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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

SINDE TORRES and CRISTINA GUERRERO, as individuals and on behalf of all others similarly situated, Plaintiffs, vs. FIDELITY NATIONAL MANAGEMENT SERVICES, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No.: 23CV416377 [Assigned to the Hon. Charles F. Adams, Department 7] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: March 6, 2025 Time: 1:30 P.M. Dept.: 7 Action Filed: May 23, 2023 Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 6, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Charles F. Adams, judge presiding, in Department 7 of the above referenced Court located at 161 North First Street, San Jose, California 95113, Plaintiffs Sinde Torres and Cristina Guerrero ("Plaintiffs") will and hereby do move this Court for the following relief with respect to the Joint Stipulation of Class Action and PAGA Settlement ("Agreement," "Stipulation," or "Settlement Agreement") entered into by Plaintiffs and Defendant Fidelity National Management Services, LLC, ("Defendant") (together with Plaintiffs, the "Parties"):

1. That the Court approve the Agreement referenced above;

2. That the Court conditionally certify the following class for settlement purposes only: all individuals who fall into either the Overtime Settlement Sub-Class and/or the Wage Statement Sub-Class (the "Settlement Class"). The Settlement Class is broken down into the following sub-classes;

> all hourly-paid, non-exempt employees of Defendant in California who worked overtime and also signed an agreement wherein they received a signing or retention bonus, and also worked overtime during the period of their bonus during the period starting May 23, 2019, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60 of the settlement agreement (the "Overtime Settlement Sub-Class"); and
>
> all hourly-paid, non-exempt employees of Defendant in California who received overtime during the period starting on May 23, 2022, through August 1, 2023, unless such period is shortened by operation of Paragraph 61, below (the "Wage Statement Sub-Class");

3. That Plaintiffs Sinde Torres and Cristina Guerrero be appointed as Class Representatives, and Larry W. Lee, Max W. Gavron, and Kwanporn "Mai" Tulyathan of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group be appointed as Class Counsel;

4. That the Court preliminarily approve the Agreement and the total Gross Settlement Sum in the amount of Two Million Two Hundred Seventy-Five Thousand Dollars

($2,275,000.00);

5. That the Court finds on a preliminary basis that the Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, the service award to the Class Representatives, Class Counsel award of attorneys' fees and costs, settlement administration costs, and the allocation of individual payments to Class Members, that could ultimately be given final approval by this Court;

6. That the Court approve the mailing of the proposed Notice of Class Action Settlement ("Class Notice") to be sent to Settlement Class Members;

7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

8. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

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

The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Settlement Class Members to participate in, opt-out of, or object to the settlement. This Motion is based on the attached Memorandum of Points and Authorities, the Agreement and the proposed Class Notice, and the supporting Declarations of Larry W. Lee, Max W. Gavron, Kwanporn "Mai" Tulyathan, William L. Marder, Plaintiff Sinde Torres, and Plaintiff Cristina Guerrero, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: February 10, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiffs and the Class

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I. INTRODUCTION

This is a wage and hour class and representative Private Attorneys General Act ("PAGA") action seeking statutory and civil penalties under the California Labor Code.[1] Plaintiffs Sinde Torres and Cristina Guerrero (together, "Plaintiffs") allege that Defendant Fidelity National Management Services, LLC ("Defendant") failed to pay all overtime wages owed and provide accurate itemized wage statements to its employees in violation of Labor Code §§ 201-204, 222, 226, 510, 558, 1194, and 2698, *et seq*. Based on these violations, Plaintiffs assert class and PAGA claims for violation of Labor Code §§ 201-204, 222, 226, 510, 558, 1194, and 2698, *et seq*., and the Unfair Competition Law ("UCL"). The Parties have reached a class and PAGA action settlement, the terms of which are reflected in the Parties' Joint Stipulation of Class Action and PAGA Settlement ("Agreement," "Stipulation," or "Settlement Agreement").

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the legal principles applicable to the claims asserted against Defendant. Through the exchange of informal discovery in connection with mediation, Defendant provided necessary data pertaining to the number of putative class members and wage statements issued, as well as Plaintiffs' personnel files, employee handbook, copies of wage statements, sampling of time and pay data, written policies, and bonus contracts. The information provided by Defendant allowed Plaintiff to review and analyze the liability and potential exposure. The Parties attended a full day mediation with Retired Judge Brian C. Walsh on July 23, 2024. With the assistance of Judge Walsh, the Parties ultimately reached the current settlement.

The terms of the Agreement provide that Defendant pay the Gross Settlement Sum of Two Million Two Hundred Seventy-Five Thousand Dollars ($2,275,000.00) to resolve the class and PAGA claims. Significantly, the entire Gross Settlement Sum will be distributed to the class

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[1] In conjunction with the Parties' settlement, Plaintiffs requested leave to file a First Amended Complaint, which includes the putative class claims originally alleged in this Action and the PAGA claims that are subject to the settlement agreement, which were originally alleged in a separate action bearing the same name and Case No. 23CV418473 (PAGA case, filed July 7, 2023).

on a **non-reversionary basis**, **such that no remaining monies will revert to Defendant**. Further, no claim forms are required. The following represents the key terms of the settlement:

- Gross Settlement Sum of $2,275,000.00;
- Estimated class size of approximately 3,139 individuals;[2]
- Service Award to each Class Representative of up to $10,000.00, for their service as class representatives;
- Class Counsel's attorneys' fees of one-third of the Gross Settlement Sum, up to $758,333.33;
- Class Counsel's costs of up to $30,000.00;
- Settlement administration costs of up to $25,950;
- Payment to the California Labor & Workforce Development Agency ("LWDA") of $170,625.00, representing 75% of the total PAGA penalties payment of $227,500.00, and payment of $56,875.00 to aggrieved employees representing the remaining 25%;
- Net Settlement Sum of approximately $1,213,216.67, of which twenty percent (20%) (or $242,643.33) will be allocated to the Overtime Settlement Sub-Class, and eighty percent (80%) (or $970,573.34) will be allocated to the Wage Statement Sub-Class. Within each of these groups, the Overtime Settlement Sub-Class and Wage Statement Sub-Class will receive a *pro rata* amount of the settlement funds based on the number of pay periods they worked during the relevant time period; and
- Each Overtime Settlement Sub-Class Member will receive approximately $912.90 ($242,643.33 ÷ ~266 Overtime Settlement Sub-Class Members) and each Wage Statement Sub-Class Member will receive approximately $337.83 ($970,573.34 ÷

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[2] This may overestimate the class size slightly because this case settles two sub-classes addressing distinct claims. Therefore, it is possible (likely) that some but not all individuals fall within the definition of both classes and thus would reduce the total number of unique individuals included within the settlement.

~2,873 Wage Statement Sub-Class Members). As noted, it is likely that some individuals will be included in both sub-classes thus increasing their take-home amount from the proposed settlement.

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiffs and their counsel are confident that they can prevail on the merits, they recognize the inherent risks in drawn-out litigation and the risks of non-certification and/or that Plaintiffs could fail to establish liability. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On May 2, 2023, Plaintiff Sinde Torres ("Torres") filed a written notice with the California Labor & Workforce Development Agency ("LWDA"), alleging violations of Labor Code §§ 204, 222, and 226, pursuant to the Private Attorneys General Act, Labor Code § 2699 ("PAGA"). Declaration of Max W. Gavron ("Gavron Decl.") ¶ 2. Thereafter, on May 24, 2023, Torres filed a supplemental notice with the LWDA, alleging additional violations of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1. *Id.* ¶ 3.

On May 10, 2023, Plaintiff Cristina Guerrero ("Guerrero") filed a written notice with the LWDA, alleging violations of Labor Code §§ 201-204, 222, 226, 510, 558, 1194, 1197, and 1197.1, pursuant to the PAGA. *Id.* ¶ 4. Thereafter, on May 24, 2023, Guerrero filed a supplemental notice with the LWDA, alleging additional violations of Labor Code §§ 201-204, 510, 558, and 1194. *Id.* ¶ 5.

On May 23, 2023, Plaintiffs filed a class action complaint against Defendant in the Superior Court of California, County of Santa Clara (the "Action"). *Id*. ¶ 6. The complaint alleges causes of action for: (1) failure to pay wages; (2) failure to pay overtime wages; (3) violation of Labor Code § 226; and (4) violation of Business and Professions Code § 17200, *et seq*. *Id.* ¶ 6.

Plaintiffs' class claims as pled in the complaint are predicated upon the following allegations. With respect to Plaintiffs' failure to pay wages claim, Plaintiffs contend that their employment contracts guaranteed an agreed upon wage. Prior to the expiration of their employment contracts, Defendant unilaterally decreased the amount of wages paid to Plaintiffs below the set minimum, including reducing the hourly rate of pay and/or the number of hours worked. With regard to Plaintiffs' overtime wages claim, Plaintiffs contend that non-discretionary remuneration such as signing bonuses were not included in the regular rate of pay during workweeks when both non-discretionary pay and overtime wages were earned. Plaintiffs allege that all wages owed have not been paid, and as such, they are owed waiting time penalties. Finally, Plaintiffs contend that Defendant issued deficient wage statements to employees. As a result of the above underpayment, the wage statements issued by Defendant failed to identify the correct total hours worked, hourly rates of pay, and gross and net wages earned. As such, Plaintiffs seek damages, penalties, attorneys' fees, and costs. *Id*. ¶ 7.

On July 7, 2023, Plaintiffs filed a separate, related representative action complaint against Defendant in the Superior Court of California, County of Santa Clara, Case No. 23CV418473 (the "PAGA Action"). *Id*. ¶ 8. The PAGA Action complaint alleges a single cause of action for violation of Labor Code § 2698, *et seq*., predicated on underlying violations of Labor Code §§ 201-204, 222, 226, 510, 558, 1194, 1197, and 1197.1. *Id*. ¶ 8.

After the filing of the Action and PAGA Action, the Parties met and conferred and agreed to participate in private mediation. Gavron Decl. ¶ 9. In connection with mediation, the Parties engaged in informal discovery to allow Plaintiffs to assess the claims and liability, as well as analyze the maximum exposure of damages and penalties. *Id*. Defendant provided Plaintiffs' counsel with number of putative class members and wage statements issued, as well as Plaintiffs' personnel files, employee handbook, copies of wage statements, sampling of time and pay data, written policies, and bonus contracts. *Id*. The information allowed Plaintiffs to review and analyze the liability and potential exposure. *Id*.

On July 23, 2024, the Parties engaged in a full-day mediation with the Honorable Brian C. Walsh (Ret.), which ultimately resulted in the proposed settlement. Gavron Decl. ¶ 10. In resolution of Plaintiffs' class and PAGA claims, the Parties entered the Joint Stipulation of Class

Action and PAGA Settlement, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Max W. Gavron. *Id*. ¶ 10.

As a condition of settlement, the Parties have agreed to incorporate Plaintiffs' PAGA Action claims into the Action and dismiss the separate PAGA Action without prejudice. *Id*. ¶ 11. The Parties also agreed to modify Plaintiffs' first cause of action in the Action for failure to pay wages from a class claim to an individual claim alleged on behalf of Torres and Guerrero only because the data provided by Defendant during the mediation process demonstrated that this was not a class-wide issue. *Id*. ¶ 11. Accordingly, on February 10, 2025, Plaintiffs filed a stipulation to submit the Amended Complaint and a request to dismiss the PAGA Action without prejudice, pursuant to the terms of the proposed settlement.

Following the Court's approval of the stipulation, Plaintiffs will file the operative first amended complaint ("Amended Complaint") in the Action, alleging causes of action for: (1) failure to pay wages as to Plaintiffs only; (2) failure to pay overtime wages as to the putative classes; (3) violation of Labor Code § 226 as to the putative classes; (4) violation of Business and Professions Code § 17200, *et seq*. as to the putative classes; and (5) violation of Labor Code § 2698, *et seq*. *Id.* ¶ 12.

The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate. Gavron Decl. ¶ 13. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the class and PAGA claims as set forth in the Agreement.

III. DISCUSSION

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 as to settlement of the class and PAGA claims. Said terms in the Settlement Agreement include, among other things, the method for calculating the Settlement Class Members' individual portions of the settlement payment.

A. Class Definition

The current settlement is being settled on behalf of a class of "all individuals who fall into either the Overtime Settlement Sub-Class and/or the Wage Statement Sub-Class" (the

"Settlement Class"). *See* Agreement ¶ 36. The Overtime Settlement Sub-Class includes "all hourly-paid, non-exempt employees of Defendant in California who worked overtime and also signed an agreement wherein they received a signing or retention bonus, and also worked overtime during the period of their bonus during the period starting May 23, 2019, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60,[3] below." *Id*. ¶ 36.a. The Wage Statement Sub-Class includes "all hourly-paid, non-exempt employees of Defendant in California who received overtime during the period starting on May 23, 2022, through August 1, 2023, unless such period is shortened by operation of Paragraph 61, below." *Id*. ¶ 36.b. Paragraph 61 provides a similar mechanism to preserve the value as the settlement as Paragraph 60.

The Overtime Settlement Class Period is defined as "May 23, 2019, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60, below." *Id*. ¶ 19. The Wage Statement Class Period is defined as "May 23, 2022, through August 1, 2023, unless such period is shortened by operation of Paragraph 60, below." *Id*. ¶ 38.

As of the date of mediation, Defendant represented that there are approximately 266 individuals who are Overtime Settlement Sub-Class Members and 2,873 individuals who are Wage Statement Sub-Class Members. Gavron Decl. ¶ 15.

The Wage Statement Class Period is truncated because Defendant changed the format of the wage statements issued to California employees such that the alleged violations of the Labor Code as it relates to the Wage Statement Class were remedied. *Id.*

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless

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[3] Paragraph 60 provides an escalation clause that permits Defendant to close the class period at a date earlier than preliminary approval should the number of pay periods articulated in the Settlement Agreement exceed the agreed upon amount between the Parties. This preserves the settlement's value and is aligned with the penalty schemes associated with the claims alleged because it is connected to how long each of the putative class members was exposed to the alleged harm.

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 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 Plaintiffs' and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiffs' counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Gavron Decl. ¶¶ 33-39; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 6-8; Declaration of Kwanporn "Mai" Tulyathan ("Tulyathan Decl.") ¶¶ 6-11; Declaration of William L. Marder ("Marder Decl.") ¶¶ 6-13. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties. Gavron Decl. ¶ 14.

Based on the class data provided by Defendant, Plaintiffs estimated that Defendant would face potential liability ranging between $13.7 million on the high end to $7.75 million on the lower end, if Plaintiffs succeeded at trial on every class claim.[4] Gavron Decl. ¶ 16. Plaintiffs were able to estimate the potential penalties based on data provided by Defendant, including the number of employees in the class, the number of pay periods at issue, and the estimated average hourly rate of pay, and data provided regarding the bonuses awarded to the overtime class members. *Id*. ¶ 16.

Plaintiffs estimated Defendant's maximum exposure as follows based on the information exchanged in advance of mediation.

Claim	**Estimated Exposure**	**Calculations/Formula**
Overtime	$2.4 million	Plaintiffs estimated this exposure by comparing the bonus contracts offered to the putative class members, which ranged in value from $25,000 to $50,000, to the overtime hours worked. Plaintiffs estimated an average underpayment of approximately $8,950.50 per employee x 266 employees
Labor Code § 203	$587,328	56 former employees, $43.70 average hourly rate, x 8 hours, x 30 days
Labor Code § 226	$5.3 million	2,873 employees and 54,985 wage statements
PAGA	$5.4 million	54,985 pay periods x $100 per pay period

Gavron Decl. ¶ 17.

The estimated exposure above likely overestimates the potential liability in this action for a number of reasons. With regard to the overtime regular rate claim, Defendant argued that the bonuses at issue were not the type of bonuses properly included in the regular rate of pay because they were discretionary. On the other hand, Plaintiffs argued that the bonuses at issue were longevity bonuses and thus could only be excluded from the regular rate of pay if it is not (1) "measured by hours worked, production or efficiency," or (2) "paid pursuant to [a] contract

[4] This exposure analysis does not include Plaintiffs' First Cause of Action for failure to pay wages as articulated in the Amended Complaint because that claim is being brought on behalf of Plaintiffs only and is not subject to class resolution. Plaintiffs' have agreed to resolve that claim as to them only through a confidential individual settlement agreement, which Plaintiffs are prepared to share with the Court for in camera review if requested. Gavron Decl. ¶ .

(so that the employee has a legal right to the payment and could bring suit to enforce it)." 29 C.F.R. § 778.212(b); *see also Moreau v. Klevenhagen*, 956 F.2d 516, 520-21 (5th Cir. 1992) (excluding longevity pay under § 207(e)(1)). Plaintiffs argued that the bonuses met these requirements and thus should be included in the regular rate of pay and Defendant heavily disputed this. Defendant also argued that this claim would not be ripe for certification because the Court would be required to examine each of the bonuses at issue, the contracts of the individual employees, and make individual determinations as to each of the putative class members.

Plaintiffs' class claim for waiting time penalties, which totaled nearly half of a million dollars in exposure, was completely dependent on succeeding on the disputed overtime theory of liability. Defendant also would have argued it was entitled to a complete defense because it acted in good faith. If Defendant was successful on its good faith defense, the Court may not have awarded waiting time penalties at all, reducing the exposure by approximately half a million dollars. *Hill v. Walmart, Inc.*, 32 F.4th 811 (9th Cir. 2022) (upholding good faith defense because defendant reasonably believed wages were not due and owing at time of separation of employment); *Chavez v. Converse, Inc.,* 2020 WL 1233919, at *l (N.D. Cal. 2020) (holding that an employer's failure to pay is not willful where there is uncertainty in the law or a "good faith mistaken belief that wages are not owed").

Regarding Plaintiffs' wage statement claim, Plaintiffs would face the burden of demonstrating that any alleged omission of information from the wage statements was a "knowing and intentional failure" by Defendant to comply with Labor Code § 226. *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"); Defendant also would have argued that penalties under Section 226 are subject to a similar "good faith" defense. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief that it is not in violation of Section 226, any violation is not knowing and intentional."). The California Supreme Court also recently approved a good faith defense to the imposition of Section 226 penalties, which further undermines the certainty of recovering these damages even if Plaintiffs prevailed on liability. *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024). Gavron Decl. ¶ 20.

Finally, with respect to potential liability of Plaintiffs' PAGA claim, Plaintiffs estimated that Defendant could face civil penalties of up to approximately $5.4 million if Plaintiffs were successful at trial. Gavron Decl. ¶ 21. This amount was calculated based on approximately 54,000 pay periods during the relevant time period and a $100 penalty per violation, which assumes that the Court would not "stack" PAGA penalties for distinct violations of the Labor Code. *Id.* ¶ 21. If the Court awarded successive penalties for multiple violations, the award could be higher. However, courts are hesitant to award a higher PAGA penalty for "subsequent" violations where there is no prior citation by the Labor Commissioner, which renders the evaluation of the potential PAGA penalties without "stacking" reasonable. *C.f. Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) ("Virgin was not notified by the Labor Commissioner or any court that it was subject to the California Labor Code until the district court partially granted Plaintiffs' motion for summary judgment. On this basis, we reverse the district court's holding that Virgin is subject to heightened penalties for any labor code violation that occurred prior to that point."). While *Bernstein* addresses whether the higher subsequent penalty should be applied, defendants often argue that this decision supports their position that the court should not award multiple penalties for different predicate violations of the Labor Code during the same pay period. Accordingly, evaluating the settlement compared to a potential penalty of $100 per pay period is fair, adequate, and reasonable.

Even assuming Plaintiffs ultimately prevail on their 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 a reduction to be proper. *Id*. at p. 539.

Although Plaintiffs believe in the merits of the alleged claims and maintain that there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise defenses to the claims, and further, with respect to the reduction of PAGA penalties, that it could be persuasive to the Court. Gavron Decl. ¶ 23. Thus, even if Plaintiffs were to successfully prove their claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Sum was premised with this risk in mind, associated with the possibility of the Court significantly reducing Plaintiffs' PAGA penalties, along with other attendant risks, even if Plaintiffs were to prevail at trial. *Id*.

Thus, the settlement for each Settlement Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, including the uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in the Amended Complaint, the possibility of non-certification, and the potential for appeals. Gavron Decl. ¶ 24. The settlement is the result of extensive arm's length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator.

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 p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between **8.5% and 25%** of the defendant's 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) (granting 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 p.*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 total amount of class and PAGA penalties ranges between $13.7 million on the high end to $7.75 million, if considering some of the risk factors addressed above. Gavron Decl. ¶ 22. The Gross Settlement Sum is $2,275,000.00, which is between approximately 16.6% and 29.4% of the maximum class and PAGA penalties. *Id.* The high settlement percentage-to-recovery further supports the fact that the settlement is fair and reasonable.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement ("Class Notice"), should any Settlement Class Member wish to pursue his or her own case for the claims being released herein, each Settlement Class Member has the right to submit a Request for Exclusion (*i.e*., opt-out) from the settlement. *See* Class Notice, attached as **Exhibit A** to the Settlement Agreement. Moreover, as set forth in the Class Notice, Settlement Class Members are advised of their right to object to any of the terms contained in the Agreement and attend the final approval hearing. *Id*.

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 Agreement provides for Two Million Two Hundred Seventy-Five Thousand Dollars ($2,275,000.00) as the Gross Settlement Sum. *See* Agreement ¶ 15. The Net Settlement Sum, calculated after deduction of attorneys' fees (up to $758,333.33), litigation costs (up to $30,000.00), service award to each Class Representative (for a total of $20,000.00), payment of PAGA penalties to the LWDA ($170,625.00) and aggrieved employees ($56,875.00), and settlement administration costs (up to $25,950.00), is estimated to be approximately $1,213,216.67. *Id*. ¶¶ 4, 9, 15, 17, 22, 35.

As explained in the Agreement, the Net Settlement Sum will be allocated 20% to the Overtime Settlement Sub-Class, and 80% to the Wage Statement Sub-Class. *Id.* ¶ 59. This is a reasonable allocation given the relative exposure of the claims and length of exposure to the alleged illegal practices. A raw average of approximately $912.19 ($242,643.33 ÷ ~266 Overtime Settlement Sub-Class Members) will be paid to each Overtime Settlement Sub-Class Member and each Wage Statement Sub-Class Member will receive approximately $337.83 ($970,573.34 ÷ ~2,873 Wage Statement Sub-Class Members). Gavron Decl. ¶ 26. The amount actually paid to each Settlement Class Member may increase or decrease depending on the actual number of pay periods worked by each Settlement Class Member during the relevant time period. Agreement ¶¶ 59.a-b. If an individual falls within the definition of both classes, then their take-home amount will include their allocation from each of the sub-classes. Gavron Decl. ¶ 26.

The Agreement also provides for Fifty-Six Thousand Eight Hundred Seventy-Five Dollars ($56,875.00) to be distributed to aggrieved employees in settlement of their claims for civil penalties under PAGA. *Id.* ¶ 22. The aggrieved employees are defined as "all individuals who fall into either the PAGA Overtime Settlement Group and/or the PAGA Wage Statement Settlement Group" ("PAGA Aggrieved Employees"). *Id.* ¶ 20. The PAGA Overtime Settlement Group is comprised of "all hourly-paid, non-exempt employees of Defendant in California who worked overtime and also signed an agreement wherein they received a signing or retention bonus, and also worked overtime during the period of their bonus, during the period starting July 7, 2022, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60, below." *Id.* ¶ 20.a. The PAGA Wage Statement Group is comprised of "all hourly-paid, non-exempt employees of Defendant in California who received overtime during the period starting on July 7, 2022, through August 1, 2023." *Id.* ¶ 20.b.

The PAGA Overtime Settlement Group Period means "the period of July 7, 2022, through preliminary approval, or an alternative date to be selected by Defendant, at their sole discretion, subject to the provisions set forth in Paragraph 60, below." *Id.* ¶ 21. The PAGA Wage Statement Settlement Group Period means "the period between July 7, 2022, and August 1, 2023." *Id.* ¶ 23.

Finally, the terms of the settlement provide that funds from uncashed checks (upon the expiration date) shall be transmitted to the proposed *cy pres* recipient: Legal Aid at Work. *See* Agreement ¶ 78; *see* Gavron Decl. ¶ 28. Neither Plaintiffs nor their counsel have a conflict of interest with the proposed cy pres recipient. Gavron Decl. ¶ 28; Marder Decl. ¶ 14; Tulyathan Decl. ¶ 13; Lee Decl. ¶ 5; Torres Decl. ¶ 10; Guerrero Decl. ¶ 10.

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

This settlement is non-reversionary, meaning that none of the settlement funds will revert to Defendant. Agreement ¶¶ 53, 59.c.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this settlement, Settlement Class Members who do not submit a Request for Exclusion ("Participating Class Members") will release only those claims applicable to their sub-class, as follows:

- Overtime Settlement Sub-Class Members will release "any and all claims, known or unknown, that: were asserted in the Amended Complaint and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code §§ 201, 202, 203, 204, 222, 226, 510, and 1194; and/or any and all claims, known or unknown, that could have been reasonably asserted based on any or all the factual allegations in the Amended Complaint in the action and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code §§ 201, 202, 203, 204, 222, 226, 510, and 1194 ("Overtime Settlement Sub-Class Released Claims"). Agreement ¶¶ 28.a, 82.a.
- Wage Statement Sub-Class Members will release "any and all claims, known or unknown, that: were asserted in the Amended Complaint and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code § 226; and/or any and all claims, known or unknown, that could have been reasonably asserted based on any or all the factual

allegations in the Amended Complaint in the action and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code § 226" ("Wage Statement Settlement Sub-Class Released Claims"). Agreement ¶¶ 28.b, 82.b.

Agreement ¶ 28. Together, the Overtime Settlement Sub-Class Released Claims and the Wage Statement Settlement Sub-Class Released Claims are known as the "Released Class Claims." *Id.* ¶ 28.

Regardless of whether they are eligible to opt out of the class portion of the settlement, PAGA Aggrieved Employees will also release only those claims applicable to their sub-group, as follows:

- <u>PAGA Overtime Settlement Group</u> Members will release "any and all claims, known or unknown, for civil penalties under California Labor Code § 2698 *et seq*. (PAGA) that were asserted in the Amended Complaint and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code §§ 201, 202, 203, 204, 222, 226, 510, and 1194; and/or any and all claims, known or unknown, that could have been reasonably asserted based on any or all the factual allegations in the Amended Complaint in the action and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code §§ 201, 202, 203, 204, 222, 226, 510, and 1194" ("PAGA Overtime Settlement Group Released Claims"). Agreement ¶¶ 29.a, 83.a.
- <u>PAGA Wage Statement Settlement Group</u> Members will release "any and all claims, known or unknown, for civil penalties under California Labor Code § 2698 *et seq*. (PAGA) that were asserted in the Amended Complaint and/or any of Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code §§ 226, 226.3; and/or any and all claims, known or unknown, that could have been reasonably asserted based on any or all the factual allegations in the Amended Complaint in the action and/or any of

Plaintiffs' letters to the LWDA (including any subsequently amended complaints or letters) premised on Labor Code §§ 226, 226.3. This includes but is not limited to claims for or related to: failure to provide accurate wage statements; and any civil penalties related to any or all of the foregoing" ("PAGA Wage Statement Settlement Group Released Claims"). Agreement ¶¶ 29.b, 83.b.

Agreement ¶ 29. Together, the PAGA Overtime Settlement Group Released Claims and the PAGA Wage Statement Settlement Group Released Claims are known as the "Released PAGA Claims." *Id*. ¶ 29.

Taken together, the Released Class Claims and Released PAGA Claims are the "Released Claims." Agreement ¶ 27.

Given that the releases are tailored only to the claims pled in the Amended Complaint and Plaintiffs' LWDA notices, applicable to each sub-class or group, the releases are appropriately limited.

4. Tax Treatment of Settlement Amounts

As this lawsuit seeks damages and penalties as recovery, the Parties have agreed that payments to members of the Overtime Settlement Sub-Class shall be characterized as 50% unpaid wages and 50% penalties and interest. *See* Agreement ¶ 62. Payments to members of the Wage Statement Sub-Class shall be characterized as 100% penalties. *Id*. Payments to PAGA Aggrieved Employees shall be characterized as 100% penalties. *Id*. Amounts deemed wages shall be reported on an IRS Form W-2 and amounts deemed penalties and interest shall be reported on an IRS Form 1099, as applicable. *Id.*

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

As stated above, Settlement Class Members do <u>not</u> need to do anything should they wish to receive their share of the settlement funds. In other words, because this is not a claims-made settlement, Settlement Class Members will not be required to make a submission to participate in the settlement. No claim forms are required. Thus, this substantially decreases the amount of burden each Settlement Class Member must bear in order to receive their share of the settlement funds.

If a Settlement Class Member does not wish to take part in this settlement or be bound by the Released Class Claims, the Settlement Class Member must submit a Request for Exclusion. *See* Agreement ¶¶ 31, 72.

C. Notice to Class Members

Should the Court grant the instant motion, Defendant will provide the Settlement Administrator with a list containing each Settlement Class Member's full name, last known home address, last known telephone number, Social Security number, total number of pay periods worked during their respective retention bonus period during which they also earned overtime pay during the Overtime Settlement Class Period, total number of pay periods worked with payment of overtime wages during the Wage Statement Class Period, total number of pay periods worked during their respective retention bonus period during which they also earned overtime pay during the PAGA Overtime Settlement Group Period, total number of pay periods worked with payment of overtime wages during the PAGA Wage Statement Settlement Group Period; and any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement ("Class List"). *See* Agreement ¶¶ 6, 67. Pursuant to the Agreement, Defendant will provide said Class List within fifteen (15) business days of preliminary approval. *Id*. ¶ 67. After receipt of the information and prior to mailing the Class Notice to Class Members, 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. *Id*. ¶ 69.

Within ten (10) calendar days of receipt of the Class List from Defendant, the Settlement Administrator will mail the Class Notice to Settlement Class Members using the last-known mailing address. *See* Agreement ¶ 68. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-sent via regular First-Class U.S. Mail to the forwarding address affixed thereto. *Id*. ¶ 71. If no forwarding address is provided, the Settlement Administrator will attempt to find the correct address using a skip-trace or other comparable search to locate the most current address to re-mail the Class Notice. *Id*.

The Class Notice will advise Settlement Class Members of what the litigation is about, their rights under the settlement, the total settlement amount and other terms of the settlement, their expected settlement payment share, their opportunity to and procedures to opt out or to object to the settlement, and the release of claims. *See* Class Notice. As set forth in the Class Notice, Settlement Class Members will be allowed to opt out of or object to the settlement by a certain deadline, which is 45 calendar days after the initial mailing of the Class Notice. *See* Agreement ¶¶ 32, 72, 74. Settlement Class Members are also informed in the Class Notice that they may object in writing or appear at the final approval hearing to present their objections to the Court.

If Settlement Class Members need further information about the settlement and/or the lawsuit, Class Counsel's contact information is provided in the Class Notice. *See* Class Notice, at pp. 8.

D. Typicality and Adequacy of Representation

1. Class Representatives' 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 Plaintiff alleges 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).

In the present case, Plaintiffs allege that Defendant is liable to Settlement Class Members for failure to pay overtime wages at the regular rate of pay and provide accurate itemized wage statements to its employees, in violation of Labor Code §§ 201-204, 226, 510, 558, 1194, and

2698, *et seq*. Like all Settlement Class Members, Plaintiffs were subjected to these same policies and practices. Declaration of Sinde Torres ("Torres Decl.") ¶¶ 3-5; Declaration of Cristina Guerrero ("Guerrero Decl.") ¶¶ 3-5. During workweeks when non-discretionary pay and overtime wages were earned, Plaintiffs were not paid overtime wages based on the regular rate of pay. As a result, the wage statements issued to Plaintiffs failed to identify the correct hourly rates of pay and gross and net wages earned. Torres Decl. ¶ 5; Guerrero Decl. ¶ 5. In other words, Plaintiffs contend that they were subjected to the same policies and practices as other Settlement Class Members and thus, the typicality requirement is met.

Moreover, Plaintiffs do not have any interests adverse to the Settlement Class Members, nor have any such issues been raised or presented. Torres Decl. ¶ 6; Guerrero Decl. ¶ 6. Plaintiffs have taken all necessary steps to represent the interests of the Settlement Class Members, including by providing information and documents to their counsel. Torres Decl. ¶ 7; Guerrero Decl. ¶ 7. For such reasons, Plaintiffs have adequately represented the Settlement Class and will continue to do so.

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

From the inception of the case, Class Counsel have zealously represented the interests of Settlement Class. Class Counsel have engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents on behalf of the Settlement Class. Gavron Decl. ¶ 30. The settlement was obtained for the benefit of the Settlement Class, as opposed to the individual Class Representatives. 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 Settlement Class. Lee Decl. ¶¶ 6-8; Gavron Decl. ¶¶ 33-39; Tulyathan Decl. ¶¶ 6-11; Marder Decl. ¶¶ 6-13.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at p. 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, she may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano v. Priest*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 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, in 2016, 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 p. 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at p. 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at p. 505.)

The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement Sum, or $758,333.33, for payment to Class Counsel as attorneys' fees. *See* Agreement ¶ 55. The Parties have agreed to a payment of the foregoing attorneys' fees and, thus, this payment should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs up to $30,000.00. *Id*. Class Counsel have, at their own risk, expended costs, for example, to file this instant action and other pleadings in the case, effect service of process, participate in mediation, and advance other litigation-related costs. If Class Counsel's actual costs total less than $30,000.00, the remainder will be added to the Net Settlement Sum for distribution to Settlement Class Members.

Based on the foregoing, the Court should preliminarily approve the attorney's fees and costs as requested by the Parties.

2. Proposed Payment to the Class Representatives

Class Representatives Sinde Torres and Cristina Guerrero each request a modest service award of $10,000.00. *See* Agreement ¶ 56. The Class Representatives met and conferred with their counsel on a number of occasions to discuss the case, provided documents and information to their counsel, and reviewed pleadings and documents, including the Settlement Agreement. Torres Decl. ¶¶ 8-9; Guerrero Decl. ¶¶ 8-9. As part of their duties as Class Representatives, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that they provided, Plaintiffs also took a significant risk, both professionally and monetarily, in acting as Class Representatives and seeking benefits on behalf of Settlement Class Members. Because the claims alleged by the Class Representatives involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant, had they 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, Plaintiffs may face prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves while currently employed and the whole Settlement Class benefited from these risks taken by Plaintiffs. 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 no more than $25,950.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement. *See* Agreement ¶¶ 34, 57. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 42.

IV. NOTICE TO LWDA

Concurrent with the filing of this Motion, Plaintiffs provide notice to the LWDA. Gavron Decl. ¶ 43.

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

The settlement presented here is fair, adequate, and reasonable. The settlement will result in both substantial monetary benefits to Settlement 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 the respective Parties who are experienced in wage and hour class action litigation and facilitated by an experienced and neutral mediator.

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 Class Notice, and set a date for a final approval hearing.

DATED: February 10, 2025

DIVERSITY LAW GROUP, P.C.

By:______________________________

Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiffs and the Class

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On February 10, 2025, I served the following document(s) described as:

1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2. **DECLARATION OF LARRY W. LEE INSUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
3. **DECLARATION OF KWANPORN "MAI" TULYATHAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
4. **DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
5. **DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
6. **DECLARATION OF SINDE TORRES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
7. **DECLARATION OF CRISTINA GUERRERO IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
8. **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows

Angela J. Rafoth Emily Mertes Littler Mendelson, PC 101 Second Street, Suite 1000 San Francisco, California 94105	*Attorneys for Defendant Fidelity National Management Services, LLC* ARafoth@littler.com EMertes@littler.com

__X___ BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 10, 2025, at Los Angeles, California.

____
Erika Mejia