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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JEFFREY ELDRIDGE and JANINE NELSON, individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA");

Plaintiffs,

v.

ENDO PHARMACEUTICALS INC., a Delaware corporation; PAR PHARMACEUTICAL, INC., a New York corporation; ANCHEN PHARMACEUTICALS, INC., a Delaware corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2020-01140634-CU-OE-CXC

Assigned for All Purposes to:
Honorable Glenda Sanders
Department CX-101

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); Declaration of Proposed Settlement Administrator (Eric Springer); and [Proposed] Order filed concurrently herewith]

Hearing Date: September 16, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department CX-101

Complaint Filed: May 26, 2020
FAC Filed: June 15, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that on September 16, 2022 at 1:30 p.m., or as soon as the matter may be heard, before the Honorable Glenda Sanders in Department CX-101 of the Orange County Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs Jeffrey Eldridge ("Plaintiff Eldridge") and Janine Nelson ("Plaintiff Nelson") (collectively, "Plaintiffs") will and hereby do move for an order:

- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Parties' Joint Stipulation of Class Action and PAGA Settlement ("Agreement," "Settlement Agreement," "Joint Stipulation," or "Settlement"), attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds, the allocations for payments under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, and Administration Costs;
- Conditionally certifying the proposed Class for settlement purposes only;
- Appointing Plaintiffs as the Class Representatives;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement ("Notice") attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Setting Hearing for Final Approval of Settlement;
- Approving the Election Not to Participate In ("Opt Out" From) Class Action Settlement ("Exclusion Form") attached as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Setting Hearing for Final Approval of Settlement;
- Directing the mailing of the proposed Notice and Exclusion Form (collectively, known as the "Notice Packet") with a postage-paid return envelope to the proposed Class;
- Approving the proposed deadlines for the notice and settlement administration process;

- Approving Simpluris, Inc. (“Simpluris”) 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 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the Administration Costs, and the allocation of the PAGA Payment.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); the Declaration of the Proposed Settlement Administrator (Eric Springer); 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: August 17, 2022

JUSTICE LAW CORPORATION

By: D. Han

Douglas Han
Attorneys for Plaintiffs

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I. INTRODUCTION

This motion seeks preliminary approval of a non-reversionary $850,000 proposed wage-and-hour class action settlement by Plaintiffs on behalf of themselves and all individuals who are or previously were employed by Endo Pharmaceuticals Inc., Par Pharmaceutical, Inc., and Anchen Pharmaceuticals, Inc. ("Defendants") in the State of California and classified as non-exempt employees at any time during the time period from February 3, 2016, to December 31, 2021 ("Class," "Class Members," and "Class Period"). At the time of this filing, the number of Class Members confirmed by Defendants is estimated to be three hundred seventeen (317). (Declaration of Douglas Han ("Han Dec."), ¶ 9.)

It is requested that this Court grant Preliminary Approval because when analyzing the strengths and vulnerabilities of the class claims alongside Defendants' potential liability exposure, this proposed Settlement is well within the range of reasonableness. Class Counsel and Plaintiffs are convinced that the proposed Settlement is in the best interests of the Class Members based on the negotiations and a detailed knowledge of the issues present in this action.

II. BACKGROUND

On February 3, 2020, Plaintiff Eldridge, a former hourly-paid employee of Defendants, provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the provisions of the Labor Code he contends Defendants violated and the theories supporting his contentions. (Han Dec., *supra*, at ¶ 11.) On February 12, 2020, Plaintiff Eldridge submitted an amended written notice to the LWDA, adding Plaintiff Nelson, another former hourly-paid employee of Defendants, as a representative. (*Id.* at ¶ 12.) On May 26, 2020, Plaintiffs filed a representative PAGA action, pursuant to Labor Code section 2698, *et seq.*, against Endo International, PLC and Defendants Endo Pharmaceuticals Inc. and Par Pharmaceutical, Inc. in the Superior Court of California, County of Orange, entitled *Eldridge, et al. v. Endo International, PLC, et al.*, Case Number 30-2020-01140634-CU-OE-CXC (the "Action"). (*Id.* at ¶ 13.) On November 11, 2020, Plaintiffs filed a Request for Dismissal of the previously named defendant Endo International, PLC, which the Court granted on November 16, 2020. (*Id.* at ¶ 14.)

On August 11, 2021, Plaintiffs and Defendants (collectively, the "Parties") participated in private mediation with Jeffrey A. Ross, a well-respected mediator with considerable experience mediating wage-and-hour class actions. (Han Dec., *supra*, at ¶ 15.) While the Parties did not settle at mediation, the mediator assisted the Parties in further negotiations following mediation that subsequently resulted in a settlement of the claims alleged in the Action. (*Ibid.*)

As part of the settlement, Plaintiffs submitted a second amended written notice to the LWDA on May 13, 2022, removing Endo International, PLC as an improperly named employer and adding Anchen Pharmaceuticals, Inc. as an additional employer. (Han Dec., *supra*, at ¶ 16.) Plaintiffs' second amended notice also corrected the name of employer Endo Pharmaceuticals Inc. (erroneously named as "Endo Pharmaceuticals, Inc."). (*Ibid.*) Also as part of the settlement, Plaintiffs filed a First Amended Complaint on June 15, 2022, naming Anchen Pharmaceuticals, Inc., as a defendant and adding nine (9) class action allegations on behalf of the proposed Class. (*Id.* at ¶ 17.)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiffs initially filed their representative PAGA action, both Parties engaged in discovery. (Han Dec., *supra*, at ¶ 19.) Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*) Afterwards, the Parties met and conferred and agreed to engage in an informal exchange of information and then to attend mediation. (*Ibid.*)

To that end, prior to mediation, the Parties conducted significant investigation and discovery of the relevant facts and law. (Han Dec., *supra*, at ¶ 20.) Defendants produced Plaintiffs' and numerous other Class Members' personnel files, time and pay records, information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of pay periods and workweeks in the Class Period. (*Ibid.*) Class Counsel also interviewed Class Members who worked for Defendants throughout the Class Period. (*Ibid.*)

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Based upon the information provided by Defendants and interviews Class Counsel had with non-exempt employees of Defendants, Plaintiffs contend – and Defendants deny – that Defendants: (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to compensate employees for all hours worked; (c) failed to properly calculate and pay overtime and sick leave pay; (d) failed to reimburse employees for necessary business expenses; (e) issued noncompliant wage statements; and (f) are liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 22-28.)

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 of Class Action and PAGA Settlement

The Parties agreed to attend a mediation, which took place on August 11, 2021, with experienced wage-and-hour mediator Jeffrey A. Ross. (Han Dec., *supra*, at ¶ 30.) During the mediation, the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the Parties' claims and defenses versus the benefits of settlement. (*Ibid.*) Though the Parties did not settle at mediation, with the assistance of the mediator, the Parties eventually came to an agreement on settlement, the terms of which were memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

ii. The Settlement Was Reached as a Result of Arm's-length Negotiations

At the mediation on August 11, 2021, and after, through the assistance of the mediator, the Parties' counsel engaged in extensive arm's-length settlement negotiations until an agreement was reached by all Parties, the terms of which were memorialized in the Settlement Agreement. (Han Dec., *supra*, at ¶ 44.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*)

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Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of additional proceedings necessary to continue the litigation. (Han Dec., *supra*, at ¶ 45.) Plaintiffs and Class Counsel have considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel also conducted extensive settlement negotiations, including formal mediation, as described above. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of Plaintiffs' claims and Defendants' defenses before reaching the proposed Settlement and engaged in sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶ 46.) The proposed Settlement was only possible following significant investigation and evaluation of Defendants' relevant policies and procedures and the data Defendants produced for the putative class. (*Ibid.*) This information produced by Defendants permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) 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. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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 $850,000 ("Gross Settlement Amount") which includes, subject to Court approval: (1) the Attorney Fee Award of $297,500 to Class Counsel; (2) the Cost Award of up to $20,000 to Class Counsel; (3) the Class Representative Enhancement Payments of $5,000 to each Plaintiff; (4) Administration Costs of up to $10,000 to Simpluris, the Settlement Administrator; and (5) the PAGA Payment of $50,000 to the LWDA and the Eligible Aggrieved Employees. (Han Dec., *supra*, at ¶ 31.)

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ii. Calculation of the Class Members' Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that between $465,700 and $462,500 ("Net Settlement Amount") will be distributed to the Participating Class Members, resulting in an average Individual Settlement Share estimated to be between $1,469.09 and $1,458.99. (Han Dec., *supra*, at ¶ 33.)

Only Plaintiffs and Participating Class Members will receive Individual Settlement Shares under the Agreement. (Han Dec., *supra*, at ¶ 34.) Individual Settlement Shares, as well as Individual PAGA Payments to each Eligible Aggrieved Employee, will be calculated in accordance with the formulas set forth in the Agreement. (*Id.* at ¶¶ 34-35.)

iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is Justified Under the Claims of this Action

Individual Settlement Shares will be apportioned as follows: twenty percent (20%) as wages and eighty percent (80%) as penalties and interest. (Han Dec., *supra*, at ¶ 34.)

The allocation of wages, penalties, and interest was reached based on Defendants' realistic exposure for meal and rest break premiums, unpaid wages due to off-the-clock work, and underpaid overtime wages and sick leave pay due to Defendants' regular rates issue if this case were to go to trial. (Han Dec., *supra*, at ¶ 73.) Premium wages owed for noncompliant meal and rest breaks, unpaid wages due to off-the-clock work, and unpaid overtime wages and sick leave pay due to Defendants' failure to factor non-discretionary bonuses into employees' regular rates of pay qualify as wages. (*Ibid.*) Thus, the Parties added up the realistic exposures for rest break premiums and meal break premiums, the high-end realistic exposure for unpaid wages due to off-the-clock work, and the realistic exposure for underpaid overtime wages and sick leave pay ($127,261.52 + $155,488.84 + $407,813.46 + $87,668.61 = $778,232.43). (*Ibid.*) The realistic exposure of $778,232.43 that Plaintiffs can expect to receive for meal and rest break premiums, unpaid wages due to off-the-clock work, and underpaid overtime wages and sick leave pay represents about thirty percent (30.16%) of the high-end of the maximum total realistic exposure plus the PAGA penalties ($1,451,565.53 + $1,128,400.00 = $2,579,965.53). (*Ibid.*) Because this represents approximately thirty percent (30.16%) wages, the Parties determined that allocating twenty percent (20%) as wages and eighty percent (80%) as non-wages (penalties and interest) was reasonable. (Han Dec., *supra*, at ¶ 73.)

iv. Notice to the Class

Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendants will provide the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 37.) The Settlement Administrator will conduct a National Change of Address ("NCOA") Database search for all Class Members to obtain the most up-to-date address information. (*Id.* at ¶ 38.) Within fourteen (14) calendar days after Defendants provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail using the most current mailing address information available. (*Ibid.*) The Settlement Administrator will mail the Class Members Notice Packets in both English and Spanish. (*Ibid.*) Class Members and Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares and Individual PAGA Payments respectively. (*Ibid.*)

v. Distribution of Funds

No later than twenty (20) calendar days after the Effective Final Settlement Date and upon satisfaction of the preconditions described in the Settlement Agreement, Defendants shall deposit the Gross Settlement Amount of $850,000, along with Defendants' portion of employer-side payroll taxes, into the Qualified Settlement Fund ("QSF"). (Han Dec., *supra*, at ¶ 39.) Within fourteen (14) calendar days after Defendants fund the entire Gross Settlement Amount, along with Defendants' portion of employer-side payroll taxes, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares and Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the payment to the LWDA, and the Administration Costs. (*Ibid.*)

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Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 40.) Uncashed checks will be canceled and paid to the California State Controller's Office. (*Ibid.*)

vi. Release of Claims

Upon Defendants' fulfillment of their payment obligations under Section III(J)(8) of the Settlement Agreement, Plaintiffs and all Participating Class Members shall release the Released Parties from the Released Claims, as defined in Section I(JJ) the Settlement Agreement, occurring during the Class Period. (Han Dec., *supra*, at ¶ 41; Exhibit 2, ¶¶ I(JJ), I(KK), III(L).)

Upon Defendants' fulfillment of their payment obligations under Section III(J)(8) of the Settlement Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees, including Plaintiffs, shall release the Released Parties from the PAGA Released Claims, as defined in Section I(EE) of the Settlement Agreement, occurring during the PAGA Period. (Han Dec., *supra*, at ¶ 42; Exhibit 2, ¶¶ I(EE), I(JJ), III(M).) The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion. (Han Dec., ¶ 42.)

The Released Parties include Defendants and their past, present, and/or future, direct and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, including Endo International, PLC. (Han Dec., *supra*, at ¶ 43; Exhibit 2, *supra*, at ¶ I(KK).)

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With regard to class action releases, """[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint."'" (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases in this case are acceptable because they are limited to the scope of the allegations in the Complaint. Moreover, the released claims are """based on *the identical factual predicate* as that underlying the claims in the settled class action."'" (*Ibid.*) In other words, the released claims do not """go beyond the scope of the allegations in the operative complaint … ."'" (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Counsel for both Parties are particularly experienced in wage-and-hour employment law and class actions. (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial, and the viability of the defenses. (*Ibid.*) Class Counsel's experience guided their determination to endorse the proposed Settlement.[1] (*Ibid.*)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

California Rules of Court, rule 3.769 requires court approval for class action settlements.[2] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

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[1] The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, 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.

[2] The California Supreme Court has also 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, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

> (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.
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> (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 have discretion to approve settlements that are fair, not collusive, and consider "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.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." (*Kullar v. Foot Locker Retail, Inc., supra,* 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not require an explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all his claims, provided there is a record that allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar*, at p. 133.)

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i. The Settlement Amount of $850,000 Is Fair and Reasonable

The proposed Settlement was only possible following significant investigation and evaluation of Defendants' relevant policies and procedures and the data Defendants produced for the putative class, as referenced in Section III(b)(iii) above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 46.)

This investigation and evaluation informed Plaintiffs' central theories of liability that are predicated on Defendants' alleged: (a) failure to properly calculate and pay overtime wages; (b) failure to provide meal and rest breaks and pay applicable premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor Code section 229; (h) violation of Labor Code section 2698, *et seq.* (PAGA); and (i) violation of Business & Professions Code section 17200, *et seq*. (Han Dec., *supra*, at ¶ 47.) Defendants deny Plaintiffs' theories of liability. (*Id.* at ¶ 48.)

Although Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Dec., *supra*, at ¶ 49.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.[3] (*Ibid.*) These factors led Plaintiffs to discount the calculations of potential damages.

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[3] (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 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].)

ii. The PAGA Payment of $50,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Han Dec., *supra*, at ¶ 58.) Defendants asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants maintained that, in addition to their strong arguments against the underlying claims, they had a strong argument that it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendants argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **$21,700.00** (217 employees x $100 initial violations) on the low end and **$130,200.00** (217 employees x $100 x 6 theories of recovery) on the high end. (Han Dec., ¶ 61.)

Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Dec., *supra*, at ¶ 63.) Many of the causes of action brought were duplicative of the statutory claims, such as Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) The maximum penalties for each pay period are not justified. (*Ibid.*) It was arguable the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating $50,000 to PAGA civil penalties was reasonable based on a rate of approximately **$4.40** per pay period [$50,000 ÷ 11,372 pay periods in PAGA date range = **$4.40**], given the fact that Defendants are paying an additional $800,000 in the class settlement.[4] (*Ibid.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable.[5] (*Ibid.*)

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[4] (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of $5 per violation and a total PAGA penalty of $150,000 while the plaintiff requested a rate of $25 to $75 per violation and a total PAGA penalty of $70,000,000].)

[5] (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,

Considering Defendants' defenses, their supporting evidence, and their position that the case is not suitable for class treatment, the settlement of $850,000 is reasonable, adequate, and fair.

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 **$$8,525,668.23** on the low end and **$10,079,243.30** on the high end. (Han Dec., *supra*, at ¶ 64.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	$1,131,213.50	75%	65%	$127,261.52
Meal Break Premiums	$987,230.72	65%	55%	$155,488.84
Overtime/Minimum Wage: Off-the-Clock Work	$3,107,150.20 to $4,660,725.30	65%	75%	$271,875.64 to $407,813.46
Overtime/Minimum Wage: Regular Rate	$487,047.81	55%	60%	$87,668.61
Unreimbursed Business Expenses	$230,180.00	60%	70%	$27,621.60
Wage Statement Penalty	$1,117,550.00	50%	50%	$279,387.50
Waiting Time Penalty	$1,465,296.00	50%	50%	$366,324.00
MAXIMUM TOTAL EXPOSURE	**$8,525,668.23** to **$10,079,243.30**[6]			**$1,315,627.71** to **$1,451,565.53**[7]

Based on this analysis, the realistic recovery for this case is **$1,315,627.71** on the low end and **$1,451,565.53** on the high end. (Han Decl., *supra*, at ¶ 72.) The Gross Settlement Amount of $850,000 is approximately eight percent (8.43%) of the maximum potential exposure and about fifty-nine percent (58.56%) of the maximum realistic exposure at trial, which is a fair and adequate settlement. (*Ibid.*)

"[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims".)

6 (Han Decl., *supra*, at ¶¶ 51-57.)

7 (*Id.* at ¶¶ 65-71.)

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 1059, 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 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 in line with the realistic exposure had Plaintiffs prevailed at trial and provides significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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*, *supra*, 34 Cal.4th at p. 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 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. (Han Dec., *supra*, at ¶74.) Plaintiffs contend that as a former hourly-paid, non-exempt employees of Defendants, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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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.)

This case involves about three hundred seventeen (317) Class Members. (Han Dec., *supra*, at ¶ 75.) Thus, the Class is sufficiently numerous.[8] (*Ibid.*) All Class Members can and will be identified by Defendants through a review of Defendants' employment records concerning all individuals who are or previously were employed by Defendants in the State of California and classified as non-exempt employees at any time during the Class Period. (*Ibid.*)

ii. The Class Members Share a Well-defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." (*Ibid.*)

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8 (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of "as many as 190 current and former employees" is sufficiently numerous].)

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 v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) 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 Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 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. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS [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. (Han Dec., *supra*, at ¶ 76.) Plaintiffs contend that all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former employees of Defendants and allege that they and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 77.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

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3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 78.) Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs have no interest that is averse to the interests of the other Class Members. (*Ibid.*)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. But because several Class Members are current employees, Plaintiffs believe fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)

California Rules of Court, rule 3.769(f), provides:

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

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

V. CONCLUSION

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

Dated: August 17, 2022

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiffs

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 manderson@justicelawcorp.com

On August 17, 2022, 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: **Eldridge v. Endo Pharmaceuticals Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 770264-20**
Court Case No.: 30-2020-01140634-CU-OE-CXC
Orange 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 August 17, 2022, at Pasadena, California.

Mariah Anderson