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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

EDDIE FULINARA, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

GENMARK DIAGNOSTICS, INC., a
Delaware Company; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2019-00000877-CU-OE-CTL

Judge Ronald F. Frazier
Department C-65

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**

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

Hearing Date: May 21, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department C-65

Complaint Filed: January 7, 2019
FAC Filed: May 10, 2019
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on May 21, 2021 at 8:30 a.m. or as soon as the matter
2 may be heard before the Honorable Ronald F. Frazier in Department C-65 of the Central
3 Courthouse, located at 330 West Broadway, San Sigeo, California 92101, Plaintiffs Eddie
4 Fulinara and Steven Soliven (“Plaintiffs,” “Plaintiff Fulinara,” and “Plaintiff Soliven”) will and
5 hereby moves for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stioulation and Settlement Agreement
8 of Class Action and PAGA Claims (“Settlement Agreement,” “Settlement,” or
9 “Agreement”), attached as **“EXHIBIT 2”** to the Declaration of Douglas Han,
10 including, and not limited to, the means of allocation and distribution of funds,
11 and the allocations for penalties under the California Labor Code Private
12 Attorneys General Act of 2004 (“PAGA”), the Class Counsel’s fees, the Class
13 Counsel’s costs/expenses, the Incentive Awards to Plaintiffs, and the Settlement
14 Administrator’s costs;
- 15 • Conditionally certifying the proposed Class for settlement purposes only;
- 16 • Appointing Plaintiffs as the Class Representatives;
- 17 • Appointing Justice Law Corporation as Class Counsel;
- 18 • Approving the proposed Notice of Pendency of Class Action (“Notice”) attached
19 as **“Exhibit A”** to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Notice with a postage-paid return envelope
21 to the proposed class;
- 22 • Approving the proposed deadlines for the notice and Settlement Administration
23 process;
- 24 • Approving Smpluris, Inc. (“Simpluris”) as the Settlement Administrator; and

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- 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 Class Counsel's fees, the Class Counsel's costs/expenses, the Incentive Awards to Plaintiffs, the Settlement Administrator's costs, and approval of the allocation for PAGA penalties.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); 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: April 27, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Haig Hogdanian
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,200,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all hourly non-exempt
4 employees directly employed by Defendant GenMark Diagnostics, Inc. (“Defendant”) during the
5 Class Period and all temporary non-exempt workers assigned to GenMark by third-party staffing
6 company The June Group, LLC dba QualStaff Resources (“QualStaff”) during the Class Period
7 (“Class Members”). The Class Period is the time period from January 7, 2015 through the date
8 the Court grants preliminary approval or May 31, 2021, whichever date is earlier (“Class
9 Period”). At the time of this filing, the number of Class Members provided by Defendants is
10 currently estimated to be nine hundred fifty (950).

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
12 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
13 proposed settlement of \$1,200,000 – with an average Individual Settlement Payment estimated at
14 \$695.79¹ – is well within the “ballpark” of reasonableness.

15 As the following sections show, Class Counsel is convinced that the proposed Settlement
16 is in the best interests of the class based on the negotiations and a detailed knowledge of the
17 issues present in this action. The length and risks of trial and perils of litigation that affect the
18 value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant,
19 particularly, the uncertainty of class certification, the difficulties of complex litigation, the
20 lengthy process of establishing specific damages and various possible delays and appeals, were
21 also carefully considered by Class Counsel in arriving at the proposed Settlement.

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28 ¹ \$661,000 (Net Settlement Amount) / 950 (Class Members) = \$695.73.

II. BACKGROUND

Defendant is a leading provider of multiplex molecular panels for use in diagnostic solutions. (Declaration of Douglas Han (“Han Dec.”) at ¶ 8.) This case involves all hourly non-exempt employees directly employed by Defendant and all temporary non-exempt workers assigned to Defendant by third-party staffing company QualStaff during the period from January 7, 2015 through the date the Court grants preliminary approval or May 31, 2021, whichever date is earlier. (*Ibid.*) Plaintiffs alleges that at all times during the Class Period, Defendant’s non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

Plaintiff Fulinara, a former employee of Defendant, filed his complaint on January 7, 2019, in the Superior Court of California, County of San Diego (“Fulinara Action”). (Han Dec., *supra*, at ¶ 9.) The Fulinara Action alleged: (1) unpaid overtime in violation of Labor Code sections 510 and 1198; (2) unpaid meal period premiums in violation of Labor Code sections 226.7 and 512(a); (3) unpaid rest period premiums in violation of Labor Code section 226.7; (4) unpaid minimum wages in violation of Labor Code sections 1194 and 1197; (5) final wages not timely paid in violation of Labor Code sections 201 and 202; (6) non-compliant wage statements in violation of Labor Code section 226(a); (7) unreimbursed business expenses in violation of Labor Code sections 2800 and 2802; and (8) violation of California Business & Professions Code sections 17200, *et seq.* (*Ibid.*) On May 10, 2019, Plaintiff Fulinara filed a first amended complaint adding more information to his original eight (8) causes of action. (*Ibid.*)

Plaintiff Soliven, another former employee of Defendant, brought his representative PAGA action on May 26, 2020, in the Superior Court of California, County of San Diego, on behalf of all aggrieved employees and alleging a single cause of action for violation of Labor Code sections 2698, *et seq.* (“Soliven Action”). (Han Dec., *supra*, at ¶ 10.) Specifically, the Soliven Action alleged that Defendant failed to pay minimum and overtime wages; failed to provide meal periods and rest breaks; failed to timely pay wages during employment; failed to timely pay wages upon termination; failed to provide complete and accurate wage statements; and failed to reimburse business expenses. (*Ibid.*) Plaintiff Soliven filed a first amended complaint on October 16, 2020, adding class allegations for the same eight (8) causes of action

1 alleged in Fulinara Action. (Han Dec., *supra*, at ¶ 10.)

2 The Parties attended mediation on Plaintiffs' claims on February 2, 2021. (Han Dec.,
3 *supra*, at ¶ 11.) At the conclusion of the mediation, the mediator Anthony F. Pantoni made a
4 mediator's proposal on February 4, 2021, which the Parties accepted. (*Ibid.*)

5 As a prerequisite to Plaintiffs' filing of a motion for preliminary approval of the Action,
6 the Parties will seek to file a joint stipulation to consolidate the Fulinara Action and Soliven
7 Action. (Han Dec., *supra*, at ¶ 12.) Specifically, the joint stipulation shall request that the
8 Fulinara Action, the earlier filed case, be deemed the lead case.

9 Defendant denies any and all liability or wrongdoing of any sort with regard to any of the
10 claims alleged, makes no concessions or admissions of liability of any sort, and contends that for
11 any purpose other than settlement, the Action is not appropriate for class or representative
12 treatment. (Han Dec., *supra*, at ¶ 13.) Furthermore, Defendant asserts a number of defenses to
13 the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or
14 conduct in the Action. (*Ibid.*)

15 **III. INVESTIGATION/ LITIGATION HISTORY**

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

17 After Plaintiffs filed their complaints, both Parties engaged in discovery. (Han Dec.,
18 *supra*, at ¶ 14.) Plaintiff Fulinara propounded one (1) set of form interrogatories, one (1) set of
19 special interrogatories, one (1) set of requests for admissions; and one (1) set of requests for
20 production of documents. (*Ibid.*) Plaintiff Soliven propounded two (2) sets of form
21 interrogatories, two (2) sets of special interrogatories, two (2) sets of requests for admissions;
22 and two (2) sets of requests for production of documents. (*Ibid.*) Defendant responded to the
23 discovery. (*Ibid.*) Afterwards, the Parties met and conferred regarding this discovery. (*Ibid.*)

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1 Prior to the mediation with Anthony F. Pantoni on February 2, 2021, the Parties
2 conducted significant investigation and discovery of the facts and law both before and after the
3 Action was filed. (Han Dec., *supra*, at ¶ 15.) Prior to mediation, Defendant produced hundreds
4 of documents relating to its policies, practices, and procedures regarding reimbursement of
5 business expenses, paying non-exempt employees for all hours worked, meal and rest break
6 policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production,
7 Plaintiffs also reviewed time records, pay records, and information relating to the size and scope
8 of the class, as well as data permitting Plaintiffs to understand the number of workweeks in the
9 Class Period. (*Ibid.*)

10 Furthermore, Plaintiffs also interviewed several of Class Members who worked for
11 Defendant throughout the Class Period. (Han Dec., *supra*, at ¶ 16.) The Parties agree that the
12 above-described investigation and evaluation, as well as the information exchanged during the
13 settlement negotiations, are more than sufficient to assess the merits of the respective Parties'
14 positions and to compromise the issues on a fair and equitable basis. (*Ibid.*)

15 Based upon Defendant's discovery responses and document production, as well as
16 interviews Plaintiffs' counsel had with non-exempt employees, Plaintiffs contend – and
17 Defendant denies – failed to compensate employees for all hours worked. (Han Dec., *supra*, at ¶
18 17.) Specifically, Plaintiffs contend that Defendant had a rounding policy in place since
19 December 2013 that consistently resulted in the underpayment of wages. (*Ibid.*) Furthermore,
20 Plaintiffs contend that employees were often forced to work off-the-clock pre-shift and post-shift
21 because Defendant would assign them heavy, time-sensitive workloads. (*Ibid.*)

22 Moreover, Plaintiffs assert – and Defendant denies – that Defendant uniformly failed to
23 provide legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Specifically, Plaintiffs
24 assert that Defendant's Welcome to GenMark Orientation PowerPoint presented to new
25 employees reflected noncompliant meal and rest break policies. (*Ibid.*) Plaintiffs also assert that
26 Defendant's rest break policy failed to authorize and permit duty-free rest breaks because
27 employees were required to remain on the jobsite during rest breaks. (*Ibid.*) Additionally,
28 Plaintiffs assert Defendant had a uniform, improper practice of pressuring employees to skip, cut

1 short, and/or take late meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Furthermore, despite
2 failing to provide employees with legally mandates meal breaks, Plaintiffs assert Defendant
3 automatically assumed (or deducted) thirty (30) minutes from employees' time and pay for meal
4 breaks. (*Ibid.*) Finally, Plaintiffs assert that Defendant never paid premium wages for rest breaks
5 and underpaid premium wages for meal breaks. (*Ibid.*)

6 Plaintiffs also allege – and Defendant denies – that Defendant excluded payments from
7 employees' regular rates of pay for purposes of overtime compensation. (Han Dec., *supra*, at ¶
8 19.) This included paying employees a non-discretionary annual bonus and shift differentials that
9 were not factored into employees' regular rates of pay. (*Ibid.*)

10 Next, Plaintiffs contend – and Defendant denies – that Defendant failed to reimburse
11 employees for necessary business expenses. (Han Dec., *supra*, at ¶ 20.) This included Defendant
12 requiring employees to use their personal vehicles and personal cell phones for business-related
13 purposes. (*Ibid.*)

14 Finally, Plaintiffs allege – and Defendant denies – that Defendant is liable for wage
15 statement penalties and waiting time penalties. (Han Dec., *supra*, at ¶¶ 21-22.)

16 Defendant denies Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 23.)
17 Among other things, Defendant denies Plaintiffs' rest and meal break contentions, on the
18 grounds that it provided rest and meal breaks within compliant times and that non-exempt
19 employees were given discretion as to when to take their rest and meal breaks. (*Ibid.*) In other
20 words, employees were not pressured to skip, cut short, and/or take late meal and rest breaks.
21 (*Ibid.*) Defendant also contends that both its meal and rest break policies complied with
22 California law since December 2013 and that non-exempt employees were allowed to use their
23 meal and rest break time for their own purposes. (*Ibid.*) Defendant further contends that whether
24 non-exempt employees took meal and rest breaks during compliant time frames and were
25 relieved of all duties are questions that could only be resolved by resorting to individualized
26 inquiries to each non-exempt employee and, therefore, class certification would not be
27 appropriate. (*Ibid.*) Defendant also asserts that it paid its employees for all times worked,
28 including overtime, minimum, and premium wages. (*Ibid.*) Furthermore, Defendant argues that

its rounding policy was fair and neutral on its face. (Han Dec., *supra*, at ¶ 23.) Moreover, Defendant contends that it did factor the non-discretionary annual “Bonus” and shift differentials into eligible employees’ regular rates for overtime purposes. (*Ibid.*) Moreover, Defendant contends that Plaintiffs’ claims regarding off-the-clock work and unpaid overtime are trivial as only a small number of employees actually worked off-the-clock for which they were compensated. (*Ibid.*) Defendant also asserts that it reimbursed employees for all business expenses, including using their personal cell phones and personal vehicles. (*Ibid.*) Finally, Defendant argues that its failure to comply with California labor laws was an honest mistake made in good faith. (*Ibid.*) Thus, Defendant’s conduct could not be deemed “willful” under Labor Code section 203. (*Ibid.*)

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

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

i. The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement

The Parties agreed to go to mediation with experienced wage and hour mediator, Anthony F. Pantoni. (Han Dec., *supra*, at ¶ 24.) The mediation took place on February 2, 2021. (*Ibid.*) During the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) At the conclusion of the mediation, the mediator made a mediator’s proposal that the Parties accepted, the terms of which were memorialized in a Settlement Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

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

3 The Settlement Agreement was reached as a result of arm’s-length negotiations. (Han
4 Dec., *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have been, at
5 all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediations, Counsel for the
6 Parties conducted extensive arm’s length settlement negotiations until an agreement was
7 ultimately reached by all Parties. (*Ibid.*)

8 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
9 expense and length of continued proceedings necessary to continue the litigation against
10 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
11 *supra*, at ¶ 41.) Plaintiffs and Class Counsel have also taken into account the uncertainty and risk
12 of further litigation, the potential outcome, and the difficulties and delays inherent in such
13 litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations,
14 including formal mediation on February 2, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and
15 Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate,
16 and reasonable settlement, and is in the best interests of the class. (*Ibid.*)

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

18 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
19 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
20 discovery to support the settlement. (Han Dec., *supra*, at ¶ 42.) The proposed settlement was
21 only possible following significant discovery and evaluation of Defendant’s relevant policies and
22 procedures, as well as the data they produced for the putative class, which permitted Class
23 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Also,
24 this case has reached the stage where “the Parties certainly have a clear view of the strengths and
25 weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D.
26 Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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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 \$1,200,000 (“Gross Settlement Amount”) which includes, subject to Court approval: (a) the Class Counsel’s fees in an amount not to exceed \$420,000 (thirty-five percent (35%) of the Gross Settlement Amount) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement and securing Court approval; (b) the Class Counsel’s costs/expenses not to exceed \$25,000²; (c) the Incentive Awards in the amount of \$10,000 to each Class Representative in recognition of Plaintiffs’ 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 costs to Simpluris, Inc. (“Simpluris”), the Settlement Administrator, that are currently estimated at approximately \$14,000; and (e) PAGA Payment in the amount of \$60,000, seventy-five percent (75%) of which (\$45,000) will be paid to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of which (\$15,000) will be distributed to all hourly-paid non-exempt employees directly employed by Defendant and all temporary non-exempt workers assigned to Defendant by QualStaff (“PAGA Members”) during the time period from February 3, 2019 through the date the Court grants preliminary approval, or May 31, 2021, whichever date is earlier (“PAGA Period”), as the PAGA Member Payments, on a pro-rata basis. (Han Dec., *supra*, at ¶ 25.)

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² The actual amount of litigation costs and expenses will be provided to the Court in conjunction with Plaintiffs’ motion for final approval. (Han Dec., *supra*, at ¶ 26.) At that time, Plaintiffs will ask the Court to approve the amount of these costs. (*Ibid.*) If Plaintiffs’ actual litigation costs exceed \$25,000, Plaintiffs will only seek reimbursement in the amount of \$25,000. (*Ibid.*) If Class Counsel collectively requests a lesser amount or if the Court approved a lesser amount of Class Counsel’s fees and/or Class Counsel’s costs/expenses, the difference between the lesser amount and the maximum amount (\$25,000) shall be added back into the Net Settlement Amount. (*Ibid.*)

1 **ii. Calculation of the Individual Settlement Payments to Class Members**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 that \$661,000 (“Net Settlement Amount”) will be distributed to Class Members – with an
4 average Individual Settlement Payment estimated at \$695.79. (Han Dec., *supra*, at ¶ 27.) The
5 Settlement Administrator shall be responsible for issuing the payments and withholding all
6 required state and federal taxes in accordance with Settlement. (*Ibid.*) The Settlement
7 Administrator will also issue IRS Forms W-2 with respect to the amounts paid as wages to all
8 Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion
9 (“Settlement Class Members”), and IRS Forms 1099 with respect to the amounts paid as interest
10 and penalties to the Settlement Class Members and PAGA Members. (*Ibid.*) The Settlement
11 Administrator will also issue IRS Forms 1099 to: (1) Plaintiffs for the Incentive Award; and (2)
12 Class Counsel for the amount paid for approved fees and costs. (*Ibid.*) Finally, the Settlement
13 Administrator shall be responsible for submitting Defendant’s share of payroll taxes to the
14 appropriate government agencies on behalf of Defendant. (*Ibid.*)

15 The Individual Settlement Payments obtained from the Net Settlement Amount shall be
16 divided among the Settlement Class Members on a pro-rata basis, based upon the following:

- 17 (i) Each Settlement Class Member’s work week count, which shall be the
18 sum of the total number of work weeks the Settlement Class Member
19 worked during the Class Period; (ii) divided by the combined sum of all
20 Settlement Class Members’ work week count during the Class Period; and
21 (iii) then multiplied by the value of the Net Settlement Amount. (Han
22 Dec., *supra*, at ¶ 28.)

23 To arrive at the PAGA Member Payments, the portion of the PAGA Payment allocated to
24 the PAGA Members shall be divided among the PAGA Members on a pro-rata basis, based upon
25 the following:

- 26 i) Each PAGA Member’s work week count, which shall be the sum of the total
27 number of work weeks the PAGA Member worked during the PAGA Period; (ii)
28 divided by the combined sum of all PAGA Members’ work week counts; and (iii)
then multiplied by the value of the portion of the PAGA Payment allocated to the
PAGA Members, which as set forth as \$15,000. (Han Dec., *supra*, at ¶ 29.)

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1 The precise number of compensable weeks worked per Class Member will not be known
2 until Defendant have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 30.)
3 No portion of the Gross Settlement Amount shall revert to Defendant, and any amount of the
4 Gross Settlement Amount not required to pay the above referenced amounts shall be paid to the
5 Settlement Class Members on a pro rata basis according to the formula described above. (*Ibid.*)

6 **iii. Notice to the Class**

7 Within twenty (20) calendar days of preliminary approval of the Settlement by the Court
8 or within twenty (20) calendar days of the date Class Counsel provides Defendant the
9 information described in paragraph 49 of the Settlement Agreement, whichever is later,
10 Defendant shall provide to the Settlement Administrator a database containing the following
11 information for all Class Members and PAGA Members: (a) the full name, last known address,
12 and full social security number of all Class Members; and (b) the information necessary to
13 determine the estimated settlement allocation to each Class Member, including: (i) the total
14 number of work weeks worked by each Class Member within the Class Period; and (ii) the total
15 number of work weeks worked by each PAGA Member within the PAGA Period. (Han Dec.,
16 *supra*, at ¶ 31.)

17 The Settlement Administrator shall send a Notice to each Class Member by first class
18 mail within fourteen (14) calendar days of receipt of the Class Member List described above.
19 (Han Dec., *supra*, at ¶ 32.) Class Members and PAGA Members are not required to submit a
20 claim form to receive their Individual Settlement Payments and PAGA Member Payments
21 pursuant to the Settlement. (*Ibid.*) The proposed Notice is attached as Exhibits A to the
22 Settlement Agreement which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

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1 **iv. Distribution of Funds**

2 Within sixty (60) calendar days after the Effective Date, Defendant shall transfer to the
3 Settlement Administrator an amount equal to the Gross Settlement Amount and the employer's
4 share of payroll taxes. (Han Dec., *supra*, at ¶ 33.)

5 Within fourteen (14) calendar days of the transfer of the Gross Settlement Amounts to the
6 Settlement Administrator, and only upon the Effective Date being met, the Settlement
7 Administrator shall issue to each Settlement Class Member his/her/their Individual Settlement
8 Payment. (Han Dec., *supra*, at ¶ 34.)

9 Any portion of the Net Settlement Amount not cashed within one-hundred eighty (180)
10 days from the date of issuance of the check shall be paid to the following *cy pres* recipients,
11 selected by Defendant in accordance with California Code of Civil Procedure section 384, after
12 all payments for the Settlement Administrator's costs, the Incentive Award, Class Counsel's
13 fees, Class Counsel's costs/expenses, and the PAGA Payment have been completed: Justice Gap
14 Fund, State Bar of California. (Han Dec., *supra*, at ¶ 35.)

15 **v. Release of Claims**

16 Upon the Effective Date, the claims released by the Settlement Class Members and
17 Plaintiffs will include all claims that were alleged or could have been alleged, known or
18 unknown, including those arising out of or based on the same or similar facts, in the Complaints
19 and First Amended Complaints filed by Plaintiffs in the Fulinara Action and the Soliven Action
20 and/or any PAGA letter sent to the LWDA by Plaintiffs prior to or during the Action and which
21 could have been alleged against the Released Parties for work performed during the Class
22 Period. *See* Exhibit 2 ¶ 62(a). (Han Dec., *supra*, at ¶ 36.)

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1 Upon the Effective Date, Plaintiffs and the PAGA Members shall be deemed to have
2 fully, finally, and forever released, settled, compromised, relinquished and discharged any and
3 all of the Released Parties of and from any and all PAGA claims predicated on the facts and/or
4 claims alleged, or that could have been alleged, in the Action and/or any PAGA letter sent to the
5 LWDA by Plaintiffs or in any way premised in whole or in part on any of the Class Released
6 Claims set forth in Paragraph 62 of the Settlement Agreement that arose at any time during the
7 PAGA Period. *See* Exhibit 2 ¶ 63. (Han Dec., *supra*, at ¶ 37.)

8 The Released Parties include Defendant and any of its past, present and future direct or
9 indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to
10 Clinical Micro Sensors, Inc. as well as each of its or their past, present and future officers,
11 directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers,
12 and any individual or entity which could be jointly liable with Defendant. *See* Exhibit 2 ¶ 23.
13 (Han Dec., *supra*, at ¶ 38.)

14 Upon the Effective Date, and as a condition of receiving any portion of the Incentive
15 Award, the Class Representatives, for themselves only, agree to an additional General Release.
16 *See* Exhibit 2 ¶ 64. (Han Dec., *supra*, at ¶ 39.)

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

18 Both Plaintiffs' counsel and Defendant's counsel are particularly experienced in wage
19 and hour employment law and class actions. Plaintiffs' counsel has significant experience in
20 litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions.
21 (Han Dec., *supra*, at ¶¶ 2-6, Exhibit 1.)

22 Plaintiffs' counsel has prosecuted numerous cases on behalf of employees for California
23 Labor Code violations and thus are experienced and qualified to evaluate the class claims, to
24 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
25 defenses. (Han Dec., *supra*, at ¶¶ 2-6, Exhibit 1.) This experience instructed Plaintiffs' counsel
26 on the risks and uncertainties of further litigation and guided their determination to endorse the
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proposed Settlement.³ (Han Dec., *supra*, at ¶¶ 2-6, Exhibit 1.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

- (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
...
- (b) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

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

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³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action 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.

⁴ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying 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 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

8 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
9 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
10 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not
11 require an explicit statement of the maximum amount the class could recover if the plaintiff
12 prevailed on all his claims, provided there is a record that allows “an understanding of the
13 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
14 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
15 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
16 itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
17 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
18 499-500.).)

19 As the following subsections show, the Parties’ investigation and discovery revealed
20 numerous reasons to discount claims and agree to the Settlement.

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

22 The proposed Settlement was only possible following significant discovery and
23 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant
24 produced for the putative class as referenced in Section III above, which permitted Class Counsel
25 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
26 42.)

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1 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendant failed to pay overtime wages, failed to pay for all hours worked,
3 failed to provide meal and rest breaks and pay applicable premiums, failed to pay final wages in
4 a timely manner, failed to issue compliant wage statements, failed to reimburse business
5 expenses, violated PAGA, and violated the Business & Professions Code sections 17200, et seq.
6 (Han Dec., *supra*, at ¶ 43.)

7 Defendant vehemently denies Plaintiffs' theories of liability and contend, as stated above,
8 that all meal and rest breaks were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that it provided final wages in a timely manner, that it
10 provided wage statements in compliance with Labor Code section 226, and that it reimbursed all
11 business expenses. (Han Dec., *supra*, at ¶ 44.) Defendant further contends that any mistakes
12 made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to
13 continue, it feels confident that it would prevail. (*Ibid.*)

14 Although Plaintiffs believe the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiffs contend violate California law and uniformly affect the
16 putative class members, uncertainties with respect to certification are always present. (Han Dec.,
17 *supra*, at ¶ 45.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34
18 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions
19 following *Sav-On* have reached different conclusions concerning certification of wage and hour
20 claims.⁵ (*Ibid.*)

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

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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 **ii. The Settlement Amount of \$1,200,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 putative class members and the average hourly rate for Class Members. (Han Dec., *supra*, at ¶
6 46.) Defendant also confirmed that there were approximately 62,848 workweeks worked by
7 Class Members. (*Ibid.*) Plaintiffs were also able to determine that the average hourly rate for
8 Class Members was \$25.12. (*Ibid.*)

9 The provisions of the Labor Code potentially triggering PAGA penalties in this case
10 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
11 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 52.) Defendant asserted that, regardless of
12 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
13 and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments
14 against the underlying claims, it had a strong argument that it would be unjust to award
15 maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

16 Class Counsel calculated penalties under this cause of action by multiplying the number
17 of active Class Members (because of the shortened statutory period for this claim), by the civil
18 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
19 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 53.) Class Counsel then
20 applied discounts in light of the countervailing arguments with regard to the other causes of
21 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
22 Lab. Code § 2699(e)(2). (*Ibid.*)

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1 Given the state of the law and the range of PAGA penalties requested and actually
2 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
3 for PAGA penalties. (Han Dec., *supra*, at ¶ 54.) However, if PAGA penalties are granted on any
4 one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure for
5 the eligible pay periods could be approximately \$2,895,600 $(([1 \times \$100] + [28 \times \$200]) \times 508$
6 employees). (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent
7 (100%) violation rate based on the average number of pay periods (29) during the one-year
8 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
9 under the PAGA theories of recovery (6) gives potential civil penalties of \$17,373,600. (*Ibid.*)

10 Although Plaintiffs argued they could obtain over \$17 million for PAGA penalties, it
11 seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶
12 55.) PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty
13 for each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for
14 each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In
15 *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the
16 employer has been notified that it is violating a Labor Code provision (whether or not the
17 commissioner or court chooses to impose penalties), the employer cannot be presumed to be
18 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties [and
19 will be assessed only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.)
20 This language could be interpreted as indicating that until the Labor Commissioner or a court
21 informs an employer that it has violated the Labor Code, the employer can only be assessed the
22 “initial” violation rate. Under this interpretation, the maximum individual civil penalty for one
23 statutory violation is \$50,800 (508 employees x 100 (initial violation)), and for all possible Labor
24 Code violations is \$304,800.

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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, Defendants 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 \$50,800 on the low end and \$304,800 on the high end based on six (6) major theories of recovery.

To the extent Defendant’s exposure remains in the hundreds of thousands of dollars, the civil penalties would certainly be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken liberties to dramatically reduce the civil penalties. (See e.g. *Viceral 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
2 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to
3 \$304,800 [508 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 55.)

4 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
5 (Han Dec., *supra*, at ¶ 56.) Many of the causes of action brought were duplicative of the
6 statutory claims such as violations of California Labor Code §§ 226(a), 226.7, 510, 512(a), 1194,
7 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
8 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
9 under the law. (*Ibid.*) Thus, allocating \$60,000 to PAGA civil penalties was reasonable based
10 on a rate of \$4.10 per pay period [$\$60,000 \div 14,640$ Pay Periods in PAGA Date Range = \$4.10],
11 given the fact that Defendant are also paying an additional \$1,140,000 in the class settlement.
12 (*Id.* (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate
13 of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
14 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where PAGA penalties
15 are negotiated in good faith and “there is no indication that [the] amount was the result of self-
16 interest at the expense of other Class Members,” such amounts are generally considered
17 reasonable. (Han Dec., *supra*, at ¶ 56.) (citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3,
18 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com.*
19 *Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a
20 settlement which does not allocate any damages to the PAGA claims.”).)

21 Accordingly, taking into consideration Defendants’ defenses, their supporting evidence,
22 and their position that the Action is not suitable for class treatment, the settlement amount of
23 \$1,200,000— with an average Individual Settlement Payment estimated at \$695.79—is
24 reasonable and fair.

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c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$14,782,313.76 on the low end and \$15,571,684.64 on the high end. (Han Dec., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$4,736,225.28	70%	70%	\$426,260.28
Meal Break Premiums	\$3,157,483.52	60%	50%	\$631,496.70
Overtime/Minimum Wage: Off-the-Clock and Rounding	\$1,578,741.76 to \$2,368,112.64	50%	60%	\$315,748.35 to \$473,622.53
Waiting Time Penalty	\$3,339,955.20	50%	50%	\$834,988.80
Wage Statement Penalty	\$1,447,800	50%	50%	\$361,950
Unreimbursed Business Expenses	\$522,108	30%	70%	\$109,642.68
MAXIMUM TOTAL EXPOSURE	\$14,782,313.76 to \$15,571,684.64⁶			\$2,680,086.81 to \$2,837,960.99⁷

Based on this analysis, the realistic recovery for this case is \$2,680,086.81 on the low end and \$2,837,960.99 on the high end. (Han Dec., *supra*, at ¶ 64.) The Gross Settlement Amount of \$1,200,000 is approximately seven percent (7.7%) of the maximum potential exposure and is approximately forty-two percent (42.3%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is

⁶ Han Dec., *supra*, at ¶¶ 47-51.

⁷ *Id.*, at ¶¶ 58-63.

1 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
2 that induce consensual settlements. The proposed settlement is not to be judged against a
3 hypothetical or speculative measure of what might have been achieved by the negotiators.”).
4 Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have prevailed at trial
5 and provide a significant recovery for the Class Members. Thus, there can be no doubt that this
6 settlement is fair and reasonable.

7 **d. Conditional Certification of the Class Is Appropriate**

8 For settlement purposes only, the requisites for establishing conditional class certification
9 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is
10 one of a common or general interest, of many persons, or when the parties are numerous, and it
11 is impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
12 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
13 “both [1] an ascertainable class and [2] a well-defined community of interest among class
14 members.” (*Ibid.*)

15 The proposed class is ascertainable and numerous as to make it impracticable to join all
16 Class Members, and there are common questions of law and fact that predominate over any
17 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 65.) Plaintiffs’ claims
18 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
19 protect the interests of the class. (*Ibid.*) Also, the prosecution of separate actions by individual
20 Class Members would create the risk of inconsistent or varying adjudications, and a class action
21 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
22 discussed below, this case is amenable to class certification. (*Ibid.*)

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1 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

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

9 The Action involves nine hundred fifty (950) Class Members. (Han Dec., *supra*, at ¶ 66.)
10 This class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008)
11 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
12 former employees” is sufficiently numerous).) Furthermore, all Class Members can and will be
13 identified by Defendant to the Settlement Administrator through a review of Defendant’s
14 employment records concerning hourly-paid and non-exempt employees employed by Defendant
15 within the State of California during the Class Period. (Han Dec., *supra*, at ¶ 66.)

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

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

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1. Common Issues Predominate

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

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 67.) All hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All of Plaintiffs’ claims surround Defendant’s common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, negatively impacting employees with its rounding practice, and failing to fully and properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

2. Plaintiffs’ Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially similar to other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 Plaintiffs were non-exempt employees and allege that they and the Class Members were employed by the same company and injured by Defendant’s common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unfairly rounding employees clock ins and clock outs, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 68.) Plaintiffs seek relief for these claims and

1 derivative claims on behalf of all Class Members. (Han Dec., *supra*, at ¶ 68.) Thus, Plaintiffs’
2 claims arise from the same employment practices and are based on the same legal theories as
3 those applicable to the other Class Members. (*Ibid.*)

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

5 Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 69.)
6 They have conducted themselves diligently and responsibly in representing the class in this
7 litigation, understands their fiduciary obligations, and have actively participated in the
8 prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with
9 counsel to provide counsel with a complete understanding of their work environment and
10 requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the
11 interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to
12 represent the class. (Han Dec., *supra*, at ¶¶ 2-6, Exhibit 1.)

13 **4. Class Action is Superior for the Fair and Efficient**

14 **Adjudication of this Controversy**

15 A class action is superior to other available means for the fair and efficient adjudication
16 of this controversy. Joinder of all members of the proposed class is impractical. Class treatment
17 will permit a large number of similarly-situation persons to prosecute their common claims in a
18 single forum simultaneously for settlement purposes without the necessary duplication of effort
19 and expense that numerous individual actions would engender. Moreover, because a number of
20 the class members are current employees, the fear of retaliation further support superiority of
21 class-wide relief because that fear of retaliation often discourages victims from seeking legal
22 redress while currently employed by the same employer.

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1 **e. The Settlement Is Fair, Reasonable, and Adequate**

2 In deciding whether to approve a proposed class action settlement under Code of Civil
3 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and
4 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class
5 action settlement is presumed fair under the following circumstances: (1) the parties reached
6 settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to
7 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
8 and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,
9 all of these elements are present here. Thus, Plaintiffs request that this Court grant their motion
10 for Preliminary Approval.

11 **f. Notice to Class Members Complies with California Rule of Court 3.769(f)**

12 California Rule of Court, No. 3.769(f), provides:

13 If the court has certified the action as a class action, notice of the final approval
14 hearing must be given to class members in the manner specified by the court. The
15 notice must contain an explanation of the proposed settlement and procedures for
16 class members to follow in filing written objections to it and in arranging to
17 appear at the settlement hearing and state any objections to the proposed
18 settlement.

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

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1 **V. CONCLUSION**

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

7
8 Dated: April 27, 2021

JUSTICE LAW CORPORATION

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10 _____
11 Douglas Han
12 Shunt Tatavos-Gharajeh
13 Haig Hogdanian
14 *Attorneys for Plaintiff*
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, 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 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is arivera@justicelawcorp.com

On April 27, 2021, I served the foregoing document described as

**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**

for the following case: **Fulinara v. Genmark Diagnostics, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-770277-20**
Court Case No.: 37-2019-00000877-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 27, 2021, at Pasadena, California.



Allana Rivera