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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DESTINY KING, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

AMF FOODS SPE LLC, a Delaware limited liability company; F & H PIZZA INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 25CU010664C

(Assigned to the Hon. Wendy M. Behan, Dept. C-66)

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

Date: October 23, 2026
Time: 10:15 a.m.
Dept.: C-66

Action Filed: February 27, 2025
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 23, 2026, at 10:15 a.m., or as soon thereafter as the matter may be heard, before the Honorable Wendy M. Behan, judge presiding, in Department C-66 of the above referenced Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Destiny King ("Plaintiff") will seek an Order: (1) approving the Joint Stipulation of Class Action and PAGA Settlement and Release ("Agreement," "Settlement," "Settlement Agreement," or "Stipulation of Settlement")[1] in this matter; (2) conditionally certifying the following Class for settlement purposes only: "all current and former non-exempt employees of Defendants AMF Foods SPE LLC and F&H Pizza Inc. who were paid wages at any time from February 27, 2021, to January 28, 2025"; (3) appointing Plaintiff Destiny King as the Class Representative and Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. as Class Counsel; (4) preliminarily approving the Settlement Agreement and the total Gross Settlement Amount in the amount of One Hundred Twenty-Five Thousand Dollars ($125,000.00); (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 PAGA penalties, Class Representative Service Award, Class Counsel's fees and costs, settlement administration costs, and allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the proposed class notice to be sent to Class Members; (7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a 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 Defendants AMF Foods SPE, LLC ("AMF") and F & H Pizza, Inc.'s ("F & H") (AMF and F & H together, "Defendants"), is that the proposed settlement is fair, adequate, and reasonable and the

[1] The Settlement Agreement is attached as **Exhibit A** to the Declaration of Mai Tulyathan.

procedures proposed by the Plaintiff and Defendants are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached memorandum of points and authorities, the Stipulation and the proposed class notice, and the supporting Declarations of Larry W. Lee, Mai Tulyathan, and Plaintiff Destiny King, and upon the oral arguments of counsel (should there be any) and on the complete records and file herein.

DATED: October 1, 2026

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class and representative action seeking unpaid wages and penalties. Plaintiff Destiny King ("Plaintiff") brought her claims based on a class-wide basis for violation of various Labor Code sections. Defendants AMF Foods SPE LLC and F & H Pizza Inc. (together, "Defendants") deny each, every, and all of the allegations of the operative Complaint.

Prior to the settlement of this action, Plaintiff and Defendants (collectively, the "Parties") thoroughly investigated the facts relating to the claims alleged in the operative Complaint and engaged in a thorough study of the legal principles applicable to the claims asserted against Defendants. Through the exchange of informal discovery, Defendants provided the necessary data, including the number of putative class members, the number of workweeks worked and pay periods at issue, as well as information pertaining to Defendants' policies, practices, and procedures pertaining to the alleged violations at issue. The information provided by Defendants allowed Plaintiff to review and analyze the liability and potential exposure. The Parties exchanged documents and data related to the class. Thereafter, the Parties commenced direct negotiations over the course of several months and were ultimately able to reach the current settlement. **Significantly, this entire amount is non-reversionary, such that no monies will revert back to Defendants**.

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

Although Plaintiff and her counsel are confident that they could prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release ("Agreement," "Settlement," "Settlement Agreement," or "Stipulation of Settlement") is fair,

reasonable, and adequate and is in the best interests of the Settlement Class and Defendants in light of all known circumstances and the expenses and risks inherent in litigation.

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

II. BACKGROUND

On or about January 15, 2025, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of the Labor Code sections described herein, pursuant to Labor Code § 2699.3. Declaration of Mai Tulyathan ("Tulyathan Decl.") ¶ 2.

On February 27, 2025, Plaintiff filed a wage and hour class action complaint. *Id*. ¶ 3. On May 5, 2025, Plaintiff filed a First Amended Complaint ("FAC"). *Id*. ¶ 4. The FAC is the operative Complaint ("Complaint"). The operative Complaint alleges causes of action for: (1) failure to pay wages in violation of California Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (2) violation of California Labor Code §§ 201-203; (3) violation of California Labor Code § 226(a); (4) violation of California Business & Professions Code § 17200, *et seq.*; and (5) violation of California Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA").[2] *Id.*

Following the filing of the FAC, the Parties engaged in formal and informal discovery. *Id*. ¶ 5. The Parties also conducted discovery in connection with the PAGA's Early Evaluation Conference ("EEC"). *Id*. ¶ 6. As part of the discovery, Defendants provided the necessary data, including the number of putative class members, the number of workweeks worked and pay

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[2] The operative Complaint also alleges class and PAGA claims for failure to pay all wages at separation of employment resulting from the alleged payment of wages through pay cards without authorization or consent, including the second and fifth causes of action for violations of California Labor Code §§ 201-204, 212, 213, and 2698, *et seq.* As part of Plaintiff's investigation into the claims of the Action and as part of this settlement, the Parties have agreed to dismiss Plaintiff's claims premised solely on these pay card claims based on Defendants' representation that the pay card practice was voluntary. On September 29, 2026, the Parties submitted a Joint stipulation to Dismiss Plaintiff's Pay Card Claims Without Prejudice. As such, the pay card class and PAGA claims are **not** part of this settlement and will not be subject to the release. Tulyathan Decl. ¶ 10.

periods at issue, time records, number of shifts worked, average hourly pay rate, as well as information pertaining to Defendants' policies, practices, and procedures pertaining to the alleged violations at issue, including the store opening and closing practices. Tulyathan Decl. ¶ 7.

Defendants' production allowed Plaintiff to conduct an exposure analysis. *Id*. After a thorough investigation and evaluation of the facts and claims and negotiations conducted over the course of several months, the Parties reached the current settlement. *Id.* ¶ 8. In resolution of Plaintiff's class and PAGA claims, the Parties entered into the Settlement Agreement, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Mai Tulyathan. *Id.* ¶ 9.

III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

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

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

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

Thus, the preliminary approval by the trial court is simply a conditional finding that the 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." Alba Conte & Herbert B. Newberg, *4 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 by 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 settlements.

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.

4 Newberg on Class Actions § 11.26.

In addition to such terms as class identification, settlement amount, and payment procedures, the Settlement Agreement reached by the Parties contains a provision pursuant to

which the Parties stipulate to the Court's provisional certification of the class for the purposes of this settlement only.

A. Proposed Class Definition

The current settlement is being settled on behalf of "all current and former non-exempt employees of Defendants AMF Foods SPE LLC and F&H Pizza Inc. who were paid wages at any time from February 27, 2021, to January 28, 2025" (the "Settlement Class" or "Class Members"). Agreement ¶ 5. The Class Period is from February 27, 2021, to January 28, 2025. *Id.* ¶ 6. There are approximately 81 individuals that comprise the Settlement Class. *Id.* ¶ 56. Pursuant to the Settlement Agreement, Defendants have represented that Class Members worked 4,515 workweeks during the Class Period. *Id.* Should the number of applicable workweeks in the Class Period increase above 4,515, then Defendants will increase the Gross Settlement Amount on a *pro rata* basis, based on $27.68 per workweek for each workweek above 4,515. *Id*.

B. Settlement Terms and Evaluation

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

While the recommendations of counsel proposing the settlement are not conclusive, the court can properly take them into account, particularly where, as here, they have been involved in discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions*, *supra*, § 11.47; *Nat'l Rural Telecomms. Coop*., 221 F.R.D. at 528

("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement…[citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

Here, both Plaintiff's and Defendants' counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Tulyathan Decl. ¶¶ 44-47; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 6-7. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties. Tulyathan Decl. ¶ 33.

Here, Plaintiff's main theory is the off-the-clock claim. Plaintiff alleges that Defendants failed to pay wages owed for off-the-clock work performed in connection with store opening and closing procedures, including locking/unlocking the doors and arming/disarming the store alarm. *Id*. ¶ 21. Based on the class data provided by Defendants, Plaintiff estimated that Defendants would face potential liability of up to approximately $344,458.62 for Plaintiff's off-the-clock claims, which is based on approximately $3,898.62 in unpaid wages (calculated based on approximately 2,178 shifts worked) and $340,560.00 in waiting time penalties under Labor Code § 203 (calculated based on 66 former employees in the class and based on an average hourly rate of $21.50). *Id*. ¶ 22. Plaintiff's Labor Code § 226 claim is a derivative claim resulting from the off-the-clock claim. Based on Plaintiff's extrapolation of the workweeks at issue, Plaintiff estimates approximately $108,850.00 in Labor Code § 226(e) penalties. *Id*. ¶ 23.

Plaintiff was able to estimate the potential damages and penalties based on data provided by Defendants. *Id*. ¶ 24. The total theoretical exposure of Plaintiffs' class claims based on the above amount to approximately $453,308.62. Tulyathan Decl. ¶ 25. However, this analysis does not take into account Defendants' arguments to liability and to class certification as further explained below. In particular, Defendants' position was that any off-the-clock work was *de minimis* and non-compensable. Defendants argued that Plaintiff will not be able to certify this claim on behalf of the entire putative class, as the nature of the alleged off-the-clock work is

highly individualized. *Id*. ¶ 26.

Additionally, Defendants also argued that Plaintiff cannot establish that Defendant "willfully" failed to pay wages at separation of employment, and thus Plaintiffs cannot recover waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, 88 Cal. App. 5th 937 (2023), the court upheld an employer's good faith defense to the plaintiff's claim for waiting time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal defense, which precluded the imposition of waiting time penalties because its acts were not "willful" within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut the plaintiff's claim for penalties, pursuant to Labor Code § 226. Should Defendants succeed on these arguments, class members would recover $0 for waiting time penalties under Labor Code § 203 and statutory penalties under Labor Code § 226. Tulyathan Decl. ¶ 27.

In addition to the above defense, Plaintiff's estimated 226(e) derivative penalties would likely end up lower than estimated as it is possible that not every individual would have incurred violations on every pay period. Defendants also argued that the violation was not "knowing and intentional" and thus would not warrant Section 226(e) penalties. *See Harris v. Vector Mktg. Corp*., 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its conduct was not "knowing and intentional"). Defendants argued that they are entitled to a "good faith" defense on this claim, too. *See, e.g., Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law").

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendants could face civil penalties of up to a maximum $338,400 if Plaintiff was successful at trial, and without any reduction by the Court. Tulyathan Decl. ¶ 29.

Thus, based on the data provided by Defendants, Plaintiff's counsel estimated total class and PAGA penalties to be approximately $791,708.62. *Id*. ¶ 30.

Even assuming Plaintiff prevailed on her PAGA claims, the court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539.

Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and potential for appeals. Tulyathan Decl. ¶¶ 32. These risks on class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the California Supreme Court after an additional five years of litigation. The case was remanded back to superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

Indeed, numerous courts have held that **gross** settlements approximating between only 8% and 25% of the defendant's potential exposure are fair and reasonable. *See*, *e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.

Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the Defendants' potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained ***only 9.1%*** of projected damages, given the risks of continued litigation); *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 $125,000.00 gross settlement is approximately **15.8%** of the maximum potential damages and statutory penalties. Tulyathan Decl. ¶ 34.

Despite the asserted fairness of the settlement terms, as set forth in the proposed class notice ("Settlement Notice"), 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. Agreement ¶ 28. Moreover, as set forth in the Settlement Notice, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement. *Id*. ¶ 18.

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 Hundred Twenty-Five Thousand Dollars ($125,000.00) as the Gross Settlement Amount. Agreement ¶ 14. The Net Settlement Amount (calculated after deduction of attorneys' fees (up to $41,666.67) and costs (up to $10,000.00), Class Representative Service Award (up to $10,000.00), PAGA Payment ($12,500.00), and Settlement Administration Costs ($5,950.00) is estimated to be approximately $44,883.33. Agreement ¶¶ 3, 7, 14, 17, 21, 31. Class Members who do not opt out of the settlement ("Participating Class Members") will be entitled to receive a portion of the Net Settlement Amount. *Id*. ¶¶ 15, 23.

To determine the amount to which each Class Member is entitled from the Net Settlement Amount, the Settlement Administrator will first divide the Net Settlement Amount by the total number of workweeks worked by all Class Members during the Class Period, to arrive at the

Workweek Value. *Id*. ¶ 53.a.i. The number of workweeks for each Class Member will be multiplied by the Workweek Value, to arrive at the Individual Class Payment for that Class Member. *Id*.

Separate from the Individual Class Payment, PAGA Group Members will be entitled to receive a portion of the PAGA penalties (or 35% of the PAGA Payment) as an Individual PAGA Payment. Agreement ¶ 21. PAGA Group Members consist of "all current and former non-exempt employees of Defendants AMF Foods SPE LLC and F&H Pizza Inc. who were paid wages at any time from January 15, 2024 to January 28, 2025." *Id.* ¶ 19. The PAGA Period is January 15, 2024 to January 28, 2025. *Id.* ¶ 22.

The Individual PAGA Payment will be calculated by the Settlement Administrator by dividing 35% of the PAGA Payment (or $4,375.00) by the total number of workweeks worked by PAGA Group Members during the PAGA Period, to arrive at the PAGA Workweek Value. Agreement ¶ 53.a.ii. The PAGA Pay Period Value will be multiplied by the individual number of workweeks worked by each PAGA Member during the PAGA Period, to arrive at the Individual PAGA Payment for that PAGA Member. *Id*.

Based thereon, on a raw average, each Participating Class Member may recover approximately **$554.12** per person. Tulyathan Decl. ¶ 36. The amount actually paid to each Participating Class Member will increase or decrease depending on his or her number of workweeks, as well as the number of opt-outs received and fees and costs approved by the Court. Agreement ¶ 53.a. Finally, the funds remaining from uncashed checks (upon the expiration date) shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and/or PAGA Group Member to whom the funds relate.[3] *Id*. ¶ 53.a.vii.

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[3] To the extent that the Court does not approve distribution of funds resulting from uncashed checks to the California Controller's Unclaimed Property Fund, the Parties have agreed that any such residual funds shall be distributed to the cy pres recipient: Legal Aid At Work. Agreement ¶ 53.a.vii.

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

None of the settlement funds will revert to Defendants. Agreement ¶ 53.a.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Plaintiff and Participating Class Members shall waive and release "any and all claims asserted in the Action based upon the factual allegations in the operative Complaint for failure to pay all minimum, regular, and overtime wages for all hours worked in violation of Labor Code §§ 201-204, 226, 510, 558, 1194, 1197, 1197.1, and California Business and Professions Code § 17200, *et seq.*, that arose during the Class Period against the Released Parties" ("Released Class Claims"). Agreement ¶¶ 25, 48.a. The Released Parties are "Defendants and all of their present and former owners, parent entities, sister entities, subsidiaries, investors, beneficiaries, representatives, related or affiliated entities, shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and assigns." *Id*. ¶ 27.

With respect to the PAGA claims, Plaintiff and PAGA Group Members will release "any and all claims under the PAGA asserted in the Action based upon the factual allegations in the operative Complaint for failure to pay all minimum, regular, and overtime wages for all hours worked in violation of Labor Code §§ 201-204, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.,* that arose during the PAGA Period against the Released Parties ("Released PAGA Claims")." Agreement ¶¶ 26, 48.b.

Pursuant to the settlement, the class and PAGA releases exclude all claims premised on failure to pay wages at separation of employment resulting from the alleged payment of wages through pay cards without authorization or consent, in violation of Labor Code §§ 201-204, 212, 213, and 2698, *et seq.* *Id*. ¶¶ 25-26.

PAGA Group Members will receive Individual PAGA Payments and be bound by the Released PAGA Claims regardless of whether they opt out of the settlement and/or cash their Individual PAGA Payment. Agreement ¶¶ 48.b.

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4. Tax Treatment of Settlement Amounts

Ten percent (10%) of the Individual Class Payment is in settlement of wage claims and is subject to wage withholdings and shall be reported on IRS Form W-2, and the remaining ninety percent (90%) of each Participating Class Member's Individual Class Payment is in settlement of claims for penalties and interest, and shall be reported on IRS Form 1099. Agreement ¶ 53.a.vi.

Individual PAGA Payments shall be allocated as one hundred percent (100%) penalties and reported on IRS Form 1099. *Id.*

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

As stated above, Class Members do **not** need to do anything should they wish to receive their share of the settlement funds. This substantially decreases the amount of burden each Class Member must bear in order to receive their settlement share. If a Class Member does not wish to take part in this settlement and be bound by the Released Claims, the Class Member must submit a Request for Exclusion. Agreement ¶ 28. Class Members who are also PAGA Group Members and who timely and validly submit a Request for Exclusion, however, will still receive Individual PAGA Payments and be bound by the Released PAGA Claims. *Id*. ¶ 48.a.

C. Notice to Class Members

Within fourteen (14) calendar days of the preliminary approval of this settlement, Defendants will confidentially transmit to the Settlement Administrator a list containing for each Class Member the following information: (i) full name; (ii) last known address; (iii) Social Security Number; (iv) number of workweeks actually worked during the Class Period; and (v) the number of workweeks actually worked during the PAGA Period ("Class List"). Agreement ¶¶ 4, 53.a.

Upon receipt of the information and prior to mailing the Notice of Class Action and PAGA Settlement ("Settlement Notice"), the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Agreement ¶ 52.a.i. Within fourteen (14) days after receiving the Class List from Defendants, the Settlement Administrator shall mail the Settlement

Notice to all Class Members via regular First-Class U.S. Mail. *Id*. ¶ 52.a. The Settlement Administrator will re-mail the Settlement Notice to the forwarding address provided for returned notices within seven (7) calendar days of receipt of the returned Settlement Notice. *Id*. ¶ 52.a. Settlement Notices that are returned without a forwarding address will be re-mailed to a corrected address obtained by the Settlement Administrator after performing a skip-trace or other automated search. *Id*.

As set forth in the Settlement Notice, Class Members will be allowed to opt out of the settlement by a certain deadline or object to the settlement in writing. Agreement ¶¶ 18, 28.

D. Typicality and Adequacy of Representation

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

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

Plaintiff alleges that Defendants, as a matter of their corporate policy, practice, or procedure violated the Labor Code by failing to pay wages for all hours worked resulting from off-the-clock work and issuing inaccurate wage statements. Declaration of Destiny King ("King Decl.") ¶¶ 3. In other words, Plaintiff alleges that she was subjected to the same policy and practice as other Class Members. Thus, Plaintiff's claims are typical to those of Class Members.

Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor have any such issues been raised or presented. *Id*. ¶ 4. Plaintiff has taken all necessary steps to

represent the interests of the Settlement Class, and provided information and documents to her counsel. *Id*. ¶ 5. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel have zealously represented the interests of the Settlement Class. The settlement was obtained for the benefit of the Settlement Class, as opposed to the individual Class Representative. Further, Class Counsel have 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. Tulyathan Decl. ¶¶ 45-48; Lee Decl. ¶ 7. Class Counsel have provided notice of this settlement to the LWDA concurrently with the filing of this Motion. Tulyathan Decl. ¶ 49.

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) ("*Serrano III*"); *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, more 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 $41,666.67) 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 $10,000.00. Class Counsel have, at their own risk, expended costs, for example, to file this instant action, effect service of process, and pay 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

Plaintiff Destiny King requests a modest enhancement of $10,000.00. Agreement ¶ 7. 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, participated in early discussions about the PAGA EEC, and reviewed the Settlement Agreement. As part of her duties as Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. King 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 Settlement 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 Defendants 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 assumed these risks and the whole Settlement 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.

3. Settlement Administration Costs

The Parties have agreed to an estimated payment of $5,950.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. Agreement ¶¶ 30, 31; Tulyathan Decl. ¶ 16, Ex. B. 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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F. Notice to the LWDA Has Been Provided

Pursuant to California Labor Code § 2699(1), on October 1, 2026, Plaintiff uploaded the instant motion, Settlement Agreement, and proposed order to the LWDA's website. Tulyathan Decl. ¶ 49. In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. *Id.*

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

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

DATED: October 1, 2026

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff, the Class, and Aggrieved Employees