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

GENE WEBER, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

SUNRISE MEDICAL (US) LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 20CV-01461
[Consolidated with Case No. 20CV-01707]

Assigned for all purposes to:
Honorable Brian McCabe
Courtroom 8

CLASS ACTION

**PLAINTIFF'S 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: April 20, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Courtroom 8

Complaint Filed: April 1, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 20, 2022, at 8:15 a.m., or as soon as the matter
2 may be heard, before the Honorable Brian McCabe in Courtroom 8 of the Merced County
3 Superior Court (Old Merced Courthouse), located at 627 W 21st Street, Merced, California
4 95340, Plaintiff Gene Weber (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or “Settlement”),
8 attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited
9 to, the means of allocation and distribution of funds and the allocations for
10 penalties under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
12 Enhancement Payment, and Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action and PAGA Settlement (“Notice”)
17 attached as **Exhibit A** to the Agreement;
- 18 • Approving the Election Not to Participate In (“Opt Out” From) Class Action
19 Settlement (“Exclusion Form”) attached as **Exhibit B** to the Agreement;
- 20 • Directing the mailing of the proposed Notice and Exclusion Form (collectively,
21 known as the “Notice Packet”) with a postage-paid return envelope to the proposed
22 Class;
- 23 • Approving the proposed deadlines for the notice and settlement administration
24 process;
- 25 • Approving Simpluris, 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 the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the Administration Costs, and approval of 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 [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: March 10, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$739,300.00 proposed
3 wage-and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all current
4 and former California-based (i.e., currently “residing” in California with the intent to remain in
5 California indefinitely) hourly-paid or non-exempt employees (whether hired directly or through
6 staffing agencies or labor contractors) of Defendant Sunrise Medical (US) LLC (“Defendant”) within the State of California at any time during the period from April 1, 2016, through March
7 20, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number
8 of Class Members is estimated to be three-hundred ninety-nine (399).

9
10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
11 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
12 proposed settlement of \$739,300.00 is well within the range of reasonableness. Class Counsel and
13 Plaintiff are convinced that the proposed Settlement is in the best interests of the Class Members
14 based on the negotiations and a detailed knowledge of the issues present in this action.

15 **II. BACKGROUND**

16 On March 31, 2020, Plaintiff, a former employee of Defendant, provided written notice
17 to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the
18 specific provisions of the Labor Code he contends Defendant violated and the theories supporting
19 his contentions. (Declaration of Douglas Han (“Han Dec.”), ¶ 10.)

20 On April 1, 2020, Plaintiff filed a wage-and-hour class action lawsuit against Defendant
21 in the Superior Court of California, County of Merced, Case No. 20CV-01461, alleging eight (8)
22 causes of action for violation of various sections of the California Labor Code and California
23 Business & Professions Code (the “Class Action”). (Han Dec., *supra*, at ¶ 11.)

24 On June 5, 2020, after the sixty-five (65) days’ notice period expired, Plaintiff filed a
25 representative PAGA (Private Attorneys General Act of 2004) action, pursuant to Labor Code
26 section 2698, *et seq.*, against Defendant in the Superior Court of California, County of Merced,
27 Case No. 20CV-01707 (the “PAGA Action”). (Han Dec., *supra*, at ¶¶ 12-13.)

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1 Plaintiff and Defendant (collectively, the “Parties”) attended mediation on the claims
2 alleged in both the Class Action and the PAGA Action with mediator Michael Loeb on November
3 17, 2020. (Han Dec., *supra*, at ¶ 14.) However, the Parties were unable to agree to a settlement of
4 Plaintiff’s claims pursuant to this mediation session. (*Ibid.*) On December 20, 2021, the Parties
5 attended a second mediation on the claims alleged in both the Class Action and the PAGA Action
6 with mediator Paul Grossman, Esq. (*Id.* at ¶ 15.) With the help of the mediator, the Parties were
7 eventually able to reach an agreement regarding the settlement of the claims alleged in both the
8 Class Action and the PAGA Action. (*Ibid.*)

9 As part of the settlement, following mediation, on January 3, 2022, Plaintiff filed a
10 Stipulation to File First Amended and Consolidated Class and Representative Action Complaint,
11 which the Court granted on January 13, 2022, thereby consolidating the Class Action and the
12 PAGA Action. (Han Dec., *supra*, at ¶ 16.) The Class Action, Case No. 20CV-01461, has been
13 designated as the lead case. (*Ibid.*) On or about March 4, 2022, Plaintiff filed a First Amended
14 Complaint against Defendant in the Superior Court of California, County of Merced, Case No.
15 20CV-01461, consolidating the Class Action and the PAGA Action (the “Action”). (*Id.* at ¶ 17.)

16 **III. INVESTIGATION/ LITIGATION HISTORY**

17 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

18 After Plaintiff filed his wage-and-hour class action lawsuit, both Parties engaged in
19 discovery. (Han Dec., *supra*, at ¶ 19.) Plaintiff propounded one (1) set of form interrogatories,
20 one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of
21 requests for production of documents. (*Ibid.*) Both Parties responded to each other’s discovery.
22 (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of
23 information and to attend mediation. (*Ibid.*)

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Both before and after the mediation on November 17, 2020, and before the mediation on December 20, 2021, the Parties conducted significant investigation and discovery of the relevant facts and law. (Han Dec., *supra*, at ¶ 20.) Specifically, Defendant produced documents relating to its wage-and-hour policies, practices, and procedures, time and pay records, and information and data relating to the size and scope of the Class and the number of workweeks in the Class Period. (*Ibid.*) Class Counsel also interviewed Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

Based upon the information provided by Defendant and interviews Class Counsel had with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant: (a) failed to provide employees with legally mandated meal and rest breaks and pay applicable premiums; (b) maintained an improper rounding practice that resulted in a significant amount of uncompensated time worked; (c) failed to reimburse employees for necessary business expenses; (d) issued noncompliant wage statements; and (e) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 22-27.)

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

During both mediation sessions, the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the claims and defenses versus settlement benefits. (Han Dec., *supra*, at ¶ 29.) With the assistance of the mediators, the Parties were eventually able to reach 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 both mediation sessions on November 17, 2020, and December 20, 2021, both Parties' counsel engaged in extensive arm's-length negotiations, which ultimately led to an agreement on settlement, the terms of which were memorialized in Settlement Agreement. (Han Dec., *supra*, at ¶ 45.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*)

1 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
2 and length of additional proceedings necessary to continue the litigation against Defendant. (Han
3 Dec., *supra*, at ¶ 46.) Plaintiff and Class Counsel have also considered the uncertainty and risk of
4 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
5 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
6 adequate, and reasonable settlement, and is in the Class Members' best interests. (*Ibid.*)

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

8 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
9 of Plaintiff's claims and Defendant's defenses before reaching the Settlement and engaged in
10 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
11 47.) The Settlement was only possible following significant investigation and evaluation of
12 Defendant's relevant policies and procedures and the data Defendant produced for the putative
13 class. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear
14 view of the strengths and weaknesses of their cases" sufficient to support the Settlement's
15 reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485
16 F.Supp. 610, 617.)

17 **c. Terms of the Proposed Settlement**

18 **i. Deductions from the Settlement**

19 The Parties have agreed (subject to and contingent upon the Court's approval) that this
20 action be settled and compromised for the non-reversionary total sum of \$739,300.00 ("Gross
21 Settlement Amount"), which includes, subject to Court approval: (a) the Attorney Fee Award to
22 Class Counsel in an amount not to exceed \$280,934.00 (38% of the Gross Settlement Amount);
23 (b) the Cost Award to Class Counsel in an amount not to exceed \$40,000.00 for reimbursement
24 of litigation costs and expenses; (c) the Class Representative Enhancement Payment in the amount
25 of \$10,000.00 to Plaintiff for his service as the Class Representative; (d) Administration Costs to
26 Simpluris, the Settlement Administrator, in an amount currently estimated at \$7,900.00, but not
27 to exceed \$10,000.00; and (e) the PAGA Payment of \$30,000.00, seventy-five percent (75%) of
28 which (\$22,500.00) will be paid to the LWDA and twenty-five percent (25%) of which

1 (\$7,500.00) shall be distributed to the Eligible Aggrieved Employees, on a pro rata basis. (Han
2 Dec., *supra*, at ¶ 30.) Defendant will be entitled to a credit toward its satisfaction of the Gross
3 Settlement Amount in the amount of \$89,300.00, which represents the amount previously paid to
4 Class Members for *Pick-Up Stix* settlements. (*Ibid.*)

5 **ii. Calculation of the Class Members' Individual Settlement Shares**

6 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
7 that \$368,366.00 ("Net Settlement Amount") will be distributed to Class Members – with an
8 average gross Individual Settlement Share estimated at \$923.22.¹ (Han Dec., *supra*, at ¶ 32.)

9 Each Participating Class Member's Individual Settlement Share will be apportioned as
10 twenty percent (20%) wages, fifty percent (50%) interest, and eighty percent (80%) penalties.
11 (Han Dec., *supra*, at ¶ 33.)

12 The Settlement Administrator will calculate and pay each Participating Class Member's
13 proportional share of the Net Settlement Amount in accordance with the formula listed in the
14 Settlement Agreement. (Han Dec., *supra*, at ¶ 34.) If a Participating Class Member executed a
15 settlement agreement during the course of the Action that represented a portion of the \$89,300.00
16 credit Defendant received toward the Gross Settlement Amount, that Participating Class Member
17 will have his or her Individual Settlement Share reduced by the amount of that settlement. (*Ibid.*)

18 In addition, the Settlement Administrator will calculate and pay each Eligible Aggrieved
19 Employee's proportional share of the PAGA Payment in accordance with the formula listed in
20 the Settlement Agreement. (Han Dec., *supra*, at ¶ 35.)

21 **iii. Notice to the Class**

22 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
23 Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
24 37.) Within fourteen (14) calendar days after the receipt of the Class Data from Defendant, the
25 Settlement Administrator will mail the Notice Packet to the Class Members via first-class regular
26 U.S. using the most current mailing address information available. (*Id.* at ¶ 38.) Class Members
27 are not required to submit a claim form to receive their Individual Settlement Shares. (*Ibid.*)

28 ¹ \$368,366.00 (Net Settlement Amount) / 399 (Class Members) = \$923.22.

1 **iv. Distribution of Funds**

2 Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall
3 deposit the \$650,000.00 needed to fund the Gross Settlement Amount of \$739,300.00 into the
4 Qualified Settlement Fund. (Han Dec., *supra*, at ¶ 39.) Within fourteen (14) calendar days after
5 the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments
6 due under the Settlement. (*Ibid.*)

7 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
8 their settlement checks within one hundred eighty (180) calendar days after the checks are mailed
9 to them. (Han Dec., *supra*, at ¶ 40.) If any checks are not redeemed or deposited within ninety
10 (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard.
11 (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period after
12 mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
13 calendar days after the checks are initially mailed, cancel the check(s), and pay the amount of the
14 Individual Settlement Share(s) to the California State Controller: Unpaid Wage Fund. (*Ibid.*)

15 **v. Release of Claims**

16 Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of the
17 Settlement Agreement, Plaintiff and the other Participating Class Members will fully and finally
18 release and discharge the Released Parties from the Released Claims ("Released Claims"). (Han
19 Dec., *supra*, at ¶ 41; Exhibit 2, *supra*, at §§ I.GG, I.HH, III.K.)

20 Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of the
21 Settlement Agreement, Plaintiff, the LWDA, and any other representative, proxy, or agent
22 thereof, including, but not limited to, the Eligible Aggrieved Employees will fully and finally
23 release and discharge the Released Parties from the PAGA Released Claims. (Han Dec., *supra*,
24 at ¶ 42; Exhibit 2, *supra*, at §§ I.BB, I.HH, III.L.)

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1 Upon Defendant’s fulfillment of its payment obligations under Section III (J)(9)(a) of the
2 Settlement Agreement, in exchange for the Class Representative Enhancement Payment in an
3 amount not to exceed \$10,000.00, and in recognition of his work and efforts in obtaining the
4 benefits for the Class and undertaking the risk of paying litigation costs in the event this matter
5 had not successfully resolved, Plaintiff provides a general release of claims for himself and any
6 respective spouse, heirs, successors and assigns. (Han Dec., *supra*, at ¶ 43; Exhibit 2, *supra*, at §
7 III.M.)

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

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

17 Counsel for both Parties are particularly experienced in wage-and-hour employment law
18 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
19 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
20 qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial,
21 and the viability of the defenses. (*Ibid.*) Class Counsel’s experience also guided their
22 determination to endorse the proposed Settlement.² (*Ibid.*)

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26 ² The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
27 number of objectors – is not determinable until the Notice has been provided to the Class
28 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.

1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.³
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

- 7 (a) A settlement or compromise of an entire class action, or a cause of action in
8 a class action, or as to a party, requires the approval of the court after
9 hearing.
10 . . .
11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

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

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

20 An understanding of the amount in controversy is an important factor in whether the
21 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
22 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
24 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
25 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129;
26 see also *Munoz*, at p. 409.)

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28 ³ 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

11 **i. The Settlement Amount of \$739,300 Is Fair and Reasonable**

12 The proposed Settlement was only possible following significant investigation and
13 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant
14 produced for the putative class, referenced in Section III above, which permitted Class Counsel
15 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
16 47.)

17 This investigation and evaluation informed Plaintiff’s central theories of liability. (Han
18 Dec., *supra*, at ¶ 48.) These claims are predicated on Defendant’s alleged: (a) failure to pay
19 overtime wages; (b) failure to provide compliant meal and rest breaks and pay applicable
20 premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
21 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor
22 Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code sections
23 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiff’s theories of liability. (*Id.* at ¶ 49.)

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1 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Dec., *supra*, at ¶ 50.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour
6 claims.⁴ (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

7 **ii. The PAGA Payment of \$30,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
10 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*,
11 at ¶ 57.) Defendant asserted that, regardless of the results of the underlying causes of action,
12 PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also
13 maintained that, in addition to its strong arguments against the underlying claims, it had a strong
14 argument that it would be unjust to award maximum PAGA penalties given the law's unsettled
15 state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
16 penalties by 30% under this authority].) Defendant argued that without stacking and limited to
17 the initial violation, the PAGA penalties would be limited to **\$31,200.00** (312 employees x \$100
18 initial violations) on the low end and **\$218,400.00** (312 employees x \$100 x 7 theories of
19 recovery) on the high end. (Han Dec., at ¶ 60.)

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

1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Decl., *supra*, at ¶ 62.) Many of the causes of action brought were duplicative of the statutory
3 claims such as violations of Labor Code sections 201, 202, 203, 204, 218.5, 226.3, 226.7, 510,
4 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$30,000.00 to PAGA
5 civil penalties was reasonable based on a rate of **\$2.11** per pay period [$\$30,000.00 \div 14,189$ pay
6 periods in PAGA date range = **\$2.11**], given the fact that Defendant is also paying an additional
7 \$620,000.00 in the class settlement and has already paid \$89,300.00 to Class Members for *Pick-*
8 *Up Stix* settlements.⁵ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no
9 indication that [the] amount was the result of self-interest at the expense of other Class Members,”
10 such amounts are generally considered reasonable.⁶ (*Ibid.*)

11 Considering Defendant’s defenses, its supporting evidence, and its position that the case
12 is not suitable for class treatment, the settlement of \$739,300.00 is reasonable, adequate, and fair.

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

14 Excluding the civil penalties, which could be discretionary for the reasons stated, the total
15 estimated potential exposure, assuming certification and prevailing at trial, would be
16 approximately **\$3,847,862.05**. (Han Dec., *supra*, at ¶ 63.)

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24 ⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
25 \$5.00 per violation and a total PAGA penalty of \$150,000.00 while the plaintiff requested a rate
of \$25.00 to \$75.00 per violation and a total PAGA penalty of \$70,000,000.00].)

26 ⁶ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
28 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$221,447.63	70%	60%	\$26,573.72
Meal Break Premiums	\$1,284,570.56	60%	50%	\$256,914.11
Overtime/Minimum Wage: Rounding	\$308,962.86	30%	40%	\$129,764.40
Unreimbursed Business Expenses	\$122,424.00	30%	70%	\$25,709.04
Wage Statement Penalty	\$1,248,000.00	60%	50%	\$249,600.00
Waiting Time Penalty	\$662,457.60	60%	50%	\$132,491.52
MAXIMUM TOTAL EXPOSURE	\$3,847,862.05⁷			\$821,052.79⁸

Based on this analysis, the realistic recovery for this case is **\$821,052.79**. (Han Dec., *supra*, at ¶ 70.) The Gross Settlement Amount of \$739,300.00 is approximately nineteen percent (19.21%) of the potential exposure and approximately ninety percent (90.04%) of the realistic exposure at trial. (*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 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. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a significant recovery for the Class Members.

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⁷ (Han Dec., *supra*, at ¶¶ 52-56.)

⁸ (*Id.* at ¶¶ 64-69.)

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

2 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one
3 of a common or general interest, of many persons, or when the parties are numerous, and it is
4 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,
5 *supra*, 34 Cal.4th at p. 326.) California courts certify class actions where the plaintiff identifies
6 “both [1] an ascertainable class and [2] a well-defined community of interest among class
7 members.” (*Ibid.*)

8 The proposed Class is ascertainable and numerous as to make it impracticable to join all
9 Class Members, and there are common questions of law and fact that predominate over any
10 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 71.) Plaintiff contends
11 that as former hourly-paid, non-exempt employees of Defendant, his claims are typical of the
12 claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class.
13 (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate actions by individual Class Members
14 would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

16 “Ascertainability is required in order to give notice to putative class members as to whom
17 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
18 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
19 by describing a set of common characteristics sufficient to allow a member of that group to
20 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
21 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
22 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

23 This case involves approximately three hundred ninety-nine (399) Class Members. (Han
24 Dec., *supra*, at ¶ 72.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva*
25 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as
26 many as 190 current and former employees” is sufficiently numerous].)

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

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

12 **1. Common Issues Predominate**

13 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
14 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
15 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
16 other words, courts determine whether the elements necessary to establish liability are susceptible
17 to common proof, even if the class members must individually prove their damages. (*Brinker*
18 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
19 regularly granted class certification when the plaintiff can present evidence of common policies.
20 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
21 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
22 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
23 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

24 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
25 alleged. (Han Dec., *supra*, at ¶ 73.) Plaintiff contends that all Class Members were subject to the
26 same or similar employment practices, policies, and procedures, described in detail above. (*Ibid.*)

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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.) Plaintiff is a former employee of Defendant and alleges he and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 74.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 75.) He has conducted himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Further, Plaintiff has 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. Plaintiff contends 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. Because several Class Members are current employees, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

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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.

V. CONCLUSION

Plaintiff submits 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.

JUSTICE LAW CORPORATION

By: D. Han
Douglas Han
Attorneys for Plaintiff

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PROOF OF SERVICE
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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 jkislow@justicelawcorp.com

On March 14, 2022, I served the foregoing document described as

**PLAINTIFF'S 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: **Weber v. Sunrise Medical (US) LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-781068-20**
Court Case No.: 20CV-01461
Merced 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 March 14, 2022, at Pasadena, California.


Jillian Kislow