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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 PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: October 21, 2022
Time: 10:00 a.m.
Dept.: 6

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

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 21, 2022 at 10 a.m. before the Honorable Thomas M. Anderson, judge presiding in Department 6 of the above-referenced Court, located at 201 Church Street, Nevada City, California 95959, Plaintiff Jeanette Osman-Bravard (“Plaintiff”) will and hereby does move the Court for the following relief with respect to the Joint Stipulation of Class Action Settlement (“Stipulation,” “Settlement,” or “Settlement Agreement”) entered into by Plaintiff and Defendant Placer Title Company (“Defendant”) (together with Plaintiff, the “Parties”):

1. That the Court approve the Stipulation referenced above;

2. That the Court conditionally certify the following class for settlement purposes only: all current and former non-exempt 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 Class Period.

3. That Plaintiff Jeanette Osman-Bravard by appointed as the Class Representative, and Larry W. Lee, and Mai Tulyathan of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group, be appointed as Class Counsel;

4. That the Court preliminary approve the Stipulation and the total Gross Settlement Amount in the amount of Four Hundred Seventeen Thousand Five Hundred Dollars and Zero Cents (\$417,500.00);

5. That the Court finds on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, the enhancement payment to the Class Representative, Class Counsel award of attorneys’ fees and costs, settlement administration costs, and the allocation of individual payments to Class Members, that could ultimately be given final approval by this Court;

6. That the Court approve the mailing of the proposed Notice of Class Action Settlement (“Notice Packet”) to be sent to Class Members;

7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

8. That the Court schedule the matter for a final approval hearing.

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
2 court approval of the settlement of a purported class action and allows the Court to preliminarily certify a
3 class for settlement purposes.

4 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
5 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Class
6 Members to participate in, opt out of, or object to the settlement. This Motion is based on the
7 Memorandum of Points and Authorities included herein, the Stipulation and the proposed Notice Packet,
8 and the supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, and Plaintiff
9 Jeanette Osman-Bravard, and upon the oral arguments of counsel (should there be any), and on the
10 complete records and file herein.

11
12 DATED: September 29, 2022

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

13
14 By: 
15 Larry W. Lee
16 Mai Tulyathan
17 William L. Marder
Attorneys for Plaintiff, the Class, and Aggrieved
Employees

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act (“PAGA”) action
3 under the California Labor Code. Plaintiff Jeanette Osman-Bravard (“Plaintiff”) alleges that Defendant
4 Placer Title Company (“Defendant”) failed to pay overtime wages at the correct regular rate of pay in
5 violation of Labor Code §§ 510, 558, and 1194 and failed to provide accurate itemized wage statements
6 to its employees in violation of Labor Code § 226. Based on these violations, Plaintiff asserts class and
7 PAGA claims for violation of Labor Code §§ 201-203, 226, 510, 558, 1194, and 2698, *et seq.*, as well as
8 a claim for violation of Business and Professions Code § 17200, *et seq.* Plaintiff also alleges individual
9 claims for age discrimination in violation of the Fair Employment and Housing Act (“FEHA”), wrongful
10 termination in violation of public policy, and intentional infliction of emotional distress. Defendant
11 denied all material allegations. The Parties have reached a class and PAGA action settlement, the terms
12 of which are reflected in the Parties’ Joint Stipulation of Class Action Settlement (“Stipulation,”
13 “Settlement,” or “Settlement Agreement”).

14 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the
15 class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the legal principles
16 applicable to the claims asserted against Defendant. Through the exchange of formal discovery, as well
17 as informal discovery in connection with mediation, Defendant provided necessary data pertaining to the
18 number of putative class members, the hourly rates of pay, number of workweeks, payroll data for the
19 putative class, sample wage statements and timekeeping records for putative class members, and
20 pertinent policies regarding overtime and commission payments. The information provided by
21 Defendant allowed Plaintiff to review and analyze the liability and potential exposure. Thereafter, the
22 Parties attended a full day of mediation with experienced mediator Russell J. Wunderli, Esq., after
23 which the Parties were able to reach the current settlement.

24 The terms of the Settlement Agreement provide that Defendant pay a Gross Settlement Amount
25 of Four Hundred Seventeen Thousand Five Hundred Dollars and Zero Cents (\$417,500.00) to resolve
26 the class and PAGA claims. Significantly, the entire Gross Settlement Amount will be distributed to the
27 class on a **non-reversionary** basis, **such that no remaining monies will revert to Defendant.** Further,
28 no claim forms are required. The following represents the key terms of the Settlement:

- Gross Settlement Amount of \$417,500.00;
- Estimated class size of 260 individuals;
- Enhancement payment to the Class Representative of up to \$7,500.00;
- Class Counsel’s attorneys’ fees of one-third of the Gross Settlement Amount, up to \$139,166.67;
- Class Counsel’s costs of up to \$15,000.00;
- Settlement administration costs of up to \$7,000.00;
- PAGA Payment of \$20,000.00, of which 75%, or \$15,000.00, will be paid to the Labor and Workforce Development Agency (“LWDA”), and the remaining 25%, or \$5,000.00, will be included as part of the Net Settlement Amount for distribution to Class Members;
- Net Settlement Amount of approximately \$228,833.33 to be distributed to Class Members on a pro rata basis, based on the Class Score of the Class Member who does not opt out of the Settlement; and
- Raw average of at least **\$880.13** from the Net Settlement Amount to be paid to each Participating Class Member.

The Parties and their respective counsel believe that the Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and her counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that the class might not be certified and/or that Plaintiff could fail to establish liability.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On January 21, 2021, Plaintiff submitted her written notice to the LWDA, alleging violations of Labor Code §§ 201-203, 226, 510, 558, and 1194, pursuant to the PAGA, Labor Code § 2699. Declaration of Mai Tulyathan (“Tulyathan Decl.”) ¶ 2. On March 15, 2021, Plaintiff filed a charge with the Department of Fair Housing and Employment (“DFEH”), alleging claims for age discrimination,

1 wrongful termination, and other claims in violation of Government Code § 12940, *et seq.* Tulyathan
2 Decl. ¶ 3. Thereafter, on March 19, 2021, Plaintiff filed a complaint against Defendant in the Superior
3 Court of California, County of Nevada, alleging class and individual causes of action for: (1) age
4 discrimination in violation of the FEHA; (2) wrongful termination in violation of public policy; (3)
5 intentional infliction of emotional distress; (4) violation of Labor Code §§ 510, 558, and 1194; (5)
6 violation of Labor Code § 226(a); and (6) violation of Business & Professions Code § 17200, *et seq.* *Id.*
7 ¶ 4.

8 On March 26, 2021, Plaintiff filed a First Amended Complaint, adding a seventh cause of action
9 for violation of Labor Code § 2698, *et seq.* *Id.* ¶ 5. The First Amended Complaint is the operative
10 Complaint (“Complaint”).

11 Plaintiff’s class and PAGA claims as pled in the Complaint are predicated upon the following
12 allegations. Plaintiff contends that Defendant failed to pay overtime wages at the correct regular rate of
13 pay. Specifically, Plaintiff contends that Defendant failed to factor non-discretionary remuneration,
14 including commission wages, into the calculation of the regular rate for purposes of paying overtime,
15 and thus Plaintiff and employees were underpaid overtime wages. *Id.* ¶ 6. Plaintiff also alleges
16 derivative wage statement claims under Labor Code § 226(a). Specifically, as a result of the regular rate
17 claim, Plaintiff asserts that the corresponding wage statements issued to Plaintiff and other employees
18 failed to identify accurate hourly rates of pay for overtime wages and gross and net wages earned
19 whenever overtime wages were paid. *Id.* ¶ 6. As a result of these alleged violations, Plaintiff seeks
20 unpaid wages, waiting time penalties, statutory penalties, and civil penalties under the California Labor
21 Code and PAGA, as well as attorneys’ fees and costs. *Id.* ¶ 6.

22 Following the exchange of formal discovery, the Parties agreed to participate in private
23 mediation. In connection with mediation, the Parties agreed to exchange informal discovery to allow
24 Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of damages and
25 penalties. *Id.* ¶ 7. Defendant produced class data, including the number of putative class members, the
26 hourly rates of pay, number of workweeks, payroll data for the putative class, sample wage statements
27 and timekeeping records for putative class members, and pertinent policies regarding overtime and
28 commission payments. *Id.*

1 On April 13, 2022, the Parties engaged in a full-day mediation with mediator Russell J.
2 Wunderli, Esq. *Id.* ¶ 8. While the Parties did not resolve the claims at mediation, the Parties continued
3 settlement negotiations for several months facilitated by Mr. Wunderli. *Id.* After thorough investigation
4 and evaluation of the facts and claims, and further arm's length negotiations, the Parties and their
5 counsel reached the current settlement. *Id.* In resolution of Plaintiff's class and PAGA claims, the
6 Parties entered into Settlement Agreement, a true and correct copy of which is attached as **Exhibit A** to
7 the Declaration of Mai Tulyathan. *Id.* Plaintiff's individual claims were resolved separately in a
8 confidential settlement agreement. *Id.* ¶ 9.

9 The Parties recognize the risk, expense, and delay in continuing litigation with the class and
10 PAGA claims, and believe the Settlement to be fair, reasonable, and adequate. *Id.* ¶ 10. Accordingly,
11 the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to
12 the class and PAGA claims as set forth in the Settlement Agreement.

13 **III. DISCUSSION**

14 Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is
15 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
16 has been distributed to the class members for their comment or objections. The *Manual for Complex*
17 *Litigation, Third* § 30.41 states:

18 Approval of class action settlements involves a two-step process. First,
19 counsel submits the proposed terms of settlement and the court makes a
20 preliminary fairness evaluation. If the preliminary evaluation of the
21 proposed settlement does not disclose grounds to doubt its fairness or
22 other obvious deficiencies, such as unduly preferential treatment of class
23 representatives or of segments of the class, or excessive compensation for
24 attorneys, and appears to fall within the range of possible approval, the
25 court should direct that notice...be given to the class members of a formal
26 fairness hearing, at which arguments and evidence may be presented in
27 support of and in opposition to the settlement.

28 (Fed. Jud. Ctr., 3rd ed. 1995).

29 Thus, the preliminary approval by the trial court is simply a conditional finding that the
30 settlement appears to be within the range of acceptable settlements. As Professor Newberg comments,
31 "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a

1 tentative settlement proposal may vary. The court may find that the settlement proposal contains some
2 merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid
3 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B.
4 Newberg, *Newberg on Class Actions* § 11.26 (4th ed. 2002).

5 The procedures for the parties’ submission of a proposed settlement for preliminary approval by
6 the court also are discussed in 4 *Newberg on Class Actions*:

7 When the parties to an action reach a monetary settlement, they will
8 usually prepare and execute a joint stipulation of settlement, which is
9 submitted to the court for preliminary approval. The stipulation should set
10 forth the central terms of the agreement, including but not limited to, the
11 amount of settlement, form of payment, manner of determining the
12 effective date of settlement and any recapture clause.

13 *Id.* § 11.24.

14 Here, the Parties have reached such an agreement and have submitted to this Court in connection
15 with this Motion a copy of the Stipulation fully setting forth the agreement reached by the Parties. The
16 Stipulation sets forth all terms of the agreement reached by the Parties as to settlement of the class and
17 PAGA claims. Said terms in the Stipulation include, among other things, the method for calculating the
18 Class Members’ individual portions of the settlement (“Individual Settlement Payment”).

19 The parties also may, at the preliminary approval stage, request that the court provisionally
20 approve certification of the class for settlement purposes—conditional upon final approval of the
21 settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
22 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48
23 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary
24 certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United*
25 *Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of
26 judicial efficiency in order to facilitate apparently beneficial settlement proposals”). As further
27 explained by Professor Newberg:

28 The strength of the findings made by a judge at a preliminary hearing or
conference concerning a tentative settlement proposal...may be set out in

1 conditional orders granting tentative approval to the various items
2 submitted to the court. Three basic rulings are often conditionally entered
3 at this preliminary hearing. These conditional rulings may approve a
4 temporary settlement class, the proposed settlement, and the class
5 counsel's application for fees and expenses.

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4 *Newberg on Class Actions* § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to which the Parties stipulate to the Court's provisional certification of the Class for the purposes of this settlement only. *See* Stipulation ¶ 76.

A. Proposed Class Definition

The current settlement is being settled on behalf of the following Class: all current and former non-exempt 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 Class Period (the "Class" or "Class Member(s)"). Stipulation ¶ 2. The Class Period means the time period from September 22, 2016, through July 1, 2022. Stipulation ¶ 6.

Pursuant to the Stipulation, Defendant has represented that there are approximately 260 individuals that comprise the Class. Stipulation ¶ 14.

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *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). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *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).

While the recommendations of counsel proposing the settlement are not conclusive, the Court

1 can properly take them into account, particularly where, as here, they have been involved in informal
2 discovery and negotiations for some period of time, appear to be competent, have experience with this
3 type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on*
4 *Class Actions*, *supra* § 11.47; *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at p. 528 (“[s]o long as the
5 integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of
6 fairness attaches to the proposed settlement...[citations] and ‘great weight’ is accorded to the
7 recommendations of counsel, who are most closely acquainted with the facts of the underlying
8 litigation”).

9 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and hour
10 class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of wage and
11 hour class actions and have extensive litigation experience. Declaration of Larry W. Lee (“Lee Decl.”)
12 ¶¶ 6-8; Tulyathan Decl. ¶¶ 25-29; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 4-9. Each side
13 has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in
14 negotiations taking place between the Parties. Tulyathan Decl. ¶ 11.

15 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face
16 potential liability of up to approximately \$1,300,000.00 for Plaintiff’s class claims if Plaintiff succeeded
17 at trial. Tulyathan Decl. ¶ 12. Plaintiff was able to estimate the potential class penalties based on class
18 data provided by Defendant, including the sample time and pay records of class members. *Id.* ¶ 12.
19 Specifically, for Plaintiff’s overtime regular rate claim, Plaintiff calculated the amount of unpaid wages
20 at approximately \$10,000.00, based on approximately 260 employees who were underpaid overtime
21 wages during the Class Period; and approximately \$600,000.00 in waiting time penalties, based on
22 approximately 100 former employees who were paid an average hourly rate of \$25.00. Plaintiff also
23 calculated standalone Labor Code § 226(e) penalties of \$699,600.00, based on 7,202 deficient wage
24 statements with payment of overtime wages during the Class Period. *Id.* ¶ 12.

25 With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated that Defendant
26 could face civil penalties of up to at least \$2,520,700.00 if Plaintiff were successful at trial on all claims.
27 Tulyathan Decl. ¶ 13. However, even assuming Plaintiff ultimately prevails on her PAGA claims, the
28 Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the

1 Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the
2 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30
4 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court
5 reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at
6 complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction to be
7 proper. *Id.* at p. 539.

8 Although Plaintiff believes in the merits of the alleged claims and maintains that there is no
9 reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to the claims
10 and further with respect to the reduction of PAGA penalties and that it could be persuasive to the Court.
11 Tulyathan Decl. ¶ 15. Thus, even if Plaintiff were to successfully prove her claims at trial, there is a
12 possibility that the Court may only award a small percentage of PAGA penalties, as the Court has
13 discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated with
14 the possibility of the Court significantly reducing Plaintiff’s PAGA penalties, along with other attendant
15 risks, even if Plaintiff was to prevail at trial. *Id.*

16 In light of the above, the Settlement for each Class Member is fair, reasonable, and adequate,
17 given the inherent risks of litigation, including the substantial risks relative to class certification and the
18 merits of the claims, the costs of pursuing such litigation, and the risks associated with the Court’s
19 discretion to reduce PAGA penalties. The Settlement is the result of extensive arm’s-length negotiations
20 between the Parties and their counsel and was facilitated by an experienced and neutral mediator.

21 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the fairness of
22 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
23 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
24 possibility of non-certification, and the potential for appeals. Tulyathan Decl. ¶ 16. These risks on class
25 certification are compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l*
26 *Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed
27 at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the
28 California Supreme Court after an additional five years of litigation. The case was remanded back to

1 superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

2 Indeed, numerous courts have held that **gross** settlements approximating between only 8 and
3 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
4 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
5 potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to
6 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
7 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
8 the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the
9 difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015
10 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between
11 **8.5% and 25%** of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*,
12 U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and
13 hour class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
14 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at
15 p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the
16 potential recovery was fair and reasonable).

17 Here, the total amount of class and PAGA penalties amount to approximately \$3,820,700.00,
18 without discounting for potentially losing on any of the causes of action. Tulyathan Decl. ¶ 14. The
19 Gross Settlement Amount is \$417,500.00, which is approximately **10.9%** of the maximum class and
20 PAGA penalties. *Id.* Thus, the settlement was negotiated at arm's length and the significantly high
21 settlement percentage-to-recovery further supports that the settlement is fair and reasonable.

22 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action
23 Settlement ("Notice Packet"), should any Class Member wish to pursue his or her own case for the
24 claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*,
25 opt-out) from the settlement, with the exception of the PAGA claims. *See* Notice Packet, attached as
26 **Exhibit B** to Tulyathan Decl. Moreover, as set forth in the Notice Packet, Class Members are advised
27 of their right to object to any of the terms contained in the Stipulation and attend the final approval
28 hearing. *Id.*

1 **1. Amount and Manner of Distribution of the Compensation to be Provided to**
2 **Class Members Including the Amount, or an Estimate, of What Each Class**
3 **Member Will Receive**

4 The Stipulation provides for Four Hundred Seventeen Thousand Five Hundred Dollars and Zero
5 Cents (\$417,500.00) as the Gross Settlement Amount. *See* Stipulation ¶ 14. The Net Settlement
6 Amount, calculated after deduction of attorneys' fees (up to \$139,166.67), litigation costs (up to
7 \$15,000.00), the enhancement payment to the Class Representative (up to \$7,500.00), the portion of the
8 PAGA Payment (\$20,000.00), and settlement administration costs (up to \$7,000.00), is estimated to be
9 approximately **\$228,833.33**. *Id.* ¶¶ 4, 8, 14, 16, 19, 29.

10 Pursuant to the Stipulation, the Net Settlement Amount will be apportioned among the Class
11 Members on a pro rata basis, based on the Class Score of each respective Participating Class Member, as
12 compared to the total Class Score of all Participating Class Members during the Class Period. *See*
13 Stipulation ¶ 36. Based thereon, on a raw average, each Class Member may potentially recover
14 approximately \$880.13. Tulyathan Decl. ¶ 17. The amount actually paid to each Class Member may
15 increase or decrease depending on the actual amount of Notary Fees and Overtime Payments earned by a
16 Class Member during the Class Period and the number of opt-outs received. *Id.*

17 Finally, the terms of the Settlement provide that uncashed checks (upon the expiration date) shall
18 be distributed to Loaves and Fishes, a non-profit organization that provides services to those
19 experiencing homelessness, in accordance with California Civil Procedure § 384. *See* Stipulation ¶ 55;
20 *see* Tulyathan Decl. ¶ 20, Ex. C. Class Counsel and Plaintiff do not have any relationship of any kind
21 with said organization. Tulyathan Decl. ¶ 20; Lee Decl. ¶ 5; Marder Decl. ¶ 3; Declaration of Jeanette
22 Osman-Bravard ("Osman-Bravard Decl.") ¶ 8.

23 **2. Whether, and Under What Circumstances, Amounts Available for Payment**
24 **in Settlement Might Not Be Paid to Class Members or Might Revert to the**
25 **Defendant**

26 This Settlement is non-reversionary, meaning that none of the settlement funds will revert back
27 to Defendant. *See* Stipulation ¶¶ 14, 30.

28 **3. Scope of the Release of Class Members' Claims**

As a condition of participating in this Settlement, Class Members who do not opt out of the

Settlement (“Participating Class Members”) will release the following claims against the Released Parties (“Released Claims”):

the following claims as pled and alleged in the operative complaint and derivative claims related thereto arising from the facts as alleged in the operative complaint, including:

- a. Any and all claims for failure to pay overtime wages at the regular rate of pay pursuant to Labor Code §§ 201-203, 510, 558, and 1194, that accrued during the Class Period;
- b. Any and all claims for inaccurate wage statements pursuant to Labor Code § 226, that accrued during the Class Period; and
- c. Any and all claims for civil penalties under the PAGA predicated on the failure to pay overtime wages at the regular rate of pay and failure to provide accurate wage statements pursuant to Labor Code §§ 201-203, 226, 510, 558, and 1194, that accrued during the Class Period.
- d. Any and all claims based on alleged unfair business practices in violation of the California Labor Code, the UCL, and the applicable IWC Wage Orders which are premised on violations of Labor Code §§ 201-203, 510, 558, and 1194, that accrued during the Class Period.
- e. Any and all claims asserted in the Complaint against Defendant in the Superior Court of California, County of Nevada, Case Number CU-085315 for which class certification was requested in the Complaint.

See Stipulation ¶¶ 23, 59.

Given that the release above is tailored to only claims pled in the Complaint. that arise out of the facts alleged in the Complaint, and that accrued during the Class Period, the release is appropriately limited.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that the individual settlement payment to Class Members shall be allocated as follows: twenty percent (20%) as payment for wages, less withholdings and deductions, for which an IRS Form W-2 shall issue, and eighty percent (80%) as payment of penalties and interest, for which an IRS Form 1099 shall issue. *See Stipulation ¶ 37.*

1 Pursuant to the Stipulation, employer-side payroll taxes on the wage portion of the Individual
2 Settlement Payments paid to Participating Class Members shall be paid by Defendant separately from
3 and in addition to the Gross Settlement Amount. *See* Stipulation ¶ 14.

4 **5. Affirmative Obligations to be Undertaken by Class Members or Class**
5 **Counsel and the Reasons for Any Such Obligations**

6 As stated above, Class Members do **not** need to do anything should they wish to receive their
7 share of the settlement funds. In other words, because this is not a claims-made settlement, Class
8 Members will not be required to make a submission to participate in the settlement. No claim forms are
9 required. Thus, this substantially decreases the amount of burden each Class Member must bear in order
10 to receive their share of the settlement funds. If a Class Member does not wish to take part in this
11 Settlement or be bound by the release, the Class Member must submit a request for exclusion. *See*
12 Stipulation ¶¶ 49, 59.

13 **C. Notice to Class Members**

14 Should the Court grant the instant motion, Defendant will provide the Settlement Administrator
15 with a list containing each Class Member's full name, employee number (if applicable), most recent
16 mailing address, Social Security Number, and the number of pay periods each Class Member received
17 overtime pay and notary fees from Defendant in the same pay period during the Class Period ("Class
18 List"). *See* Stipulation ¶ 5. Pursuant to the Stipulation, Defendant will provide said Class List within
19 fifteen (15) calendar days of preliminary approval. *Id.* ¶ 44. Upon receipt of the information and prior
20 to mailing the Notice Packet to Class Members, the Settlement Administrator shall perform a search
21 based on the National Change of Address Database for information to update and correct for any known
22 or identifiable address changes. *Id.* ¶ 46.

23 Within seven (7) calendar days of receipt of the Class List from Defendant, the Settlement
24 Administrator will mail the Notice Packet to Class Members using the most current, known mailing
25 address via First-Class U.S. mail. *See* Stipulation ¶ 45. Any Notice Packets returned to the Settlement
26 Administrator as non-deliverable on or before the response deadline shall be re-sent via regular First-
27 Class U.S. mail to the forwarding address affixed thereto. *Id.* ¶ 48. If no forwarding address is
28 provided, the Settlement Administrator will attempt to find the correct address using a skip-trace or

1 other comparable search to locate the most current address to re-mail the Notice Packet. *Id.*

2 The Notice Packet will advise Class Members of what the litigation is about, their rights under
3 the settlement, a summary of the principal terms and the monetary terms of the Settlement, their
4 expected Individual Settlement Payment and the formula for calculating the Individual Settlement
5 Payment if they do not request to be excluded, their opportunity to and procedures to opt out of or object
6 to the settlement, and the release of claims. *See* Stipulation ¶ 47; *see also* Notice Packet. As set forth in
7 the Notice Packet, Class Members will be allowed to opt out of or object to the Settlement by a certain
8 deadline, which is 45 calendar days after the initial mailing of the Notice Packet. *See* Stipulation ¶ 26.
9 Class Members who received a re-mailed Notice Packet will have that deadline extended by fifteen (15)
10 calendar days from the original response deadline. *Id.* ¶ 48.

11 If Class Members need further information about the settlement and/or the lawsuit, Class
12 Counsel's contact information and the Settlement Administrator's contact information are provided in
13 the Notice Packet. *See* Notice Packet at p. 7.

14 **D. Typicality and Adequacy of Representation**

15 **1. Class Representative's Claims are Typical of the Class**

16 The commonality requirement is met when there are questions of law and fact common to the
17 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues
18 with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with
19 disparate legal remedies within the class"). Commonality requires only that some common legal or
20 factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See*
21 *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the
22 commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v.*
23 *Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a
24 class of employees, as Plaintiff alleges here, the class wide impact of the Defendant's policies satisfies
25 the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421
26 (1987).

27 In the present case, Plaintiff alleges that Defendant is liable to the Class for (i) failure to pay
28 overtime wages at the correct regular rate of pay in violation of Labor Code §§ 510, 558, and 1194, and

(ii) failure to provide accurate itemized wage statements to its employees in violation of Labor Code § 226(a). Like all Class Members, Plaintiff was subjected to these same policies and practices. Osman-Bravard Decl. ¶¶ 2-3. In particular, Plaintiff alleges that Defendant miscalculated the regular rate of pay when paying overtime wages to Plaintiff whenever non-discretionary remuneration, such as commission wages, were paid to Plaintiff. *Id.* ¶ 3. Plaintiff also claims she was issued inaccurate wage statements that did not comply with Labor Code § 226(a). *Id.* ¶ 3. In other words, Plaintiff contends that she was subjected to the same policies and practices as other Class Members and thus, the typicality requirement is met.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. *Id.* ¶ 4. Plaintiff has taken all necessary steps to represent the interests of the Class, including by providing information and documents to Plaintiff's counsel. *Id.* ¶¶ 5-7. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Has Adequately Represented the Class and Has Experience with Wage and Hour Class Action

From the inception of the case, Class Counsel has zealously represented the interests of the Class. Class Counsel has engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class. Tulyathan Decl. ¶ 22. The Settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Further, Class Counsel has been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the class. Lee Decl. ¶¶ 6-8; Tulyathan Decl. ¶¶ 25-29; Marder Decl. ¶¶ 4-9.

E. Costs and Fees

1. Attorneys' Fees and Costs

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.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust

1 enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries so that
2 the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F.2d at p. 769.

3 The Common Fund doctrine is predicated on the principle of preventing unjust enrichment.
4 When a litigant’s efforts create or preserve a fund from which others derive benefits, she may require the
5 passive beneficiaries to compensate those who created the fund. Both California state and federal courts
6 have embraced this doctrine. *Serrano III*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in
7 *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court
8 recognized that the common fund doctrine has been applied “consistently in California when an action
9 brought by one party creates a fund in which other persons are entitled to share.” The reasons for
10 applying the common fund doctrine include:

11 Fairness to the successful litigant, who might otherwise receive no benefit
12 because his recovery might be consumed by the expenses; correlative
13 prevention of an unfair advantage to the others who are entitled to share in
14 the fund and who should bear their share of the burden of its recovery;
15 encouragement of the attorney for the successful litigant who will be more
16 willing to undertake and diligently prosecute proper litigation for the
17 protection or recovery of the fund if he is assured that he will be properly
18 and directly compensated should his efforts be successful.

17 *Id.*

18 Indeed, in 2016, the California Supreme Court has also now held that the award of attorneys’
19 fees in common fund wage and hour class action settlements should start with the percentage method.
20 *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of
21 federal and state courts in holding that when class action litigation establishes a monetary fund for the
22 benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of
23 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
24 percentage of the fund created”).

25 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the
26 fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that required a multiplier
27 of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is “extraordinarily high or low
28 [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the

1 imputed multiplier within a justifiable range.” *Id.* at p. 505.

2 The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
3 Amount, or \$139,166.67, for payment to Class Counsel as attorneys’ fees. *See* Stipulation ¶ 32. The
4 Parties have agreed to a payment of the foregoing attorneys’ fees and, thus, this payment should be
5 presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation
6 costs up to \$15,000.00. *Id.* Class Counsel have, at their own risk, expended costs, for example, to file
7 this instant action and other pleadings in the case, effect service of process, participate in mediation, and
8 advance other litigation-related costs. If Class Counsel’s actual costs are less than \$15,000.00, the
9 remainder will go to the Class for distribution.

10 Based on the foregoing, the Court should preliminarily approve the attorney’s fees and costs as
11 requested by the Parties.

12 **2. Proposed Payment to the Class Representative**

13 Class Representative Jeanette Osman-Bravard requests a modest enhancement of \$7,500.00. *See*
14 Stipulation ¶ 33. The Class Representative met and conferred with her counsel on a number of
15 occasions to discuss the case, provided documents and information to her counsel, and reviewed
16 pleadings and documents, including the Settlement Agreement. Osman-Bravard Decl. ¶¶ 5-7. As part
17 of her duties as the Class Representative, Plaintiff provided invaluable information, evidence, and
18 documents that resulted in this Settlement.

19 In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both
20 professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of
21 the Class. Because the claims alleged by the Class Representative involved the payment of costs to the
22 prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had she not prevailed
23 in this action.

24 Furthermore, given that future employers are much less likely to hire individuals who have filed
25 suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the
26 future from other potential employers. Plaintiff took this risk upon herself and the whole Class
27 benefited from these risks taken by Plaintiff. Class Members did not have to file individual lawsuits and
28 bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for

retaliation and not getting future employment had they filed a public lawsuit.

3. Class Administration Fees

The Parties have agreed to an estimated payment of no more than \$7,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. *See* Stipulation ¶¶ 28, 34. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

IV. PLAINTIFF HAS PROVIDED NOTICE TO THE LWDA

On September 29, 2022, Plaintiff uploaded the Joint Stipulation of Class Action Settlement to the LWDA's website. Tulyathan Decl. ¶ 31; Ex. D. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and proposed order to the LWDA's website. *Id.* at ¶ 32.

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Settlement presented here is fair, adequate, and reasonable. The Settlement will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation and facilitated by an experienced and neutral mediator.

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice Packet, and set a date for a final approval hearing.

DATED: September 29, 2022

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By: _____

Larry W. Lee

Mai Tulyathan

William L. Marder

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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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 September 29, 2022, I served the following document(s) described as:

- 1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 3. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 4. DECLARATION OF JEANETTE OSMAN-BRAVARD IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 5. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
on the interested parties in this action as follows:

Graham M. Cridland
gcridland@ericksenarbuthnot.com
Gabriel Ullrich
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Ericksen Arbuthnot
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Attorneys for Defendant Placer Title Company

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s) indicated above or on the attached mailing list. I certify that said electronic transmission was

1 completed and that all pages were received by the party(ies) identified herein or on the attached
2 mailing list.

3 I declare under penalty of perjury under the laws of the State of California that the
4 above is true and correct. Executed on September 29, 2022, at Los Angeles, California.

5 
6 Erika Mejia