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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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: November 14, 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 November 14, 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) granting final approval to the Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”) in this action;
- (2) approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement;
- (3) approving Plaintiff’s request for an award of the service payment of \$10,000.00 to the Class Representative pursuant to the terms of the Settlement;
- (4) approving Plaintiff’s request for an award of attorneys’ fees to Class Counsel for 35% of the \$828,400.00 gross settlement amount, or \$289,940.00, and reimbursement of litigation costs of \$5,369.01, pursuant to the terms of the Settlement;
- (5) approving Plaintiff’s request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$15,000.00, pursuant to the terms of the Settlement;
- (6) approving Plaintiff’s request for payment to the California Labor & Workforce Development Agency (“LWDA”) for \$15,000.00, pursuant to the terms of the Settlement; and
- (7) entering final judgment as to all Participating Class Members in this action.

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 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown by the lack of objections and only one request for exclusion, there is no question that the settlement is fair, reasonable, and adequate, and thus should be granted final approval.

This motion will be based on the attached Memorandum of Points and Authorities and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L.

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

3
4 DATED: October 19, 2022

DIVERSITY LAW GROUP, P.C.

5
6 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

7 Attorneys for Plaintiff and the Class
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	8
II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT....	9
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THUS THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL.....	11
A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class	11
1. The Class is Ascertainable.....	11
2. There is a Community of Interest.....	12
a. There are Predominant Common Questions of Law and Fact.....	12
b. Plaintiff’s Claims are Typical of the Class Claims	12
c. Plaintiff Adequately Represented the Class	13
B. Defendant’s Allegations and Unlikelihood of Class Certification	13
C. Risks, Expenses and Complexity of Further Litigation	13
D. The Negotiation, Terms, and Reception of the Settlement by Class Members Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable	14
E. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement.....	14
1. Standard of Review.....	14
2. The Settlement is Presumed to Be Fair.....	16
3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	16
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	17
5. The Opinion of Experienced Counsel Favors Final Approval	18
IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED	18
V. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED.....	19

1 VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF
2 COSTS 21
3 VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE
4 APPROVED 21
5 VIII. CONCLUSION 22
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1146 (2000) ..	15, 16
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 66 n.11 (2008)	20
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27, 45 (1983).....	12
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d. 695, 704 (1967)	11
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996)	15, 16
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....	13
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	19, 20
<i>Laffitte v. Robert Half Int'l</i> , 231 Cal. App. 4th 860, 871 (2014)	20
<i>Lockheed Martin Corp. v. Superior Court</i> , 29 Cal. 4th 1096, 1104-05 (2003)	12
<i>Reese v. Wal-Mart Stores, Inc</i> , 73 Cal. App. 4th 1225, 1234 (1999)	12
<i>Reyes v. San Diego County Board of Supervisors</i> , 196 Cal. App. 3d 1263, 1271 (1987)	11
<i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462, 470 (1981).....	11, 12
<i>Simons v. Horowitz</i> , 151 Cal. App. 3d 834, 846 (1984)	13
<i>Vasquez v. Superior Court</i> , 4 Cal.3d 800, 809 (1971)	11

Federal Cases

<i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993)	15
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).....	17, 18
<i>Byrd v. Civil Serv. Comm'n</i> , 459 U.S. 1217 (1983).....	15
<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993)	15
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268, 1291 (9th Cir. 1992).....	14
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974)	10
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980)	16, 18
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008).....	20
<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	20
<i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975).....	17, 18
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497, 508 (9th Cir. 1992).....	12
<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995)	16

<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....	15, 16
<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998)	15, 18
<i>Mullane v. Central Hanover Bank & Trust Co.</i> (1950) 339 U.S. 306, 314	10
<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615, 625 (9th Cir. 1982).....	14, 15, 17, 18
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	10
<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261, 1272 (D.C. Cir. 1993)	21
<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9th Cir. 1976).....	15, 18
<i>Young v. Katz</i> , 447 F.2d 431, 433-34 (5th Cir. 1971).....	18

Statutes

California Code of Civil Procedure § 382.....	11, 12, 14
Labor Code § 226(a)	8
Labor Code § 2698, <i>et seq</i>	8

Other Authorities

<i>4 Newberg on Class Actions</i> , 4th § 11.41 (2008).....	15, 18
Brickman, <i>Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees</i> (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11	20
Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> , 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010).....	20
Fitzpatrick, <i>An Empirical Study of Class Action Settlements and Their Fee Award</i> , 7 J. Empirical Leg. Stud. 811, 833 (2010).....	20
<i>Manual for Complex Litigation Fourth</i> (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 309	15

Rules

California Rule of Court 3.769.....	14
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1 **I. INTRODUCTION**

2 On November 9, 2021, Plaintiff Anisha Wise (“Plaintiff”) filed a complaint on behalf of
3 herself and all similarly situated employees against Defendant La Petite Academy, Inc. (“Defendant”)
4 in the Superior Court of the State of California for the County of San Joaquin. The complaint asserts a
5 cause of action for violation of Labor Code § 226(a) for failure to issue accurate itemized wage
6 statements. Plaintiff subsequently filed a first amended complaint on May 2, 2022, incorporating a
7 cause of action that was alleged in a related action. Specifically, the first amended complaint alleges
8 violation of Labor Code § 226(a) and Labor Code § 2698, *et seq.*, the Private Attorneys General Act
9 (“PAGA”). The first amended complaint is the operative complaint (“Complaint”). Plaintiff seeks
10 damages, penalties, attorneys’ fees, and costs.

11 Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class Action
12 Settlement and Release (“Settlement Agreement” or “Settlement”). In sum, the Settlement Agreement
13 provides for a \$828,400.00 **non-reversionary** fund to be created for the benefit of the Class, from
14 which attorneys’ fees, litigation costs, service award to the Plaintiff, payment to the California Labor
15 & Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid.
16 After these deductions are made, the entire net settlement amount will be paid to all Class Members
17 who did not opt-out of the Settlement (“Participating Class Members”).

18 The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval
19 Motion. This Court preliminarily approved this settlement on July 13, 2022, directing distribution of
20 the class notice and scheduling the hearing for final approval of settlement (the “Preliminary
21 Approval Order”).

22 As directed by the Court, the Settlement Administrator distributed the Notice of Class Action
23 Settlement (“Notice Packet”) to 1,147 Class Members. Declaration of Taylor Mitzner (“Mitzner
24 Decl.”) at ¶ 5. One (1) request for exclusion has been filed. *Id.* No objections have been filed. *Id.* As
25 such, there is a 99.9% participation rate by Class Members. Thus, an inference can be made that the
26 Class supports the Court’s Preliminary Approval Order finding that the Settlement Agreement is fair
27 and reasonable.

28 In sum, in light of the settlement administration process and the results thereof, the single opt-

1 out, and the amount of class funds being paid out to the Class Members, the Court should confirm its
2 preliminary approval as this process supports the Court's initial finding that the Settlement is fair and
3 reasonable.

4 In addition to the results of the notice process, for the same reasons as set forth earlier in
5 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the following represent the
6 basic points previously covered that support approval of the settlement:

- 7 ▪ The Settlement provides a total settlement sum of \$828,400.00 which is **non-**
8 **reversionary**;
- 9 ▪ The Settlement is fair given that all Class Members will receive (*after deductions for*
10 *fees, costs, etc.*) on average, approximately \$425.91 per person (*See Mitzner Decl. ¶*
11 13);
- 12 ▪ Class Members did not need to submit claim forms to participate in the settlement, but
13 are being paid automatically;
- 14 ▪ The allocation reflects that payment of claims will be paid to all Class Members on a
15 pro-rata basis, based on the number of wage statements each Class Member received
16 during the Class Period;
- 17 ▪ Plaintiff investigated the claims at issue, including exchanges of information by
18 Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully
19 evaluate this case;
- 20 ▪ A highly regarded administrator, Phoenix Settlement Administrators ("Phoenix"), was
21 retained for fees of \$15,000.00; and

22 Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval
23 Order.

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

25 The notice procedures required by the Preliminary Approval Order have been followed and
26 satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that
27 the Notice Packet be sent to all Class Members by first class mail, as specified in the settlement. The
28 Preliminary Approval Order contemplated, further, that Phoenix would serve as the Settlement

1 Administrator.

2 As clearly stated in the Mitzner Declaration, notice was provided to all Class Members as
3 required by the Preliminary Approval Order. Mitzner Decl. ¶ 5. On August 2, 2022, the Settlement
4 Administrator received a Class Member mailing list from Defendant’s counsel that included 1,147
5 Class Members. *Id.* ¶ 2.

6 On August 16, 2022, the Settlement Administrator sent each Class Member a Notice Packet
7 via first class mail. *Id.* ¶ 5. From the date of mailing twenty-one (21) Notice Packets were returned
8 due to incorrect addresses. *Id.* ¶ 6. While zero (0) Notice Packets were returned with a forwarding
9 address, the Settlement Administrator obtained thirteen (13) updated addresses via skip trace and the
10 Notice Packets were promptly re-mailed to those Class Members via first class mail. *Id.* Of these
11 thirteen (13) re-mailed Notice Packets, eleven (11) were not returned. Thus, as of date of this
12 declaration, ten (10) Notice Packets are considered undeliverable. *Id.* ¶ 7. Further, the Notice Packet
13 provided Class Members with Class Counsel’s contact information and information about how they
14 could seek further information regarding the settlement, leave questions for the Settlement
15 Administrator, and update their mailing address.

16 The provision of sending the Notice Packet to Class Members as described above meets the
17 requirements for the “best notice practicable” in this case as necessary to protect the due process
18 rights of class members. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
19 (provision of “best notice practicable” with description of the litigation and explanation of opt-out
20 rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual
21 notice must be sent to class members who can be identified through reasonable means); *Mullane v.*
22 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is
23 “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
24 the action and afford them an opportunity to present their objections”).)

25 Here, the Class Members were sent a mailing regarding the settlement that satisfies due
26 process rights. The mailing described the litigation, provided an explanation of the terms of the
27 settlement, explained Class Members’ rights, allowed Class Members to seek additional information
28 with Class Counsel contact information, and explained ways for Class Members to opt out or object,

1 if so desired. As such, this constitutes proper notice to the Class Members.

2 Accordingly, the Court may proceed to determine the fairness and adequacy of the Settlement
3 and enter its Order granting final approval, secure in the knowledge that all absent Class Members
4 have been given the opportunity to participate fully in the claims, exclusion, and the approval
5 process.

6 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND**
7 **THUS THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

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

9 In order to proceed as a class, there are two requirements which must be met—ascertainability
10 and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704 (1967). Under
11 California law, there are two basic requirements which must exist to sustain a class action: “[t]he first
12 is existence of an ascertainable class, and the second is a well-defined community of interest in the
13 questions of law and fact involved.” *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). “The
14 community of interest requirement embodies three factors: (1) predominant common questions of law
15 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
16 representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d.
17 462, 470 (1981).

18 **1. The Class is Ascertainable**

19 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 is
20 determined by examining “(1) class definition, (2) the size of the class, and (3) the means available
21 for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App.
22 3d 1263, 1271 (1987).

23 Here, the Class is defined as: “all current and former non-exempt employees of Defendant in
24 the State of California, who received a wage statement at any time from November 9, 2020, through
25 February 25, 2022” (the “Class”). There are 1,146 individuals that comprise of the Class. Mitzner
26 Decl. ¶ 11. This is far more than the minimum required to certify a class. Within the context of
27 manageability, the issue is whether there exists sufficient means for identifying class members at the
28 remedial stage. *Reyes, supra*, 196 Cal. App. 3d at pp. 1274-75. Class Members have already been

1 identified by Defendant and notice has been provided to all of the Class Members. Accordingly, the
2 Class is ascertainable under Code of Civil Procedure § 382.

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

4 The “community of interest” requirement embodies three separate factors: (1) predominant
5 common questions of law or fact; (2) class representatives whose claims are typical of the class; and
6 (3) class representatives who can adequately represent the class. *Richmond, supra*, 29 Cal. 3d at p.
7 470; *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

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

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

13 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure,
14 violated the California Labor Code by failing to provide accurate itemized wage statements.
15 Defendant denies that liability could be established on a class-wide basis. Defendant contends instead
16 that liability and damages would need to be conducted on a case-by-case basis, and that Plaintiff’s
17 legal theories lack merit.

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

19 The purported class representative’s claim must be “typical” but not necessarily identical to
20 the claims of other class members; it is sufficient that the representative is similarly situated so that he
21 or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27,
22 45 (1983). Courts look to whether class members have similar injuries, “whether the action is based
23 on conduct which is not unique to the named [p]laintiff,” and whether other class members were
24 injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The
25 purpose of the typicality requirement “is to assure that the interest of the named representative aligns
26 with the interests of the class.” *Id.* at p. 508.

27 Here, Plaintiff was subjected to the same policies and practices as other Class Members.
28 Plaintiff was employed by Defendant as a non-exempt employee. Plaintiff alleges that she, like all

1 other Class Members, was not provided compliant wage statements. Declaration of Anisha Wise
2 (“Wise Decl.”) ¶ 3. Specifically, like other members of the class, Plaintiff alleges that she received
3 wage statements that do not accurately identify all hourly rates of pay and total hours worked. Thus,
4 Plaintiff’s claims are typical to those of Class Members.

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

6 The class representative, through qualified counsel, must be capable of “vigorously and
7 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
8 846 (1984).

9 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues been
10 raised or presented. Wise Decl. ¶ 3. Plaintiff has taken all necessary steps to represent the interests of
11 the Class, including providing information and documents to her counsel and reviewing pleadings
12 and documents in this case. *Id.* ¶¶ 4-7. For such reasons, Plaintiff has adequately represented the
13 Class Members and will continue to do so.

14 **B. Defendant’s Allegations and Unlikelihood of Class Certification**

15 Defendant asserts that individualized issues predominate in this case, including without
16 limitation, whether Defendant provided accurate wage statements in compliance with the law. In any
17 event, even assuming that a class could be certified, Defendant asserts that it has complied with all
18 laws. Based thereon, Defendant continues to maintain that it is not liable for the allegations made by
19 the Plaintiff.

20 **C. Risks, Expenses and Complexity of Further Litigation**

21 Plaintiff believes that a class can be certified. However, Plaintiff also believes in the fairness
22 of 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 her operative Complaint at
24 trial, the possibility of non-certification, the possibility that the Court may award only a small
25 percentage of PAGA penalties, and the potential for any appeals. These risks of class certification are
26 compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.
27 4th 1 (2014).

28 Defendant has maintained that there is no liability. As stated above, Defendant alleges that a

1 class could not have been certified. There is always a risk that the court will not grant certification of
2 the class, wherein the class will not be entitled to any damages. Based on the foregoing, there was a
3 substantial risk that Plaintiff would not have obtained the total amount of damages and/or penalties
4 alleged, and a substantial amount of complex issues that would have necessitated significant
5 expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation
6 warrant granting of this motion.

7 **D. The Negotiation, Terms, and Reception of the Settlement by Class Members**
8 **Strongly Support the Conclusion that the Settlement is Fair, Adequate, and**
9 **Reasonable**

10 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
11 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
12 Approval of Class Action Settlement, the Parties highlight several key facts. First, the Settlement was
13 the product of negotiation between highly able and experienced attorneys on both sides who
14 possessed the relevant data and extensive legal research which they had carefully analyzed.
15 Declaration of Nicholas Rosenthal ("Rosenthal Decl.") ¶ 3. The Parties also participated in arm's
16 length negotiations over the course of months. *Id.* ¶ 5. Thus, this Settlement should be granted final
17 approval.

18 Second, the results after mailing of the Notice Packet also fully support confirmation of the
19 Court's preliminary approval of the settlement, as evidenced by the 99.9% participation rate and no
20 objections. In light of the overwhelmingly positive response to the Settlement, the Court may
21 appropriately infer that the Settlement is fair, adequate, and reasonable. *See Class Plaintiffs v. City of*
22 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992) (reaction of class members to the settlement is a factor
23 supporting approval of a class action settlement.)

24 **E. Under Well-Established Legal Principles, the Court Should Grant Final Approval**
25 **of the Settlement**

26 **1. Standard of Review**

27 On a motion for final approval of a class action settlement under California Code of Civil
28 Procedure § 382 and California Rules of Court, Rule 3.769, a court's inquiry at this juncture is
whether the settlement is "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*,
688 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*; *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217

(1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better served by the settlement than by further litigation.” *See Manual for Complex Litigation, Fourth* § 21.6 at p. 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”). The law favors settlement, particularly in class actions and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

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

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

As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000):

It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the

1 appellate court ‘need not and should not reach any dispositive conclusions on the
2 admittedly unsettled legal issue.

3 **2. The Settlement is Presumed to Be Fair**

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

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

9 (*Dunk*, 48 Cal. App. 4th at p. 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at p.
10 1146; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub*
11 *Power Supply*, *supra*, 720 F. Supp. at p. 1387.)

12 The Settlement here warrants approval and carries a presumption of fairness. As previously
13 noted in the Motion for Preliminary Approval, this Settlement was negotiated at arm’s length between
14 the Parties and their counsel. Rosenthal Decl. ¶¶ 3-5.

15 Second, Class Counsel engaged in extensive factual investigation before settling, including an
16 extensive review and analysis of class data and information pertaining Defendant’s policies and
17 practices relevant to the class claims. Rosenthal Decl. ¶ 3. Further, Class Counsel is highly
18 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
19 significant experience in class actions and employment wage and hour matters. Rosenthal Decl. ¶¶ 8,
20 9; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 3-5; Declaration of Kristen Agnew (“Agnew Decl.”)
21 ¶¶ 3-8; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 3-8.

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

24 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
25 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
26 inherent in continued litigation. *See In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995)
27 (“present value of the damages plaintiffs would likely recover if successful, appropriately discounted
28 for the risk of not prevailing, should be compared with the amount of the proposed settlement”)

(internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

If Plaintiff pursued this case without settlement and did not prevail, Plaintiff would be potentially responsible for Defendant's fees and costs. Likewise, were any individual current or former employees of Defendant to bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the same possibility of becoming liable to pay fees and costs to Defendant. Accordingly, such claims likely would not be brought by many of these current and former employees who make up the Class. Thus, this lawsuit achieves a true benefit for the Class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant's litigation fees and costs. Thus, the risks undertaken by Class Counsel should be considered a significant factor by the Court in its determination of final approval. The Settlement provides a fair recovery to Class Members and eliminates the risk of costs to Class Members or the Class Representative.

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

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

Another factor considered by courts in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers for Justice, supra*, 688 F.2d at p. 625; *Girsh, supra*, 521

1 F.2d at p. 157. In applying this factor, the Court must weigh the benefits of the settlement against the
2 expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v.*
3 *Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

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

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

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

20 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE** 21 **APPROVED**

22 Class Representative Anisha Wise requests an enhancement of \$10,000.00 in accordance with
23 the terms of the Settlement Agreement. Plaintiff met with Class Counsel and had several discussions
24 about the case. Wise Decl. ¶¶ 4-7. Plaintiff also provided substantive information and documents
25 regarding Defendant’s policies and practices to help support the class claims alleged in this case. *Id.*
26 Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this
27 settlement.

28 In addition to the invaluable services that she provided, Plaintiff took significant risks,

1 personally, professionally, and monetarily in acting as the Class Representative, seeking benefits on
2 behalf of the Class. Wise Decl. ¶¶ 9-11. Because the claims alleged by Plaintiff involved the payment
3 of costs to the prevailing party, Plaintiff undertook the risk that she may be required to pay
4 Defendant's fees and costs in the event that Defendant prevailed in this action. Moreover, Plaintiff
5 understood that an individual case would have resolved much faster than a class action and involved
6 much less financial risk than a class action. Despite this, however, Plaintiff agreed to pursue this case
7 on behalf of the Class. *Id.* ¶ 9. Significantly, given that future employers are much less likely to hire
8 individuals who have filed employment-related lawsuits, particularly cases of this nature, Plaintiff
9 also faced significant risk in not being able to find suitable prospective employment as a result of
10 filing of this case against Defendant. *Id.* ¶ 10.

11 Plaintiff took these risks upon herself for the benefit of the Class. Class Members did not have
12 to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
13 have to face the potential for retaliation and not getting future employment had they filed a lawsuit
14 which is a public record. These are significant benefits that weigh in favor of granting the requested
15 enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the Class,
16 and Plaintiff took on substantial risks in helping Class Members obtain this financial benefit. As such,
17 the enhancement should be awarded to Plaintiff for her commitment, dedication, and risks taken for
18 this litigation.

19 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

20 Class Counsel seeks a fee award calculated as thirty-five percent of the total value of the
21 settlement for the successful prosecution and resolution of this action. Recently, the California
22 Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action
23 settlements. Under California law, the award of attorneys' fees in common fund wage and hour class
24 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th
25 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when
26 class action litigation establishes a monetary fund for the benefit of the class members, and the trial
27 court in its equitable powers awards class counsel a fee out of that fund, the court may determine the
28 amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the

percentage of the fund method, the Court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set....The judge, in other words, is trying to mimic the market in legal services”).

An award of thirty-five percent of the fund in attorneys’ fees “mimics the marketplace” as it is “supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856 at p. *16 n. 59 (C.D. Cal. 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 Wash U.L.Q. 653, 659 n.11 (Fall 2003)). Indeed, “empirical studies [that] show that...fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing 35% of the fund clearly falls within that range and is consistent with other comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is

1 consistent with market rates).

2 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
3 relevant to the...reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
4 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of
5 the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice Packet specifically
6 notified Class Members that Plaintiff’s Counsel would be seeking \$289,940.00 of the settlement fund
7 as attorneys’ fees. To date, no Class Member has objected to the settlement or the request for
8 attorneys’ fees. This strong favorable response also supports the requested fees.

9 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety.
10 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the
11 successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel’s
12 request for attorneys’ fees in the amount of \$289,940.00 is fair, reasonable, and adequate.

13 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
14 **COSTS**

15 The request for reimbursement of costs, in the amount of \$5,119.01 is fair and reasonable. The
16 costs are all litigation-related costs, which have been detailed in the supporting declaration of Class
17 Counsel. Lee Decl. ¶ 6, Ex. A. The authority for the court to award this is the Parties’ Settlement
18 Agreement and the California Labor Code.

19 As such, Plaintiff’s request should be approved.

20 **VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE**
21 **APPROVED**

22 Plaintiff also requests that the Court approve administration costs to the Settlement
23 Administrator, Phoenix Settlement Administrators, in the amount of \$15,000.00. As detailed in the
24 Declaration of Ms. Mitzner submitted herewith, Phoenix performed duties in connection with this
25 settlement that were integral in effectuating the settlement and the notice process. Among other
26 things, Phoenix calculated each Class Member’s individual settlement payment, updated addresses
27 contained in the class data supplied by Defendant, formatted and distributed Notice Packets to all
28 1,147 putative Class Members, and otherwise administered the settlement. Mitzner Decl. ¶¶ 2-13. For

such reasons, it is requested that the Settlement Administrator's fees be approved.

VIII. CONCLUSION

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

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

1. granting final approval to the proposed Settlement Agreement in this action;
2. approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. approving Plaintiff's request for an award of the class representative service payment of \$10,000.00 to Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
4. approving Plaintiff's request for an award to Class Counsel for \$289,940.00 in attorneys' fees and \$5,119.01 in costs with payment pursuant to the terms of the Settlement Agreement;
5. approving Plaintiff's request for payment of the settlement administration costs to Phoenix Settlement Administrators in the amount of \$15,000.00 with payment pursuant to the terms of the Settlement Agreement;
6. approving Plaintiff's request for payment to the LWDA for \$15,000.00 with payment pursuant to the terms of the Settlement Agreement; and
7. entering final judgment as to all members of the Class in this action.

DATED: October 19, 2022

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff and the Class

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 October 20, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
OF CLASS ACTION SETTLEMENT
- 12 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 13 **3. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 14 **4. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 15 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 16 **6. DECLARATION OF ANISHA WISE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
- 17 **7. DECLARATION OF TAYLOR MITZNER WITH RESPECT TO NOTICE AND**
SETTLEMENT ADMINISTRATION
- 18 **8. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL**
APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT

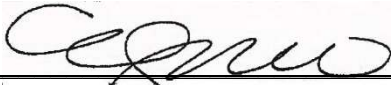
19 on the interested parties in this action as follows:

20
21 Aaron H. Cole
22 Aaron.cole@ogletree.com
23 David Szwarczstejn
24 david.szwarczstejn@ogletree.com
25 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
26
27
28

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 October 20, 2022, at Los Angeles, California.
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Erika Mejia