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

SOVANN TOUCH, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PRESIDIO COMPONENTS, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: BCV-20-101005-DRL

Honorable David R. Lampe
Department 11

CLASS ACTION

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

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

Hearing Date: July 21, 2020
Hearing Time: 8:30 a.m.
Hearing Place: Department 11

Filed: April 17, 2020
Trial: None Set

1 **PLEASE TAKE NOTICE** that on July 21, 2020 at 8:30 a.m., or as soon as the matter may be
2 heard before the Honorable David R. Lampe in Department 11 of the Kern County Superior Court,
3 located at 1415 Truxtun Avenue, Bakersfield, California 93301, Plaintiff Sovann Touch (“Plaintiff”)
4 will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described herein
6 and as set forth in the parties’ Settlement Agreement (“Settlement,” “Agreement,” or
7 “Settlement Agreement”), attached as **“EXHIBIT 1”** to the Declaration of Douglas Han,
8 including, and not limited to, the means of allocation and distribution of funds, and the
9 allocations for penalties under the California Labor Code Private Attorneys General Act
10 of 2004 (“PAGA”), Class Counsel Fees and Costs Payment, Class Representative
11 Payment, and the Settlement Administration Payment;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff as the Class Representatives;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the proposed Notice of Class Action Settlement (“Class Notice”) attached as
16 “Exhibit A” to the Settlement Agreement;
- 17 • Directing the mailing of the proposed Class Notice with a postage-paid return envelope
18 (hereinafter collectively referred to as the “Notice Packet”) to the proposed Class;
- 19 • Approving the proposed deadlines for the notice and Settlement Administration process;
- 20 • Approving Phoenix Class Action Administration Solutions as the Settlement
21 Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement, at which time the Court will also consider whether to grant Final Approval of the requests for Class Counsel Fees, Costs Payment, Class Representative Payment, approval of the allocation for PAGA Payment, and the Settlement Administration Payment.

This motion is based upon the following memorandum of points and authorities; the Declaration of proposed Class Counsel (Douglas Han); and the [Proposed] Order lodged together with this motion, as well as 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: June 9, 2020

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 \$1,400,000 proposed wage and
3 hour class action settlement by Plaintiff Sovann Touch (“Plaintiff”) on behalf of himself and all current
4 and former hourly-paid and/or non-exempt employees of Presidio Components, Inc. (“Presidio
5 Components” or “Defendant”) who have worked in California at any time between March 25, 2016 and
6 the Preliminary Approval of the Settlement or June 30, 2020, whichever occurs first (“Class Period”).
7 At the time of this filing, Defendant estimates that there are approximately two-hundred and thirty-eight
8 (238) individuals that would be included in this Settlement.

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
10 vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this proposed
11 settlement of \$1,400,000 – with an average settlement share amount estimated at \$3,442.23¹ – is well
12 within the “ballpark” of reasonableness.

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

20 **II. BACKGROUND**

21 Presidio Components, Inc. specializes in manufacturing and providing a wide range of ceramic
22 capacitors. This case involves all current and former hourly-paid and/or non-exempt employees of
23 Presidio Components who have worked in California during the Class Period. Plaintiff alleges that at all
24 times during the Class Period, Defendant’s non-exempt employees work and/or worked on an hourly
25 basis. (Declaration of Douglas Han “Han Dec.” ¶ 8).

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¹ \$819,250 (Net Settlement Amount) / 238 (Class Members) = \$3,442.23

1 Plaintiff Sovann Touch, a former non-exempt employee for Defendant, filed a Class Action
2 Complaint on April 17, 2020, against Defendant alleging wage and hour violations on behalf of all
3 current and former non-exempt employees who worked for Defendant between March 25, 2016 to
4 present. The operative complaint alleges causes of action for failure to provide meal and rest periods,
5 pay all wages worked, failure to pay minimum wages, failure to provide compliant wage statements,
6 failure to pay all wages due at time of termination and failure to reimburse business expenses. (Han Dec.
7 ¶ 9).

8 On May 11, 2020 after extensive arms-length negotiations that lasted a period of several weeks,
9 the parties reached a settlement and entered into a binding Memorandum of Understanding. (Han Dec. ¶
10 10).

11 Defendant denies the allegations of the class action in their entirety, denies any liability or
12 wrongdoing of any kind associated with the claims alleged in this action, and further denies that, for any
13 purpose other than settling this action, this matter is appropriate for class treatment. Defendant further
14 contends that it has complied at all times with all applicable California laws, the California Labor Code,
15 the applicable California Wage Order(s), and the Unfair Competition Law. Defendant finally contends
16 that, if this matter were to be litigated further, it would have strong defenses to class certification and on
17 the merits. (Han Dec. ¶ 11).

18 **III. INVESTIGATION/ LITIGATION HISTORY**

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

20 This case is an example of how the Parties can efficiently manage a class action lawsuit without
21 spending years litigating and effectively recover substantial settlement for the Class Members. Prior to
22 filing the complaint, the Parties engaged in informal discovery and investigation. After filing the
23 complaint, the Parties engaged in confirmatory discovery. Plaintiff propounded one (1) set of form
24 interrogatories, one (1) set of special interrogatories, one (1) set of requests for production, and one (1)
25 set of requests for admission. Defendant produced policy documents, time and pay data and sample
26 punch and corresponding data for ten percent of the class members. Defendant also produced complete
27 personnel files, payroll records, and time records for Plaintiff (Han Dec. ¶ 12).

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1 Based upon Defendant's responses and document production, Plaintiff contends – and Defendant
2 denies – that Defendant did not provide lawful meal and rest periods. Plaintiff asserts that Defendant
3 failed to maintain a formal written meal and rest period policies that comply with California law.
4 Putative Class Members claim that they were rarely afforded timely, uninterrupted meal and rest breaks
5 while working, resulting in Defendant's exposure for Labor Code § 226.7 premiums. (Han Dec. ¶ 13).

6 Further, Plaintiff contends – and Defendant denies – that Defendant's wage statements do not
7 itemize all hours worked, as none of the wage statements show the time that class members are working
8 through meal periods as well as off-the-clock work. Plaintiff contends – and Defendant denies – based
9 on these contentions served as the basis for an independent and derivative violation of the wage
10 statement claim. (Han Dec. ¶ 14).

11 Further, Plaintiffs contend – and Defendant denies – that Defendant failed to properly
12 compensate its hourly-paid or non-exempt employees for overtime. Plaintiffs assert that Defendant
13 failed to include bonuses and incentive pay to non-exempt employees' regular rate for purposes of
14 overtime pay. (Han Dec. ¶ 15).

15 Plaintiffs contend – and Defendant denies – that Defendant failed to properly reimburse its
16 hourly-paid or non-exempt employees for out-of-pocket business expenses, including the cost of using
17 their own personal cellular phone for business purposes. (Han Dec. ¶ 16).

18 Defendant denies Plaintiff's allegations in their entirety. First, Defendant argues that it has ample
19 evidence to show that Plaintiff and the settlement class were afforded ample opportunity and discretion
20 to take legally-compliant meal and rest breaks. In particular, Defendant denies that Plaintiff and the
21 settlement class were subjected to a facially unlawful policy or that or that their duties failed to provide
22 them meaningful opportunities to take breaks. Second, Defendant contends that it always required and
23 encouraged Plaintiff and the settlement class to record all hours worked, whether overtime or straight
24 time.. Third, Defendant asserts that Plaintiff and the settlement class were always properly paid
25 overtime. Fourth, Defendant asserts that Plaintiff and the settlement class were not required to use their
26 personal cell phone for business use and if they did, they could have submitted for reimbursement. Fifth,
27 Defendant asserts that it afforded Plaintiff and the settlement class clear wage statements with all the
28 required information—whether in print or electronically. Defendant thus denies that Plaintiff and the

1 settlement class can recover on any of the derivative claims asserted including waiting time penalties,
2 wage statements, and PAGA. (Han Dec. ¶ 17).

3 Per the above, the Parties took staunchly conflicting positions concerning Defendant’s policies
4 and procedures and their effect on the putative class members.

5 **b. The Parties Conducted Arms-Length Negotiations Which Resulted in the Settlement**
6 **Agreement**

7 Through extensive settlement negotiations conducted at arms-length and at an adversarial
8 position, the Parties ultimately were able to reach an agreement on settlement, the terms of which were
9 memorialized in a “Settlement Agreement” (referred to herein as the “Settlement Agreement” or
10 “Settlement”) that the Parties seek preliminary approval of in the instant motion. (Han Dec. ¶ 18; Ex. 1).

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be
14 settled and compromised for the non-reversionary total sum of \$1,400,000 (“Gross Settlement Amount”
15 or “MSA”) which includes, subject to Court approval: (a) Class Counsel Fees Payment of up to
16 \$532,000 (38% of the GSA) to compensate Class Counsel for work already performed and all work
17 remaining to be performed in documenting the settlement, administrating the settlement and securing
18 Court approval; (b) Class Counsel Costs Payment for actual litigation costs currently estimated to be
19 \$10,000;² (c) Class Representative Payment to the named Class Representative in a sum not to exceed
20 \$10,000 in consideration for a general release of claims, for initiating and prosecuting the class action
21 complaint, serving as the Class Representative, work performed, and risks undertaken for the payment
22 of attorneys’ fees and costs in the event they had been unsuccessful in his matter; (d) Settlement
23 Administration Payment to Phoenix Class Action Administration Solutions (“Phoenix”), estimated at
24 approximately \$10,000 and (e) LWDA payment of \$18,750 (which is 75% of the \$25,000 allocated to
25 the PAGA Payment). (Han Dec. ¶ 19).

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28 ² The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for final approval.
At that time, Plaintiff will ask the Court to approve the amount of these costs. (Han Dec. ¶ 23).

1 **ii. Calculation of the Settlement Shares to Class Members**

2 After all Court-approved deductions from the GSA, it is estimated that \$819,250 (“Net
3 Settlement Amount” or “NSA”), less all applicable employee taxes, will be distributed to Class
4 Members – with an average settlement share estimated at \$3,442.23. Subject to the terms and conditions
5 of the Settlement, the Settlement Administrator will calculate and issue Settlement Shares based on the
6 following formula:

7 The percentage share of the Settlement Fund to be paid to each Participating Class
8 Member will be determined by dividing the number of Individual Work Weeks of each
9 Participating Class Member during the Class Period by the Total Work Weeks of all the
Participating Class Members during the Class Period.

10 Under no circumstances will any portion of the \$1,400,000 settlement revert to Defendant. (Han Dec. ¶
11 20).

12 **iii. Notice to the Class**

13 Within ten (10) business days after entry of the preliminary approval order, Defendant shall
14 deliver to the Settlement Administrator the Class Data necessary to calculate each Class Member’s
15 individual Settlement Share. Within fourteen (14) days after receiving the Class Data, Phoenix shall mail
16 copies of the Class Notice to all Class Members via regular First-Class U.S. Mail. The Notice advises
17 the Class of their rights to participate in the settlement and how and when to object or request exclusion
18 from the settlement. Class Members are not required to submit a claim form to receive payment. (Han
19 Dec. ¶ 21). The proposed Notice is attached as Exhibit A to the Settlement Agreement, which is Exhibit
20 1 to the Declaration of Douglas Han.

21 **iv. Distribution of Funds**

22 Within twenty-one (21) calendar days after the Court order granting Final Approval, Defendant
23 will make a one-time deposit of the Gross Settlement Amount by wiring the funds into a Qualified
24 Settlement Fund (“QSF”) set up and controlled by Phoenix. (Han Dec. ¶ 22).

25 Phoenix shall pay the Settlement Shares, Class Representative Payment, Class Counsel Fees and
26 Costs Payment, PAGA Payment, and Settlement Administration Payment within seven (7) business days
27 after the funding of the Settlement. (Han Dec. ¶ 23).

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1 Any checks issued to Participating Class Members shall remain valid and negotiable for one
2 hundred and eighty (180) days from the date of their issuance. If any checks remain uncashed or not
3 deposited within one hundred and fifty (150) calendar days after its last mailing to the Participating
4 Class Member, a postcard informing him or her that unless the check is cashed within the next 30 days,
5 it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but
6 not cashed. If the checks are not cashed within one hundred and eighty (180) calendar days after the
7 checks are mailed, Phoenix will pay the amount of the uncashed Individual Settlement Share to the Non-
8 profit organization Access Youth Academy in San Diego, California. (Han Dec. ¶ 24).

9 **v. Release of Claims**

10 Upon the final approval of the settlement by the court, the Participating Class Members will
11 release and discharge Defendant, and its former and present parents, subsidiaries, and affiliates, and their
12 current and former officers, directors, employees, partners, shareholders and agents, and the
13 predecessors and successors, assigns, and legal representatives of all such entities and individuals
14 (“Class Members’ Released Parties”), from the claims below arising during the period from March 25,
15 2016, to the date on which the court gives preliminary approval of the Settlement or June 30, 2020,
16 whichever date is earlier (“Class Members’ Released Period”).

17 Plaintiff waives and release Defendant, and its former and present parents, subsidiaries, and
18 affiliates, and their current and former officers, directors, employees, partners, shareholders and agents,
19 and the predecessors and successors, assigns, and legal representatives of all such entities and
20 individuals from all claims, rights, demands, causes of action, damages, and penalties, whether civil or
21 statutory, known or unknown, that he has or had against any of the Released Parties prior to their
22 execution of this Agreement. Plaintiff expressly waives the provisions, rights and benefits of section
23 1542 of the California Civil Code. (Han Dec. ¶ 25).

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1 **IV. ARGUMENT**

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

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

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

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

17 **b. The Settlement Is Fair, Reasonable, and Adequate**

18 In deciding whether to approve a proposed class action settlement under Code of Civil Procedure
19 § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford*
20 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is presumed fair under
21 the following circumstances: (1) the parties reached settlement after arms-length negotiations;
22 (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently;
23 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v.*
24 *Ford Motor Co., supra*, at 1802. As the following shows, all of these elements are present here, and the
25 Court’s grant of preliminary approval is therefore requested.

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28 ³The 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; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

2 The Settlement was reached as a result of arms-length negotiations. Though cordial and
3 professional, the settlement negotiations have been, at all times, adversarial and non-collusive. Counsel
4 for the Parties conducted extensive arm’s length settlement negotiations until the parties ultimately
5 reached agreement on the major terms of a settlement. The terms of the Settlement are memorialized in
6 the Settlement Agreement. (Han Dec. ¶ 26, Ex. 1).

7 Plaintiff believes in the merits of his case, but also recognize the inherent risks of litigation and
8 understand the benefit of the Class receiving settlement funds immediately as opposed to risking
9 continued litigation in achieving class certification, the merits of the case before and after trial, the
10 damages awarded, and/or an appeal that can take years to litigate. (Han Dec. ¶ 27).

11 **d. The Settlement Is the Result of Thorough Investigation and Discovery**

12 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
13 reaching the proposed settlement, and performed sufficient investigation, research and discovery to
14 support the settlement. The settlement was only possible following discovery and evaluation of
15 Defendant’s policies and procedures, as well as the data produced for the putative class, which permitted
16 Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation
17 has reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of
18 their cases” sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp.
19 610, 617.

20 **i. Counsel for Both Parties Are Experienced in Similar Litigation**

21 Both Plaintiff’s counsel and Defendant’s counsel are particularly experienced in wage and hour
22 employment law and class actions. Plaintiff’s counsel has significant experience in litigating unpaid
23 wages, unprovided meal period, and unprovided rest period class actions. (Han Dec. ¶¶ 4-7).

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1 Plaintiff's counsel has prosecuted numerous cases on behalf of employees for California Labor
2 Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate
3 settlement versus trial on a fully informed basis and to evaluate the viability of the defenses. This
4 experience instructed Plaintiff's counsel on the risks and uncertainties of further litigation and guided
5 their determination to endorse the proposed settlement.⁴ (Han Dec. ¶¶ 4-7).

6 **ii. The Proposed Settlement is a Reasonable Compromise of Claims**

7 An understanding of the amount in controversy is an important factor into whether the settlement
8 "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and
9 the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
10 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.
11 The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced
12 against the amount offered in settlement." *Id.*

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

22 As the following subsections show, the Parties' investigation and discovery revealed plenty of
23 reasons to discount claims and agree to this settlement.

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28 ⁴ 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.

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2 The proposed settlement was only possible following significant discovery and evaluation of
3 Defendants' relevant policies and procedures, as well as the data they produced for the putative Class as
4 referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis
5 of liability and potential damages. (Han Dec. ¶ 28).

6 This discovery and investigation resulted in Plaintiff's central theories of liability, which are
7 predicated on Plaintiff's claims that Defendant failed to maintain a written policy providing compliant
8 meal and rest periods, failed to properly adjust the regular hourly rate for purposes of calculating
9 overtime owed, failed to provide compensation for off-the-clock work resulting from an illegal rounding
0 policy, failed to reimburse business expenses, and failed to provide employees with accurate itemized
1 wage statements. (Han Dec. ¶ 29).

2 Defendant vehemently denies Plaintiff's theories of liability and contends, as stated above, that
3 all meal and rest periods were provided in compliance with California law, that all wages and
4 reimbursements were properly paid to class members, and that it provided wage statements in
5 compliance with Labor Code § 226. Defendant argues that if litigation were to continue, it feels
6 confident that it would prevail. (Han Dec. ¶ 30).

Although Plaintiff believes the case is suitable for certification on the claimed basis that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the putative class members, uncertainties with respect to certification are always present. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions with respect to certification of wage and hour claims.⁵ (Han Dec. ¶ 31).

3 Although remaining confident in the strengths of his claims, all these factors led Plaintiff to
4 discount the following calculations of potential damage claims.

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⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class and ordering summary adjudication in favor of employees), *review granted*, 171 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); *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)).

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Specifically, Plaintiff claims - and Defendant denies - that Defendant failed to calculate the overtime pay properly by including bonuses and incentives into the regular rate of pay. While the exact underpayment in nominal for damages calculation purposes, each instance results in a potential PAGA penalty, wages statement penalty and importantly the waiting time penalties. (Han Decl. ¶ 32).

Further, Plaintiff claims – and Defendant denies – that Defendant failed to accurately record hours worked by putative class members while rounding time making it likely that Defendant issued wage statements in violation of *California Labor Code* section 226(a) in that the wage statements would also fail to state the accurate number of hours worked. Plaintiff calculates Defendant’s potential exposure as to this claim to be approximately \$511,450 (193 x ((1 pay period x \$50 initial violation) + (26 pay periods x \$100 subsequent violations)). (Han Dec. ¶ 34).

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1 If Plaintiff can prove his failure to pay all wages owed, and underpayment of overtime, he is then
2 entitled to waiting time penalties in the amount of 30 day's worth of wages. Plaintiff calculates
3 Defendant's maximum potential exposure as to this claim to be approximately \$177,660 (30 days x 8
4 hours x \$16.85 x 45). (Han Dec. ¶ 35).

5 Plaintiffs claim – and Defendant denies – that employees were required to use their own cell
6 phones to make business related calls and take photographs. Plaintiffs allege that Defendant was
7 required to reimburse employees for this expense, in accordance with Labor Code § 2802, but failed to
8 do so. Defendant attributed no value to this claim. However, Plaintiffs argued that Defendant had to
9 reimburse for a portion of the phone data service. Based upon investigation, Plaintiffs estimate that each
10 employee attributed approximately five percent or \$4.00 per month on average on their cell phone plans
11 for this data.⁶ Plaintiffs calculate Defendant's maximum potential exposure as to this claim to be
12 approximately \$32,585 (8,146 months x \$4 per month). (Han Dec. ¶ 36).

13 The provisions of the Labor Code potentially triggering PAGA penalties in this case
14 include but are not limited to Labor Code sections 204, 226.7, 512(a), 558, 1174, 1194, 1198, and 2802.
15 Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are
16 not mandatory but permissive and discretionary. Defendant maintained that, in addition to its strong
17 arguments against the underlying claims, it had a strong argument that it would be unjust to award
18 maximum PAGA penalties given the current unsettled state of law. (Han Decl., ¶ 37.)

19 Class Counsel calculated penalties under this cause of action by multiplying the number
20 of active Class Members (because of the shortened statutory period for this claim), by the civil penalties
21 that each could be awarded for the Labor Code sections enumerated under Labor Code section 2699.5
22 that were applicable in this case. Class Counsel then applied discounts in light of the countervailing
23 arguments with regard to the other causes of action, as well as the Court's power to award "a lesser
24 amount than the maximum civil liability." Lab. Code § 2699(e)(2). (Han Decl., ¶ 38)

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28 ⁶ Cell phone charges were based on the assumption of \$80 per month of cellular phone bill with 5%
allocated to business purposes including calls and time keeping.

1 Given the state of the law and the range of PAGA penalties requested and actually awarded in
2 California courts, it is difficult to determine a reasonable value and actual exposure for PAGA penalties.
3 However, if PAGA penalties are granted on any one of the violations alleged in Plaintiffs' operative
4 complaint, the total penalties exposure for the eligible pay periods could be approximately \$0 to
5 \$492,000 (\$5,300 x 193). Plaintiffs calculated Defendant's PAGA exposure using a 100% violation rate
6 based on the average number of pay periods during the one-year statutory period. If this amount were to
7 be multiplied by the alleged violations under the PAGA cause of action the civil penalties could be \$0 to
8 \$ 3,943,200. (Han Decl., ¶ 39.)

9 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced. Many of
10 the causes of action brought were duplicative of the statutory claims such as violations of California
11 Labor Code section 201, 204, 226(e), 510, 512(a), 1194, 1198, and 2802. Of these violations, section
12 226(e) is a derivative claim. For the off-the-clock claim there was no hard data to support this claim
13 other than testimony and rest period violations, did not occur every single pay period. Thus, the
14 maximum penalties for each pay period is not justified. It was indeed arguable whether the Court would
15 award the maximum penalties under the law. Thus, allocating \$25,000 to PAGA civil penalties was
16 reasonable. Where PAGA penalties are negotiated in good faith and "there is no indication that [the]
17 amount was the result of self-interest at the expense of other Class Members," such amounts are
18 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist.
19 LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
20 579 (20 10) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate
21 any damages to the PAGA claims."). Parties negotiated that approximately an average of \$129 in
22 penalties per aggrieved employee (approximately 193) would be justified for PAGA penalties. (Han
23 Decl., ¶ 40.)

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1 Defendant argues that if litigation continues, it will show that non-exempt employees were
2 provided with compliant meal and rest periods. Defendant argues that it posted the IWC wage orders
3 which provided for lawful and compliant meal and rest breaks under California law. Defendant argues
4 that meal periods were provided in lawful timeframes and that employees were specifically instructed
5 that they were prohibited from performing any work during meal periods. Defendant argues that to
6 determine when meal periods were taken each shift and whether work was being conducted during meal
7 periods, an individual inquiry of each employee regarding how long their shift was and when they took a
8 meal period which would show that individualized issues predominate. Defendant also argues that if
9 employees performed any off-the-clock work during their meal periods, it violated company policy and
10 unknown to Defendant. Defendant argues it pays for all time worked as recorded by employees.
11 Likewise, Defendant argues that its rest period practices conform to California law, and those class
12 members are provided with rest periods in compliant time frames. As no records of rest periods exist,
13 Plaintiff would have to ask each class member when they took a rest period during any given shift, and
14 individual issues would also predominate as to this claim. Defendant contends that under *Brinker*, it is
15 not required to police its employees to ensure they take meal and rest breaks. If these breaks were not
16 taken, Defendant argues this was due to the employees' decisions not to take the breaks. (Han Dec. ¶
17 41).

18 Accordingly, taking into consideration Defendant's defenses, its supporting evidence, and its
19 position that the action is not suitable for class treatment, the settlement amount of \$1,400,000– with an
20 average settlement share amount estimated at \$3,442.23 – is a reasonable and fair settlement.

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

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

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

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1 The proposed Notice meets all of these requirements. The proposed Notice advises the Class of
2 their rights to participate in the Settlement, how and when to object to or request exclusion from the
3 Settlement, and the date, time, and location of the final approval hearing. *See* Han Dec. Ex. A to Ex 1.

4 **V. CONCLUSION**

5 Plaintiff respectfully submits that the proposed settlement is in the best interests of the class, as it
6 is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under the
7 applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved
8 by the Court, the class should be conditionally certified for purposes of settlement only, and the Notice
9 of Class Action Settlement should be approved.

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11 Dated: June 9, 2020

JUSTICE LAW CORPORATION

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14 Douglas Han
15 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, California 91103 and my electronic service address is arivera@justicelawcorp.com.

On June 9, 2020, I served the foregoing document described as

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

for the following case: **Touch v. Presidio Components, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-780310-20**
Court Case No.: BCV-20-101005
Kern 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

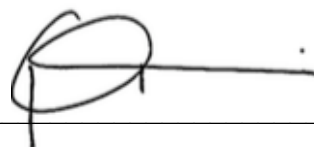
[X] BY ELECTRONIC SUBMISSION

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 June 9, 2020, at Pasadena, California.



Allana Rivera