25 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
26 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

27 Here, Plaintiff will request an attorneys’ fees award of 33⅓% of the Gross Settlement Amount.
28 Agreement ¶ 5.1.1. 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 Janele Aldana 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 Janele Aldana ("Aldana Decl.") ¶¶ 2-3.

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

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

4. The Administration Costs Are Reasonable.

Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has quoted Administration Costs not to exceed \$12,000.00 to send notices and administer the settlement. The Administration Costs are reasonable and should be approved.

II. The Class Meets All Requirements for Certification.⁶

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

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

A. The Class Is Ascertainable and Sufficiently Numerous.

Class Members are identifiable from Defendants’ records. The class definition “is precise, objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Indeed, there are approximately 579 Class Members. Agreement § 1.5. Numerosity thus is sufficiently established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples in which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

B. The Class Establishes a Community of Interest.

“The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)

⁶ Defendants expressly reserve their objections and do not agree that class certification of any of the claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the inherent risk of class certification motion practice.

1 class representatives who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
2 435 (2000).

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

4 Plaintiff alleges that Defendants furnished unlawful wage statements as a result of Defendants’
5 common wage statement policies, practices, or procedures. With respect to typicality, Plaintiff—exactly
6 like other members of the Class—was provided wage statements that fail to accurately show the total
7 hours worked or to show the pay period start date. Aldana Decl. ¶ 2.

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

9 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
10 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
11 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
12 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
13 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
14 462, 473 (1981). Defendants’ conduct is central to the commonality inquiry. *See City of San Jose v.*
15 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).

16 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the
17 classwide impact of Defendants’ policies satisfies the commonality requirement. *See Stephens v.*
18 *Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

19 **3. Plaintiff and Her Counsel Adequately Represent the Class.**

20 With respect to adequate representation, Plaintiff does not have any interests adverse to the
21 Class, and no such issues have been raised or presented. Aldana Decl. ¶ 3. Plaintiff has taken all
22 necessary steps to represent the interests of the Class, including by providing information and
23 documents to Class Counsel, making herself available to discuss the claims, providing wage statements
24 that she was issued, reviewing wage statements while the lawsuit was pending, and answering any
25 questions. *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will
26 continue to do so.

27 From the inception of the case, Class Counsel has zealously represented the interests of the
28 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class

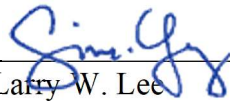
Representative. Class Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶ 10-14; Marder Decl. ¶¶ 10-11.

CONCLUSION

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

DATED: January 26, 2023

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation			
Reservation ID: 602110108426		Status: RESERVED	
Reservation Type: Motion to Confirm Settlement		Number of Motions: 1	
Case Number: RG20071668		Case Title: Aldana VS Dal-Tile Service, Inc	
Filing Party: Janele Aldana (Plaintiff)		Location: Rene C. Davidson Courthouse - Department 21	
Date/Time: February 21st 2023, 10:00AM		Confirmation Code: CR-VK3KPWYADVJ4ZP8HB	
Fees			
Description	Fee	Qty	Amount
Reschedule Fee	1.00	1	1.00
TOTAL			\$1.00
Payment			
Amount: \$1.00		Type: Visa	
Account Number: XXXX3359		Authorization: 02392G	
Payment Date: 2023-01-04			

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