

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 326572)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

GERALD ANGELES and ANDRES
BECERRA, individually, and 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”);

Plaintiff,

v.

IKRUSHER, INC., a California corporation;
DAVID BO CHEN, an individual; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: MSC20-01312

Honorable Edward G. Weil
Department 39

CLASS ACTION

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

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

Complaint Filed: July 16, 2020
FAC Filed: September 14, 2020
SAC Filed: June 21, 2021
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that as soon as the matter may be heard before the Honorable
2 Edward G. Weil in Department 39 of the Contra Costa Superior Court-Martinez, located at 725
3 Court Street, Martinez, CA 94553, Plaintiffs Gerald Angeles (“Plaintiff Angeles”) and Andres
4 Becerra (“Plaintiff Becerra”) (collectively, “Plaintiffs”) will and hereby move for an order:

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

28 ///

- 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 Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

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

Dated: October 1, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	INVESTIGATION/ LITIGATION HISTORY	3
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	3
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action.....	6
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	6
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations.....	7
iii.	The Settlement Is the Result of Thorough Investigation and Discovery....	7
c.	Terms of the Proposed Settlement.....	8
i.	Deductions from the Settlement	8
ii.	Calculation of the Settlement Payments to Class Members	8
iii.	Notice to the Class.....	10
iv.	Distribution of Funds.....	10
v.	Release of Claims	11
d.	Counsel for Both Parties Are Experienced in Similar Litigation	12
IV.	ARGUMENT	13
a.	Class Action Settlements Are Subject to Court Review	13
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	13
i.	The Settlement Is Fair and Reasonable	14
ii.	The Settlement Amount of \$150,000 Is Reasonable	16
c.	Discount Analysis Justifies the Settlement.....	19
d.	Conditional Certification of the Class Is Appropriate	20
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous	21
ii.	The Class Members Share a Well-Defined Community of Interest.....	21

1	1.	Common Issues Predominate	22
2	2.	Plaintiffs’ Claims Are Typical of the Class Claims	22
3	3.	Plaintiffs are Adequate to Represent the Class.....	23
4	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
5		this Controversy	23
6	e.	The Settlement Is Fair, Reasonable, and Adequate	23
7	f.	Notice to Class Members Complies with California Rule of Court 3.769(f)	24
8	V.	CONCLUSION	24

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	15
<i>Amaral v. Cintas Corp.,</i>	
163 Cal. App. 4 th 1157 (2008)	17
<i>Bartold v. Glendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	21
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	13
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979)	7, 14
<i>Brinker Restaurant Corporation v. Superior Court,</i>	
53 Cal. 4 th 1024 (2012)	22
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	21, 22
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	18
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2d Cir. 1974)	20
<i>Classen v. Weller,</i>	
145 Cal. App. 3d 27 (1983)	22
<i>Costter v. Lyft, Inc.,</i>	
193 F. Supp. 3d 1030 (N.D. Cal. 2016)	18
<i>Dunbar v. Albertson's Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	15
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	13, 23, 24

1	<i>Espinoza v. Galardi South Enterprises Inc.,</i>	
2	Case No. 1:14-cv-21244 (S.D. Fla. 2016)	22
3	<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
4	169 Cal. App. 4 th 1524 (2008)	21
5	<i>Green v. Obledo,</i>	
6	29 Cal. 3d 126 (1981)	13
7	<i>Harris v. Superior Court,</i>	
8	154 Cal. App. 4 th 164 (2007)	15
9	<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
10	89 Cal. App. 4 th 908 (2001)	21
11	<i>Hopson v. Hanesbrands Inc.,</i>	
12	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	19
13	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
14	452 U.S. 905 (1981)	13
15	<i>Jones v. JGC Dallas LLC,</i>	
16	Case No. 3:11-cv-02743 (N.D. Tex. 2014)	22
17	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
18	168 Cal. App. 4 th 116 (2008)	13, 14
19	<i>Linder v. Thrifty Oil Co.,</i>	
20	23 Cal. 4 th 429 (2000)	21
21	<i>Linney v. Cellular Alaska Partnership,</i>	
22	151 F. 3d 1234 (9 th Cir. 1998)	20
23	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
24	186 Cal. App. 4 th 399 (2010)	13, 14
25	<i>Nordstrom Com. Cases,</i>	
26	186 Cal. App. 4 th 576 (2010)	19
27	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
28	34 Cal. 4 th 319 (2004)	15, 20, 21, 22

1	<i>In re Tableware Antitrust Litig.,</i>	
2	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	20
3	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
4	38 Cal. 3d 488 (1985).....	14
5	<i>Ubrino v. Orkin Svcs. Of Calif., Inc.,</i>	
6	726 F. 3d 118 (9 th Cir. 2013)	17
7	<i>Vasquez v. Superior Court,</i>	
8	4 Cal. 3d 800 (1971).....	13
9	<i>Viceral v. Mistras Grp., Inc.,</i>	
10	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016)	18
11	<i>Walsh v. IKON Solutions, Inc.,</i>	
12	148 Cal. App. 4 th 1440 (2007)	15
13	<i>Yocupicio v. PAE Grp., LLC,</i>	
14	795 F. 3d 1057 (9 th Cir. 2015)	18
15	<u>Statutes</u>	
16	Business and Professions Code §§ 17200	15
17	Code of Civil Procedure § 382	20, 23
18	Code of Civil Procedure § 877.6	14
19	Federal Rule 23.....	13
20	Labor Code § 201	16
21	Labor Code § 202	16
22	Labor Code § 203	5, 6
23	Labor Code § 226	5, 15, 16, 18
24	Labor Code § 226.7	16, 18
25	Labor Code § 510	16, 18
26	Labor Code § 512	16, 18
27	Labor Code § 1194	16, 18
28	Labor Code § 1197	16, 18

1	Labor Code § 1197.1	16
2	Labor Code § 1198	16, 18
3	Labor Code § 2699	16, 17
4	Labor Code § 2699.5	16
5	Labor Code § 2802	16, 18
6	Rule 3.769	13, 24

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$150,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all former and current
4 sales representatives and non-exempt employees employed by Defendants iKrusher, Inc. and
5 David Bo Chen (“Defendants” or “iKrusher”), in California during the Class Period (“Class”).
6 The Class Period is the time period from July 16, 2016 through June 21, 2021 (“Class Period”).
7 At the time of this filing, the number of Class Members confirmed by Defendants is sixty-seven
8 (67).

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this
11 proposed settlement of \$150,000– with an average settlement share amount estimated at \$858.21¹
12 – is well within the “ballpark” of reasonableness.

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

20 **II. BACKGROUND**

21 iKrusher advertises itself as a trusted global leader in custom vaporizer innovation and
22 technology for the cannabis industry. (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.)
23 Headquartered in Los Angeles, California, Defendants have multiple fulfillment locations and
24 deliver about 81,300 units per day, totaling 385 million units overall. (*Ibid.*) Indeed, iKrusher’s
25 website states that it is the largest custom (OEM and ODM) vaporizer manufacturer in the
26 United States. (*Ibid.*)

27
28

¹ \$150,000 (Net Settlement Amount) / 67 (Class Members) = \$858.21.

1 This case involves all persons who worked for Defendants in California as a sales
2 representative or non-exempt employee during the Class Period (“Class”). The Class Period is
3 the time period from July 16, 2016 through June 21, 2021 (“Class Period”). Plaintiffs allege that
4 at all times during the Class Period, Defendants’ non-exempt employees work and/or worked on
5 an hourly basis. (Han Dec., *supra*, at ¶ 9.)

6 Plaintiff Angeles is a former hourly-paid, non-exempt aggrieved employee of Defendants
7 who filed a representative Private Attorneys General Act (“PAGA”) action on behalf of all
8 former employees (whether hired directly or through staffing agencies or labor contractors) of
9 Defendants who worked for Defendants at any time during the period from June 19, 2019 to the
10 present, in the Superior Court of California, Contra Costa County. (Han Dec., *supra*, at ¶ 10).
11 Plaintiff Angeles filed his complaint on July 16, 2020. (*Ibid.*) The PAGA claim alleges that
12 Defendants violated the Labor Code by failing to pay minimum and overtime wages, failing to
13 provide meal periods and rest breaks, failing to timely pay wages during employment and upon
14 termination, failing to provide complete and accurate wage statements, and failing to reimburse
15 business expenses. (*Ibid.*) On September 14, 2020, Plaintiff Angeles filed his First Amended
16 Complaint. (*Ibid.*)

17 The Parties attended mediation on Plaintiffs’ claims on April 16, 2021. (Han Dec., *supra*,
18 at ¶ 11.) Under the auspices of the mediator, Phillip K. Cha, the Parties were eventually able to
19 reach an agreement on the settlement of the action. (*Ibid.*)

20 On June 21, 2021, in line with the settlement reached between the Parties at mediation,
21 Plaintiff Angeles filed his Second Amended Class Action Complaint in the Superior Court of
22 California, County of Contra Costa, adding Andres Becerra as an additional class representative
23 and alleging class claims. (Han Dec., *supra*, at ¶ 12.) Plaintiffs’ Second Amended Class Action
24 Complaint alleges causes of action for (1) violation of California Labor Code §§ 510 and 1198
25 (unpaid overtime); (2) violation of Labor Code §§ 226.7 and 512(a) (unpaid meal period
26 premiums); (3) violation of Labor Code § 226.7 (unpaid rest period premiums); (4) violation of
27 California Labor Code §1194, 1197 and 1197.1 (unpaid minimum wages); (5) violation of
28 California Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California

1 Labor Code § 226(a) (non-compliant wage statements); (7) violation of Labor Code § 2800 and
2 2802 (unreimbursed business expenses); (8) violation of PAGA; and (9) violation of Business &
3 Professions Code §§ 17200, et seq. (Han Dec., *supra*, at ¶ 12.)

4 Defendants generally and specifically deny any and all liability or wrongdoing of any sort
5 with regard to any of the claims alleged, make no concessions or admissions of liability of any
6 sort, and contend that, for any purpose other than settlement, the Class Action is not appropriate
7 for class or representative treatment. (Han Dec., *supra*, at ¶ 13.) Furthermore, Defendants assert a
8 number of defenses to the claims, and have denied any wrongdoing or liability arising out of any
9 of the alleged facts or conduct in the Class Action. (*Ibid.*)

10 **III. INVESTIGATION/ LITIGATION HISTORY**

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

12 Prior to the mediation and both before and after the Class Action was filed, the Parties
13 conducted significant investigation and discovery of the facts and law. (Han Dec., *supra*, at ¶
14 14.) As part of Defendants’ production, Plaintiffs also reviewed time records, pay records, and
15 information relating to the size and scope of the Class, as well as data permitting Plaintiffs to
16 understand the number of workweeks in the Class Period. (*Ibid.*) Defendants also produced
17 hundreds of documents relating to its policies, practices, and procedures regarding
18 reimbursement of business expenses, paying sales representatives or non-exempt employees for
19 all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) The
20 Parties agree that the above-described investigation and evaluation, as well as the information
21 exchanged during the settlement negotiations, are more than sufficient to assess the merits of the
22 respective Parties’ positions and to compromise the issues on a fair and equitable basis. (*Ibid.*)

23 Based upon the Parties’ discovery, and interviews Plaintiffs’ counsel had with sales
24 representatives or non-exempt employees, Plaintiffs contend – and Defendants deny – that
25 Defendants failed to provide employees legally mandated rest breaks. (Han Dec., *supra*, at ¶ 15.)
26 Defendants’ employment practices functioned to prevent employees from taking timely and
27 complete rest periods. (*Ibid.*) Defendants had employees focus on performance and results, in
28 lieu of giving them legally mandated rest breaks. (*Ibid.*) Specifically, due to the understaffing

1 and expectations of searching for, reaching out to, and maintaining client relationships,
2 employees missed almost all of their rest periods. (Han Dec., *supra*, at ¶ 15.) Interviews with
3 class members confirm that supervisors would pressure sales representatives to keep working,
4 making calls, and following-up. (*Ibid.*) If employees took a break on their own, this would be
5 heavily frowned upon as it would deviate from what everyone was expected to do. (*Ibid.*)

6 Moreover, Plaintiffs assert- and Defendants deny – that Defendants failed to provide
7 employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 16.) Defendants generally
8 did not care if employees were taking timely and compliant meal and rest breaks. Instead,
9 employees were told to take meal breaks in turns, which resulted in frequent late meal breaks for
10 aggrieved employees. (*Ibid.*) However, even if an employee was taking a meal break, if a vendor
11 came in, the expectation was for that employee to cut their meal break short to assist the
12 customer. (*Ibid.*) Additionally, supervisors would pressure sales representatives to keep
13 working, making calls, and following-up. (*Ibid.*) If employees took a meal break on their own,
14 this would be heavily frowned upon as it would deviate from what everyone was expected to do.
15 (*Ibid.*)

16 Plaintiffs also assert – and Defendants deny – that Defendants failed to compensate
17 employees for all hours worked. (Han Dec., *supra*, at ¶ 17.) Specifically, Defendants require
18 sales representatives to attend conventions and events to promote and advertise its brand. (*Ibid.*)
19 Aggrieved employees would pick up equipment from Defendants, meet at the location, set up
20 their booth, engage in promotional activities, break down their booth, and clean up. (*Ibid.*)
21 Defendants usually failed to accurately record aggrieved employees’ hours worked during these
22 multi-day events; as a result, aggrieved employees were almost always undercompensated for the
23 time that they spent there. (*Ibid.*) There was a convention about once a month or every other
24 month. (*Ibid.*) Beyond these events, sales representatives were expected to answer calls, texts,
25 direct messages, and emails from Defendants’ customers during their time off. (*Ibid.*) This work
26 would commonly take anywhere from five to ten (5-10) minutes each and would occur about
27 twice a week. (*Ibid.*) Aggrieved employees could not input this time anywhere and were never
28 properly compensated for it. (*Ibid.*)

1 Additionally, Plaintiffs assert – and Defendants deny – that Defendants failed to
2 reimburse employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 18.) For
3 example, Defendants required aggrieved employees to use their personal cell phones without any
4 reimbursement. (*Ibid.*) For example, Sales Representatives were expected to talk with coworkers,
5 call current and potential clients, follow up, communicate through social media, and send
6 messages with their personal cell phone. (*Ibid.*) Employees also testified that they were required
7 use their own vehicles to drive to appointments. (*Ibid.*) These employees using their personal
8 vehicles for business purposes were never compensated for any mileage. (*Ibid.*)

9 Furthermore, Plaintiffs contend – and Defendants deny – that Defendants are liable for
10 issuing non-compliant wage statements. (Han Dec., *supra*, at ¶ 19.) Specifically, Defendants
11 issued wage statements in violation of Labor Code section 226(a) because of the underlying
12 violations that are discussed above. (*Ibid.*) Consequently, Defendants’ wage statements would
13 necessarily be inaccurate. (*Ibid.*) Even if Defendants assert that their violation of section 226(a)
14 is trivial, California courts have held that strict compliance of section 226(a) is exactly what is
15 intended. (*Ibid.*)

16 Finally, Plaintiffs contend – and Defendants deny – that Defendants are liable for waiting
17 time penalties. (Han Dec., *supra*, at ¶ 20.) Specifically, Defendants’ non-exempt employees are
18 entitled to back underpaid overtime and compensation for time worked off-the-clock as well as
19 missed meal and rest breaks, thereby triggering waiting time penalties under Labor Code section
20 203. (*Ibid.*) Thus, Defendants owe compensation for underpaid work and missed meal and rest
21 breaks as a matter of fact and law but intentionally failed or refused to perform an act, which was
22 required to be done, constituting “willful” conduct and justifying “waiting-time” penalties under
23 section 203 to former employees. (*Ibid.*)

24 Defendants deny Plaintiffs’ contentions in their entirety. (Han Dec., *supra*, at ¶ 21.)
25 Among other things, Defendants deny Plaintiffs’ rest and meal break contentions, on the grounds
26 that it provided rest and meal periods within compliant times. (*Ibid.*) Defendants also contend
27 that both their meal and rest break policies complied with California law. (*Ibid.*) Defendants
28 further contend that whether non-exempt employees took meal and rest breaks during compliant

time frames and were relieved of all duties are questions that could only be resolved by resorting to individualized inquiries to each non-exempt employee and, therefore, class certification would not be appropriate. (Han Dec., *supra*, at ¶ 21.) Defendants also assert that they paid their employees for all times worked, including overtime, minimum, and premium wages. (*Ibid.*) Defendants also assert that they reimbursed employees for all business expenses, including the use of personal cell phones and vehicles for business-related purposes. (*Ibid.*) Finally, Defendants argue that their failure to comply with California labor laws was an honest mistake made in good faith. (*Ibid.*) Thus, Defendants' conduct could not be deemed "willful" under Labor Code section 203. (*Ibid.*)

As demonstrated above, the Parties took staunchly conflicting positions concerning Defendants' policies and procedures and their effect on sales representatives or non-exempt employees.

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

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

The Parties agreed to go to mediation with experienced wage and hour mediator, Phillip K. Cha. (Han Dec., *supra*, at ¶ 22.) The mediation took place on April 16, 2021. (*Ibid.*) During the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action, the terms of which were memorialized in a "Joint Stipulation and Settlement Agreement" ("Settlement Agreement," "Settlement," or "Agreement"), that the Parties now seek Preliminary Approval of in the instant motion. (*Ibid.*) Attached hereto as **Exhibit 2** is a true and correct copy of the Settlement Agreement. (*Ibid.*)

///

///

///

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

3 The Settlement Agreement was reached as a result of arm's-length negotiations. (Han
4 Dec., *supra*, at ¶ 38.) Though cordial and professional, the settlement negotiations have been, at
5 all times, adversarial and non-collusive in nature. (Han Dec., *supra*, at ¶ 38.) At the mediation,
6 Counsel for the Parties conducted extensive arm's length settlement negotiations until an
7 agreement was ultimately reached by all Parties. (*Ibid.*)

8 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
9 expense and length of continued proceedings necessary to continue the litigation against
10 Defendants through class certification and trial and through any possible appeals. (Han Dec.,
11 *supra*, at ¶ 39.) Plaintiffs and Class Counsel have also taken into account the uncertainty and risk
12 of further litigation, the potential outcome, and the difficulties and delays inherent in such
13 litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations,
14 including formal mediation on April 16, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and
15 Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate,
16 and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

18 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
19 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
20 discovery to support the settlement. (Han Dec., *supra*, at ¶ 40.) The proposed settlement was
21 only possible following significant discovery and evaluation of Defendants' relevant policies and
22 procedures, as well as the data they produced for the putative Class, which permitted Class
23 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
24 Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the
25 strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*
26 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 40.)

27 ///

28 ///

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$150,000 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
6 amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$52,500 to
7 compensate Class Counsel for work already performed and all work remaining to be performed
8 in documenting the settlement, administering the settlement and securing Court approval; (b)
9 Cost Award for actual litigation costs not to exceed \$10,000; (c) Class Representative
10 Enhancement Payments in the amount of \$5,000 to each Class Representative in recognition of
11 Plaintiffs’ work and efforts in obtaining the benefits for the Class and undertaking the risk for the
12 payment of costs in the event this matter had not successfully resolved; (d) Administration Costs
13 to Phoenix Class Action Settlement Administrators (“Phoenix”), the Settlement Administrator,
14 not to exceed \$5,000; and (e) PAGA Payment of \$15,000, seventy-five percent (75%) of which
15 (\$11,250) shall be paid to the LWDA and twenty-five percent (25%) of which (\$3,750) shall be
16 distributed to the PAGA employees eligible to recover the PAGA Payment that consist of all
17 former and current non-exempt employees of Defendants in California during the period from
18 April 29, 2019 through June 21, 2021 (“Eligible PAGA Employees,” “PAGA Period,” and
19 “Individual PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 23.)

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

21 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
22 that \$57,500 (“Net Settlement Amount”) will be distributed to Class Members – with an average
23 settlement share estimated at \$858.21. (Han Dec., *supra*, at ¶ 25.) The Settlement Administrator
24 will withhold the amount of the Participating Class Members’ portion of normal payroll
25 withholding taxes out of each person’s Individual Settlement Share. (*Ibid.*) The Settlement
26 Administrator will calculate the amounts of the Participating Class Members’ and Defendants’
27 portions of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator will submit
28 Defendants’ portion of payroll withholding tax calculation to Defendants for additional funding

1 and forward those amounts along with each person's Individual Settlement Share withholdings to
2 the appropriate taxing authorities. (Han Dec., *supra*, at ¶ 25.) The Individual Settlement Share is
3 calculated based on each Participating Class Member's pro rata share of the Net Settlement
4 Amount based on workweeks during the Class Period as follows:

5 (i) the number of weeks he or she worked as an hourly-paid or non-exempt
6 employee during the Class Period, divided by (ii) the total number of weeks
7 worked by all Participating Class Members collectively during the Class Period,
8 which is then multiplied by the Net Settlement Amount. Defendants will include
9 the number of workweeks worked by Class Members in the Class Data which will
be used by the Settlement Administrator for purposes of this calculation. (Han
Dec., *supra*, at ¶ 26.)

10 Furthermore, the Settlement Administrator shall pay each Eligible PAGA Employee
11 according to his or her proportional share, which will be based upon the total number of work
12 weeks he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 27.) The
13 Individual PAGA Payment is calculated based on each Eligible PAGA Employee's pro rata
14 share of the PAGA Payment allocated to Eligible PAGA Employees based on work weeks
15 during the PAGA Period as follows:

16 (i) the number of work weeks he or she worked as an hourly-paid or non-exempt
17 employee during the PAGA Period, divided by (ii) the total number of work
18 weeks worked by all Eligible PAGA Employees collectively during the PAGA
19 Period, which is then multiplied by the PAGA Payment allocated to the Eligible
20 PAGA Employees. Defendants will include the number of workweeks worked by
21 Class Members in the Class Data which will be used by the Settlement
Administrator to calculate the number of weeks worked by each Eligible PAGA
Employee for purposes of this calculation. (*Ibid.*)

22 The precise number of compensable weeks worked per Class Member will not be known
23 until Defendants have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶
24 28.) No portion of the Gross Settlement Amount will revert to Defendants for any reason. (*Ibid.*)

25 ///

26 ///

27 ///

1 **iii. Notice to the Class**

2 Within fifteen (15) business days after entry of the Preliminary Approval Order,
3 Defendants shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
4 29.) The Class Data will be formatted as a Microsoft Excel spreadsheet and will include: (i) each
5 Class Member’s full name; (ii) each Class Member’s last-known address; (iii) each Class
6 Member’s Social Security and Employee ID number, if any; (iv) the Class Member’s relevant
7 dates of employment; (v) number of work weeks worked by the Class Member as a sales
8 representative or non-exempt employee in California during the Class Period and the PAGA
9 Period. (*Ibid.*)

10 Within fourteen (14) calendar days after Defendants’ deadline to provide the Class Data
11 to the Settlement Administrator, the Settlement Administrator will mail the Notice of Class
12 Action Settlement (“Class Notice”)² and the Election Not To Participate or Opt-out Form
13 (“Exclusion Form”)³ (collectively, known as “Notice Packet”) to all identified Class Members
14 via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 30.) Class Members are not required to
15 submit a claim form to receive their Individual Settlement Payments pursuant to the Settlement.
16 (*Ibid.*) Eligible PAGA Employees are not required to submit a claim form to receive their
17 Individual PAGA Payment. (*Ibid.*)

18 **iv. Distribution of Funds**

19 No later than ten (10) calendar days after the date the Final Approval of the Settlement
20 can no longer be appealed or, if there are no objectors and no Plaintiffs in intervention at the time
21 the Court grants Final Approval of the Settlement, the date the Court enters judgment granting
22 Final Approval of the Settlement, Defendants shall deposit the Gross Settlement Amount of
23 \$150,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
24 Settlement Administrator. (Han Dec., *supra*, at ¶ 31.) Defendants shall also at this time provide
25 any tax information that the Settlement Administrator may need to calculate each Participating
26 Class Members’ Individual Settlement Shares. (*Ibid.*)

27 _____
28 ² The **Class Notice** is attached to the Settlement Agreement (Exhibit 2 attached hereto) as **Exhibit A**.

³ The **Exclusion Form** is attached to the Settlement Agreement (Exhibit 2 attached hereto) as **Exhibit B**.

1 After fifteen (15) calendar days after the deadline to fund the Settlement, the Settlement
2 Administrator shall calculate and disburse all payments due under the Settlement Agreement,
3 including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award,
4 the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the
5 Administration Costs. (Han Dec., *supra*, at ¶ 32.) The Settlement Administrator will forward a
6 check for seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the
7 PAGA claim. (*Ibid.*)

8 Participating Class Members and Eligible PAGA Employees must cash or deposit their
9 Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty
10 (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 33.) If any
11 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
12 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or
13 not deposited by the expiration of the 90-day period after mailing the reminder notice, the
14 Settlement Administrator will, within two hundred (200) calendar days after the checks are
15 mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as
16 applicable) to the California State Controller's Office in accordance with California Unclaimed
17 Property Law so that the Participating Class Member and/or Eligible PAGA Employee will have
18 his or her Individual Settlement Share and/or Individual PAGA Payment available to him or her
19 per the applicable claim procedure to request that money from the State of California. (*Ibid.*)

20 **v. Release of Claims**

21 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
22 the Settlement, Plaintiffs and the Participating Class Members release the Released Parties from
23 the Released Claims for the Class Period ("Released Claims"). *See* Exhibit 2 §§ (I)(JJ), (III)(J).
24 (Han Dec., *supra*, at ¶ 34.)

25 As of the Effective Final Settlement Date and upon Defendants' fully funding of the
26 Settlement, all Eligible PAGA Employees and the State of California shall be deemed to have
27 fully, finally, and forever released, relinquished and will release all claims for civil penalties
28 pursuant to PAGA for the PAGA Released Claims during the PAGA Period ("PAGA Released

Claims”), subject to the escalator clause. *See* Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 35.) The escalator clause states, in the event the number of workweeks increase between April 16, 2021 and the Effective Final Settlement Date by more than 10%, or 180 workweeks, Defendants may, in their sole discretion, have the option to either: (1) proportionally increase the total settlement amount; or (2) terminate the class settlement period as of June 21, 2021. (*Id.*)

The Released Parties include Defendants and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint employers (“Released Parties”). *See* Exhibit 2 § (I)(KK). (Han Dec., *supra*, at ¶ 36.)

As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiffs in an amount not to exceed \$5,000 each, in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of claims for themselves and their spouses, heirs, successors and assigns. *See* Exhibit 2 §§ (III)(L). (Han Dec., *supra*, at ¶ 37.)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Plaintiffs’ counsel and Defendants’ counsel are particularly experienced in wage and hour employment law and class actions. Plaintiffs’ counsel has significant experience in litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

Plaintiffs’ counsel has prosecuted numerous cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims, to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.) This experience instructed Plaintiffs’ counsel

1 on the risks and uncertainties of further litigation and guided their determination to endorse the
2 proposed Settlement.⁴ (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

3 **IV. ARGUMENT**

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

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

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

12 ...

13 (b) Any party to a settlement agreement may serve and file a written notice of
14 motion for preliminary approval of the settlement. The settlement
15 agreement and proposed notice to class members must be filed with the
16 motion, and the proposed order must be lodged with the motion.

17 Courts act within their discretion in approving settlements that are fair, not collusive, and take
18 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
19 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
20 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
21 U.S. 905.)

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

23 An understanding of the amount in controversy is an important factor in whether the
24 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
25 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
26 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)

27 ⁴ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
28 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.

⁵ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases
applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see
Green v. Obledo (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and
federal case law in addition to California law.

1 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
2 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

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

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

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

17 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
18 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
19 discovery to support the settlement. (Han Dec., *supra*, at ¶ 40.) The proposed settlement was
20 only possible following significant discovery and evaluation of Defendants’ relevant policies and
21 procedures, as well as the data they produced for the putative Class, which permitted Class
22 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
23 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
24 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
25 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

26 ///

27 ///

28 ///

1 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendants failed to pay overtime wages, failed to provide meal breaks
3 and pay applicable premiums, failed to provide rest periods and pay applicable premiums, failed
4 to pay minimum wages, failed to pay final wages in a timely manner, failed to issue compliant
5 wage statements, failed to reimburse business expenses, violated PAGA, and violated the
6 Business & Professions Code sections 17200, et seq. (Han Dec., *supra*, at ¶ 41.)

7 Defendants vehemently deny Plaintiffs' theories of liability and contend, as stated above,
8 that all meal and rest periods were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that they provided final wages in a timely manner, that
10 they provided wage statements in compliance with Labor Code section 226, and that they
11 reimbursed all business expenses. (Han Dec., *supra*, at ¶ 42.) Defendants further contend that
12 any mistakes made were honest rather than willful. (*Ibid.*) Finally, Defendants argue that if
13 litigation were to continue, they feel confident that they would prevail. (*Ibid.*)

14 Although Plaintiffs believe the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiffs contends violate California law and uniformly affect the
16 putative Class Members, uncertainties with respect to certification are always present. (Han Dec.,
17 *supra*, at ¶ 43.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34
18 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
20 and hour claims.⁶ (*Ibid.*)

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

23 ///

24 ///

25
26 ⁶(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,
148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th
1422 (affirming denial of certification).)

1 **ii. The Settlement Amount of \$150,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendants provided Plaintiffs with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 putative class members and the average hourly rate for class members. (Han Dec., *supra*, at ¶
6 44.) Defendants also confirmed that there were approximately 3,791 workweeks worked by
7 Class Members. (Han Dec., *supra*, at ¶ 44.) Plaintiffs were also able to determine that the
8 average hourly rate for Class Members was \$24.76. (*Ibid.*)

9 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
10 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
11 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 50.) Defendants asserted that,
12 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
13 but permissive and discretionary. (*Ibid.*) Defendants also maintained that, in addition to their
14 strong arguments against the underlying claims, they had a strong argument that it would be
15 unjust to award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

16 Class Counsel calculated penalties under this cause of action by multiplying the number
17 of active Class Members (because of the shortened statutory period for this claim), by the civil
18 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
19 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 51.) Class Counsel then
20 applied discounts in light of the countervailing arguments with regard to the other causes of
21 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
22 Lab. Code § 2699(e)(2). (*Ibid.*)

23 Given the state of the law and the range of PAGA penalties requested and actually
24 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
25 for PAGA penalties. (Han Dec., *supra*, at ¶ 52.) However, if PAGA penalties are granted on any
26 one of the violations alleged in Plaintiffs' operative complaint, the total penalties exposure for
27 the eligible pay periods could be approximately \$261,300 (([1 x \$100] + [19 x \$200]) x 67
28 employees). (*Ibid.*) Plaintiffs calculated Defendants' PAGA exposure using one hundred percent

(100%) violation rate based on the average number of pay periods (20) during the one-year statutory period. (Han Dec., *supra*, at ¶ 52.) Multiplying the PAGA exposure by the number of alleged violations under the PAGA theories of recovery (6) gives potential civil penalties of \$1,567,800. (*Ibid.*)

Although Plaintiffs argued they could obtain over \$1.5 million for PAGA penalties, it seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 53.) PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty for each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could be interpreted as indicating that until the Labor Commissioner or a court informs an employer that it has violated the Labor Code, the employer can only be assessed the “initial” violation rate. Under this interpretation, the maximum individual civil penalty for one statutory violation is \$6,700 (67 employees x 100 (initial violation)), and for all possible Labor Code violations is \$40,200. (Han Dec., *supra*, at ¶ 53.)

Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the civil penalty described in subdivision (f)...on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed” (emphasis added). However, Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*

(9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$6,700 on the low end and \$40,200 on the high end based on six (6) major theories of recovery. (Han Dec., *supra*, at ¶ 53.)

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

Plaintiffs also recognized the risk that any PAGA award could be significantly reduced. (Han Dec., *supra*, at ¶ 54.) Many of the causes of action brought were duplicative of the statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. It was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$15,000 to PAGA civil penalties was reasonable based on a rate of \$11.06 per pay period [$\$15,000 \div 1,356$ Pay Periods in PAGA Date Range = \$11.06], given the fact that Defendants are also paying an additional \$135,000 in the class settlement.⁷ (*Ibid.*) Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount

⁷ (*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).)

was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁸ (Han Dec., *supra*, at ¶ 54.)

Accordingly, taking into consideration Defendants’ defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$150,000— with an average settlement share estimated at \$858.21—is reasonable 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 approximately \$740,307.18 on the low end and \$787,239.76 on the high end. (Han Dec., *supra*, at ¶ 55.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$83,921.54	60%	50%	\$16,784.31
Meal Break Premiums	\$155,443.28	50%	40%	\$46,632.98
Overtime/Minimum Wage: Off-the-Clock	\$93,865.16 to \$140,797.74	60%	50%	\$18,773.03 to \$28,159.55
Waiting Time Penalty	\$255,523.20	50%	50%	\$63,880.80
Wage Statement Penalty	\$130,650	50%	50%	\$32,662.50
Unreimbursed Business Expenses	\$20,904	30%	70%	\$4,389.84
MAXIMUM TOTAL EXPOSURE	\$740,307.18 to \$787,239.76			\$183,123.46 to \$192,509.98

Based on this analysis, the realistic recovery for this case is \$183,123.46 on the low end and \$192,509.98 on the high end. (Han Dec., *supra*, at ¶ 62.) The Gross Settlement Amount of \$150,000 is approximately nineteen percent (19.05%) of the maximum potential exposure and is approximately seventy-eight percent (77.92%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

⁸ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
3 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
4 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
5 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
6 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
7 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
8 that induce consensual settlements. The proposed settlement is not to be judged against a
9 hypothetical or speculative measure of what might have been achieved by the negotiators.”)
10 Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have prevailed at trial
11 and provide a significant recovery for the Class Members. Thus, there can be no doubt that this
12 settlement is fair and reasonable.

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

14 For settlement purposes only, the requisites for establishing conditional class certification
15 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
16 of a common or general interest, of many persons, or when the parties are numerous, and it is
17 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
18 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
19 “both [1] an ascertainable class and [2] a well-defined community of interest among class
20 members.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.)

21 The proposed Class is ascertainable and numerous as to make it impracticable to join all
22 Class Members, and there are common questions of law and fact that predominate over any
23 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 63.) Plaintiffs’ claims
24 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
25 protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
26 Class Members would create the risk of inconsistent or varying adjudications, and a class action
27 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
28 discussed below, this case is amenable to class certification.

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

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

9 The Class Action involves sixty-seven (67) Class Members. (Han Dec., *supra*, at ¶ 64.)
10 Thus, the Class is sufficiently numerous.⁹ Further, all Class Members can and will be identified
11 by Defendants to the Settlement Administrator through a review of Defendants’ employment
12 records concerning sales representatives or non-exempt employees employed by Defendants
13 within the State of California during the Class Period. (*Ibid.*)

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

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

25 ///

26 ///

27 _____
28 ⁹ (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, supra*, 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (*See, e.g., Jones v. JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class of dancers on state law claims).)

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 65.) All sales representatives or non-exempt employees who worked for Defendants during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All of Plaintiffs’ claims surround Defendants’ common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

2. Plaintiffs’ Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially similar to other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were sales representatives and non-exempt employees and allege they and the Class Members were employed by the same company and injured by Defendant’s common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 66.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (Han

Dec., *supra*, at ¶ 66.) Thus, Plaintiffs’ claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

3. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 67.) They 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 counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Moreover, because a number of the class members are current employees, the fear of retaliation further support superiority of class-wide relief because that fear of retaliation often discourages victims from seeking legal redress while currently employed by the same employer.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 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;

1 and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th. at
2 p. 1802.) As the foregoing analysis shows, all of these elements are present here. Thus,
3 Plaintiffs request that this Court grant their motion for Preliminary Approval.

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

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

6
7 If the court has certified the action as a class action, notice of the final approval
8 hearing must be given to class members in the manner specified by the court. The
9 notice must contain an explanation of the proposed settlement and procedures for
10 class members to follow in filing written objections to it and in arranging to
11 appear at the settlement hearing and state any objections to the proposed
12 settlement.

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

17 **V. CONCLUSION**

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

23 Dated: October 1, 2021

JUSTICE LAW CORPORATION

24 

25 Douglas Han
26 Shunt Tatavos-Gharajeh
27 Phillip Song
28 *Attorneys for Plaintiff*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 mking@justicelawcorp.com

On October 1, 2021, I served the foregoing document described as

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

for the following case: **Angeles v. iKrusher, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-784906-20**
Court Case No.: MSC20-01312
Contra Costa 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 October 1, 2021, at Pasadena, California.



Madeline King