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Attorneys for Plaintiff and the Class

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

ANISHA WISE, individually and on behalf of all  
others similarly situated,

Plaintiff,

vs.

LA PETITE ACADEMY, INC., a Delaware  
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2021-10461

(Assigned for all purposes to the Hon. Erin Guy  
Castillo, Dept. 10B)

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

Date: July 6, July 7, July 8,  
July 12 or July 13, 2022

Time: 9:00 a.m.

Dept.: 10B

Complaint Filed: November 9, 2021

FAC Filed: May 2, 2022

Trial Date: None Set

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

**PLEASE TAKE NOTICE** that on July 6, July 7, July 8, July 12 or July 13, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Erin Guy Castillo, judge presiding, in Department 10B of the above referenced Court, located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Anisha Wise (“Plaintiff”) will seek an Order:

(1) Preliminarily approving the Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”) in this matter;

(2) Conditionally certifying the following Class for settlement purposes only: all current and former non-exempt employees of Defendant in the State of California, who received a wage statement at any time from November 9, 2020, through February 25, 2022 (“Class Period”);

(3) Appointing Plaintiff as the Class Representative and Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group, as Class Counsel;

(4) Preliminarily approving the Settlement and the Gross Settlement Amount of \$828,400.00;

(5) Finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the Service Award to the Class Representative, Class Counsel’s fees and costs, the settlement administration costs, and the allocation of payments to Participating Class Members, that could ultimately be given final approval by this Court;

(6) Approving the Notice of Class Action Settlement (“Notice Packet”) to be sent to Class Members, which is attached as an exhibit to the Settlement Agreement;

(7) Approving the distribution of the Notice Packet to Class Members substantially in the manner and form set forth in the Settlement Agreement;

(8) Appointing Phoenix Settlement Administrators as the settlement administrator; and

(9) Setting the matter for a Final Fairness and Final Approval hearing.

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

The basis for this Motion, filed without any opposition from Defendant, is that the proposed

1 settlement is fair, adequate, and reasonable and the procedures proposed by the parties are adequate to  
2 ensure the opportunity of class members to participate in, opt-out of, or object to the settlement.

3 This Motion will be based on the attached Memorandum of Points and Authorities, the  
4 Settlement Agreement, the proposed Notice Packet, and the supporting Declarations of Larry W. Lee,  
5 Kristen M. Agnew, Nicholas Rosenthal, William L. Marder, and Plaintiff Anisha Wise, and upon the  
6 oral arguments of counsel (should there be any) and on the complete records and file herein.

7  
8 DATED: June 6, 2022

DIVERSITY LAW GROUP, P.C.

9  
10 By:   
11 Larry W. Lee  
12 Kristen M. Agnew  
13 Nicholas Rosenthal  
14 Attorneys for Plaintiff and the Class  
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## TABLE OF CONTENTS

|                                                                                                                                                                             | <u>Page</u> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <b>I. INTRODUCTION.....</b>                                                                                                                                                 | <b>7</b>    |
| <b>II. STATEMENT OF FACTS.....</b>                                                                                                                                          | <b>7</b>    |
| <b>III. ARGUMENT.....</b>                                                                                                                                                   | <b>8</b>    |
| <b>A. Preliminary Approval Standard.....</b>                                                                                                                                | <b>8</b>    |
| <b>B. Proposed Class Definition .....</b>                                                                                                                                   | <b>10</b>   |
| <b>C. Settlement Terms and Evaluation .....</b>                                                                                                                             | <b>10</b>   |
| 1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive ..... | 13          |
| 2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants .....            | 14          |
| 3. Scope of the Release of Class Members' Claims .....                                                                                                                      | 14          |
| 4. Tax Treatment of Settlement Amounts.....                                                                                                                                 | 14          |
| 5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations .....                                                | 14          |
| <b>D. Notice to Class Members .....</b>                                                                                                                                     | <b>15</b>   |
| <b>E. Typicality and Adequacy of Representation .....</b>                                                                                                                   | <b>15</b>   |
| 1. Class Representative's Claims are Typical of the Class.....                                                                                                              | 15          |
| 2. Class Counsel Has Adequately Represented the Class and Has Experience with Wage and Hour Class Actions.....                                                              | 16          |
| <b>F. Costs and Fees .....</b>                                                                                                                                              | <b>16</b>   |
| 1. Attorneys' Fees and Costs .....                                                                                                                                          | 16          |
| 2. Proposed Payment to the Class Representative .....                                                                                                                       | 18          |
| 3. Settlement Administration Fees.....                                                                                                                                      | 18          |
| <b>IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL .....</b>                                                                             | <b>19</b>   |

## TABLE OF AUTHORITIES

### Page(s)

#### State Cases

|                                                                                       |        |
|---------------------------------------------------------------------------------------|--------|
| <i>City and County of San Francisco v. Sweet</i> , 12 Cal.4th 105, 110 (1995).....    | 16, 17 |
| <i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447, 460 (1974) .....          | 15     |
| <i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1803 (1996) .....              | 10     |
| <i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....                     | 12     |
| <i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016) .....               | 17     |
| <i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981).....            | 15     |
| <i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977) .....                             | 16     |
| <i>Stephens v. Montgomery Ward &amp; Co.</i> , 193 Cal. App. 3d 411, 421 (1987) ..... | 15     |
| <i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971).....                  | 15     |
| <i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 240 (2001).....        | 10, 16 |

#### Federal Cases

|                                                                                                                          |        |
|--------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) ..... | 12     |
| <i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980).....                                                          | 16     |
| <i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990) .....                                                           | 10     |
| <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....                                                        | 15     |
| <i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979) .....                                      | 11     |
| <i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475, 478 (S.D.N.Y. 1984).....                                             | 10     |
| <i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957, 962 (N.D. Ga. 1980).....                                       | 10     |
| <i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000) .....                                       | 12     |
| <i>Mars Steel Corp. v. Continental Illinois Nat'l Bank &amp; Trust Co.</i> , 834 F.2d 677, 682 (7th Cir. 1987) ....      | 10     |
| <i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004).....                         | 10, 11 |
| <i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989).....                                                        | 10     |
| <i>Sommers v. Abraham Lincoln Federal Sav. &amp; Loan Ass'n</i> , 79 F.R.D. 571 (E.D. Pa. 1978) .....                    | 11     |
| <i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979).....                                                        | 11     |
| <i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) .....                 | 12     |

|                                                                                                                                 |    |
|---------------------------------------------------------------------------------------------------------------------------------|----|
| <i>Villegas v. J.P. Morgan Chase &amp; Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012)..... | 13 |
| <i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997) .....                                              | 16 |

## Statutes

|                                         |        |
|-----------------------------------------|--------|
| Labor Code § 2698, <i>et seq.</i> ..... | passim |
| Labor Code § 226.....                   | 8, 14  |
| Labor Code § 226(a) .....               | 7      |
| Labor Code § 226(a)(2) .....            | 8      |
| Labor Code § 226(a)(9) .....            | 8      |
| Labor Code § 226(e) .....               | 11     |
| Labor Code § 2699.....                  | 7      |

## Other Authorities

|                                                                                                  |           |
|--------------------------------------------------------------------------------------------------|-----------|
| 4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> , § 11.26 (4th ed. 2002)..... | 9, 10, 11 |
| Manual for Complex Litigation (Third) § 30.41 .....                                              | 9         |

## Rules

|                                                  |   |
|--------------------------------------------------|---|
| Rule 3.769 of the California Rules of Court..... | 2 |
|--------------------------------------------------|---|

1 **I. INTRODUCTION**

2 This is a wage and hour class action seeking statutory and civil penalties for wage statement  
3 violations. Plaintiff Anisha Wise (“Plaintiff”) brought claims against Defendant La Petite Academy, Inc.  
4 (“Defendant”) (together, Plaintiff and Defendant shall be referred to as the “Parties”) on a class-wide  
5 basis, alleging that Defendant had a policy and practice of issuing defective wage statements in violation  
6 of Labor Code § 226(a). Defendant denies all of the allegations of the Complaint.

7 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the  
8 claims alleged in the Complaint and engaged in a thorough study of the legal principles applicable to the  
9 claims asserted against Defendant. Defendant provided information related to the number of wage  
10 statements issued to the Class that violated the Labor Code. Thereafter, the Parties commenced  
11 settlement negotiations and were ultimately able to reach the current settlement. **Significantly, this**  
12 **entire amount is non-reversionary, such that no monies will revert back to Defendant.**

13 The Parties believe that this amount is fair, adequate, and reasonable, especially given the risks  
14 and uncertainty of class certification and the merits of this case.

15 Although Plaintiff and her counsel believe that they can prevail on class certification, as well as  
16 on the merits, Plaintiff and her counsel recognize the inherent risks in drawn-out litigation and the  
17 specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability.  
18 Defendant denies the allegations in the complaint and believes that it can prevail at trial. Based on their  
19 own independent investigation and evaluation, the Parties and their respective counsel are of the opinion  
20 that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,  
21 reasonable, and adequate and is in the best interests of the Class and Defendant in light of all known  
22 circumstances and the expenses and risks inherent in litigation.

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

25 **II. STATEMENT OF FACTS**

26 On November 3, 2021, Plaintiff filed written notice with the California Labor & Workforce  
27 Development Agency (“LWDA”), alleging that Defendant’s wage statements failed to comply with  
28 Labor Code § 226, pursuant to Labor Code § 2699 (“PAGA Notice”). Declaration of Nicholas Rosenthal

1 (“Rosenthal Decl.”) ¶ 2.

2 On November 9, 2021, Plaintiff filed a class action complaint against Defendant in the Superior  
3 Court of California for the County of San Joaquin, alleging violation of California Labor Code § 226  
4 (the “Action”). Rosenthal Decl. ¶ 3. The complaint alleged that the wage statements issued by Defendant  
5 failed to identify the correct total hours worked when overtime wages were paid in violation of Labor  
6 Code § 226(a)(2). *Id.*

7 On January 7, 2022, Plaintiff filed a related action against Defendant in the Superior Court of  
8 California for the County of San Joaquin (“Related Action”). The Related Action alleged a single cause  
9 of action for violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”),  
10 predicated on an underlying violation of Labor Code § 226. *Id.* ¶ 4.

11 Following the filing of the Related Action, the Parties agreed to engage in settlement discussions.  
12 *Id.* ¶ 5. In connection with the Parties’ discussions, Defendant produced corporate records and payroll  
13 data and information pertaining to the putative class. *Id.* The payroll data included the putative class size  
14 and number of wage statements at issue, which allowed Class Counsel to conduct a full damage  
15 analysis. *Id.*

16 After arm’s length negotiations between the Parties over the course of months, the Parties  
17 reached the present class-wide settlement. *Id.* ¶ 6.

18 On May 2, 2022, Plaintiff filed a first amended complaint in the Action. The first amended  
19 complaint alleges causes of action for (1) violation of Labor Code § 226 and (2) violation of Labor Code  
20 § 2698, *et seq.*, and seeks penalties, attorneys’ fees, and costs. The first amended complaint alleges that  
21 the wage statements issued by Defendant failed to identify the correct hourly rates of pay and total hours  
22 worked in violation of Labor Code § 226(a)(2) and (9). *Id.* ¶ 7. The first amended complaint is the  
23 operative Complaint (“Complaint”). *Id.*

### 24 **III. ARGUMENT**

#### 25 **A. Preliminary Approval Standard**

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

1 *Litigation, Third* § 30.41 states:

2           Approval of class action settlements involves a two-step process. First,  
3           counsel submits the proposed terms of settlement and the court makes a  
4           preliminary fairness evaluation. If the preliminary evaluation of the  
5           proposed settlement does not disclose grounds to doubt its fairness or  
6           other obvious deficiencies, such as unduly preferential treatment of class  
7           representatives or of segments of the class, or excessive compensation for  
8           attorneys, and appears to fall within the range of possible approval, the  
9           court should direct that notice...be given to the class members of a formal  
10          fairness hearing, at which arguments and evidence may be presented in  
11          support of and in opposition to the settlement.

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

13           Thus, the preliminary approval by the trial court is simply a conditional finding that the  
14          settlement appears to be within the range of acceptable settlements. As Professor Newberg comments,  
15          “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a  
16          tentative settlement proposal may vary. The court may find that the settlement proposal contains some  
17          merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid  
18          subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B.  
19          Newberg, *Newberg on Class Actions* § 11.26 (4th ed. 2002).

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

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

28 *Id.* § 11.24.

          Here, the Parties have reached such an agreement and have submitted to this Court in connection  
with this Motion a copy of the Settlement Agreement fully setting forth the agreement reached among  
the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the Parties,  
which include, among other things, the method for calculating the Class Members’ Individual  
Settlement Payments.

          The parties also may, at the preliminary approval stage, request that the court provisionally

1 approve certification of the class—conditional upon final approval of the settlement. “[P]re-certification  
2 settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*,  
3 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996)  
4 (although the settlement was reached before any “adversary certification,” the court was satisfied that it  
5 was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984)  
6 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate  
7 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

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

15 *4 Newberg on Class Actions* § 11.26.

16           In addition to such terms as class identification, settlement amount and payment procedures, the  
17 Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties  
18 stipulate to the Court’s provisional certification of the Class for the purposes of this settlement only.

#### 19 **B. Proposed Class Definition**

20           The current settlement is being settled on behalf of a Class of “all current and former non-exempt  
21 employees of Defendant in the State of California, who received a wage statement at any time from  
22 November 9, 2020, through February 25, 2022.” There are approximately 1,362 individuals that  
23 comprise of the Class. *See* Settlement Agreement ¶¶ 3, 48.

#### 24 **C. Settlement Terms and Evaluation**

25           Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence  
26 to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*  
27 *Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust*  
28 *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.*

1 *Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D.  
2 Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

3 While the recommendations of counsel proposing the settlement are not conclusive, the Court  
4 can properly take them into account, particularly where, as here, they have been involved in formal and  
5 informal discovery and negotiations for some period of time, appear to be competent, have experience  
6 with this type of litigation, and have exchanged substantial evidence from the opposing party. *See*  
7 *Newberg on Class Actions*, *supra*, § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o long  
8 as the integrity of the arm’s length negotiation process is preserved, however, a strong initial  
9 presumption of fairness attaches to the proposed settlement...[citations] and ‘great weight’ is accorded  
10 to the recommendations of counsel, who are most closely acquainted with the facts of the underlying  
11 litigation”).

12 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and hour  
13 class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of wage and  
14 hour class actions and have extensive litigation experience. Rosenthal Decl. ¶¶ 23-25; Declaration of  
15 Larry W. Lee (“Lee Decl.”) ¶¶ 7-9; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶¶ 6-11;  
16 Declaration of William L. Marder (“Marder Decl.”) ¶¶ 6-13. Each side has apprised the other of their  
17 respective factual contentions, legal theories, and defenses, resulting in negotiations taking place  
18 between the Parties. Rosenthal Decl. ¶ 22.

19 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face  
20 potential liability of up to approximately \$2,002,900.00 for Plaintiff’s class claims, pursuant to Labor  
21 Code § 226(e), which provides a \$50 penalty for the initial violation, followed by \$100 penalties for  
22 subsequent violations, with each employee’s cumulative penalties totaling no more than \$4,000.  
23 Rosenthal Decl. ¶ 14. Plaintiff was able to calculate precisely the potential damages and penalties based  
24 on data provided by Defendant, including the number of employees in the putative class and the number  
25 of wage statements at issue. *Id.* Specifically, the amount of Labor Code § 226(e) penalties are based on  
26 approximately 20,710 allegedly deficient wage statements and approximately 1,362 Class Members. *Id.*

27 Although Plaintiff believe that a class can be certified, Plaintiff also believes in the fairness of  
28 the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not

1 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the  
2 possibility of non-certification, and the potential for appeals. Rosenthal Decl. ¶ 21. These risks on class  
3 certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l*  
4 *Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed  
5 at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the  
6 California Supreme Court after an additional five years of litigation. The case was remanded back to  
7 superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

8 Further, Defendant raised several defenses that presented risk, including an employee could  
9 perform math calculations to determine his or her hourly pay rate and total hours worked on wage  
10 statements.

11 Thus, the Settlement for each Class Member is fair, reasonable, and adequate, given the inherent  
12 risks of litigation, including the substantial risks relative to class certification and the merits of the  
13 claims, and the costs of pursuing such litigation. The Settlement is the result of extensive arm's-length  
14 negotiations between the Parties and their counsel and was facilitated by an experienced and neutral  
15 mediator.

16 Indeed, numerous courts have held that **gross** settlements approximating between only 8 and  
17 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*  
18 *Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential  
19 exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a  
20 fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the  
21 fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation  
22 to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in  
23 proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at  
24 \*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of  
25 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case  
26 No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class  
27 settlement which obtained **only 9.1%** of projected damages, given the risks of continued litigation);  
28 *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at \*6 (N.D.

Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable). Here, the Gross Settlement Amount is fair and reasonable as it is approximately **41.4%** of the potential recovery of Plaintiff's class claims if Plaintiff was to fully succeed at trial. Rosenthal Decl. ¶ 15.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement, should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. Settlement Agreement ¶ 56. Moreover, as set forth in the Notice Packet, Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the Settlement Agreement.

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

The Settlement Agreement provides for Eight Hundred Twenty-Eight Thousand Four Hundred Dollars (\$828,400.00) as the Gross Settlement Amount. Settlement Agreement ¶ 16. The Net Settlement Amount, calculated after deduction of attorneys' fees (up to \$289,940.00), costs (up to \$10,000.00), Class Representative Service Award (up to \$10,000.00), Settlement Administration Costs (up to \$15,000.00), and payment of PAGA penalties to the LWDA (\$15,000.00), is estimated to be approximately \$488,460.00. *Id.* ¶¶ 5, 9, 16, 18, 21, 31. Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount based upon the number of applicable wage statements each Participating Class Member received during the Class Period. *Id.* ¶ 44.

Based thereon, on a raw average, each Participating Class Member may potentially recover approximately \$358.63. Rosenthal Decl. ¶ 18. The amount actually paid to each Participating Class Member may increase or decrease depending on the actual number of wage statements he or she received during the Class Period and/or the number of timely Requests for Exclusion received. Settlement Agreement ¶ 44; Rosenthal Decl. ¶ 19. This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly suffered greater harm. *Id.*

Finally, the terms of the settlement provide that uncashed checks (upon the expiration date) shall

1 be distributed to the Legal Aid at Work, a non-profit legal services organization that provides legal  
2 services and policy advocacy for and on behalf of low-income workers. Settlement Agreement ¶ 61.

3 **2. Whether, and Under What Circumstances, Amounts Available for Payment**  
4 **in Settlement Might Not Be Paid to Class Members or Might Revert to the**  
5 **Defendants**

6 None of the settlement funds will revert to Defendant. Settlement Agreement ¶¶ 16, 39, 61.

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

8 As a condition of participating in this settlement, Class Members shall waive and release “a. All  
9 claims, including penalties, costs, and attorneys’ fees related thereto, that could have been brought  
10 under the facts and allegations made in the operative Complaint, including claims for violation of  
11 Labor Code § 226 that accrued from November 9, 2020, through February 25, 2022; b. All claims for  
12 penalties under the California Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*,  
13 including costs and attorneys’ fees related thereto, predicated on the violation of Labor Code § 226,  
14 based on the facts as alleged in the operative Complaint that accrued from November 9, 2020, through  
15 February 25, 2022.” Settlement Agreement ¶¶ 25, 65. This release is appropriately limited, as it only  
16 applies during the time period of November 9, 2020, through February 25, 2022.

17 **4. Tax Treatment of Settlement Amounts**

18 As Plaintiff’s lawsuit sought solely statutory and civil penalties, the Parties have agreed that  
19 100% of all settlement payments to Class Members shall be deemed as IRS Form 1099 income and not  
20 subject to withholdings and deductions. Settlement Agreement ¶ 45.

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

23 As stated above, Class Members do not need to do anything should they wish to receive their  
24 share of the settlement funds. Thus, this substantially decreases the amount of burden each Class  
25 Member must bear in order to receive their settlement share. If a Class Member does not wish to take  
26 part in this settlement and be bound by the release, the Class Member must submit an exclusion request.  
27 Settlement Agreement ¶¶ 27, 56. Even if a Class Member submits an exclusion request, they will still be  
28 subject to the PAGA release. Settlement Agreement ¶ 56.

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1           **D.      Notice to Class Members**

2           Within twenty (20) days of the preliminary approval of this settlement, Defendant will  
3           confidentially transmit to the Settlement Administrator a spreadsheet containing each Class Member’s  
4           full name, last known mailing address, Social Security Number, and number of wage statements he/she  
5           received during the Class Period (“Class List and Data”). Settlement Agreement ¶¶ 6, 51. Upon receipt  
6           of the information and prior to mailing the Notice Packet, the Settlement Administrator shall perform a  
7           search based on the National Change of Address Database for information to update and correct for any  
8           known or identifiable address changes. *Id.* ¶ 53. Within ten (10) business days of receipt of the Class  
9           List and Data, the Settlement Administrator shall mail the Notice Packet to all Class Members. *Id.* ¶ 52.  
10          The Settlement Administrator will re-mail the Notice Packet to Class Members for whom the notice is  
11          returned with a forwarding address and perform a skip-trace or other search on Class Members and re-  
12          mailing for whom a Notice Packet is returned as undeliverable. *Id.* ¶ 55.

13          As set forth in the Notice Packet, Class Members will be allowed to opt out of the settlement by  
14          a certain deadline, or object to the settlement in writing or by appearing at the final approval hearing.  
15          Settlement Agreement ¶¶ 56, 58.

16           **E.   Typicality and Adequacy of Representation**

17                   **1.      Class Representative’s Claims are Typical of the Class**

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

28          Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure

1 violated the Labor Code by issuing inaccurate itemized wage statements. Declaration of Anisha Wise  
2 (“Wise Decl.”) ¶ 3. In other words, Plaintiff was subjected to the same policy and practice as other Class  
3 Members. Thus, Plaintiff’s claims are typical to those of Class Members.

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

8 **2. Class Counsel Has Adequately Represented the Class and Has Experience**  
9 **with Wage and Hour Class Actions**

10 From the inception of the case, Class Counsel has zealously represented the interests of the  
11 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class  
12 Representative. Further, Class Counsel has been approved as class counsel on a number of prior cases,  
13 have litigated numerous other class action cases, and are competent to represent the class. Rosenthal  
14 Decl. ¶¶ 23-25; Lee Decl. ¶¶ 7-9; Agnew Decl. ¶¶ 6-11; Marder Decl. ¶¶ 6-13.

15 **F. Costs and Fees**

16 **1. Attorneys’ Fees and Costs**

17 California state and federal courts have recognized that an appropriate method for determining  
18 award of attorneys’ fees is based on a percentage of the total value of benefits to class members by the  
19 settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20  
20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air*  
21 *West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust  
22 enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries so that  
23 the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F.2d at 769.

24 The common fund doctrine is predicated on the principle of preventing unjust enrichment. When  
25 a litigant’s efforts create or preserve a fund from which others derive benefits, he may require the  
26 passive beneficiaries to compensate those who created the fund. Both California state and federal courts  
27 have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City*  
28 *and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court

1 recognized that the common fund doctrine has been applied “consistently in California when an action  
2 brought by one party creates a fund in which other persons are entitled to share.” The reasons for  
3 applying the common fund doctrine include: “fairness to the successful litigant, who might otherwise  
4 receive no benefit because his recovery might be consumed by the expenses; correlative prevention of  
5 an unfair advantage to the others who are entitled to share in the fund and who should bear their share of  
6 the burden of its recovery; encouragement of the attorney for the successful litigant who will be more  
7 willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund  
8 if he is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*

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

16 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the  
17 fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of  
18 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or low [should] the  
19 trial court [] consider whether the percentage method should be adjusted so as to bring the imputed  
20 multiplier within a justifiable range.” *Id.* at 505.

21 The Parties have agreed to a payment of a maximum of thirty-five percent (35%) of the Gross  
22 Settlement Amount (or \$289,940.00) for payment to Class Counsel as attorneys’ fees. Settlement  
23 Agreement ¶¶ 5, 41. The Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this  
24 payment should be presumed to be fair.

25 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs in an  
26 amount up to \$10,000.00. *Id.* Class Counsel has expended costs at their own risk, for example, to file  
27 this instant action, effect service of process, and pay of other litigation-related costs.

28 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and costs

being requested by the Parties.

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

Class Representative Anisha Wise requests a modest enhancement of \$10,000.00. Settlement Agreement ¶¶ 9, 42. The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the Settlement Agreement. As part of her duties as the Class Representative, Plaintiff provided invaluable information and documents that resulted in this settlement. Wise Decl. ¶ 5. In addition to the invaluable services that she provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant had she not prevailed in this action.

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

Finally, as part of this settlement, Plaintiff has agreed to provide a full, complete, and general release of her individual claims, something that the Class Members did not have to provide. Settlement Agreement ¶ 66. This sacrifice by Plaintiff for the benefit of the Class further warrants the requested enhancement amount.

## **3. Settlement Administration Fees**

The Parties have agreed to an estimated payment of \$15,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Settlement Agreement ¶¶ 30, 31. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

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1 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**  
2 **PRELIMINARY APPROVAL**

3 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial  
4 monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed,  
5 extensive, and arm's-length negotiations conducted by counsel for respective parties who are  
6 experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully  
7 requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order,  
8 approve and authorize mailing of the proposed Notice of Class Action Settlement, and set a date for a  
9 final approval hearing.

10  
11 DATED: June 6, 2022

DIVERSITY LAW GROUP, P.C.

12  
13 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class  
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3  
4 STATE OF CALIFORNIA ]  
5 COUNTY OF LOS ANGELES ]ss.  
6 ]

7 I am employed in the County of Los Angeles, State of California. I am over the age of  
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite  
9 1250, Los Angeles, California 90071.

10 On June 6, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**  
12 **APPROVAL OF CLASS ACTION SETTLEMENT**
- 13 **2. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**  
14 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
15 **SETTLEMENT**
- 16 **3. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**  
17 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
18 **SETTLEMENT**
- 19 **4. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**  
20 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 21 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**  
22 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
23 **SETTLEMENT**
- 24 **6. DECLARATION OF ANISHA WISE IN SUPPORT OF PLAINTIFF'S MOTION**  
25 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 26 **7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**  
27 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

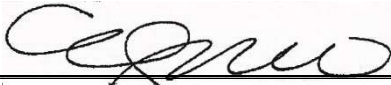
28 on the interested parties in this action as follows:

Aaron H. Cole  
[Aaron.cole@ogletree.com](mailto:Aaron.cole@ogletree.com)  
David Szwarczstejn  
[david.szwarczstejn@ogletree.com](mailto:david.szwarczstejn@ogletree.com)  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

1 400 South Hope Street, Suite 1200  
2 Los Angeles, California 90071  
3 *Attorneys for Defendant La Petite Academy, Inc.*

4   X   BY ELECTRONIC MAIL: by personally sending a true and correct copy  
5 of the above-described document(s) to the party(ies) listed above or on the attached mailing list  
6 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)  
7 indicated above or on the attached mailing list. I certify that said electronic transmission was  
8 completed and that all pages were received by the party(ies) identified herein or on the attached  
9 mailing list.

10 I declare under penalty of perjury under the laws of the State of California that the  
11 above is true and correct. Executed on June 6, 2022, at Los Angeles, California.  
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Erika Mejia