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

LAMEISHA GEORGE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WESTWAYS STAFFING SERVICES,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: CIVSB2212594
[Consolidated with: CIVSB2217699]

[Assigned for all purposes to the Hon. Jessica
Morgan, 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: January 22, 2024
Time: 8:30 a.m.
Dept: S-26

Complaint Filed: June 16, 2022
Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on January 22, 2024, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Jessica Morgan, judge presiding, in Department S-
4 26 of the above referenced Court, located at 247 W. Third Street, San Bernardino, California 92415,
5 Plaintiff Lameisha George (“Plaintiff”) will seek an Order: (1) approving the Stipulation of Class
6 Action and PAGA Settlement and Release (“Agreement” or “Settlement Agreement”) in this
7 matter; (2) conditionally certifying the following Class for settlement purposes only: “all non-
8 exempt employees of Defendant who worked for Defendant in California who were paid overtime
9 wages at any time from September 5, 2021, through August 5, 2022” (the “Class”); (3) appointing
10 Plaintiff Lameisha George as Class Representative and Larry W. Lee, Max W. Gavron, and
11 Kwanporn “Mai” Tulyathan of Diversity Law Group, P.C. and William L. Marder of Polaris Law
12 Group as Class Counsel; (4) preliminarily approving the Settlement Agreement and the total
13 Maximum Settlement Amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00); (5)
14 finding on a preliminary basis that the Agreement appears to be within the range of reasonableness
15 of a settlement, including the amount of the PAGA penalties, Class Representative Enhancement
16 Award,¹ attorneys’ fees, litigation costs, Settlement Administration Costs, and the allocation of
17 payments to Class Members that could ultimately be given final approval by this Court; (6)
18 approving the Notice of Class Action Settlement to be sent to Class Members; (7) appointing
19 Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a
20 Final Fairness and Final Approval hearing.

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

24 The basis for this Motion, filed without any opposition from Defendant Westways Staffing
25 Services, Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and
26

27 _____
28 ¹ Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as
those set forth in the Parties’ Settlement Agreement.

1 the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to
2 participate in, opt-out of, or object to the settlement. This Motion will be based on the attached
3 Memorandum of Points and Authorities, the Settlement Agreement and the proposed Notice of
4 Class Action Settlement, and the supporting Declarations of Larry W. Lee, Max W. Gavron,
5 Kwanporn “Mai” Tulyathan, William L. Marder, and Lameisha George, and upon the oral
6 arguments of counsel (should there be any) and on the complete records and file herein.

7
8 DATED: November 29, 2023

DIVERSITY LAW GROUP, P.C.

9
10 By: 

Larry W. Lee

Max W. Gavron

Kwanporn “Mai” Tulyathan

Attorneys for Plaintiff and the Class
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1 **I. INTRODUCTION**

2 Plaintiff Lameisha George (“Plaintiff”) brings class and representative action claims against
3 Defendant Westways Staffing Services, Inc. (“Defendant”) (together with Plaintiff, the “Parties”)
4 under the California Labor Code. Plaintiff alleges in this lawsuit that Defendant had a policy and
5 practice of issuing defective wage statements in violation of Labor Code §§ 226 and 2698, *et seq.*,
6 the Private Attorneys General Act (“PAGA”). Plaintiff now moves for preliminary approval of the
7 proposed class and representative action settlement after thorough investigation of the claims
8 alleged.

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
11 principles applicable to the claims asserted against Defendant. The Parties exchanged written
12 discovery, including the production of documents, and took the depositions of Plaintiff and
13 Defendant’s person most knowledgeable. Defendant also provided data related to the number of
14 putative class members and wage statements at issue. Thereafter, the Parties commenced settlement
15 negotiations through a private mediator and were ultimately able to reach the current settlement
16 after continued negotiations conducted post-mediation and acceptance of a mediator’s proposal.

17 **Significantly, this entire amount is non-reversionary, such that no monies will revert to**
18 **Defendant.**

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

28 Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary

1 Approval of Class Action Settlement.

2 **II. PROCEDURAL HISTORY**

3 On June 13, 2022, Plaintiff filed a notice with the California Labor and Workforce
4 Development Agency (“LWDA”) alleging that Defendant violated Labor Code § 226(a), pursuant
5 to Labor Code § 2699 (“PAGA Notice”). The PAGA Notice alleged that Defendant failed to
6 identify the correct hourly rate of pay for overtime wages on wage statements issued to
7 employees. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 2.

8 On June 16, 2022, Plaintiff filed a class action complaint in the Superior Court of the State
9 of California, County of San Bernardino (the “Action”). The class action complaint alleges a single
10 cause of action for violation of Labor Code § 226. *Id.* ¶ 3. Plaintiff alleged that the wage statements
11 failed to identify all applicable hourly rates of pay during the pay period, and that the overtime rate
12 of pay was identified as Plaintiff’s base rate of pay rather than one and half times the regular rate of
13 pay. *Id.*

14 On August 18, 2022, Plaintiff filed a representative action complaint in the Superior Court
15 of the State of California, County of San Bernardino. The representative action complaint alleges a
16 single cause of action for violation of the Labor Code § 2698, *et seq.*, Private Attorneys General Act
17 (“PAGA”), predicated on an underlying violation of Labor Code § 226. *Id.* ¶ 4.

18 Due to the related nature of the claims, on or about January 17, 2023, the Court
19 consolidated the class action and representative action, with further litigation to proceed through
20 the earlier-filed class action. *Id.* ¶ 5. As such, the operative complaint in the Action (“Complaint”
21 or “operative Complaint”) consists of claims for (1) violation of Labor Code § 226 and (2)
22 violation of Labor Code § 2698, *et seq.* *Id.* ¶ 5. As alleged in the Complaint, Plaintiff seeks to
23 represent a class of similarly situated employees. Plaintiff further seeks damages, penalties,
24 attorneys’ fees, and costs. *Id.*

25 Following the filing of the Complaint, the Parties engaged in formal and informal discovery.
26 Plaintiff propounded requests for production of documents and interrogatories, to which Defendant
27 responded. *Id.* ¶ 6. Likewise, Defendant propounded requests for production of documents and
28 interrogatories, to which Plaintiff responded. *Id.* ¶ 6. The Parties also took the depositions of

1 Plaintiff and Defendant's person most knowledgeable, and produced documents, including
2 Plaintiff's personnel file, Plaintiff's wage statements, copies of wage statements issued to putative
3 class members, and other documents. *Id.* Defendant also maintained that it revised the format of its
4 wage statements, which it argued necessarily cut off the potential liability period at issue given
5 Plaintiff's theory of liability. *Id.* The Parties initially agreed to file cross motions for summary
6 adjudication, but later agreed to engage in private mediation. *Id.*

7 In advance of the mediation, Defendant produced data relating to the number of putative
8 class members and wage statements at issue. Defendant also produced information regarding the
9 revised format of its wage statements. This allowed Plaintiff to conduct a full damage analysis. *Id.*

10 On August 25, 2023, the Parties engaged in an all-day mediation session with neutral Mike
11 D. Young, Esq. of Judicate West. *Id.* ¶ 8. Although the Parties did not reach an agreement at the
12 mediation, they continued to engage in arm's length negotiations over the course of several months.
13 *Id.* The Parties ultimately reached an agreement in principle with the assistance of the mediator and
14 finalized the terms of the agreement in the Stipulation of Class Action and PAGA Settlement and
15 Release, a copy of which is attached to the Declaration of Max W. Gavron. *Id.*, Ex. A.

16 **III. DISCUSSION**

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

21 Approval of class action settlements involves a two-step process. First, counsel
22 submits the proposed terms of settlement and the court makes a preliminary fairness
23 evaluation. If the preliminary evaluation of the proposed settlement does not disclose
24 grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential
25 treatment of class representatives or of segments of the class, or excessive
26 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.

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

28 Thus, the preliminary approval by the trial court is simply a conditional finding that the

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

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

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

14 *Id.* § 11.24.

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

20 The parties also may, at the preliminary approval stage, request that the court provisionally
21 approve certification of the class—conditional upon final approval of the settlement. “[P]re-
22 certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v.*
23 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48 Cal.
24 App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary
25 certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-*
26 *United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in
27 the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”). As
28 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

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

4 *Newberg on Class Actions* § 11.26.

5 In addition to such terms as class identification, settlement amount, and payment
6 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to
7 which the Parties stipulate to the Court's provisional certification of the Class for the purposes of
8 this settlement only. Agreement ¶ 2.2.

9 **A. Proposed Class Definition**

10 The current settlement is being settled on behalf of a class of "all non-exempt employees of
11 Defendant who worked for Defendant in California who were paid overtime wages at any time from
12 September 5, 2021, through August 5, 2022" (the "Class"). *See* Agreement ¶ 1.1. The Parties
13 limited the proposed settlement class to end August 5, 2022 because discovery and Plaintiff's
14 investigation revealed that Defendant revised the format of its wage statements after August 5,
15 2022. Thus, the settlement class is appropriately limited to the theory of liability alleged in the
16 operative complaint. Gavron Decl. ¶ 10. The Parties also augmented the beginning of the Class
17 Period, as compared to what was originally alleged in Plaintiff's complaint because of a prior class
18 action settlement in *Jones v. Westways Staffing Services, Inc.*, Los Angeles Superior Court Case
19 No. 19STCV43097, which barred the claims alleged in this action up to a certain period.

20 **B. Settlement Terms and Evaluation**

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

1 *Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan*
2 *Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

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

12 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage and
13 hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a number of
14 wage and hour class actions and have extensive litigation experience. Gavron Decl. ¶¶ 34-43;
15 Declaration of Larry W. Lee (“LWL Decl.”) ¶¶ 6-8; Declaration of Kwanporn “Mai” Tulyathan
16 (“Tulyathan Decl.”) ¶¶ 5-10; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 7-14. Each side
17 has apprised the other of their respective factual contentions, legal theories, and defenses, resulting
18 in negotiations taking place between the Parties. Gavron Decl. ¶ 8.

19 Based on the class data provided by Defendant, Plaintiff estimated that Defendant would
20 face potential liability of up to approximately \$2.7 million for Plaintiff’s class claims if Plaintiff
21 succeeded at trial. Gavron Decl. ¶ 17. This number is based upon an analysis of the data provided
22 by Defendant regarding the putative class. Specifically, the amount of Labor Code § 226(e)
23 penalties is based on approximately 28,300 wage statements reflecting the payment of overtime
24 wages that were issued to approximately 1,741 putative class members during the Class Period. *Id.*
25 If accounting for the buffer included in the escalation provision, the penalties increase to
26 approximately \$3 million based on a total of approximately 31,838 wage statements including
27 overtime issued during the Class Period.

28 With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated that

1 Defendant could face civil penalties of up to \$2.8 million in PAGA penalties premised on 28,300
2 pay periods, or approximately \$3.18 million if based on 31,838 pay periods. *Id.* ¶ 18.

3 Based thereon, the total amount of class and PAGA recovery ranges between \$5.5 million to
4 \$6.18 million if Plaintiff were to obtain class certification, prevail at trial, and the Court were to
5 award the full PAGA penalty of \$100 per pay period. *Id.* ¶ 19.

6 However, assuming Plaintiff ultimately prevails on her PAGA claims, the Court still has
7 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
8 decline to award PAGA penalties where “if, based on the facts and circumstances of the particular
9 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
10 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*,
11 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial
12 court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith
13 attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such
14 reduction to be proper. *Id.* at p. 539. If the Court reduced the PAGA penalty similarly here, the
15 PAGA claim exposure would range between \$280,000 and \$318,000. Gavron Decl. ¶ 20.

16 Although Plaintiff believes in the merits of the alleged claims and maintains that there is no
17 reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to the
18 wage statement claims and that, with respect to the reduction of PAGA penalties, could be
19 persuasive to the Court. Gavron Decl. ¶ 21. Thus, even if Plaintiff was to successfully prove her
20 claims at trial, there is a possibility that the Court may only award a small percentage of PAGA
21 penalties, as the Court has discretion to do so. The Maximum Settlement Amount was premised
22 with these risks in mind, associated with the possibility of the Court significantly reducing
23 Plaintiff’s PAGA penalties, along with other attendant risks, even if Plaintiff were to prevail at trial.
24 *Id.* ¶ 21.

25 Further, Defendant denies liability as to Plaintiff’s claims and has raised several defenses
26 that presented risk. Gavron Decl. ¶ 22. In this regard, Defendant asserts that its wage statements
27 comply with Labor Code § 226, and that the overtime rate may be ascertained by performing simple
28 math, as demonstrated by the Parties’ briefing on Defendant’s Demurrer. *Id.* ¶ 22. Defendant also

1 would have argued that Plaintiff could not demonstrate that any alleged omission of information
2 from the wage statements was a “knowing and intentional failure” by Defendants to comply with
3 Labor Code § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal.
4 2009) (granting summary judgment in favor of employer and finding its conduct was not “knowing
5 and intentional”). Defendant also would have argued that penalties under Section 226 are subject
6 to a similar “good faith” defense. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL
7 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is not in
8 violation of Section 226, any violation is not knowing and intentional.”); *Wright v. Adventures*
9 *Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same); *Ricaldai v.*
10 *U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v.*
11 *Lee Publ'ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011) (same); *see also Naranjo v.*
12 *Spectrum Security Services, Inc.*, __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), *review*
13 *granted* 2023 WL 3745105 (May 31, 2023) (upholding good faith defense to the imposition of
14 penalties pursuant to Labor Code § 226).

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

21 Although Plaintiff believes that a class can be certified, 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 the operative Complaint, the
24 possibility of non-certification, and the potential for appeals. Gavron Decl. ¶ 24. These risks on
25 class certification are compounded by the California Supreme Court’s holding in *Duran v. U.S.*
26 *Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and
27 subsequently prevailed at trial after eight years of litigation, but the judgment and the certification
28 ruling were reversed by the California Supreme Court after an additional five years of litigation.

1 The case was remanded to superior court where class certification was denied and plaintiffs’
2 subsequent appeal also was denied.

3 Indeed, numerous courts have held that **gross** settlements approximating between only 8 and
4 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
5 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16%
6 of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
7 amounting to only a fraction of the potential recovery does not per se render the settlement
8 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
9 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
10 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor Supply*
11 *Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class
12 action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was
13 fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)
14 (court granted preliminary approval of wage and hour class settlement which obtained **only 9.1%** of
15 projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*,
16 No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that
17 gross class action settlement of approximately 15% of the potential recovery was fair and
18 reasonable). Here, the Maximum Settlement Amount is fair and reasonable as it ranges between
19 approximately 7-15% of the potential recovery of Plaintiff’s class and PAGA claims if Plaintiff was
20 to fully succeed at trial based on the permutations described above. Gavron Decl. ¶ 25. If the Court
21 reduced the PAGA penalties to 10% like in *Carrington*, the percentage of recovery compared to
22 the available penalties would be even greater.

23 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
24 Action Settlement (“Class Notice”), should any Class Member wish to pursue his or her own case
25 for the claims being released herein, each Class Member has the right to submit a Request for
26 Exclusion (*i.e.*, opt-out) from the settlement. Agreement ¶ 3.6. Moreover, as set forth in the Class
27 Notice, Class Members are advised of their right to attend the final approval hearing and object to
28 any of the terms contained in the Settlement Agreement. *Id.* ¶ 3.7.

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

4 The Settlement Agreement provides for Four Hundred Twenty-Five Thousand Dollars
5 (\$425,000.00) as the Maximum Settlement Amount. Agreement ¶ 1.18. Defendant will fund the
6 Maximum Settlement Amount within 20 days of the Court granting final approval (if no objections
7 are filed). *Id.* ¶¶ 1.13, 3.10. The Net Settlement Amount, calculated after deduction of attorneys’
8 fees (up to \$141,666.67), costs (up to \$30,000.00), Class Representative Enhancement Award (up
9 to \$10,000.00), payment of PAGA penalties (\$40,000.00), and Settlement Administration Costs (up
10 to \$16,000.00), is estimated to be approximately \$187,333.33. *Id.* ¶¶ 1.4, 1.18, 1.19, 1.22, 1.34,
11 3.13. Each Class Member who does not opt out of the settlement (“Settlement Class Member”) will
12 be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the number of
13 Compensable Pay Periods each respective Settlement Class Member worked during the Class
14 Period. *Id.* ¶ 3.11.2.

15 In addition, and regardless of whether a Class Member decides to opt-out of the class
16 portion of the settlement, Class Members will receive a pro rata portion of the PAGA Payment
17 allocated to employees (“PAGA Penalties Payments”), based upon the number of Compensable Pay
18 Periods each Class Member worked during the Class Period. *Id.* ¶ 3.11.4.

19 Based thereon, on a raw average, each Settlement Class Member may potentially recover
20 approximately \$107.60 (\$187,333.33/1,741 class members). Gavron Decl. ¶ 28. The amount
21 actually paid to each Settlement Class Member may increase or decrease depending on the actual
22 number of Compensable Pay Periods he or she worked during the Class Period and/or the number
23 of timely Requests for Exclusion received. *Id.*

24 Finally, the terms of the settlement provide that uncashed checks (upon the expiration date)
25 shall be distributed to the Legal Aid at Work, a non-profit legal services organization that provides
26 legal services and policy advocacy for and on behalf of low-income workers. Agreement ¶ 3.9.
27 Class counsel does not have any conflicts of interest with the proposed cy pres recipient. Gavron
28 Decl. ¶ 45; Lee Decl. ¶ 9; Tulyathan Decl. ¶ 12; Marder Decl. ¶ 15.

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

4 None of the settlement funds will revert to Defendant.

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

6 As a condition of participating in this settlement, members of the Settlement Class shall
7 waive and release “any and all claims, rights, demands, liabilities, and/or causes of action that were
8 alleged, or reasonably could have been alleged in the Lawsuit during the Class Period, and based on
9 the facts stated in the Operative Complaint and/or ascertained in the course of the Lawsuit. These
10 claims include (1) violation of Labor Code § 226 and the applicable Wage Orders and (2) all
11 damages, interest, penalties, litigation costs, attorneys’ fees, restitution, and equitable relief, that
12 reasonably arise from, and/or are reasonably related to the factual allegations pled in the Lawsuit
13 which arose during the Class Period” (“Released Class Claims”). Agreement ¶¶ 1.28, 3.2.1. This
14 release is appropriately limited, as it only applies during the time period of September 5, 2021,
15 through August 5, 2022, and only applies to the claims alleged. *Id.* ¶ 1.6.

16 In addition, Class Members will release “any and all individual and representative claims
17 that could have been assessed upon and collected from the Released Parties under California Labor
18 Code § 2698, *et seq.* based on the factual allegations contained in Plaintiff’s Notice to the Labor
19 and Workforce Development Agency (“LWDA”) dated June 13, 2022 and Operative Complaint on
20 file with the court in this action during the Class Period, including but not limited to California
21 Labor Code §§ 226 and 226.3 and any resulting claim for attorneys’ fees and costs under PAGA”
22 (“Released PAGA Claims”). Agreement ¶¶ 1.29, 3.2.2.

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

24 As Plaintiff’s lawsuit sought damages and penalties, the Parties have agreed that the Class
25 Settlement Payments to Settlement Class Members shall be classified as interest/penalties/non-wage
26 damages, for which an IRS Form 1099 will be distributed. Agreement ¶ 3.11.3. PAGA Penalties
27 Payments shall be classified as penalties, for which an IRS Form 1099 will be distributed (if
28 required). *Id.* ¶ 3.11.4.

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

3 As stated above, Class Members do not need to do anything should they wish to receive
4 their share of the settlement funds. Thus, this substantially decreases the amount of burden each
5 Class Member must bear in order to receive their settlement share. If a Class Member does not wish
6 to take part in this settlement and be bound by the Released Class Claims, the Class Member must
7 submit a Request for Exclusion. Agreement ¶¶ 3.6.

8 **C. Notice to Class Members**

9 Within twenty (20) business days of preliminary approval of this settlement, Defendant will
10 confidentially transmit to the Settlement Administrator a spreadsheet containing each Class
11 Member's full name, last known mailing address, Social Security Number, and number of
12 Compensable Pay Periods ("Class Information"). Agreement ¶¶ 1.5, 3.4.2. Upon receipt of the
13 information and prior to mailing the Notice of Class Action Settlement ("Class Notice"), the
14 Settlement Administrator shall perform a search based on the National Change of Address Database
15 for information to update and correct for any known or identifiable address changes. *Id.* ¶ 3.4.4.
16 Within fourteen (14) calendar days of receipt of the Class Information, the Settlement
17 Administrator shall mail the Class Notice to all Class Members. *Id.* ¶ 3.4.4. The Settlement
18 Administrator will re-mail the Class Notice to Class Members for whom the notice is returned with
19 a forwarding address and perform a skip-trace or other search and re-mailing to Class Members for
20 whom a Class Notice is returned as undeliverable. *Id.* ¶ 3.4.5.

21 As set forth in the Class Notice, Class Members will be allowed to opt out of the settlement
22 by a certain deadline, or object to the settlement in writing or by appearing at the final approval
23 hearing. Agreement ¶¶ 3.6, 3.7.

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

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

26 The commonality requirement is met when there are questions of law and fact common to
27 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
28 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 Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by issuing inaccurate wage statements. Declaration of Lameisha George (“George Decl.”) ¶ 3. In other words, Plaintiff 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 Class, nor have any such issues been raised or presented. George Decl. ¶ 4. Plaintiff has taken all necessary steps to represent the interests of the 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 Class. The settlement was obtained for the benefit of the 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. Gavron Decl. ¶¶ 34-43; Lee Decl. ¶¶ 6-9; Tulyathan Decl. ¶¶ 5-10; Marder Decl. ¶¶ 7-14.

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);

1 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable
2 doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs proportionally
3 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”
4 *Vincent*, 557 F.2d at 769.

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

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

26 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
27 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
28 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high

1 or low [should] the trial court [] consider whether the percentage method should be adjusted so as
2 to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

3 The Parties have agreed to a payment of a maximum of one-third of the Maximum
4 Settlement Amount (or \$141,666.67) for payment to Class Counsel as attorneys’ fees. The Parties
5 have agreed to a payment of the foregoing attorney’s fees and, thus, this payment should be
6 presumed to be fair.

7 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs in an
8 amount up to \$30,000.00. Class Counsel have expended costs at their own risk, for example, to file
9 this instant action, effect service of process, pay the mediation fee, and pay of other litigation-
10 related costs.

11 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and costs
12 being requested by the Parties.

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

14 Class Representative Lameisha George requests an enhancement of \$10,000.00. Agreement
15 ¶ 3.12. The Class Representative met and conferred with Class Counsel on a number of occasions to
16 discuss the case, provided documents and information to Class Counsel, reviewed the Settlement
17 Agreement, and sat for an in-person deposition. As part of her duties as Class Representative,
18 Plaintiff provided invaluable information and documents that resulted in this settlement. George
19 Decl. ¶ 5. In addition to the invaluable services that she provided, Plaintiff also took a significant
20 risk, both professionally and monetarily, in acting as Class Representative and seeking benefits on
21 behalf of the Class. Because the claims alleged by the Class Representative involved the payment of
22 costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant had
23 she not prevailed in this action.

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

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

2 **3. Settlement Administration Fees**

3 The Parties have agreed to an estimated payment of \$16,000.00 to the Settlement
4 Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement.
5 Settlement Agreement ¶¶ 1.34, 1.35. Phoenix Settlement Administrators is a well-recognized class
6 action settlement administrator. The Parties believe that the administration fee is reasonable and
7 should be approved.

8 **F. Notice to the LWDA**

9 Concurrently with this filing, Plaintiff submitted the Motion and settlement agreement to the
10 LWDA. Gavron Decl. ¶ 46.

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

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

20
21 DATED: November 29, 2023

DIVERSITY LAW GROUP, P.C.

22
23 By: 

Larry W. Lee

Max W. Gavron

Kwanporn "Mai" Tulyathan

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]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 29, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF
- 12 **2. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
- 14 **4. DECLARATION OF KWANPORN "MAI" TULYATHAN IN SUPPORT OF**
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 16 **6. DECLARATION OF LAMEISHA GEORGE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 17 **7. [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS**
ACTION SETTLEMENT

18 on the interested parties in this action as follows:

19 Tiffany Brosnan
20 Erin D. Leach
21 Snell & Wilmer LLP
22 600 Anton Blvd, Suite 1400

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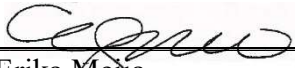
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 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of the above-described document(s) to the party(ies) listed above or on the attached mailing list from the e-mail server diversitylaw.com, to the electronic transmission address of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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 29, 2023, at Los Angeles, California.


Erika Mejia