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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

EVERETT ALEXANDER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KBR TECHNICAL SERVICES, INC., a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVSB2133085

[Assigned for all purposes to the Hon. David
Cohn, Dept. S-26]

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

Date: March 22, 2023

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: November 9, 2021

FAC Filed: November 29, 2022

Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 22, 2023, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable David Cohn, judge presiding, in Department S-26 of the above referenced Court, located at 247 W. Third Street, San Bernardino, California 92415, Plaintiff Everett Alexander (“Plaintiff”) will seek an Order:

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

(2) conditionally certifying the following Class for settlement purposes only:

all former and current employees of Defendant, Centauri, LLC (also known as NTG), KBR Monterrey S.A. de C.V., and/or Tech Staffing Resources, LLC in the state of California at any time during the Covered Period who received one or more wage statements during the Covered Period and who do not opt-out of the settlement; and

all non-exempt current and former employees of KBR Wyle Services, LLC and/or KBR Services, LLC who worked in the state of California at any time during the Covered Period who received one or more wage statements with overtime or double time pay during the Covered Period and who do not opt-out of the settlement;

(3) appointing Plaintiff Everett Alexander 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 Agreement and the total Gross Settlement Amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00);

(5) finding on a preliminary basis that the Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, Class Representative Service Award, Class Counsel Award, Settlement Administration Costs, and the allocation of payments to Class Members that could ultimately be given final approval by this Court;

(6) approving the Notice of Class Action Settlement to be sent to Class Members;

(7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and

(8) 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

1 certify a class for settlement purposes.

2 The basis for this Motion, filed without any opposition from Defendant KBR Technical
3 Services, Inc. ("Defendant"), is that the proposed settlement is fair, adequate, and reasonable and the
4 procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to
5 participate in, opt-out of, or object to the settlement. This Motion will be based on the attached
6 Memorandum of Points and Authorities, the Settlement Agreement and the proposed Notice of Class
7 Action Settlement, and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas
8 Rosenthal, William Marder, and Everett Alexander, and upon the oral arguments of counsel (should
9 there be any) and on the complete records and file herein.

10
11 DATED: November 29, 2022

DIVERSITY LAW GROUP, P.C.

12
13 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

14 Attorneys for Plaintiff, the Class, and Settlement
15 Aggrieved Employees
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1 **I. INTRODUCTION**

2 Plaintiff Everett Alexander (“Plaintiff”) brings class, representative, and individual action
3 claims against Defendant KBR Technical Services, Inc. (“Defendant”) under the California Labor
4 Code (Plaintiff and Defendant shall be jointly referred to as the “Parties”). Plaintiff alleges in this
5 lawsuit that Defendant had a policy and practice of issuing defective wage statements in violation of
6 Labor Code §§ 226 and 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). Plaintiff now
7 moves for preliminary approval of the proposed class and representative settlement after thorough
8 investigation of the claims alleged, mediation and extended negotiations.

9 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to
10 the claims alleged in the operative Complaint and engaged in a thorough study of the legal principles
11 applicable to the claims asserted against Defendant. Defendant provided data related to the number of
12 putative class members and wage statements issued to each class member. Thereafter, the Parties
13 commenced settlement negotiations through a private mediator and were ultimately able to reach the
14 current settlement after continued negotiations conducted post-mediation. **Significantly, this entire**
15 **amount is non-reversionary, such that no monies will revert to Defendant.**

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

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

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

28 //

II. PROCEDURAL HISTORY

On November 1, 2021, Plaintiff filed a notice with the California Labor and Workforce Development Agency (“LWDA”) alleging that Defendant violated Labor Code § 226, pursuant to Labor Code § 2699 (“PAGA Notice”). The PAGA Notice alleged that Defendant failed to identify the legal name and address of the employer, as well as the correct rates of pay for overtime and/or double time wages, on wage statements issued to employees. Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 2.

On November 9, 2021, Plaintiff filed a class action complaint against Defendant in the Superior Court of the State of California, County of San Bernardino (the “Action”). The class action complaint alleges a cause of action for violation of Labor Code § 226. *Id.* ¶ 3.

On January 5, 2022, Plaintiff filed a related action against Defendant in the Superior Court of the State of California, County of San Bernardino, Case Number CIVSB2200363 (the “PAGA Action”). *Id.* ¶ 4. The PAGA Action is a representative action complaint and alleges a cause of action for violation of Labor Code § 2698, *et seq.*, predicated on an underlying violation of Labor Code § 226. *Id.* ¶ 4.

On November 21, 2022 Plaintiff filed a Joint Stipulation for Leave to File a First Amended Complaint, in which the Parties agreed to allow Plaintiff to file a first amended complaint in the Action solely for the purpose of obtaining the Court’s approval of the Parties’ settlement agreement. *Id.* ¶ 5. The first amended complaint alleges two causes of action for violation of Labor Code §§ 226 and 2698, *et seq.*, and combines the allegations of the Action and the PAGA Action. *Id.* ¶ 5. The first amended complaint also names Defendant’s affiliated companies as defendants. *Id.* ¶ 5. On November 29, 2022, the Court signed the order granting the Parties’ stipulation, and the first amended complaint was deemed to have been filed. The first amended complaint is the operative Complaint (“Complaint”). As alleged in the Complaint, Plaintiff seeks to represent the Class Members and other aggrieved employees. Plaintiff further seeks damages, penalties, interest, attorneys’ fees, and costs. *Id.*

Plaintiff will request dismissal of the PAGA Action with prejudice following final approval of this class and representative action settlement. *Id.* ¶ 9.

1 Following the filing of the Action and PAGA Action, the Parties agreed to participate in
2 private mediation. In connection with mediation, the Parties agreed to conduct informal discovery to
3 allow Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of
4 damages and penalties. *Id.* ¶ 6. Defendant produced class data, including the number of putative class
5 members and the number of wage statements issued to putative class members. *Id.* Plaintiff reviewed
6 the data and records and performed an analysis of Defendant’s maximum liability. *Id.*

7 On August 8, 2022, the Parties engaged in an all-day mediation session with neutral Michael
8 J. Loeb, Esq. *Id.* ¶ 12. After thorough investigation and evaluation of the facts and claims, and
9 negotiations with the assistance of Mr. Loeb, the Parties and their counsel reached a settlement and
10 entered into a memorandum of understanding. *Id.* In resolution of Plaintiff’s class and PAGA claims,
11 the Parties entered into the Joint Stipulation of Class Action and PAGA Settlement, a true and correct
12 copy of which is attached as **Exhibit A** to the Declaration of Nicholas Rosenthal. *Id.*, Ex. A.

13 **III. DISCUSSION**

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

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

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

27 Thus, the preliminary approval by the trial court is simply a conditional finding that the
28 settlement appears to be within the range of acceptable settlements. As Professor Newberg
comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
concerning a tentative settlement proposal may vary. The court may find that the settlement proposal

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

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

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

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

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

1 4 *Newberg on Class Actions* § 11.26.

2 In addition to such terms as class identification, settlement amount and payment procedures,
3 the Settlement Agreement reached among the Parties contains a provision pursuant to which the
4 Parties stipulate to the Court's provisional certification of the Class for the purposes of this
5 settlement only. Settlement Agreement ¶ 101.

6 **A. Proposed Class Definition**

7 The current settlement is being settled on behalf of a Class of "(1) all former and current
8 employees of Defendant, Centauri, LLC (also known as NTG), KBR Monterrey S.A. de C.V., and/or
9 Tech Staffing Resources, LLC in the state of California at any time during the Covered Period who
10 received one or more wage statements during the Covered Period and who do not opt-out of the
11 settlement; and (2) all non-exempt current and former employees of KBR Wyle Services, LLC and/or
12 KBR Services, LLC who worked in the state of California at any time during the Covered Period
13 who received one or more wage statements with overtime or double time pay during the Covered
14 Period and who do not opt-out of the settlement." See Settlement Agreement ¶ 3.

15 **B. Settlement Terms and Evaluation**

16 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
17 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel*
18 *Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re*
19 *Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
20 judgment for that of the proponents, particularly where, as here, settlement has been reached with the
21 participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v.*
22 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087
23 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust*
24 *Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*,
25 79 F.R.D. 571 (E.D. Pa. 1978).

26 While the recommendations of counsel proposing the settlement are not conclusive, the Court
27 can properly take them into account, particularly where, as here, they have been involved in informal
28 discovery and negotiations for some period of time, appear to be competent, have experience with

1 this type of litigation, and have exchanged substantial evidence from the opposing party. *See*
2 *Newberg on Class Actions, supra*, § 11.47; *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o
3 long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial
4 presumption of fairness attaches to the proposed settlement...[citations] and ‘great weight’ is
5 accorded to the recommendations of counsel, who are most closely acquainted with the facts of the
6 underlying litigation”).

7 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and
8 hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a number of
9 wage and hour class actions and have extensive litigation experience. Rosenthal Decl. ¶¶ 39-40;
10 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 8-9; Declaration of Kristen M. Agnew (“Agnew
11 Decl.”) ¶¶ 7-11; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 6-13.

12 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face
13 potential liability of up to approximately \$6,159,550 for Plaintiff’s class and PAGA claims if
14 Plaintiff succeeded at trial. Rosenthal Decl. ¶ 18. This number is based upon an analysis of the data
15 provided by Defendant regarding the putative class. Specifically, the approximate damages/penalties
16 for the class claim is \$3,056,750 for Labor Code § 226(e) penalties for wage statement violations for
17 employees based on 31,028 wage statements issued during the Covered Period.¹ *Id.*

18 With respect to potential liability of Plaintiff’s PAGA claim, Plaintiff estimated that
19 Defendant could face civil penalties of up to \$3,102,800 in PAGA penalties premised on 31,028 pay
20 periods. *Id.* ¶ 19.

21 Based thereon, the collective total amount of class and PAGA recovery is approximately
22 \$6,159,550.00. *Id.* ¶ 20.

23 However, Defendant denies liability as to all of Plaintiff’s claims and it has raised several
24 defenses that presented risk. Rosenthal Decl. ¶ 21. Defendant contends that it is not realistic that
25 employees would not know the address of their employer, regardless of the absence of an address on
26 the wage statements. *Id.* Defendant also contends Defendant contends that simple math would allow
27

28 ¹ The number of pay periods is based on data provided to Plaintiff that went from November 1, 2020
to June 27, 2022.

1 employees to determine their overtime and shift differential rates of pay. Rosenthal Decl. *Id.*

2 Moreover, Defendant maintains that Plaintiff cannot prove willfulness or injury, both of which are
3 required for any assignment of penalties under Labor Code Section 226(e). *Id.*

4 Further, even assuming Plaintiff ultimately prevails on his PAGA claims, the Court still has
5 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline
6 to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do
7 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed,
8 as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
9 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
10 maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying
11 with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.*
12 at p. 539. Thus, even if Plaintiff were to successfully prove his claims at trial, there is a possibility
13 that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to
14 do so.

15 The Gross Settlement Amount was premised with these risks in mind, associated with the
16 possibility of the Court significantly reducing Plaintiff’s PAGA penalties, along with other attendant
17 risks, even if Plaintiff were to prevail at trial. Rosenthal Decl., ¶ 24.

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

24 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness
25 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
26 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
27 possibility of non-certification, and the potential for appeals. Rosenthal Decl. ¶ 25. These risks on
28 class certification are compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank*

1 *Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently
2 prevailed at trial after eight years of litigation, but the judgment and the certification ruling were
3 reversed by the California Supreme Court after an additional five years of litigation. The case was
4 remanded to superior court where class certification was denied and plaintiffs' subsequent appeal
5 also was denied.

6 Indeed, numerous courts have held that **gross** settlements approximating between only 8 and
7 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
8 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of
9 potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting
10 to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
11 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of
12 pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends
13 on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-
14 02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement
15 recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v.*
16 *Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted
17 preliminary approval of wage and hour class settlement which obtained **only 9.1%** of projected
18 damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-
19 00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
20 action settlement of approximately 15% of the potential recovery was fair and reasonable). Here, the
21 Gross Settlement Amount is fair and reasonable as it is approximately **24.4%** of the potential
22 recovery of Plaintiff's class and PAGA claims if Plaintiff were to fully succeed at trial. Rosenthal
23 Decl. ¶ 26. If the Court reduced the PAGA penalties to 10% like in *Carrington*, the percentage of
24 recovery compared to the available penalties would be greater.

25 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action
26 Settlement ("Class Notice"), should any Class Member wish to pursue his or her own case for the
27 claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*,
28 opt-out) from the settlement. Settlement Agreement ¶ 29. Moreover, as set forth in the Class Notice,

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. Settlement Agreement ¶¶ 63, 68.

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 One Million Five Hundred Thousand Dollars (\$1,500,000.00) as the Gross Settlement Amount. Settlement Agreement ¶ 17. Defendant will fund the Gross Settlement Amount within twenty-one (21) days of the Effective Date of the Settlement Agreement. *Id.* ¶ 48.

The Net Settlement Amount, calculated after deduction of attorneys' fees (up to \$500,000.00), costs (up to \$15,000.00), Class Representative Service Award (up to \$10,000.00), payment of PAGA penalties to the LWDA (\$37,500.00), and Settlement Administration Costs (up to \$25,000.00), is estimated to be approximately \$912,500.00. The Settlement Administrator will allocate the Individual Settlement Payments by distributing the Net Settlement Amount to the Class and Exempt Class on a pro-rata basis from two funds. The Net Settlement Amount will be split into a Class Amount and a PAGA Amount. The PAGA Amount will be 25% of the total amount allocated for the satisfaction of claims for civil penalties under the PAGA, which is currently estimated to total Twelve Thousand Five Hundred Dollars (\$12,500.00). The Class Amount will be the remaining Net Settlement Amount after deduction of the PAGA Amount, currently estimated to be \$900,000.00. Settlement Agreement ¶ 53. Thus the total amount allocated to the Class and Aggrieved Employees is \$912,500.

Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the number of pay periods each respective Participating Class Member worked during the Covered Period. *Id.* ¶ 53.a. Each Non-Participating Class Member will receive only a pro rata portion of the PAGA Amount, based upon the number of pay periods worked during the Covered Period. *Id.* ¶¶ 36, 53.b.

Based thereon, on a raw average, each Participating Class Member may potentially recover approximately \$990.77. Rosenthal Decl. ¶ 29. The amount actually paid to each Participating Class Member may increase or decrease depending on the actual number of pay periods he or she worked

1 during the Covered Period and/or the number of timely Requests for Exclusion received. *Id.*

2 Finally, the terms of the settlement provide that uncashed checks (upon the expiration date)
3 shall be distributed to the Warriors to Work veteran employment program operated by the non-profit
4 organization Wounded Warrior Project. Settlement Agreement ¶ 73. The Wounded Warrior
5 Project's Warriors to Work program assists California veterans transitioning into the civilian
6 workforce by providing reasonable accommodations and otherwise facilitating adherence to the
7 California Labor Code by employers of such veterans.

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

11 None of the settlement funds will revert to Defendant. Settlement Agreement ¶¶ 53.c, 73.

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

13 As a condition of participating in this settlement, members of the Class shall waive and
14 release "all claims for penalties and damages, including costs and attorneys' fees related thereto,
15 predicated on claims alleged or could have been alleged based on the facts as alleged in the
16 Complaint, First Amended Complaint, and/or LWDA Letter, including but not limited to from any
17 and all known or unknown claims related in any way to defective or inaccurate wage statements
18 under any theory of law including California Labor Code section 226, that accrued from November
19 1, 2020, through October 7, 2022, against the Released Parties" ("Settled Class Claims"). Settlement
20 Agreement ¶¶ 31, 78. This release is appropriately limited, as it only applies during the time period
21 of November 1, 2020, through October 7, 2022, and only applies to the claims alleged.

22 Settlement Aggrieved Employees, or Class Members who submit a valid Request for
23 Exclusion, shall waive and release "all claims for penalties, including costs and attorneys' fees
24 related thereto, predicated on PAGA claims alleged or could have been alleged based on the facts as
25 alleged in the Complaint, First Amended Complaint, and/or LWDA Letters, including but not limited
26 to any and all known or unknown claims related in any way to defective or inaccurate wage
27 statements under any theory of law that accrued from November 1, 2020, through October 7, 2022,
28 against the Released Parties" ("Settled PAGA Claims"). Settlement Agreement ¶¶ 32, 78.

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

2 As Plaintiff's lawsuit only sought penalties, the Parties have agreed that the Individual
3 Settlement Payments to Participating Class Members and Settlement Aggrieved Employees shall be
4 classified 100% as civil and statutory penalties, for which an IRS Form 1099 will be distributed.
5 Settlement Agreement ¶ 54.

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

8 As stated above, Class Members do not need to do anything should they wish to receive their
9 share of the settlement funds. Thus, this substantially decreases the amount of burden each Class
10 Member must bear in order to receive their settlement share. If a Class Member does not wish to take
11 part in this settlement and be bound by the release, the Class Member must submit a Request for
12 Exclusion. Settlement Agreement ¶¶ 29, 65.

13 **C. Notice to Class Members**

14 Within twenty-five (25) days of the preliminary approval of this settlement, Defendant will
15 confidentially transmit to the Settlement Administrator a spreadsheet containing each Class
16 Member's full name, last known home address, telephone, Social Security Number, number of
17 Qualifying Pay Periods worked during the Covered Period, and any other data necessary for the
18 Settlement Administrator to identify and/or contact the Class Members and Settlement Aggrieved
19 Employees ("Class List"). Settlement Agreement ¶¶ 6, 60. Upon receipt of the information and prior
20 to mailing the Notice of Class Action Settlement ("Class Notice"), the Settlement Administrator shall
21 perform a search based on the National Change of Address Database for information to update and
22 correct for any known or identifiable address changes. *Id.* ¶ 62. Within ten (10) business days of
23 receipt of the Class List, the Settlement Administrator shall mail the Class Notice to all Class
24 Members. *Id.* ¶ 61. The Settlement Administrator will re-mail the Class Notice to Class Members for
25 whom the notice is returned with a forwarding address and perform a skip-trace or other search on
26 Class Members and re-mailing for whom a Class Notice is returned as undeliverable. *Id.* ¶ 63.

27 As set forth in the Class Notice, Class Members will be allowed to opt out of the settlement
28 by a certain deadline, or object to the settlement in writing or by appearing at the final approval

1 hearing. Settlement Agreement ¶¶ 65, 68.

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

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

4 The commonality requirement is met when there are questions of law and fact common to the
5 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal
6 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple
7 with disparate legal remedies within the class”). Commonality requires only that some common legal
8 or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See*
9 *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s conduct is central to the
10 commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v.*
11 *Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at
12 a class of employees, as it is here, the class wide impact of the Defendant’s policies satisfies the
13 commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421
14 (1987).

15 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
16 violated the Labor Code by issuing defective wage statements. Declaration of Everett Alexander
17 (“Alexander Decl.”) ¶ 3. In other words, Plaintiff was subjected to the same policy and practice as
18 other Class Members. Thus, Plaintiff’s claims are typical to those of Class Members.

19 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues
20 been raised or presented. Alexander Decl. ¶ 4. Plaintiff has taken all necessary steps to represent the
21 interests of the Class, and by providing information and documents to Plaintiff’s counsel. *Id.* ¶ 5. For
22 such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.
23 Defendant denies that the claims are typical, but agrees to certification of the class for settlement
24 purposes only.

25 **2. Class Counsel Has Adequately Represented the Class and Has Experience
26 with Wage and Hour Class Actions**

27 From the inception of the case, Class Counsel has zealously represented the interests of the
28 class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
Representative. Further, Class Counsel has been approved as class counsel on a number of prior

cases, have litigated numerous other class action cases, and are competent to represent the Class. Rosenthal Decl. ¶¶ 38-40; Lee Decl. ¶¶ 7-9; Agnew Decl. ¶¶ 7-11; Marder Decl. ¶¶ 6-13.

E. Costs and Fees

1. Attorneys' Fees and Costs

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

The common fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id.*

Indeed, most recently, the California Supreme Court has also now held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the

percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 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 505.

The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement Amount (or \$500,000.00) for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be presumed to be fair.

Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs in an amount up to \$15,000.00. Class Counsel has expended costs at their own risk, for example, to file this instant action, effect service of process, pay the mediation fee, and pay of other litigation-related costs.

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 Everett Alexander requests a service award of \$10,000.00. Settlement Agreement ¶¶ 9, 50. 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 his duties as Class Representative, Plaintiff provided invaluable information and documents that resulted in this settlement. Alexander Decl. ¶ 5. In addition to the invaluable services that he 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,

1 Plaintiff could have possibly faced paying the costs of Defendant had he not prevailed in this action.

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

8 **3. Settlement Administration Costs**

9 The Parties have agreed to a maximum payment of \$25,000.00 to the Settlement
10 Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement.
11 Settlement Agreement ¶¶ 34, 35, 51. Phoenix Settlement Administrators is a well-recognized class
12 action settlement administrator. The Parties believe that the administration fee is reasonable and
13 should be approved.

14 **F. Notice to the LWDA**

15 Concurrently with this filing, Plaintiff submitted the Motion and settlement agreement to the
16 LWDA. Rosenthal Decl. ¶ 42.

17 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 18 **PRELIMINARY APPROVAL**

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

1 DATED: November 29, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

6 Attorneys for Plaintiff, the Class, and Settlement

Aggrieved Employees

1 **PROOF OF SERVICE**

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

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

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

10 On November 30, 2022, I served the following document(s) described as:

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

on the interested parties in this action as follows:

1 Sarah E. Ross
2 sross@littler.com
3 Jannine E. Kranz
4 jkranz@littler.com
5 Littler Mendelson, P.C.
6 2049 Century Park East, 5th Floor
7 Los Angeles, CA 90067
8 *Attorneys for Defendant KBR Technical Services, Inc.*

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

15 I declare under penalty of perjury under the laws of the State of California that the above
16 is true and correct. Executed on November 30, 2022, at Los Angeles, California.

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Erika Mejia