

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Kwanporn “Mai” Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA

RYAN MIDDLEBROOKS, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

FLEETPRIDE, INC., an Alabama
corporation; and DOES 1 through 50,
inclusive,

Defendants

Case No. 23CV-0202247

(Assigned to the Hon. Stephen H. Baker, Dept. 3)

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

Date: September 9, 2024

Time: 8:30 A.M.

Dept.: 3

Action Filed: May 16, 2023

Trial Date: November 5, 2024

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

2 **PLEASE TAKE NOTICE** that on September 9, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Stephen H. Baker, in Department 3 of the
4 above referenced Court located at 1500 Court Street, Redding, California 96001, Plaintiff Ryan
5 Middlebrooks (“Plaintiff”) will seek an Order: (1) approving the Joint Stipulation Re: Class
6 Action and Representative Action Settlement (“Settlement,” “Agreement,” or “Settlement
7 Agreement”) in this matter; (2) conditionally certifying the following Class for settlement
8 purposes only: “all persons who were employed by FleetPride, Inc. in California in an hourly,
9 non-exempt position and who were paid overtime and/or doubletime wages at any time during
10 the Class Period”; (3) appointing Plaintiff Ryan Middlebrooks as the Class Representative, and
11 Larry W. Lee, Max W. Gavron, and Kwanporn “Mai” Tulyathan of Diversity Law Group, P.C.
12 and William L. Marder of Polaris Law Group as Class Counsel; (4) preliminarily approving the
13 Settlement Agreement and the total Gross Settlement Amount in the amount of Three Hundred
14 Fifteen Thousand Dollars (\$315,000.00); (5) finding on a preliminary basis that the Settlement
15 Agreement appears to be within the range of reasonableness of a settlement, including the
16 amount of the Class Representative service award, attorneys’ fees and costs, settlement
17 administration costs, and the allocation of payments to Settlement Class Members, that could
18 ultimately be given final approval by this Court; (6) approving the Notice of Proposed Class
19 Action Settlement and Date for Final Approval Hearing (“Class Notice”) to be sent to Settlement
20 Class Members; (7) appointing Phoenix Settlement Administrators as the Administrator; and (8)
21 setting the matter for a Final Fairness and Final Approval hearing.

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

25 The basis for this Motion, filed without any opposition from Defendant FleetPride, Inc.
26 (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and the
27 procedures proposed by the Parties are adequate to ensure the opportunity of Settlement Class
28 Members to participate in, opt-out of, or object to the settlement. This Motion will be based on

1 the attached Memorandum of Points and Authorities, the Settlement Agreement and the
2 proposed Class Notice, and the supporting Declarations of Larry W. Lee, Max W. Gavron,
3 Kwanporn “Mai” Tulyathan, William L. Marder, and Plaintiff Ryan Middlebrooks, and upon the
4 oral arguments of counsel (should there be any) and on the complete records and file herein.

5
6 DATED: August 9, 2024

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

7
8
9 By: 

Larry W. Lee
Max W. Gavron
Kwanporn “Mai” Tulyathan
William L. Marder
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	7
II. PROCEDURAL HISTORY.....	8
III. DISCUSSION	9
A. Proposed Class Definition	11
B. Settlement Terms and Evaluation	11
1. Amount and Manner of Distribution of the Compensation to be Provided to Settlement Class Members Including the Amount, or an Estimate, of What Each Settlement Class Member Will Receive	15
2. Settlement Funds Do Not Revert to the Defendant.....	17
3. Scope of the Release of Settlement Class Members' Claims.....	17
4. Tax Treatment of Settlement Amounts.....	17
5. No Affirmative Obligations to be Undertaken by Settlement Class Members	17
C. Notice to Settlement Class Members.....	17
D. Typicality and Adequacy of Representation	18
1. Class Representative's Claims are Typical of the Settlement Class... 	18
2. Class Counsel Have Adequately Represented the Settlement Class ..	19
E. Costs and Fees	19
1. Attorneys' Fees and Costs	19
2. Proposed Payment to the Class Representative	20
3. Settlement Administration Costs.....	21
4. Notice to LWDA	21
IV. CONCLUSION	21

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157, 1209 (2008)	13
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	14
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	10
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....	14
<i>Gunther v. Alaska Airlines, Inc.</i> , 72 Cal. App. 5th 334 (2021).....	13
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016).....	20
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> , 88 Cal. App. 5th 937, 947 (2023), review filed (Apr. 7, 2023)	13
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981).....	19
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	19
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001).....	10, 19

Federal Cases

<i>Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.</i> 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009)	14
<i>Apodaca v. Costco Wholesale Corp.</i> , 2014 WL 2533427 (C.D. Cal. June 5, 2014)	13
<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015)	15
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	14
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	19
<i>Dalton v. Lee Publ'ns, Inc.</i> , 2011 WL 1045107 (S.D. Cal. Mar. 22, 2011).....	13
<i>Greko v. Diesel U.S.A., Inc.</i> , No. 10-cv-02576 NC, 2013 WL 1789602 (N.D. Cal. Apr. 26, 2013)	15
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	11
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	18
<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128 (N.D. Cal. 2009).....	13
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	11
<i>In re Baldwin-United Corp.</i> , 105 F.R.D. 475 (S.D.N.Y. 1984).....	10

1	<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980).....	11
2	<i>Lesevic v. Spectraforce Techs., Inc.</i> , 2021 WL 1599310 (N.D. Cal. Apr. 23, 2021)	15
3	<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	11
4	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	11
5	<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989).....	11
6	<i>Ricaldai v. U.S. Investigations Servs., LLC</i> , 878 F. Supp. 2d 1038 (N.D. Cal. 2012)	13
7	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978)	11
8	<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979).....	11
9	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)	15
10	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012).....	15
11	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1997)	19
12	<i>Wright v. Adventures Rolling Cross Country, Inc.</i> , 2013 WL 1758815 (N.D. Cal. Apr. 24, 2013)	13
13		13

Statutes

15	California Civil Procedure § 384	16
16	Civil Code § 1542	21
17	Labor Code § 226.....	8, 9
18	Labor Code § 226(e)	12, 13
19	Labor Code § 226(e)(1)	12
20	Labor Code § 2698, <i>et seq.</i>	9
21	Labor Code § 2699.....	8
22	Labor Code § 2699(e)(2)	14

Other Authorities

24	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.26 (4th ed. 2002).....	10
25	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.47 (4th ed. 2002).....	11

1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code. Plaintiff
4 Ryan Middlebrooks (“Plaintiff”) alleges that Defendant FleetPride, Inc. (“Defendant”) (together
5 with Plaintiff, the “Parties”) failed to provide accurate itemized wage statements. Plaintiff brings
6 class and PAGA claims based on these alleged violations. The Parties have reached a proposed
7 class and PAGA action settlement, the terms of which are reflected in the Parties’ Joint
8 Stipulation Re: Class Action and Representative Action Settlement (“Settlement,” “Agreement,”
9 or “Settlement Agreement”).

10 Prior to the settlement of this action, Plaintiff thoroughly investigated the facts relating to
11 the class and PAGA claims he alleges in the lawsuit and engaged in a thorough study of legal
12 principles applicable to the claims asserted against Defendant. Defendant maintains that all wage
13 statements it issued to Plaintiff and other hourly, non-exempt employees in California during the
14 relevant period complied in all respects with California law, including California Labor Code
15 § 226. The Parties agreed to participate in an early mediation to attempt to resolve this Action,
16 and to exchange informal discovery in preparation for mediation. As part of this exchange of
17 informal discovery, Defendant provided necessary documents and data pertaining to the number
18 of putative class members and applicable wage statements issued for purposes of performing an
19 analysis of the alleged violations and penalties resulting therefrom. Thereafter, the Parties
20 attended a full day of mediation with neutral Phillip K. Cha, Esq, wherein the Parties reached a
21 settlement in principle and entered into a memorandum of understanding.

22 The Parties have now executed the proposed settlement outlined in the Settlement
23 Agreement presented to the Court with this Motion. The following represent the key terms of the
24 settlement:

- 25 • Gross Settlement Amount of \$315,00.00, which will be paid by Defendant and
26 distributed to the Settlement Class on a **non-reversionary** basis (*See* Agreement
27 ¶ 1.L);
- 28 • Estimated Settlement Class of 280 individuals Declaration of Max W. Gavron

1 (“Gavron Decl.”) ¶ 18;

- 2 • Settlement Class Members do not need to submit claim forms to participate in the
- 3 settlement (Agreement ¶ 9.C (explaining if a class member fails to opt out, they
- 4 will be bound by the settlement));
- 5 • Class Representative Service Award of up to \$10,000.00 (*Id.* ¶ 1.CC);
- 6 • Class Counsel’s attorneys’ fees of up to \$110,250.00 (35% of the Gross
- 7 Settlement Amount) (*Id.* ¶ 12);
- 8 • Class Counsel’s litigation costs of up to \$15,000.00 (*Id.* ¶ 12);
- 9 • Settlement administration costs of up to \$8,500.00 (*Id.* ¶ 1.DD);
- 10 • PAGA Payment amount of \$30,000.00, of which 75% (\$22,500.00) will be paid to
- 11 the California Labor and Workforce Development Agency of \$22,500.00, and 25
- 12 % (\$7,500.00) will be distributed on a pro rata basis to the Aggrieved Employees
- 13 (*Id.* ¶ 15);
- 14 • Net Settlement Amount of approximately \$141,250.00 (*Id.* ¶¶ 1.DD, 1.L, 1.Q, 12,
- 15 13, 15); and
- 16 • Raw average of \$504.46 (\$141,250.00 ÷ 280 Settlement Class Members) to each
- 17 Participating Class Member.

18 The Parties believe that the settlement for the consideration and on the terms set forth in
19 the Settlement Agreement is fair, adequate, and reasonable, in light of all known circumstances
20 and the expenses and risks inherent in litigation and respectfully request that the Court grant this
21 Motion for Preliminary Approval of Class Action Settlement.

22 **II. PROCEDURAL HISTORY**

23 On May 8, 2023, Plaintiff submitted written notice to the California Labor and
24 Workforce Development Agency (“LWDA”), alleging violations of Labor Code § 226, pursuant
25 to the Private Attorneys General Act (“PAGA”), Labor Code § 2699 (“PAGA Letter”). Gavron
26 Decl. ¶ 2.

27 On May 16, 2023, Plaintiff filed a class action complaint against Defendant in the
28 Superior Court of the State of California for the County of Shasta, on behalf of himself and all

1 similarly situated employees (the “Action”). Gavron Decl. ¶ 3. Plaintiff asserted a single cause of
2 action for alleged violations of Labor Code § 226.

3 On July 12, 2023, Plaintiff filed a first amended class and representative action complaint
4 (“First Amended Complaint”), adding a cause of action for violation of Labor Code § 2698, *et*
5 *seq. Id.* ¶ 4. The First Amended Complaint is the operative complaint. *Id.* ¶ 4.

6 Plaintiff contends that Defendant issued noncompliant wage statements to employees
7 whenever overtime wages were paid. Plaintiff seeks damages and penalties under the California
8 Labor Code and the PAGA, as well as attorneys’ fees and costs. *Id.* ¶ 5. Defendant maintains that
9 all wage statements that it issued to Plaintiff and other hourly, non-exempt employees in
10 California during the relevant period correctly listed the overtime hours, applicable rates of pay,
11 and total hours worked, and otherwise complied in all respects with California law, including
12 California Labor Code § 226; denies that it violated the California Labor Code; and denies that is
13 liable for any of the damages or penalties sought by Plaintiff in this Action. Moreover, as of
14 September 15, 2023, Defendant changed the format of the wage statements it issues to its hourly,
15 non-exempt employees from that date forward.

16 On November 28, 2023, the Parties engaged in a full-day mediation with neutral Phillip
17 K. Cha, Esq. Gavron Decl. ¶ 7. In advance of the mediation, Defendant provided Plaintiff’s
18 Counsel with informal data and information, including (1) relevant policies, (2) all wage
19 statements issued to Plaintiff, and (3) data points pertaining to the putative class size and the
20 number of wage statements that included overtime and/or doubletime wages issued to them
21 during the applicable class and PAGA periods. *Id.* ¶ 8. This information allowed Plaintiff to
22 conduct a liability and damages analysis. *Id.* After arm’s length negotiations, the Parties reached
23 an agreement in principle and entered into a memorandum of understanding. *Id.* ¶ 8. In resolution
24 of Plaintiff’s class and PAGA claims, the Parties entered into the Joint Stipulation Re: Class
25 Action and Representative Action Settlement, a true and correct copy of which is attached as
26 **Exhibit A** to the Declaration of Max W. Gavron. *Id.*

27 **III. DISCUSSION**

28 Any settlement of a class action lawsuit must be reviewed and approved by the Court.

1 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
2 review after notice has been distributed to the class members for their comment or objections.

3 The preliminary approval by the trial court is simply a conditional finding that the
4 settlement appears to be within the range of acceptable settlements. As Professor Newberg
5 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
6 concerning a tentative settlement proposal may vary. The court may find that the settlement
7 proposal contains some merit, is within the range of reasonableness required for a settlement
8 offer, or is presumptively valid subject only to any objections that may be raised at a final
9 hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed.
10 2002).

11 Here, the Parties have reached such an agreement and have submitted to this Court in
12 connection with this Motion a copy of the Settlement Agreement fully setting forth the
13 agreement reached among the Parties. The parties also may, at the preliminary approval stage,
14 request that the court provisionally approve certification of the class – conditional upon final
15 approval of the settlement. “[P]re-certification settlements are routinely approved if found to be
16 fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
17 *accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement
18 was reached before any “adversary certification,” the court was satisfied that it was “fair,
19 adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984)
20 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate
21 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

22 The strength of the findings made by a judge at a preliminary
23 hearing or conference concerning a tentative settlement
24 proposal...may be set out in conditional orders granting tentative
25 approval to the various items submitted to the court. Three basic
26 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.

27 *4 Newberg on Class Actions* § 11.26.

28 The Agreement contains a provision pursuant to which the Parties stipulate to the Court’s

provisional certification of the class but do so for the purposes of this settlement only. Defendant has reserved the right to contest class certification in the event that the settlement is not approved and litigation resumes.

A. Proposed Class Definition

The current settlement is being settled on behalf of “all persons who were employed by FleetPride, Inc. in California in an hourly, non-exempt position and who were paid overtime and/or doubletime wages at any time during the Class Period” (“Settlement Class”). *See* Agreement ¶ 1.FF. The Class Period is defined as “the period from May 8, 2022 through September 15, 2023.” *Id.* ¶ 1.E. There are approximately 280 individuals that comprise the Settlement Class. Gavron Decl. ¶ 18.

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 informal 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 p. 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

1 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
2 are most closely acquainted with the facts of the underlying litigation”). Here, both Plaintiff’s
3 and Defendant’s counsel have a great deal of experience in wage and hour class action litigation.
4 Plaintiff’s Counsel have been approved as class counsel in a number of wage and hour class
5 actions and have extensive litigation experience. Gavron Decl. ¶¶ 25-31; Declaration Larry W.
6 Lee (“Lee Decl.”) ¶¶ 6-8; Declaration of Kwanporn “Mai” Tulyathan (“Tulyathan Decl.”) ¶¶ 6-
7 11; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 6-13. Each side has apprised the other
8 of their respective factual contentions, legal theories, and defenses, resulting in negotiations
9 taking place between the Parties. Gavron Decl. ¶ 11. Further, the Parties participated in a full-
10 day mediation with neutral Phillip K. Cha, Esq., an experienced employment class action
11 mediator, and reached a compromise resolution by accepting a mediator’s proposal. *Id.* ¶ 7.

12 Based on the class data provided by Defendant, Plaintiff estimated that Defendant could
13 face potential liability of up to approximately \$762,200.00 for Plaintiff’s class claims if Plaintiff
14 succeeded on all claims at trial. Gavron Decl. ¶ 12. Plaintiff was able to estimate the potential
15 class penalties based on class data provided by Defendant, which identified 143 putative class
16 members who received 41 or more wage statements including overtime wages (and thus were
17 subject to a potential maximum penalty of \$4,000 under Labor Code § 226(e)(1)), 136 putative
18 class members who received fewer than 41 wage statements including overtime wages, and
19 approximately 1,970 wage statements reflecting payment of overtime wages that were distributed
20 to the 136 putative class members. *Id.* ¶ 12. From this, Plaintiff estimated the penalties as
21 approximately \$762,200.00, which was based on 143 employees x \$4,000 (maximum penalties)
22 + [(1,970 pay periods x \$100) – (136 employees x \$50)]. *Id.* ¶ 12; Lab. Code § 226(e).

23 Moreover, Defendant disputes the class and PAGA claims asserted by Plaintiff on the
24 merits. Specifically, Defendant believes that all wage statements it issued to Plaintiff and other
25 hourly, non-exempt employees in California during the relevant period complied with all
26 requirements of Labor Code § 226, including correctly listing the hours worked (including
27 overtime hours), the corresponding applicable rates of pay, and the total hours worked.
28 Defendant also argues that, if any technical violations occurred, such violations were not

1 “knowing and intentional” and thus would not warrant Section 226(e) penalties. *See Harris v.*
2 *Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary
3 judgment in favor of employer and finding its conduct was not “knowing and intentional”).
4 Defendant has maintained that any such technical violations are subject to “good faith dispute”
5 defense in light of the existence of a good faith dispute regarding Plaintiff’s asserted theory of
6 liability in the absence of on-point, controlling authority, and extensive case law supporting its
7 wage statement practices. *See, e.g., Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024
8 WL 1979980, at *1 (Cal. May 6, 2024); *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427,
9 at *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is not in
10 violation of Section 226, any violation is not knowing and intentional.”); *Wright v. Adventures*
11 *Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same);
12 *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012)
13 (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011) (same).
14 Moreover, as of September 15, 2023, Defendant changed the format of the wage statements it
15 issues to its hourly, non-exempt employees which effectively moots Plaintiff’s theory of liability
16 from that date forward. Finally, Defendant asserts that Plaintiff would be unable to represent the
17 purported class population alleged in the FAC, given that 70% of them had executed Defendant’s
18 Dispute Resolution Policy (“DRP”), which is a binding arbitration agreement that includes an
19 enforceable class action waiver, and therefore requires them to submit the claims at issue in this
20 action to individual, binding arbitration.

21 With respect to potential liability of Plaintiff’s PAGA claims, Plaintiff estimated that
22 Defendant could face civil penalties of up to \$1,121,100.00 (~11,211 pay periods x \$100).
23 Gavron Decl. ¶ 14. This amount is calculated based on the PAGA’s initial \$100 penalty for each
24 aggrieved employee per pay period, based on the *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App.
25 5th 334 (2021) decision, in which the Court held that the \$100 penalty applies to PAGA claims.
26 Gavron Decl. ¶ 14. While the PAGA provides for a heightened penalty for a “subsequent
27 violation,” courts are hesitant to award the heightened penalty absent a showing of a prior
28 violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord*

1 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at
2 *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that employers are not
3 subject to heightened penalties for subsequent violations unless and until a court or
4 commissioner notifies the employer that it is in violation of the Labor Code”); *see also Bernstein*
5 *v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty unless
6 prior citation or court ruling).

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

16 Based on the data provided by Defendant, Plaintiff’s counsel estimated total damages and
17 penalties to be as high as \$1,883,300.00 if the Court awarded full penalties on both Plaintiff’s
18 class and PAGA claims. *Id.* ¶ 16. Therefore, Plaintiff’s settlement of \$315,000.00 is
19 approximately 16.7% of the total estimated liability. If the Court were to reduce the maximum
20 PAGA penalties by 90%, as was done in *Carrington*, the settlement value is an even higher
21 percentage of the potentially available recovery. *Id.*

22 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the
23 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
24 involved in not prevailing on one or more of the causes of action or theories alleged in the
25 operative complaint, the possibility of non-certification, and the potential for appeals. Gavron
26 Decl. ¶ 17. These risks on class certification are compounded by the California Supreme Court’s
27 holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
28 class certification and subsequently prevailed at trial after eight years of litigation, but the

1 judgment and the certification ruling were reversed by the California Supreme Court after an
2 additional five years of litigation. The case was remanded to superior court where class
3 certification was denied and plaintiffs' subsequent appeal also was denied.

4 Numerous courts have held that **gross** settlements approximating between only 8% and
5 25% of the defendant's potential exposure are fair and reasonable. *See Lesevic v. Spectraforce*
6 *Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class
7 fund of \$600,000 that compensated for 7% of maximum potential recovery was reasonable);
8 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D.
9 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
10 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
11 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class
12 settlement which obtained **only 9.1%** of projected damages, given the risks of continued
13 litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
14 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
15 approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A.,*
16 *Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was
17 reasonable).

18 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
19 Proposed Class Action Settlement and Date for Final Approval Hearing ("Class Notice"), should
20 any Settlement Class Member wish to pursue his or her own case for the claims being released
21 herein, each Settlement Class Member has the right to submit a Request for Exclusion from the
22 settlement, with the exception of the PAGA claims. *See* Class Notice, attached as **Exhibit A** to
23 the Settlement Agreement. Moreover, as set forth in the Class Notice, Settlement Class Members
24 are advised of their right to object to any of the terms contained in the Settlement Agreement and
25 attend the final approval hearing. *Id.*

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

The Settlement Agreement provides for Three Hundred Fifteen Thousand Dollars

1 (\$315,000.00) as the Gross Settlement Amount. Agreement ¶ 1.L. The Net Settlement Amount
2 [calculated after deduction of attorneys' fees (up to \$110,250.00), litigation costs (up to
3 \$15,000.00), Class Representative Service Award (up to \$10,000.00), PAGA penalties
4 (\$30,000.00), and settlement administration costs (up to \$8,500.00)] is estimated to be
5 approximately \$141,250.00. Agreement ¶¶ 1.L, 1.Q, 1.DD, 12, 13, 15.

6 Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned
7 among the Settlement Class Members on a *pro rata* basis, based on the number of wage
8 statements reflecting payment of overtime and/or doubletime wages received by each respective
9 Settlement Class Member during the Class Period, as compared to the total number of wage
10 statements reflecting payment of overtime and/or doubletime wages received by all Settlement
11 Class Members during the Class Period. *See* Agreement ¶¶ 1.N, 1.Y, 10. Based thereon, on a raw
12 average, each Settlement Class Member potentially may recover approximately \$504.46 on
13 average (\$141,250.00 ÷ 280 Settlement Class Members). Gavron Decl. ¶ 18. The amount
14 actually paid to each Participating Class Member will be higher or lower than this average figure
15 depending on the number of applicable wage statements he or she received during the Class
16 Period and the number of putative class members who choose not to participate in the settlement.

17 In addition, twenty-five percent (25%) of the PAGA Payment, or \$7,500.00, shall be paid
18 to Aggrieved Employees¹ on a *pro rata* basis, based on the number of wage statements reflecting
19 payment of overtime and/or doubletime wages received by each respective Aggrieved Employee
20 during the PAGA Period, as compared to the total number of wage statements reflecting payment
21 of overtime and/or doubletime wages received by all Aggrieved Employees during the PAGA
22 Period. *See* Agreement ¶¶ 1.M, 1.Y, 10. Finally, uncashed checks (upon the expiration date) shall
23 be sent to the California State Controller's Office Unclaimed Property Fund in the name of the
24 Participating Class Member and/or Aggrieved Employee to whom the funds relate. *See*
25 Agreement ¶ 11.A; *see* Gavron Decl. ¶ 19.

26
27 ¹ Aggrieved Employees are defined as "all persons who were employed by FleetPride in
28 California in an hourly, non-exempt position and were paid overtime and/or doubletime wages at
any time during the PAGA Period." Agreement ¶ 1.A.

1 **2. Settlement Funds Do Not Revert to the Defendant**

2 None of the settlement funds will revert to Defendant. Agreement ¶ 1.L.

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

4 As a condition of participating in this class action settlement, Settlement Class Members
5 who do not opt out of the settlement (“Participating Class Members”) will provide a limited
6 release of the claims that were alleged or could have been alleged based on the factual
7 allegations in the operative complaint against the Released Parties (“Class Released Claims”).
8 *See* Stipulation ¶¶ 1.U, 1.Z, 7.A. In addition, regardless of their decision to participate in the
9 settlement, Aggrieved Employees will also provide a limited release of all claims alleged in the
10 PAGA Letter and operative complaint for PAGA civil penalties for the duration of the PAGA
11 Period (“PAGA Released Claims”). *See* Agreement ¶¶ 1.Z, 7.B. Given that the releases above
12 are tailored to only claims pled or could arise out of the facts alleged in the operative complaint
13 and PAGA Letter that accrued during the Class and/or PAGA Period, the releases are
14 appropriately limited.

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

16 The Parties have agreed that the Individual Settlement Payments to Participating Class
17 Members shall be allocated as civil or statutory penalties and interest, and Individual PAGA
18 Payments to Aggrieved Employees shall be allocated as penalties. Agreement ¶ 14.a.

19 **5. No Affirmative Obligations to be Undertaken by Settlement Class**
20 **Members**

21 Settlement Class Members will not be required to make a submission to participate in the
22 settlement. Thus, this substantially decreases the amount of burden each Settlement Class
23 Member must bear in order to receive their Individual Settlement Payment. If a Settlement Class
24 Member does not wish to take part in this settlement and be bound by the Class Released Claims,
25 the Settlement Class Member must submit a Request for Exclusion from the settlement.
26 Agreement ¶¶ 9.C.

27 **C. Notice to Settlement Class Members**

28 Should the Court grant the instant Motion, Defendant will provide the Settlement

1 Administrator with a list containing each Settlement Class Member’s name, last known
2 address(es), last known telephone number(s), last known Social Security Number(s), dates of
3 employment, and number of wage statements reflecting payment of overtime and/or doubletime
4 wages received by each Settlement Class Member and/or Aggrieved Employee during the Class
5 Period and/or PAGA Period, respectively (“Class List”). Agreement ¶ 9.A(1). Defendant shall
6 provide this information within thirty (30) days of preliminary approval of this settlement. *Id.*
7 Upon receipt of the information and prior to mailing the Class Notice, the Settlement
8 Administrator shall perform a search based on the National Change of Address Database for
9 information to update and correct for any known or identifiable address changes. *Id.* Within
10 seven (7) calendar days of receipt of the Class List, the Settlement Administrator shall mail the
11 Class Notice to all Settlement Class Members. *Id.* Any Class Notices returned to the Settlement
12 Administrator as non-deliverable before the Response Deadline shall be sent promptly via
13 regular first-class U.S. mail to the forwarding address affixed thereto. *Id.* ¶ 9.A(3). If no
14 forwarding address is provided, the Settlement Administrator shall promptly attempt to
15 determine the correct address by contacting the Settlement Class Member by telephone or by
16 conducting a skip trace and perform a re-mailing. *Id.*

17 The Class Notice will describe the terms of the settlement and advise Settlement Class
18 Members of their estimated Individual Settlement Share and estimated Individual PAGA
19 Payment, their opportunity to opt out of the settlement, object to the settlement, and/or dispute
20 the facts and methods used to calculate their Individual Settlement Share and Individual PAGA
21 Payment. *Id.* ¶ 9.A(2). If Settlement Class Members need further information about the
22 settlement and/or the lawsuit, Class Counsel’s contact information and the Administrator’s
23 contact information are provided in the Class Notice. *See* Class Notice.

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

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

1 facts couple with disparate legal remedies within the class”). Commonality requires only that
2 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
3 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). The
4 defendant’s conduct is central to the commonality inquiry. Plaintiff alleges that Defendant, as a
5 matter of its corporate policy, practice, or procedure, violated the Labor Code by failing to
6 provide accurate itemized wage statements. Declaration of Ryan Middlebrooks (“Middlebrooks
7 Decl.”) ¶ 3. Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor
8 have any such issues been raised or presented. Middlebrooks Decl. ¶ 4. Plaintiff has taken all
9 necessary steps to represent the interests of the Settlement Class, and by providing information
10 and documents to his counsel. *Id.* ¶ 5.

11 **2. Class Counsel Have Adequately Represented the Settlement Class**

12 From the inception of the case, Class Counsel have zealously represented the interests of
13 the Settlement Class. Class Counsel have engaged in significant meet and confer discussions
14 with Defendant’s counsel to obtain informal data and documents and to discuss the merits of the
15 claims on behalf of the Settlement Class. Gavron Decl. ¶ 32. The settlement was obtained for the
16 benefit of the Settlement Class, as opposed to the individual Class Representative. Further, Class
17 Counsel have been approved as class counsel on a number of prior cases, have litigated
18 numerous other class action cases, and are competent to represent the Class. Gavron Decl. ¶¶ 25-
19 31; Lee Decl. ¶¶ 6-8; Tulyathan Decl. ¶¶ 6-11 Marder Decl. ¶¶ 6-13.

20 **E. Costs and Fees**

21 **1. Attorneys’ Fees and Costs**

22 California state and federal courts have recognized that an appropriate method for
23 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
24 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
25 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
26 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

27 In 2016, the California Supreme Court held that the award of attorneys’ fees in common
28 fund wage and hour class action settlements should start with the percentage method. *See Laffitte*

1 *v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal
2 and state courts in holding that when class action litigation establishes a monetary fund for the
3 benefit of the class members, and the trial court in its equitable powers awards class counsel a
4 fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
5 appropriate percentage of the fund created”). The California Supreme Court in *Laffitte* affirmed
6 a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was
7 based on a lodestar amount that required a multiplier of 2.13. *Id.* at p. 487. As the Court held,
8 only when the multiplier is “extraordinarily high or low [should] the trial court [] consider
9 whether the percentage method should be adjusted so as to bring the imputed multiplier within a
10 justifiable range.” *Id.* at p. 505.

11 Here, Plaintiff’s counsel seek approval of a payment of approximately thirty-five
12 percent (35%) of the Gross Settlement Amount (\$315,000.00) for payment to Class Counsel as
13 of attorneys’ fees. Agreement ¶ 12. Further, Plaintiff seeks approval for a reimbursement of
14 Class Counsel’s actual litigation costs in an amount up to \$15,000.00. *Id.* Defendant does not
15 oppose this request for attorney’s fees and litigation costs. *Id.* Class Counsel have, at their own
16 risk, expended costs to file this instant action and other pleadings in the case, effect service of
17 process, participate in mediation, and pay other litigation-related costs. If Class Counsel’s
18 actual costs are less than \$15,000.00, the remainder will become part of the Net Settlement
19 Amount for distribution to the Settlement Class. *Id.*

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

21 Class Representative Ryan Middlebrooks requests an enhancement of \$10,000.00.
22 Agreement ¶ 13. The Class Representative met and conferred with Class Counsel on a number of
23 occasions to discuss the case, provided documents and information to Class Counsel, and
24 reviewed the Settlement Agreement. As part of his duties as the Class Representative, Plaintiff
25 provided invaluable information, evidence, and documents that resulted in this settlement.
26 Middlebrooks Decl. ¶ 6. In addition to the invaluable services that he provided, Plaintiff also
27 took a significant risk, both professionally and monetarily, in acting as the Class Representative
28 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 Defendant had he not prevailed in this action. Plaintiff also agreed to provide a general release of claims and waiver of the protections of Civil Code § 1542, which is something that was not required of the Settlement Class Members. Agreement ¶¶ 1.K, 7.D.

3. Settlement Administration Costs

The Parties have agreed to the appointment of Phoenix Settlement Administrators as Settlement Administrator, whose duties will include sending all required notices and issuance of all required payments under the Settlement Agreement. Agreement ¶ 8.A. The costs of administering the settlement are currently estimated to be \$8,500.00. *Id.* Plaintiff believes that the estimated settlement administration costs are reasonable and should be approved. Gavron Decl. ¶ 20.

4. Notice to LWDA

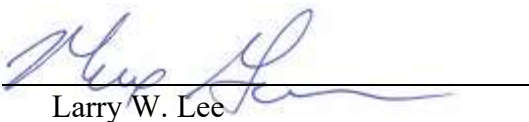
Concurrent with the filing of this Motion, Plaintiff submitted all required documentation to the LWDA. Gavron Decl. ¶ 34; Ex. B.

IV. CONCLUSION

Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing.

DATED: August 9, 2024

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By: 

Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
William L. Marder
Attorneys for Plaintiff and the Class