

Howard L. Magee (State Bar No. 185199)
Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

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

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

JEANETTE OSMAN-BRAVARD, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

PLACER TITLE COMPANY, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CU21-085315

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

Date: May 19, 2023
Time: 10:00 a.m.
Dept.: 6

Complaint Filed: March 19, 2021
FAC Filed: March 26, 2021

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

2 **PLEASE TAKE NOTICE** that on May 19, 2023, at 10:00 a.m. before the Honorable S. Robert
3 Tice-Raskin, judge presiding in Department 6 of the above-referenced Court, located at 201 Church
4 Street, Nevada City, California 95959, Plaintiff Jeanette Osman-Bravard (“Plaintiff”) will seek an Order:

- 5 1. Granting final approval to the Joint Stipulation of Class Action Settlement (“Stipulation,”
6 “Settlement,” or “Settlement Agreement”) in this action;
- 7 2. Approving distribution of the settlement funds to the Class Members pursuant to the terms
8 of the Stipulation;
- 9 3. Approving Plaintiff’s request for an award of the Class Representative enhancement
10 payment of \$7,500.00 to the Class Representative pursuant to the terms of the Stipulation;
- 11 4. Approving Class Counsel’s request for an award of attorneys’ fees of approximately one-
12 third of the Gross Settlement Amount, or \$139,166.67, and reimbursement of actual litigation costs of
13 \$5,596.90, pursuant to the terms of the Stipulation;
- 14 5. Approving Plaintiff’s request for payment of the Settlement Administration Costs to
15 Phoenix Settlement Administrators in the amount of \$7,000.00 pursuant to the terms of the Stipulation;
- 16 6. Approving Plaintiff’s request for payment to the LWDA for \$15,000.00 pursuant to the
17 Private Attorneys General Act and the terms of the Stipulation; and
- 18 7. Entering final judgment as to all members of the Class in this action.

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
20 court approval of the settlement of a purported class action and allows the Court to grant final
21 certification of a class for settlement purposes. The basis for this unopposed Motion is that the proposed
22 settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to
23 ensure the opportunity of Class Members to participate in, opt out of, or object to the settlement. In light
24 of the overwhelmingly positive response, as shown by the lack of objections and opt-outs to the
25 settlement, there is no question that the settlement is fair, reasonable and adequate and thus should be
26 granted final approval.

27 This Motion will be based on the attached Memorandum of Points and Authorities and the
28 supporting Declarations of Larry W. Lee, Mai Tulyathan, Plaintiff Jeanette Osman-Bravard, and Taylor

1 Mitzner of Phoenix Settlement Administrators, upon the oral arguments of counsel (should there be any),
2 and on the complete records and file herein.

3
4 DATED: April 27, 2023

DIVERSITY LAW GROUP, P.C.

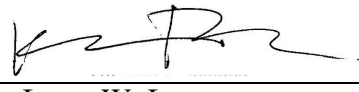
5
6 By: 
7 Larry W. Lee
8 Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved
Employees

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1 **I. INTRODUCTION**

2 Plaintiff Jeanette Osman-Bravard (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action Settlement (“Stipulation,” “Settlement,” or “Settlement Agreement”). The
4 Stipulation provides for a \$417,500.00 **non-reversionary** fund to be created for the benefit of the Class,¹
5 from which attorneys’ fees, litigation costs, enhancement payment to the Class Representative, payment
6 to the California Labor and Workforce Development Agency (“LWDA”), and costs of settlement
7 administration are to be paid. The entire Net Settlement Amount after these deductions will be paid to
8 all Class Members who did not opt-out of the Settlement.

9 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
10 Approval of Class Action Settlement. The Court preliminary approved this settlement on January 24,
11 2023, directing distribution of class notice and scheduling the hearing for final approval of the
12 settlement (the “Preliminary Approval Order”).

13 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
14 Settlement Administrators—distributed the Notice of Class Action Settlement (“Class Notice”) to 254
15 Class Members. (Declaration of Taylor Mitzner on behalf of Phoenix Settlement Administrators
16 (“Phoenix Decl.”) at ¶ 5.) All 254 Class Notices have been deemed by the Settlement Administrator to
17 have been delivered to the Class Members. (*Id.* at ¶ 7.) To date, there have been no requests for
18 exclusions and/or objections to the settlement submitted by any Class Members. (*Id.* at ¶¶ 8-9.) As
19 such, the settlement has a 100 percent participation rate. In light of this overwhelmingly positive
20 response from Class Members, an inference can be made that the Class supports the Court’s Preliminary
21 Approval Order finding that the Settlement Agreement is fair and reasonable. (Declaration of Mai
22 Tulyathan (“Tulyathan Decl.”) at ¶ 7.)

23 In addition to the results of the notice process, for the same reasons as set forth in Plaintiff’s
24 Motion for Preliminary Approval of Class Action Settlement, the following represents the basic points
25 supporting final approval of the settlement:

26
27 ¹ The “Class” as preliminarily approved by the Court consists of all current and former non-exempt
28 employees of Defendant in the State of California who received overtime pay and notary fees from
Defendant in the same pay period, at any time during the period from September 22, 2016, through
July 1, 2022 (the “Class Period”).

1 ▪ The settlement provides a Gross Settlement Amount of \$417,500.00, which is non-
2 reversionary;

3 ▪ The settlement is fair given that participating Class Members will receive (*after*
4 *deductions for fees, costs, etc.*) a substantial amount of money—on average, approximately \$957.62 to
5 each Participating Class Member, with the estimated highest individual settlement payment being
6 \$5,793.39 (*See* Phoenix Decl. at ¶ 13);

7 ▪ Class Members did **not** need to submit claim forms to participate in the settlement, but
8 will automatically receive a check for their individual share of the settlement;

9 ▪ The allocation reflects that payment of individual settlement amounts will be paid to
10 Class Members on a *pro rata* basis, based on the Class Score of each respective Class Member—or the
11 total amount of notary fees and overtime payments made to each respective Class Member between the
12 Class Period, as compared to the total amount of notary fees and overtime payments made to all Class
13 Members during the Class Period;

14 ▪ Class Counsel conducted significant investigation in this case, including conducting
15 formal and informal discovery that involved significant exchanges of information. This included class
16 data, payroll data for the putative class, sample wage statements and timekeeping records for putative
17 class members, and Defendant’s various policy documents regarding overtime and commission
18 payments necessary for Plaintiff to fully evaluate this case;

19 ▪ A highly regarded settlement administrator, Phoenix Settlement Administrators, was
20 retained to administer the settlement for approximately \$7,000.00 (*See* Phoenix Decl. at ¶ 16); and

21 ▪ The State of California’s LWDA will also be the beneficiary of this settlement, as it will
22 receive \$15,000.00 pursuant to the PAGA, should this settlement be granted final approval. Timely
23 notice of the PAGA settlement was provided to the LWDA pursuant to Cal. Lab. Code § 2699(l)(2) and
24 no objections to the Settlement by the LWDA were received by Plaintiff’s Counsel. (Tulyathan Decl. at
25 ¶ 9.)

26 Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval
27 Order.

28 ///

1 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT**

2 The notice procedures required by the Preliminary Approval Order have been followed and
3 satisfy all due process rights of Class Members. Specifically, the Preliminary Approval Order
4 contemplated that the Class Notice, as approved in the Preliminary Approval Order, be sent to all Class
5 Members by first class mail, as specified in the Settlement. The Preliminary Approval Order
6 contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement
7 Administrator.

8 As clearly stated in the Declaration of Taylor Mitzner on behalf of Phoenix Settlement
9 Administrators, notice was provided to all Class Members. On February 1, 2023, the Settlement
10 Administrator received a Class Member mailing list from Defendant's Counsel that included 254 Class
11 Members. (Phoenix Decl. at ¶ 3.) Prior to mailing the Class Notice, the Settlement Administrator
12 conducted a National Change of Address (NCOA) search to correct and/or update the class list in case of
13 any address changes. (*Id.* at ¶ 4.) On March 1, 2023, the Settlement Administrator mailed the Class
14 Notice to all Class Members on the mailing list via U.S. first class mail. (*Id.* at ¶ 5.) From the date of
15 mailing, three Class Notices were returned to the Settlement Administrator due to incorrect addresses.
16 (*Id.* at ¶ 6.) The Settlement Administrator conducted skip tracing to identify updated addresses for the
17 three Class Notices that were returned, and subsequently re-mailed those Class Notices via U.S. first
18 class mail to the updated addresses. (*Id.*) As of the date of this filing, **zero** Notice Packets remain
19 undeliverable. (*Id.* at ¶ 7.) Further, the Notice Packet provided Class Members with Class Counsel's
20 contact information and the Settlement Administrator's contact information and website, where they
21 could further seek information regarding the settlement, ask questions, review pleadings in the case, and
22 update their addresses. (Phoenix Decl., Ex. A.)

23 The provision of sending the notice to Class Members as described above meets the requirements
24 for the "best notice practicable" in this case as necessary to protect the due process rights of Class
25 Members. (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12 (provision of "best notice
26 practicable" with description of the litigation and explanation of opt-out rights satisfies due process);
27 *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75 (individual notice must be sent to class
28 members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust*

1 Co. (1950) 339 U.S. 306, 314 (best practicable notice is that which is “reasonably calculated, under all
2 the circumstances, to apprise interested parties of the pendency of the action and afford them an
3 opportunity to present their objections”).)

4 Here, all Class Members were provided with a mailing that explained the settlement and allowed
5 Class Members to seek information, ask questions, and exclude themselves and/or object to the
6 settlement, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court
7 may determine the fairness and adequacy of the Settlement and enter its Order granting final approval,
8 secure in the knowledge that all absent Class Members have been given the opportunity to participate
9 fully in the settlement, exclusion, and the approval process.

10 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND**
11 **THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

12 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

13 The Court already addressed the requirements for certifying a class for settlement purposes in its
14 Order granting preliminary approval. Plaintiff briefly addresses the requirements again here.

15 **1. The Class is Ascertainable**

16 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure Section 382
17 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available for
18 identifying the class members.” (*Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal. App.
19 3d 1263, 1271.)

20 Here, the Class consists of all current and former non-exempt employees of Defendant in the
21 State of California who received overtime pay and notary fees from Defendant in the same pay period,
22 at any time during the Class Period. 254 individuals comprise the Settlement Class. (Phoenix Decl. at ¶
23 3.) This is more than the minimum required to certify a class.

24 Within the context of manageability, the issue is whether there exists sufficient means for
25 identifying class members at the remedial stage. (*Reyes*, 196 Cal. App. 3d at pp. 1274-75.) Class
26 Members have already been identified by Defendant and notice was provided to all of the above Class
27 Members. (Phoenix Decl. at ¶¶ 3, 5.)

28 **2. There is a Community of Interest**

The “community of interest” requirement embodies three separate factors: (1) predominant

1 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
2 class representatives who can adequately represent the class. (*Richmond*, 29 Cal. 3d at p. 470; *Reese v.*
3 *Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th 1225, 1234.)

4 **a. There are Predominant Common Questions of Law and Fact**

5 “The ultimate question in every case of this type [class actions] is whether...the issues which
6 may be jointly tried, when compared with those requiring separate adjudication, are so numerous and
7 substantial that the maintenance of a class action would be advantageous to the judicial process and to
8 the litigants.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1104-05.)

9 In the present case, Plaintiff alleges that Defendant is liable to the Class for (i) failure to pay
10 overtime wages at the correct regular rate of pay, in violation of Labor Code §§ 510, 558, and 1194, and
11 (ii) failure to provide accurate itemized wage statements, in violation of Labor Code § 226. Specifically,
12 Plaintiff contends that Defendant failed to pay overtime wages at the correct regular rate of pay. In this
13 regard, Plaintiff contends that Defendant failed to factor non-discretionary remuneration, including
14 commission wages, into the calculation of the regular rate for purposes of paying overtime wages, and
15 thus Plaintiff and employees were underpaid overtime wages.

16 Plaintiff also alleges derivative wage statement claims under Labor Code § 226(a). Specifically,
17 as a result of the regular rate claims above, Plaintiff asserts that the corresponding wage statements
18 issued to Plaintiff and other employees failed to identify the required information under Labor Code §
19 226(a), including the accurate hourly rates of pay for overtime wages, and gross and net wages earned.

20 As these are all uniform corporate policies, practices, and procedures of Defendant as alleged by
21 Plaintiff, the claims can be jointly tried and thus the predominance requirement is satisfied. Defendant
22 denies all of these claims, denies that liability could be established on a class-wide basis, and contends
23 instead that liability and damages, if any, would need to be conducted on a case-by-case basis.

24 **b. Plaintiff’s Claims are Typical of the Class Claims**

25 The purported class representative’s claim must be “typical” but not necessarily identical to the
26 claims of other class members; it is sufficient that the representative is similarly situated so that he or
27 she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983) 145 Cal. App. 3d
28 27, 45.) Courts look to whether class members have similar injuries, “whether the action is based on

1 conduct which is not unique to the named Plaintiff,” and whether other class members were injured by
2 the same conduct. (*Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508.) The purpose of
3 the typicality requirement “is to assure that the interest of the named representative aligns with the
4 interests of the class.” (*Id.* at p. 508.)

5 Plaintiff asserts she was subjected to the same payroll policies and practices as all other Class
6 Members. In this regard, Plaintiff was employed by Defendant as a non-exempt employee from about
7 July 27, 2020, until about December 1, 2020. (Declaration of Jeanette Osman-Bravard (“Osman-
8 Bravard Decl.”) at ¶ 2.) Like other members of the Class, Plaintiff alleges she was underpaid overtime
9 wages. (*Id.* at ¶ 3.) Additionally, Plaintiff also claims that she was not issued accurate wage statements
10 whenever she was paid overtime wages. (*Id.*)

11 Based on the above, Plaintiff contends she was subjected to the same policies and practices as
12 other Class Members. Accordingly, typicality is satisfied.

13 **c. Plaintiff Adequately Represented the Class**

14 The class representative, through qualified counsel, must be capable of “vigorously and
15 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal. App. 3d
16 834, 846.)

17 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues been
18 raised or presented. (Osman-Bravard Decl. at ¶ 5.) Plaintiff has taken all necessary steps to represent
19 the interests of the Class, including providing information and documents to her counsel, discussing the
20 lawsuit with her counsel, and reviewing the various pleadings including the complaints, PAGA letter,
21 discovery responses and documents, settlement agreement, and declarations submitted in this case. (*Id.*
22 at ¶ 4.) For such reasons, Plaintiff has adequately represented the Class members and will continue to
23 do so.

24 **B. Risks, Expenses, and Complexity of Further Litigation**

25 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness of
26 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
27 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
28 possibility of non-certification, and potential for appeals. These risks on class certification are

1 compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59
2 Cal. 4th 1.

3 Here, Defendant alleges that Plaintiff would not be able to obtain class certification, and that its
4 policies are compliant. As such, Defendant contends that any liability would be determined on a case-
5 by-case basis. Based on the foregoing, there were risks that Plaintiff would not have obtained the total
6 amount of damages and penalties alleged on behalf of the Class, and a substantial number of complex
7 issues that would have necessitated significant expenditure of time and expenses. Therefore, the risks,
8 expenses and complexity of further litigation warrant granting of this Motion.

9 **C. The Terms of the Settlement, Negotiation of Settlement, and Reception of the**
10 **Settlement by Class Members All Strongly Support the Conclusion that the**
11 **Settlement is Fair, Adequate, and Reasonable**

12 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
13 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
14 Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement
15 Agreement was the product of negotiations between highly able and experienced attorneys on both sides
16 who possessed the relevant data and extensive legal research which they had carefully analyzed.
17 (Tulyathan Decl. at ¶¶ 3.) The Parties engaged in arm's length negotiations at mediation with an
18 experienced neutral, Russell J. Wunderli, Esq., and continued further negotiations facilitated by Mr.
19 Wunderli for several months. (*Id.*)

20 The results after mailing of the Notice Packet support confirmation of the Court's preliminary
21 approval of the settlement with final approval of the settlement, as evidenced by the fact that no class
22 members opted out and/or submitted any written objections to the settlement. (Phoenix Decl. at ¶¶ 8-9.)
23 With the significantly high rate of participation in the settlement by Class Members (**100%**), the Court
24 may appropriately infer that the class action settlement is fair, adequate, and reasonable. (*See Class*
25 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.)

26 **D. Under Well-Established Legal Principles, the Court Should Grant Final Approval**
27 **of the Settlement**

28 **1. Standard of Review**

On a motion for final approval of a class action settlement under California Code of Civil

1 Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement is
2 “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d
3 615, 625, *cert. denied subnom.*; *Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217.) A settlement is fair,
4 adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better
5 served by the settlement than by further litigation.” (*See Manual for Complex Litigation, Fourth* § 21.6
6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”).) The law favors settlement, particularly in class actions
7 and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and
8 rigors of formal litigation. (*See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41
9 (4th ed. 2002); *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v.*
10 *Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

11 Although the Court possesses “broad discretion” in determining that a proposed class action
12 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
13 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. (*See*
15 *Officers for Justice*, 688 F.2d at p. 625.) Accordingly, the Court should give due regard to what is
16 otherwise a “private consensual agreement” between the parties. (*Id.*; *see also Church v. Consolidated*
17 *Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.*
18 (D. Ariz. 1989) 720 F. Supp. 1379, *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309
19 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed
20 settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).)

21 A court’s approval of a class action settlement will only be reversed for a clear abuse of
22 discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Officers for Justice*, 688
23 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision was a clear abuse of
24 discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassir* (9th Cir. 1993) 1993 WL 326453;
25 *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

26 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

27 It cannot be overemphasized that neither the trial court in approving the
28 settlement nor this Court in reviewing that approval have the right or duty
to reach any ultimate conclusions on the issues of fact and law which

underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.

((2000) 85 Cal. App. 4th 1135, 1146.)

2. The Settlement is Presumed to Be Fair

The Court should begin its analysis with the presumption that the settlement is fair and should be approved:

[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.

(*Dunk*, 48 Cal. App. 4th at p. 1802; *accord*, *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.)

The Settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm’s length after a full day of mediation and continued settlement discussions through an experienced wage-and-hour mediator, Russell J. Wunderli, Esq. (Tulyathan Decl. at ¶ 3.)

Second, Class Counsel engaged in extensive factual investigation before settling, including exchange of formal and informal discovery before mediation. Specifically, Class Counsel reviewed class data pertaining to the number of putative class members, hourly rates of pay, the number of workweeks at issue, sample time and payroll records for the putative class members, as well as information pertaining to Defendant’s pertinent policies, practices, and procedures. (*Id.* at ¶ 4.) Class Counsel subsequently calculated the potential class and PAGA penalties available in this case. (*Id.*)

Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Declaration of Larry W. Lee (“Lee Decl.”) at ¶¶ 4-6; Tulyathan Decl. at ¶¶ 12-16.)

3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in

1 continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806 (“present
2 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
3 of not prevailing, should be compared with the amount of the proposed settlement”) (internal citations
4 omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485
5 F. Supp. 610, 616-17.)

6 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have been
7 potentially responsible for Defendant’s costs. (Osman-Bravard Decl. at ¶ 8.) As such, should individual
8 current or former employee of Defendant bring individual claims on the same causes of action, they
9 would each face the uncertainty of prevailing and the possibility of paying costs to Defendant.
10 Accordingly, such claims likely would not be brought by many of these current and former employees—
11 thus, this lawsuit achieves a true benefit for the Class that they might not otherwise get or seek as
12 individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any
13 of the Class Members will be required to pay for Defendant’s litigation costs.

14 The risks of this case were weighed by Class Counsel and should be considered a significant
15 factor by the Court in its determination of final approval. Class Counsel obtained a significant
16 settlement for the Class that resulted in a fair recovery which at the same time provides for finality and
17 no risk of costs by the Class Members or Class Representative.

18 The Settlement Agreement also affords the Class prompt, fair relief while avoiding significant
19 legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all.
20 While Class Counsel believes the Class Members’ claims are meritorious and can be successfully
21 litigated, they are experienced and fully understand the inherent risks and uncertainty involved with such
22 matters as the resolution of class certification, the outcome of a potential trial, and the outcome of any
23 appeals that would inevitably follow should the Class prevail at trial. Class Counsel has also assessed
24 the same risks in connection with the current settlement. Because the settlement provides immediate
25 and substantial relief, without the attendant risks and delay of continued litigation—not to mention the
26 threat of litigation fees and costs—Class Counsel believe that the settlement warrants the Court’s final
27 approval.

28 ///

1 **4. The Complexity, Expense, and Likely Duration of Continued Litigation**
2 **Against Defendant Favor Final Approval**

3 Another factor considered by courts in approving a settlement is the complexity, expense, and
4 likely duration of the litigation. (*See Officers for Justice*, 688 F.2d at p. 625; *Girsh*, 521 F.2d at p. 157.)
5 In applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
6 involved in achieving an equivalent or more favorable result at trial. (*Young v. Katz* (5th Cir. 1971) 447
7 F.2d 431, 433-34.)

8 As noted above, continued litigation could have led to appeals on several issues. On the other
9 hand, the settlement that was reached provides to all Class Members—regardless of their means—fair
10 relief in a prompt and efficient manner. Were the Court to deny final approval, the Class Members
11 would be left without a remedy as a practical matter and courts across the State would have to address
12 the issues presented here in a piecemeal, costly, and time-consuming manner. The settlement in this
13 case is therefore consistent with the “overriding public interest in settling and quieting litigation” that is
14 “particularly true in class action suits.” (*See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see*
15 *also 4 Newberg* § 11.41.) Here, this case could have involved years of litigation.

16 **5. The Opinion of Experienced Counsel Favors Final Approval**

17 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of
18 the Class Members as a whole. (Lee Decl. at ¶ 2; Tulyathan Decl. at ¶ 5.) Similarly, counsel for
19 Defendant is in favor of this settlement. The endorsement of qualified and well-informed counsel of a
20 settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its final
21 approval determination. (*See Officers for Justice*, 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*,
22 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.)

23 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD**
24 **BE APPROVED**

25 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement
26 funds remain after 180 days of the mailing of the individual settlement checks, the Parties have agreed
27 that all such uncashed settlement funds shall be distributed to the *cy pres* recipient Loaves and Fishes, a
28 non-profit organization that provides services to individuals experiencing homelessness, in accordance
 with C.C.P. § 384.

1 **V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENT**
2 **SHOULD BE APPROVED**

3 Class Representative Jeanette Osman-Bravard requests a total enhancement payment of
4 \$7,500.00. Plaintiff provided significant assistance with the lawsuit, including discussing the case with
5 Class Counsel on multiple occasions, searching for and providing documents and information regarding
6 Defendant's practices at issue in the case, responding to formal discovery and reviewing documents in
7 connection with discovery, and reviewing the various files and pleadings submitted in this case.
8 (Osman-Bravard Decl. at ¶ 4.) Accordingly, Plaintiff provided invaluable information, evidence, and
9 documents that resulted in this Settlement.

10 In addition to the invaluable services that she provided, Plaintiff also took significant risks, both
11 professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the Class.
12 (Osman-Bravard Decl. at ¶ 8.) Because the claims alleged by the Class Representative involved the
13 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
14 Defendant, had she not prevailed in this action. (*Id.*) Despite this, however, Plaintiff agreed to pursue
15 this case on behalf of the Class.

16 Also, given that future employers are much less likely to hire individuals who have filed
17 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
18 significant risk in not being able to find suitable employment and/or face retaliation from prospective
19 employers, all as a result of filing of this case against Defendant. Plaintiff took these risks upon herself
20 to the benefit of the Class. (Osman-Bravard Decl. at ¶ 8.) Class Members did not have to file individual
21 lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the
22 potential for retaliation and not getting future employment had they filed a lawsuit which is a public
23 record. These are significant benefits that weigh in favor of granting the requested enhancement.

24 Moreover, this litigation has resulted in a significantly valuable benefit to the Class, *i.e.*, average
25 award to Class Members in the amount of \$957.62, with the highest Individual Settlement Payment of
26 \$5,793.39, and Plaintiff took on substantial risks in helping to get this financial benefit for the Class. As
27 such, the enhancement payment should be awarded to Plaintiff for her commitment, dedication, and
28 risks taken for this litigation.

Courts have routinely granted approval of settlements containing such enhancements. (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 incentive award to class representative in ERISA case).)

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

Class Counsel seeks a fee award calculated at one-third of the Gross Settlement Amount, or \$139,666.67, for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc., supra*, 557 F.2d at p. 769.)

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements is under the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").) Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. (*See*

1 *Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (“When a fee is set by a court rather than by
2 contract, the object is to set it at a level that will approximate what the market will set....The judge, in
3 other words, is trying to mimic the market in legal services”).)

4 Here, the fee award representing approximately one-third of the fund clearly falls within that
5 range and is consistent with other rulings of other courts and comprehensive surveys of class action
6 settlements and fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S. Dist. LEXIS
7 61796, 23 (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour
8 class actions that result in recovery of a common fund under \$10 million”); *see also* Eisenberg & Miller,
9 *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud.
10 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in
11 the range sought here are consistent with market rates).) The results delivered by Class Counsel also
12 support the requested percentage of the fund. Here, Plaintiff and her counsel secured a \$417,500.00
13 non-reversionary common fund settlement.

14 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
15 relevant to the...reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir.
16 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation of
17 the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically
18 notified Class Members that Class Counsel would be seeking up to \$139,666.67 in attorneys’ fees. To
19 date, no Class Member has objected to the settlement. This strong favorable response also supports the
20 requested fees.

21 In addition, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
22 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

23 No one expects a lawyer whose compensation is contingent upon his
24 success to charge, when successful, as little as he would charge a client
25 who had agreed to pay for his services, regardless of success. Nor,
particularly in complicated cases producing large recoveries, is it just to
make a fee depend solely on the reasonable amount of time expended.

26 (*City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 470.) For Class Counsel, the fees here
27 were wholly contingent in nature and the case presented far more risk than the usual contingent fee case.
28 Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle

1 with a corporate defendant.

2 As secondary support for the percentage of the fund method, courts have discretion to “cross-
3 check” the fees awarded through the lodestar method. However, the *Laffitte* Court “emphasize[d] [that]
4 the lodestar calculation, when used in this manner, does not override the trial court’s primary
5 determination of the fee as a percentage of the common fund and thus does not impose an absolute
6 maximum or minimum on the potential fee award.” (*Laffitte*, 1 Cal.5th at p. 505; *In re Rite Aid Corp.*
7 *Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 (“[The lodestar cross-check does not trump the
8 primary reliance on the percentage of common fund method”).)

9 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar cross-
10 check is extraordinarily high or low, the trial court should consider whether the percentage used should
11 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
12 necessarily required to make such an adjustment.” (*Id.*) Thus, a lodestar cross-check is aimed at
13 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-
14 check “undermines” one of the primary reasons for using the percentage method: aligning counsel’s
15 incentives with the benefits delivered to the class and discouraging protracted litigation. (*Id.* at p. 506
16 (finding trial courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit*
17 *Task Force, Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 258; *Lealao v. Beneficial California,*
18 *Inc.* (2000) 82 Cal.App.4th 19, 29-30 (citing the recommendations of the Third Circuit Task Force with
19 approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now
20 echoed by many authorities, who have been most vocal about the manner in which it exacerbates the
21 problem of ‘cheap settlements’ and burdens already overworked trial judge”).)

22 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
23 even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also, e.g., Sutter*
24 *Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a
25 cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at p. 60 (applying a 2.5 multiplier on a
26 lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (affirming a 2.34
27 multiplier without remand).) The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable
28 range for multipliers on a cross-check, affirmed a 2.13 multiplier. (*Laffitte*, 231 Cal.App.4th at pp. 881-

82.) The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

With respect to Class Counsel's lodestar, to date, approximately 206 hours have been expended by Class Counsel in this matter. (Tulyathan Decl. at ¶ 17, Ex. A; Lee Decl. at ¶ 7, Ex. A.) Moreover, Class Counsel expects to incur approximately 20 additional hours in finalizing this settlement, including handling any post-approval matters and settlement issues that may arise. (Tulyathan Decl. at ¶ 18; Lee Decl. at ¶ 7.) Mr. Lee requests an hourly rate of \$800.00 per hour. (Lee Decl. at ¶ 7.) Ms. Tulyathan requests an hourly rate of \$600.00. (Tulyathan Decl. at ¶ 19.) The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639 [*Serrano IV*].) Thus, Class Counsel requests that the court find that these hours were reasonable in this litigation.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The court may consider other factors when determining a reasonable hourly rate, e.g., the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632-33.)

Class Counsel's skill and experience justify the requested rate. As shown in the supporting declarations, Class Counsel have significant experience in the area of employment and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. (Lee Decl. at ¶¶ 4-6; Tulyathan Decl. at ¶¶ 12-16.) As such, based on the hours and applicable rate, the total lodestar to be expended by Class Counsel through

1 finalizing this settlement will be approximately \$151,040.00, based on 226 total hours. (Lee Decl. at ¶¶
2 7-8; Ex. A; Tulyathan Decl. at ¶¶ 17-19, Ex. A.)

3 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in
4 order to make an appropriate fee award. (*Serrano III*, 20 Cal.3d at p. 48.) The pertinent factors include
5 the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee
6 award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund
7 the attorney would have received on the fair market. (*Id.*, *Lealao*, 82 Cal.App.4th at p. 49.) However,
8 this list is not exhaustive and the court can consider other factors it deems important in setting the
9 multiplier. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.)

10 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
11 enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal.App.4th at p. 52 (the promptness of
12 settlement “cannot be used to justify the refusal to apply a multiplier”).) According to *Lealao*, courts
13 placed “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for
14 achieving this goal in a timely fashion. (*Id.*)

15 Here, based upon Plaintiff’s counsel’s lodestar of \$151,040.00, Plaintiff’s request for a fee award
16 of \$139,666.67 is more than reasonable and fair. As the Court can see, the lodestar exceeds the
17 requested fee amount, such that it would result in a negative multiplier. As such, the requested fee
18 award in the amount of \$139,666.67 is fair and reasonable, and should be awarded in its entirety.

19 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
20 **COSTS**

21 The request for reimbursement of litigation costs, in the amount of \$5,596.90 is fair and
22 reasonable, especially in light of the fact that the Parties agreed that Class Counsel may seek up to
23 \$15,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set forth in Class
24 Counsel’s declaration, the costs were all directly incurred in the prosecution of this action, including but
25 not limited to, filing and service fees, court fees, postage fees, and costs associated with mediation.
26 (Tulyathan Decl. at ¶ 20, Ex. B.) As such, this requested costs should be approved as fair and
27 reasonable.

28 //

1 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
2 **APPROVED**

3 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
4 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement funds. As
5 shown on the Declaration of Taylor Mitzner, the settlement administration fees expended in this matter
6 amount to a total of \$7,000.00, which is the amount that was agreed upon by the Parties. (Phoenix Decl.
7 at ¶ 16, Ex. B.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

8 **IX. CONCLUSION**

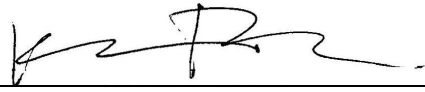
9 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
10 respectfully submits that the standards for final approval have been met and the terms of the Settlement
11 Agreement are fair, adequate, and reasonable.

12 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form proposed
13 and submitted:

- 14 1. Granting final approval to the proposed Settlement Agreement in this action;
 - 15 2. Approving distribution of the settlement funds to the Class Members pursuant to the
16 terms of the Settlement Agreement;
 - 17 3. Approving Plaintiff's request for an award of the Class Representative enhancement
18 payment of \$7,500.00, with payment pursuant to the terms of the Settlement Agreement;
 - 19 4. Approving Class Counsel's request for an award to Class Counsel for \$139,666.67 in
20 attorneys' fees and \$5,596.90 in costs, with payment pursuant to the terms of the Settlement Agreement;
 - 21 5. Approving Plaintiff's request for payment of the Settlement Administration Costs to
22 Phoenix Settlement Administrators in the amount of \$7,000.00, with payment pursuant to the terms of
23 the Settlement Agreement;
 - 24 6. Approving Plaintiff's request for payment to the LWDA for \$15,000.00, with payment
25 pursuant to the terms of the Settlement Agreement; and
 - 26 7. Entering final judgment as to all members of the Class in this action.
- 27
28

1 DATED: April 27, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: 
4 Larry W. Lee
5 Mai Tulyathan
6 Attorneys for Plaintiff, the Class, and Aggrieved
7 Employees
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On April 27, 2023, I served the following document(s) described as:

1. **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
3. **DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
4. **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT**
5. **DECLARATION OF JEANETTE OSMAN-BRAVARD IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
6. **DECLARATION OF TAYLOR MITZNER WITH RESPECT TO NOTICE AND SETTLEMENT ADMINISTRATION**

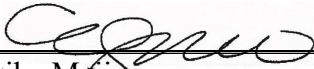
on the interested parties in this action as follows:

Charles S. Painter Adam Khan Lewis Brisbois Bisgaard & Smith LLP 2020 West El Camino Avenue, Suite 700 Sacramento, California 95833	<i>Attorneys for Defendant Placer Title Company</i> Charles.Painter@lewisbrisbois.com adam.khan@lewisbrisbois.com cynthia.buendia@lewisbrisbois.com kristi.baughman@lewisbrisbois.com kimberly.findley@lewisbrisbois.com
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2 completed and that all pages were received by the party(ies) identified herein or on the attached
3 mailing list.

4 I declare under penalty of perjury under the laws of the State of California that the
5 above is true and correct. Executed on April 27, 2023, at Los Angeles, California.

6 
7 Erika Mejia