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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ARLENE BANDRIL, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

PLASTIKON INDUSTRIES, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

MARIA REYES, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

PLASTIKON INDUSTRIES, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No. RG19038227 (Lead Case);
Consolidated with Case No. RG20054268
(Reyes)

Honorable Brad Seligman
Department 23

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Reservation ID: R-2277358]

[Declaration of Proposed Class Counsel
(Douglas Han and Jeff Geraci); and [Proposed]
Order filed concurrently herewith]

Hearing Date: September 7, 2021
Hearing Time: 3:00 p.m.
Hearing Place: Department 23

Complaint Filed: October 7, 2019
FAC Filed: February 16, 2021
Jury Trial: None Set

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1 **PLEASE TAKE NOTICE** that on September 7, 2021 at 3:00 p.m. or as soon as the matter
2 may be heard before the Honorable Brad Seligman in Department 23 of the Administration
3 Building 1221 Oak Street, Oakland, California 94612 Plaintiffs Arlene Bandril and Maria Reyes
4 (“Plaintiffs,” “Plaintiff Bandril,” and “Plaintiff Reyes”) will and hereby do move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation of Class Action and PAGA
7 Settlement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **“EXHIBIT B”** to the Declaration of Douglas Han, including, and not limited to,
9 the means of allocation and distribution of funds, and the allocations for penalties
10 under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
11 the Class Counsel’s fees and costs, the Class Representatives’ Service Payments,
12 and the Settlement Administrator’s Expenses;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiffs as the Class Representatives;
- 15 • Appointing Justice Law Corporation, Cohelan, Khoury & Singer, and Law Offices
16 of Sahag Majarian II as Class Counsel;
- 17 • Approving the proposed Notice of Class And PAGA Action Settlement (“Class
18 Notice”) attached as **“Exhibit 1”** to the Settlement Agreement;
- 19 • Approving the document that the Class Member is required to mail to the
20 Settlement Administrator (“Opt-Out Form” or “Exclusion Form”) attached as
21 **“Exhibit 2”** to the Settlement Agreement (collectively, the Class Notice and the
22 Opt-Out Form or Exclusion Form are known as the Notice Packet);
- 23 • Directing the mailing of the proposed Notice Packet with a postage-paid return
24 envelope to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and Settlement Administration
26 process;

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- Approving Phoenix Class Action Settlement Administrators (“Phoenix”) as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Class Counsel’s fees and costs, Class Representatives’ Service Payments, the Settlement Administrator’s Expenses, and approval of the allocation for PAGA penalties.

This motion is based upon the following memorandum of points and authorities; the Declarations of Proposed Class Counsel (Douglas Han and Jeff Geraci); the [Proposed] Order filed concurrently with this motion; the pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: July 22, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Haig Hogdanian
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,250,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 hourly-paid or non-exempt employees (either directly or through a staffing agency or labor
5 contractor) of Defendant Plastikon Industries (“Defendant”) within the State of California at any
6 time during the Class Period (“Class”). The Class Period is the time period from October 7, 2015
7 to April 8, 2021 (“Class Period”). At the time of this filing, the number of Class Members provided
8 by Defendant is currently estimated to be one thousand five hundred ninety-seven (1,597).

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
10 vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
11 proposed settlement of \$2,250,000 – with an average Total Individual Class Settlement Payment
12 estimated at \$745.46¹ – is well within the “ballpark” of reasonableness.

13 As the following sections show, Class Counsel is convinced that the proposed Settlement
14 is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues
15 present in this action. (“Class Counsel” means the law firms of Justice Law Corporation, Cohelan
16 Khoury & Singer, and Law Offices of Sahag Majarian II.) The length and risks of trial and perils
17 of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses
18 asserted by Defendant, particularly, the uncertainty of class certification, the difficulties of
19 complex litigation, the lengthy process of establishing specific damages and various possible
20 delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed
21 Settlement.

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 ¹ \$1,190,500 (Net Settlement Amount) / 1,597 (Class Members) = \$745.46.

II. BACKGROUND

Established over thirty-five (35) years ago, Defendant is a plastics solution provider that offers injection molding, mold design and build, part decoration and assembly, contract manufacturing, thermoforming, and rotational molding services. This case involves all current and former hourly-paid or non-exempt employees (either directly or through a staffing agency or labor contractor) of Defendant within the State of California at any time during the time period from October 7, 2015 to April 8, 2021. Plaintiffs allege that at all times during the Class Period, Defendant's non-exempt employees work and/or worked on an hourly basis. (Declaration of Douglas Han ("Han Dec.") at ¶ 9.)

On October 7, 2019, Plaintiff Bandril, a former employee of Defendant and represented by Justice Law Corporation, filed a putative wage and hour class action lawsuit against Defendant in the Superior Court of California, County of Alameda (Case No. RG19038227). (Han Dec., *supra*, at ¶ 10; Declaration of Jeff Geraci ("Geraci Dec."), at ¶ 13.)

On November 12, 2019, Defendant removed Case No. RG19038227 to the United States District Court, Northern District of California, alleging that the amount in controversy exceeded \$5,000,000. Plaintiff Bandril filed her Motion to Remand on December 6, 2019. On January 6, 2020, the District Court granted Plaintiff Bandril's Motion and the case was remanded back to Alameda County. On January 15, 2020, Defendant filed a Petition for Permission to Appeal from Remand Order. Plaintiff Bandril submitted her Opposition on January 24, 2020. On March 2, 2020, the United States Court of Appeals denied Defendant's Petition. (Han Dec., *supra*, at ¶ 11; Geraci Dec., *supra*, at ¶ 13.)

On February 11, 2020, Plaintiff Reyes, another former employee of Defendant and represented by Cohelan Khoury & Singer and Law Offices of Sahag Majarian II, provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code she contends were violated and the theories supporting her contention. On or about April 16, 2020, the sixty-five (65) day notice period expired as to Defendant, and the LWDA did not take any action to investigate or prosecute the matter. (Han Dec., *supra*, at ¶ 12; Geraci Dec., *supra*, at ¶¶ 14-15.)

1 On February 13, 2020, Plaintiff Reyes filed a putative wage and hour class action lawsuit
2 against Defendant in the Superior Court of California, County of Alameda (RG20054268). (Han
3 Dec., *supra*, at ¶ 13; Geraci Dec., *supra*, at ¶ 15.)

4 The Parties attended mediation on Plaintiffs' claims on October 9, 2020 under the auspices
5 of the mediator Steven J. Serratore. The mediation was unsuccessful. After the mediation
6 adjourned, Defendant retained new counsel that provided additional data and analytics to Class
7 Counsel, which led to continued negotiations and an eventual settlement. (Han Dec., *supra*, at ¶
8 14; Geraci Dec., *supra*, at ¶ 16.)

9 On February 2, 2021, pursuant to the Parties' stipulation, the Court consolidated the two
10 (2) related cases with Plaintiff Bandril's case (Case No. RG19038227) as the lead case. (Han Dec.,
11 *supra*, at ¶ 15.)

12 Afterwards, on February 16, 2021, Plaintiffs filed a First Amended Complaint ("FAC") of
13 the consolidated cases against Defendant in the Supreme Court of California, County of Alameda.
14 The FAC was filed on behalf of all current and former hourly-paid or non-exempt employees
15 (either directly or through a staffing agency or labor contractor) of Defendant within the State of
16 California at any time during the relevant time period. The FAC alleged nine (9) causes of action:
17 (1) violation of California Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of
18 Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code
19 section 226.7 (unpaid rest period premiums); (4) violation of Labor Code 1194 and 1197 (unpaid
20 minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid);
21 (6) violation of Labor Code section 226(a) (non-compliant wage statements); (7) violation of Labor
22 Code sections 2800 and 2802 (unreimbursed business expenses); violation of Labor Code sections
23 2698, *et seq.*; and (9) violation of California Business & Professions section 17200, *et seq.* (Han
24 Dec., *supra*, at ¶ 16; Geraci Dec., *supra*, at ¶ 17.)

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1 Defendant has denied and continues to deny, generally, each and all the claims and
2 contentions alleged by the Class Representatives in the Action. Defendant has also expressly
3 denied and continues to deny all charges of wrongdoing or liability against it arising out of any of
4 the conduct, statements, acts, or omissions alleged in the Action. Furthermore, Defendant has
5 asserted several defenses to the claims. (Han Dec., *supra*, at ¶ 17.)

6 **III. INVESTIGATION/ LITIGATION HISTORY**

7 **a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions**

8 After Plaintiffs filed their complaints, both Parties engaged in discovery. Plaintiff Bandril
9 propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of
10 requests for admissions; and one (1) set of requests for production of documents. Defendant
11 responded to the discovery. The Parties then met and conferred regarding this discovery. (Han
12 Dec., *supra*, at ¶ 18.)

13 Class Counsel have conducted significant investigation, discovery, and research during the
14 prosecution of the Action. Such efforts included, in addition to Plaintiff Bandril propounding a
15 comprehensive set of written discovery requests, among other things: (a) conducting a thorough
16 pre-filing investigation; (b) inspecting and analyzing documents and data produced by Defendant
17 pertaining to Plaintiffs, putative class members, and Defendant's policies and practices (i.e., time
18 and pay records, Employee Handbook); (d) interviewing putative class members; (e) analyzing the
19 legal arguments made by Defendant; (f) preparing an analysis of potential class-wide damages and
20 constructing a damages model; (g) researching the applicable law with respect to the claims
21 asserted in this Action and the potential defenses thereto; and (h) participating in a mediation with
22 mediator Steven J. Serratore. (Han Dec., *supra*, at ¶ 19; Geraci Dec., *supra*, at ¶ 18.)

23 The Parties agree they have engaged in sufficient investigation, discovery, and research to
24 assess the relative merits of the claims of the Class Representatives and of Defendant's defenses
25 to them. The Parties also agree that the above-described investigation and evaluation, as well as
26 the information exchanged during the settlement negotiations, are more than sufficient to
27 compromise the issues on a fair and equitable basis. (Han Dec., *supra*, at ¶ 20; Geraci Dec., *supra*,
28 at ¶ 19.)

1 Based upon Defendant's discovery responses and document production, as well as
2 interviews Plaintiffs' counsel had with non-exempt employees, Plaintiffs contend – and Defendant
3 denies – that Defendant failed to provide employees with legally mandated meal breaks. Firstly,
4 Defendant's meal break policy was not *Brinker*-compliant because it failed to advise employees
5 to take their meal breaks before their fifth (5th) and tenth (10th) hour of work. Instead, the policy
6 left the scheduling of meal breaks at supervisors' discretion, meaning meal breaks could have been
7 scheduled at later times. Secondly, Plaintiffs allege that because Defendant regularly imposed
8 heavy, time-sensitive workloads, employees had no choice but to skip, cut short, or take late meal
9 breaks to meet urgent deadlines. Supervisors would chastise employees for purportedly working
10 too slow if they were unable to keep up, which contributed to the pressures that prevented
11 employees from taking compliant meal breaks. Defendant even encouraged employees to take
12 short or late meal breaks to catch up with their workloads, which made employees perpetually
13 believe they were also behind on their work. Furthermore, Plaintiffs contend that Defendant failed
14 to provide employees with second meal breaks despite working shifts that exceeded ten (10) hours.
15 Plaintiffs also assert that this issue with meal breaks was compounded by Defendant frequently
16 being understaffed, which required employees to wait to be relieved to take their meal breaks.
17 Plaintiffs also contend that Defendant maintained a rounding policy for meal breaks until
18 November 2019 that rounded employees' times in its favor. Specifically, the rounding policy gave
19 the appearance that employees were receiving full meal breaks despite often being forced to take
20 short meal breaks. Finally, Plaintiffs allege that Defendant failed to pay employees premium wages
21 for noncompliant meal breaks until December 16, 2019. (Han Dec., *supra*, at ¶ 21.)

22 Moreover, Plaintiffs assert – and Defendant denies – that Defendant failed to provide
23 employees with legally mandated rest breaks. Like the issue with Defendant's meal break policy,
24 Defendant's rest break policy was not *Brinker*-compliant either. This is because the scheduling of
25 rest breaks was left to supervisors' discretion, meaning they could have been scheduled at later
26 times (after working for over 4 hours). Next, Defendant's rest break policy was not-code compliant
27 until August 2018 because it failed to authorize and permit employees to take duty-free rest breaks.
28 This was mainly because employees were initially prohibited from leaving the work premises

1 during their rest breaks. Plaintiffs also contend that employees were frequently forced to forgo, cut
2 short, or take late rest breaks due to the number of heavy, time-sensitive workloads they were
3 assigned. This issue with rest breaks was exacerbated by supervisors ridiculing employees who
4 were unable to keep up with the workload and Defendant regularly being understaffed, which
5 required employees to wait to be relieved. Finally, Plaintiffs contend that unlike meal breaks,
6 Defendant never issued a single premium wage for noncompliant rest breaks throughout the Class
7 Period. (Han Dec., *supra*, at ¶ 22.)

8 Plaintiffs also allege – and Defendant denies – that Defendant had in place a rounding
9 policy that negatively affected employees and resulted in the underpayment of wages. Specifically,
10 the rounding policy that was maintained until November 2019 was neither fair nor neutral because
11 a review of a sampling of time records shows a significant number of hours being underpaid
12 because of it. This issue with Defendant’s rounding policy was compounded with Defendant’s
13 strict attendance and punctuality policy that pressured employees to clock in earlier than usual to
14 avoid giving the appearance of being tardy. The expectation that employees be ready to work at
15 the start of their shifts contributed to the pressures that forced them to clock in early. But
16 Defendant’s rounding policy rounded up these early clock ins and rounded down late clock outs
17 to benefit Defendant. Consequently, this resulted in employees constantly being underpaid more
18 than they were overpaid, which continued until November 2019. Finally, Plaintiffs assert that
19 Defendant has failed to provide any documents evidencing that it implemented grace periods that
20 would create individualized inquiries regarding whether employees were under Defendant’s
21 control. (Han Dec., *supra*, at ¶ 23.)

22 Moreover, Plaintiffs contend – and Defendant denies – that Defendant failed to compensate
23 employees for all hours worked, including off-the-clock work. Specifically, Defendant generally
24 discouraged employees from working overtime because its overtime policies first required
25 employees to obtain prior approval before working any overtime. Defendant’s policies even
26 threatened employees with termination for working unauthorized overtime hours. However,
27 Plaintiffs allege that the nature of the work made it difficult for employees to make these advanced
28 requests to work overtime. Specifically, because of frequent heavy, time-sensitive workloads and

1 Defendant constantly belittling employees to keep up with production, employees felt obligated to
2 work additional hours off-the-clock without asking for compensation to avoid disciplinary action.
3 Furthermore, Plaintiffs allege that employees were frequently forced to wait in line to clock in and
4 out due to the limited number of available time clocks. Consequently, employees were usually
5 forced to wait in line for around five to ten (5-10) minutes each shift for which they were not
6 compensated. Finally, Plaintiffs assert that Defendant expected certain employees to don their
7 personal protective equipment (“PPEs”) (i.e., steel toed boots, gloves, and safety goggles) before
8 entering the work premises. This donning process took approximately five (5) minutes each time,
9 and Defendant failed to compensate them for this time. (Han Dec., *supra*, at ¶ 24.)

10 Furthermore, Plaintiffs allege – and Defendant denies – that Defendant failed to reimburse
11 employees for necessary business expenses. Specifically, Defendant required employees to use
12 their personal cell phones to report their location, provide relevant updates, and receive orders.
13 Plaintiffs also assert that Defendant’s Health and Safety policy required certain employees to wear
14 safety shoes. Despite this requirement, Defendant’s policy attempted to limit the number of times
15 employees would be reimbursed for purchasing safety shoes (“[a] safety shoe purchase order must
16 be requested by your supervisor”) and capped the reimbursement at \$70.00. Employees were also
17 required to purchase their own gloves, goggles, and aprons for which they were not reimbursed.
18 (Han Dec., *supra*, at ¶ 25.)

19 Plaintiffs also contend – and Defendant denies – that Defendant is liable for wage statement
20 penalties. Specifically, Defendant issued wage statements in violation of Labor Code section
21 226(a) because of the underlying violations that are discussed above. Even if Defendant asserts
22 that its violation of section 226(a) is trivial, the California courts have held that strict compliance
23 of section 226(a) is exactly what is intended. (Han Dec., *supra*, at ¶ 26.)

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1 Finally, Plaintiffs allege – and Defendant denies – that Defendant is liable for waiting time
2 penalties. Specifically, Defendant’s employees are entitled to back underpaid minimum and
3 overtime, as well as missed meal and rest breaks, thereby triggering waiting time penalties under
4 Labor Code section 203. Thus, Defendant owes compensation for underpaid work and missed meal
5 and rest breaks as a matter of fact and law. But Defendant intentionally failed or refused to perform
6 an act, which was required to be done, constituting “willful” conduct and justifying “waiting-time”
7 penalties under section 203 to former employees. (Han Dec., *supra*, at ¶ 27.)

8 Defendant denies Plaintiffs’ contentions in their entirety. Among other things, Defendant
9 denies Plaintiffs’ meal and rest break contentions, on the grounds that it provided breaks within
10 compliant times and that non-exempt employees were given discretion as to when to take their
11 breaks. Moreover, Defendant counters that it did not have in place improper, uniform policies and
12 practices or impose heavy, time-sensitive workloads that pressured employees to skip, cut short,
13 or take late meal and rest breaks. Defendant adds that it never pressured employees to take
14 noncompliant meal and rest breaks by belittling them for being unable to keep up. Defendant also
15 contends that both its meal and rest break policies complied with California law and that non-
16 exempt employees were allowed to use their meal and rest break time for their own purposes.
17 Defendant further contends that whether non-exempt employees took meal and rest breaks during
18 compliant time frames and were relieved of all duties are questions that could only be resolved by
19 resorting to individualized inquiries to each non-exempt employee and, therefore, class
20 certification would not be appropriate. Moreover, Defendant counters that its rounding policy was
21 fair and neutral on its face and did not consistently result in underpaid wages. Defendant also
22 asserts that it paid its employees for all times worked, including overtime, minimum, and premium
23 wages. Additionally, Defendant contends that Plaintiffs’ claims regarding off-the-clock work and
24 unpaid overtime are trivial as none of its employees worked off-the-clock. Defendant also adds
25 that it did not impose heavy, time-sensitive workloads that pressured off-the-clock work nor did
26 its policies pressure employees to work additional hours off-the-clock without asking for
27 compensation. Additionally, Defendant asserts it reimbursed employees for all business expenses,
28 including purchasing PPEs and using their personal cell phones for business-related purposes.

1 Finally, Defendant argues that its failure to comply with California labor laws was an honest
2 mistake made in good faith. Thus, Defendant’s conduct could not be deemed “willful” under Labor
3 Code section 203. (Han Dec., *supra*, at ¶ 28.)

4 As demonstrated above, the Parties took staunchly conflicting positions concerning
5 Defendant’s policies and procedures and their effect on hourly-paid and non-exempt employees.

6 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

7 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
8 **Stipulation of Class Action and PAGA Settlement**

9 The Parties agreed to go to mediation with experienced wage and hour mediator, Steven J.
10 Serratore that took place on October 9, 2020. During the mediation, the Parties discussed the risks
11 of continued litigation, risks of certification, and risks on the merits of the claims versus the
12 benefits of settlement. While the Parties were unable to settle at mediation, Defendant retained
13 new counsel, and the Parties continued to litigate and negotiate until a settlement was reached, the
14 terms of which were memorialized in a Settlement Agreement, that the Parties now seek
15 Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 29, Exhibit B.)

16 **ii. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

17 The Settlement Agreement was reached as a result of arm’s-length negotiations. Though
18 cordial and professional, the settlement negotiations have been, at all times, adversarial and non-
19 collusive in nature. At, and after, the mediation, Counsel for the Parties conducted extensive arm’s
20 length settlement negotiations until an agreement was ultimately reached by all Parties. (Han Dec.,
21 *supra*, at ¶ 45; Geraci Dec., *supra*, at ¶ 20.)

22 Plaintiffs and Class Counsel (composed of Justice Law Corporation, Cohelan, Khoury &
23 Singer, and Law Offices of Sahag Majarian II) believe in the merits of the case but also recognize
24 the expense and length of continued proceedings necessary to continue the litigation against
25 Defendant through class certification and trial and through any possible appeals. Plaintiffs and
26 Class Counsel have also considered the uncertainty and risk of further litigation, the potential
27 outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel
28 have conducted extensive settlement negotiations, including formal mediation on October 9, 2020.

Based on the foregoing, Plaintiffs and Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement, and in the Class's best interests. (Han Dec., *supra*, at ¶ 46; Geraci Dec., *supra*, at ¶ 21.)

iii. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. The proposed settlement was only possible following formal and informal discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 47; Geraci Dec., *supra*, at ¶ 19.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of \$2,250,000 ("Total Settlement Amount") which includes, subject to Court approval: (a) the Class Counsel's attorneys' fees in an amount not to exceed \$787,500 (thirty-five percent (35%) of the Total Settlement Amount) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement and securing Court approval; (b) the Class Counsel's costs in an amount not to exceed \$40,000²; (c) the Service Payments in the amount of \$10,000 to each Class Representative in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved; (d) the Settlement Administrator's Expenses to Phoenix, the Settlement Administrator, that are currently estimated at \$12,000; and (e) the

² To the extent the Court approves less than the requested amount of Class Counsel's attorneys' fees and costs, the difference between the requested and awarded amounts will be added to the amount to be distributed to any and all Class Members except those who timely request exclusion (i.e., who elect to "opt out") ("Class Participants").

1 PAGA Fund of \$200,000, seventy-five percent (75%) of which (\$150,000) will be paid to the
2 LWDA and twenty-five percent (25%) of which (\$50,000) will be distributed to all non-exempt
3 employees who worked for Defendant in California during the period from February 12, 2019
4 through April 8, 2021 on a pro rata basis based on the number of pay periods they worked during
5 this period (“PAGA Employees,” “PAGA Period,” and “Individual PAGA Payment”). (Han Dec.,
6 *supra*, at ¶ 30; Geraci Dec., *supra*, at ¶ 12.)

7 **ii. Calculation of the Settlement Payments to Class Members**

8 After all Court-approved deductions from the Total Settlement Amount, it is estimated that
9 \$1,190,500 (“Net Settlement Amount”) will be distributed to Class Members – with an average
10 Total Individual Class Settlement Payment estimated at \$745.46. (Han Dec., *supra*, at ¶ 32.)

11 All class Total Individual Class Settlement Payments will be allocated as follows: thirty
12 percent (30%) to the settlement of claims for wages, thirty percent (30%) to the settlement of
13 claims for interest, and forty percent (40%) to the settlement of claims for penalties. The
14 Settlement Administrator shall calculate the payroll taxes, associated with the wage portion of the
15 Total Individual Class Settlement Payments made to each Class Participant. The employee’s share
16 of payroll taxes shall be withheld by the Settlement Administrator and paid to the appropriate
17 governmental agencies. The employer’s share of payroll taxes will be paid separately by
18 Defendant. (Han Dec., *supra*, at ¶ 33.)

19 After deducting for the amounts for Settlement Administrator’s Expenses, each Plaintiff’s
20 Service Payment, the PAGA Fund, and Class Counsel’s awarded attorneys’ fees and costs, the
21 balance of the Total Settlement Payment (“Net Settlement Amount”) will be distributed as follows:

22 Each Class Participant’s “Individual Class Settlement Payment” for the Class
23 Period will be based on a ratio of the Class Participant’s workweeks worked to the
24 total pay periods worked by all Class Participants. The Individual Class Settlement
25 Payment for this period will be calculated by dividing the Class Participant’s
26 workweeks by the worked by all Class Participants. Any workweeks that the Class
27 Participant did not work at all (leave, sick time, vacation) shall be excluded from
28 the workweek count. (Han Dec., *supra*, at ¶ 34.)

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1 Additionally, the twenty-five percent (25%) of the \$200,000 PAGA Fund (\$50,000) will
2 be distributed to PAGA Employees on a pro rata basis based on the number pay periods they
3 worked during the PAGA Period as their Individual PAGA Payment. (Han Dec., *supra*, at ¶ 35.)

4 The precise number of compensable weeks worked per Class Member will not be known
5 until Defendant has tabulated them, following preliminary approval. No part of the Total
6 Settlement Amount will revert to Defendant. (Han Dec., *supra*, at ¶ 36.)

7 **iii. Notice to the Class**

8 Within fourteen (14) calendar days of Preliminary Approval of the Settlement, Defendant
9 shall provide the Settlement Administrator with the names, most current mailing address and
10 telephone number, social security number, and the respective pay periods at issue with respect to
11 the Class Claims and the number of pay periods worked by each PAGA Employees in the PAGA
12 Period in a readable MS Excel spreadsheet (“Class List and Data”). (Han Dec., *supra*, at ¶ 37.)

13 Within fourteen (14) calendar days after receipt of the Class List and Data, the Settlement
14 Administrator shall mail the Notice Packet to the Class Members and PAGA Employees via first-
15 class regular U.S. mail. Class Members are not required to submit a claim form to participate in
16 the settlement. The proposed Class Notice and Opt-Out or Exclusion Form are attached as Exhibit
17 1 and Exhibit 2 to the Settlement Agreement respectively, which is Exhibit B to the Declaration
18 of Douglas Han. (Han Dec., *supra*, at ¶ 38.)

19 **iv. Distribution of Funds**

20 The Settlement Fund Account shall be funded within ten (10) business days of the date the
21 Agreement is approved and the Court’s order granting Final Approval and entry of Judgment
22 becomes final and is no longer appealable (“Effective Date”). The Settlement Administrator will
23 then distribute all funds within ten (10) days of funding by Defendant. (Han Dec., *supra*, at ¶ 39.)

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1 The Class Participants and PAGA Employees shall have one-hundred eighty (180) calendar
2 days to deposit or otherwise cash their settlement checks. This 180-day period will be counted
3 from the postmark date of the checks' mailing to Class Participants and PAGA Employees by the
4 Settlement Administrator. As to the funds that remain in the Settlement Fund Account after 180
5 days due to Class Participants' and PAGA Employees' failure to deposit or cash their settlement
6 checks, those funds will be sent to the cy pres recipient Impact Fund consistent with California
7 Code of Civil Procedure section 384. (Han Dec., *supra*, at ¶ 40.)

8 **v. Release of Claims**

9 Upon approval of the terms of the Settlement Agreement at the Final Approval Hearing,
10 and upon fully funding of the Settlement, by automatic effect of the Settlement Agreement, each
11 Class Participant shall release and discharge Defendant and the other Released Parties from
12 Released Class Claims ("Released Class Claims"). *See* Exhibit B §§ (A)(33), (D)(6). (Han Dec.,
13 *supra*, at ¶ 41.)

14 Upon approval of the terms of Settlement Agreement at the Final Approval Hearing, and
15 upon fully funding of the Settlement, all PAGA Employees shall release and discharge the
16 Defendant and the other Released Parties from Released PAGA Claims, irrespective of whether
17 that PAGA Employee validly requests exclusion from the settlement of Released Class Claims.
18 An opt-out does not affect the release of PAGA Claims under the Settlement Agreement
19 ("Released PAGA Claims"). *See* Exhibit B §§ (A)(34), (D)(7). (Han Dec., *supra*, at ¶ 42.)

20 The Released Parties include Defendant, each of its parents, subsidiaries, affiliates,
21 shareholders, members, agents (including, without limitation, any investment bankers,
22 accountants, insurers, attorneys and any past, present or future officers, directors and employees),
23 predecessors, successors, and assigns ("Released Parties"). *See* Exhibit B § (A)(35). (Han Dec.,
24 *supra*, at ¶ 43.)

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1 Finally, in consideration of the mutual covenants and promises set forth herein, as of the
2 Effective Date, Class Representatives fully release and discharge Defendant and the other Released
3 Parties from any and all claims that Class Representatives now have or claims to have or which
4 Class Representatives at any time heretofore had or claimed to have or which Class
5 Representatives at any time hereafter may have or claim to have, known or unknown, arising out
6 of or related to any act, omission, event, fact, or other thing that existed or occurred on or before
7 Preliminary Approval. *See* Exhibit B § (D)(1). (Han Dec., *supra*, at ¶ 44.)

8 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

9 Both Plaintiffs' counsel and Defendant's counsel are particularly experienced in wage and
10 hour employment law and class actions. Class Counsel has significant experience in litigating
11 unpaid wages, non-compliant meal breaks, and non-compliant rest breaks class actions. (Han
12 Dec., *supra*, at ¶¶ 2-7, Exhibit A; Geraci Dec., *supra*, at ¶¶ 4-11.)

13 Class Counsel has prosecuted numerous cases on behalf of employees for Labor Code
14 violations and thus are experienced and qualified to evaluate the class claims, to evaluate
15 settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This
16 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
17 their determination to endorse the proposed Settlement.³ (Han Dec., *supra*, at ¶¶ 2-7, Exhibit A;
18 Geraci Dec., *supra*, at ¶¶ 4-11.)

19 **IV. ARGUMENT**

20 **a. Class Action Settlements Are Subject to Court Review**

21 California Rule of Court 3.769 requires court approval for class action settlements.⁴
22 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
23 settlement." (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
24 motion for preliminary approval of class settlements:

25 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action
26 Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

27 ⁴ The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying
28 it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v.*
Obledo (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and federal
case law in addition to California law.

1 (a) A settlement or compromise of an entire class action, or a cause of action in
2 a class action, or as to a party, requires the approval of the court after
3 hearing.

4 ...

5 (c) Any party to a settlement agreement may serve and file a written notice of
6 motion for preliminary approval of the settlement. The settlement
7 agreement and proposed notice to class members must be filed with the
8 motion, and the proposed order must be lodged with the motion.

9 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
10 account “all the normal perils of litigation as well as the additional uncertainties inherent in
11 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
12 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
13 U.S. 905.)

14 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

15 An understanding of the amount in controversy is an important factor in whether the
16 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
17 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
18 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
19 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
20 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

21 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
22 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
23 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not require
24 an explicit statement of the maximum amount the class could recover if the plaintiff prevailed on
25 all his claims, provided there is a record that allows “an understanding of the amount that is in
26 controversy and the realistic range of outcomes of the litigation.” (*Munoz, supra*, 186 Cal.App.4th
27 at p. 409.) Put differently, “as the court does when it approves a settlement as in good faith under
28 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at p. 133 (citing *Tech-
Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500).)

1 As the following subsections show, the Parties' investigation and discovery revealed
2 numerous reasons to discount claims and agree to the Settlement.

3 **i. The Settlement Is Fair and Reasonable**

4 The proposed Settlement was only possible following discovery and evaluation of
5 Defendant's relevant policies and procedures, as well as the data Defendant produced for the
6 putative Class as referenced in Section III above, which permitted Class Counsel to engage in a
7 comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 47; Geraci Dec.,
8 *supra*, at ¶ 19.)

9 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
10 Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal and rest
11 breaks and pay applicable premiums, failed to pay minimum wages, failed to pay final wages in a
12 timely manner, failed to issue compliant wage statements, failed to reimburse business expenses,
13 violated PAGA, and violated the Business & Professions Code sections 17200, et seq. (Han Dec.,
14 *supra*, at ¶ 48.)

15 Defendant vehemently denies Plaintiffs' theories of liability and contends, as stated above,
16 that all meal and rest breaks were provided in compliance with California law, that all wages were
17 properly paid to Class Members, that it provided final wages in a timely manner, that it provided
18 wage statements in compliance with Labor Code section 226, and that it reimbursed all business
19 expenses. Defendant further contends that any mistakes made were honest rather than willful.
20 Finally, Defendant argues that if litigation were to continue, it feels confident that it would prevail.
21 (Han Dec., *supra*, at ¶ 49.)

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1 Although Plaintiffs believe the case is suitable for certification on the basis that there are
2 company-wide policies that Plaintiffs contend violate California law and uniformly affect the
3 putative class members, uncertainties with respect to certification are always present. As the
4 California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class
5 certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On*
6 have reached different conclusions concerning certification of wage and hour claims.⁵ (Han Dec.,
7 *supra*, at ¶ 50.)

8 Although remaining confident in the strengths of his claims, all of these factors led
9 Plaintiffs to discount the following calculations of potential damage claims.

10 **ii. The Settlement Amount of \$2,250,000 Is Reasonable**

11 In addition to being able to discover the strengths and vulnerabilities associated with
12 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
13 time and pay records and information regarding the estimated number of workweeks worked by
14 putative class members and the average hourly rate for class members. Defendant also confirmed
15 that there were approximately 92,485 workweeks worked by Class Members. Plaintiffs were also
16 able to determine that the average hourly rate for Class Members was \$16.29. (Han Dec., *supra*,
17 at ¶ 51.) Detailed analysis of the potential exposure is explained in Han Dec., *supra*, at ¶¶ 52-57.

18 **iii. The PAGA Penalties Allocation Is Reasonable**

19 The provisions of the Labor Code potentially triggering PAGA penalties in this case
20 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
21 1197, 1197.1, 1198, and 2802. Defendant asserted that, regardless of the results of the underlying
22 causes of action, PAGA penalties are not mandatory but permissive and discretionary. Defendant
23 also maintained that, in addition to its strong arguments against the underlying claims, it had a
24 strong argument that it would be unjust to award maximum PAGA penalties given the current

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26 ⁵(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,
148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th
1422 (affirming denial of certification).)

1 unsettled state of law. (Han Dec., *supra*, at ¶ 58.)

2 Class Counsel calculated penalties under this cause of action by multiplying the number of
3 active Class Members (because of the shortened statutory period for this claim), by the civil
4 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
5 section 2699.5 that were applicable in this case. Class Counsel then applied discounts in light of
6 the countervailing arguments with regard to the other causes of action, as well as the Court's power
7 to award "a lesser amount than the maximum civil liability." (Lab. Code § 2699(e)(2).) (Han Dec.,
8 *supra*, at ¶ 59.)

9 Given the state of the law and the range of PAGA penalties requested and actually awarded
10 in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA
11 penalties. However, if PAGA penalties are granted on any one of the violations alleged in
12 Plaintiffs' operative complaint, the total penalties exposure for the eligible pay periods could be
13 approximately \$10,545,000 ($([1 \times \$100] + [37 \times \$200]) \times 1,406$ employees). Plaintiffs calculated
14 Defendant's PAGA exposure using one hundred percent (100%) violation rate based on the
15 average number of pay periods (38) during the one-year statutory period. Multiplying the PAGA
16 exposure by the number of alleged violations under the PAGA theories of recovery (6) gives
17 potential civil penalties of \$63,270,000. (Han Dec., *supra*, at ¶ 60.)

18 Although Plaintiffs argued they could obtain over \$63 million for PAGA penalties, it seems
19 unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 61.) PAGA's
20 plain language indicates that an employer will be assessed a lower, "initial" penalty for each initial
21 pay period in which a violation occurs, and a higher, "subsequent" penalty for each subsequent
22 pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas*
23 *Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, "Until the employer has been notified
24 that it is violating a Labor Code provision (whether or not the commissioner or court chooses to
25 impose penalties), the employer cannot be presumed to be aware that its continuing underpayment
26 of employees is a 'violation' subject to penalties [and will be assessed only the 'initial' violation
27 rate]." (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could be interpreted as indicating
28 that until the Labor Commissioner or a court informs an employer that it has violated the Labor

Code, the employer can only be assessed the “initial” violation rate. Under this interpretation, the maximum individual civil penalty for one statutory violation is \$140,600 (1,406 employees x 100 (initial violation)), and for all possible Labor Code violations is \$843,600.

Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the civil penalty described in subdivision (f)...on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed” (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$40,500 on the low end and \$243,000 on the high end based on six (6) major theories of recovery.

To the extent Defendant’s exposure remains in the millions of dollars, the civil penalties could be argued as “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken liberties to dramatically reduce the civil penalties. (See *e.g. Vicerel v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the defendant acted deliberately or negligently failed to learn about its obligations].).

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1 Under a more conservative approach, Plaintiffs’ counsel considered the possibility that the
2 Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$843,600
3 [1,406 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 61.)

4 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
5 Many of the causes of action brought were duplicative of the statutory claims such as violations
6 of Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. Thus, the
7 maximum penalties for each pay period are not justified. It was indeed arguable whether the Court
8 would award the maximum penalties under the law. Thus, allocating \$200,000 to PAGA civil
9 penalties was reasonable based on a rate of \$3.74 per pay period [$\$200,000 \div 53,456$ Pay Periods
10 in PAGA Date Range = \$3.74], given the fact that Defendant are also paying an additional
11 \$2,050,000 in the class settlement. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
12 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the
13 plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)
14 Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount
15 was the result of self-interest at the expense of other Class Members,” such amounts are generally
16 considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844,
17 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th
18 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not
19 allocate any damages to the PAGA claims.”).) (Han Dec., *supra*, at ¶ 62.)

20 Accordingly, taking into consideration Defendant’s defenses, their supporting evidence,
21 and their position that the Action is not suitable for class treatment, the settlement amount of
22 \$2,250,000 – average Total Individual Class Settlement Payment estimated at \$745.46 – is
23 reasonable and fair.

24 **c. Discount Analysis Justifies the Settlement**

25 Excluding the civil penalties, which could be completely discretionary, for the reasons
26 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
27 be approximately \$17,171,686.25 on the low end and \$17,547,739.47 on the high end. (Han Dec.,
28 *supra*, at ¶ 63.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,422,990.14	70%	60%	\$170,758.82
Meal Break Premiums	\$6,808,943.07	60%	50%	\$1,361,788.61
Overtime/Minimum Wage: Off-the-Clock	\$751,645.04 to \$1,127,698.26	50%	70%	\$112,746.76 to \$169,154.74
Overtime/Minimum Wage: Rounding	\$601,530	30%	50%	\$210,535.50
Unreimbursed Business Expenses	\$476,566	30%	70%	\$100,078.86
Wage Statement Penalty	\$5,272,500	50%	50%	\$1,318,125
Waiting Time Penalty	\$1,837,512	50%	50%	\$459,378
MAXIMUM TOTAL EXPOSURE	\$17,171,686.25 to \$17,547,739.47⁶			\$3,733,411.55 to \$3,789,819.53⁷

Based on this analysis, the realistic recovery for this case is \$3,733,411.55 on the low end and \$3,789,819.53 on the high end. The Total Settlement Amount of \$2,250,000 is about twelve percent (12.82%) of the maximum potential exposure and is approximately fifty-nine percent (59.37%) of the maximum realistic exposure at trial, which is an excellent settlement. (Han Dec., *supra*, at ¶ 71.)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”).) Nevertheless, this settlement is reasonable when compared to the realistic exposure Plaintiffs could have likely obtained at trial and provide a significant recovery for the Class Members. Thus, there can be no

⁶ Han Dec., *supra*, at ¶¶ 52-57.

⁷ Han Dec., *supra*, at ¶¶ 64-70.

doubt that this settlement is fair and reasonable.

d. Conditional Certification of the Class Is Appropriate

For settlement purposes only, the requisites for establishing conditional class certification are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Plaintiffs’ claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Also, the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. As discussed below, this case is amenable to class certification. (Han Dec., *supra*, at ¶ 72.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

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1 The Action involves one thousand five hundred ninety-seven (1,597) Class Members.
2 Thus, the Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
3 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former
4 employees” is sufficiently numerous).) Furthermore, all Class Members can and will be identified
5 by Defendant to the Settlement Administrator through a review of Defendant’s employment
6 records concerning hourly-paid and non-exempt employees employed by Defendant within the
7 State of California during the Class Period. (Han Dec., *supra*, at ¶ 73.)

8 **ii. The Class Members Share a Well-Defined Community of Interest**

9 The community of interest requirement “embodies three factors: (1) predominant common
10 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
11 (3) class representatives who can adequately represent the class.” (*Sav-On Drugs, supra*, 34
12 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not mandate*
13 *that class members have uniform or identical claims.*” (*Capitol People First v. Department of*
14 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts
15 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
16 that common behavior toward similarly situated plaintiffs renders class certification appropriate.”
17 (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The application of each of these factors
18 is discussed below.

19 **1. Common Issues Predominate**

20 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
21 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*, 155
22 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In other
23 words, courts determine whether the elements necessary to establish liability are susceptible to
24 common proof, even if the class members must individually prove their damages. (*Brinker, supra*,
25 53 Cal.4th at p. 1024.) These types of claims are regularly granted class certification when the
26 plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D.
27 Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza*
28 *v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class

1 of dancers on state law claims).)

2 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
3 alleged by Plaintiffs. All hourly-paid and non-exempt employees who worked for Defendant
4 during the Class Period were subject to the same or similar employment practices, policies, and
5 procedures. All of Plaintiffs' claims surround Defendant's common practice and scheme of failing
6 to maintain compliant meal and rest break policies and practices, failing to reimburse business
7 expenses, and failing to fully and properly compensate employees, *inter alia*, for non-compliant
8 meal and rest breaks, off-the-clock work, overtime work, associated wage statement, and waiting
9 time penalties. (Han Dec., *supra*, at ¶ 74.)

10 **2. Plaintiffs' Claims Are Typical of the Class Claims**

11 Typical claims rely on legal theories and facts that are substantially similar to other class
12 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt
13 employees and allege they and the Class Members were employed by the same company and
14 injured by Defendant's common policies and practices related to meal and rest breaks,
15 uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage
16 statements, and unreimbursed business expenses. Plaintiffs seek relief for these claims and
17 derivative claims on behalf of all Class Members. Thus, Plaintiffs' claims arise from the same
18 employment practices and are based on the same legal theories as those applicable to the other
19 Class Members. (Han Dec., *supra*, at ¶ 75; Geraci Dec., *supra*, at ¶ 22.)

20 **3. Plaintiffs are Adequate to Represent the Class**

21 Plaintiffs have proven to be adequate Class Representatives. They have conducted
22 themselves diligently and responsibly in representing the Class in this litigation, understand their
23 fiduciary obligations, and have actively participated in the prosecution of this case. Plaintiffs have
24 spent time in meetings and conferences with counsel to provide Class Counsel with a complete
25 understanding of their work environment and requirements. Furthermore, Plaintiffs do not have
26 any interest that is adverse to the interest of other Class Members. (Han Dec., *supra*, at ¶ 76;
27 Geraci Dec., *supra*, at ¶ 23.) Moreover, the proposed Class Counsel is adequate to represent the
28 Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit A; Geraci Dec., *supra*, at ¶¶ 4-11.)

1 The proposed Notice Packet meets all of these requirements. The proposed Notice Packet
2 advises the Class Members of their right to participate in the Settlement; how and when to object
3 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
4 hearing. (See Han Dec., *supra*, Exhibits 1 and 2 to Exhibit B.)

5 **V. CONCLUSION**

6 Plaintiffs respectfully submit that the proposed Settlement is in the best interests of the
7 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
8 guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class
9 should be conditionally certified for purposes of settlement only, and the Notice Packet should be
10 approved.

11 Dated: July 22, 2021

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