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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN LUIS OBISPO**

LEROY ROST, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

LEHIGH HANSON, INC., a Delaware
corporation; HANSON AGGREGATES
LLC, a Delaware limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 20CV-0225

Assigned for All Purposes to:
Honorable Tana L. Coates
Department 9

CLASS ACTION

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

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

Hearing Date: June 1, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 9

Complaint Filed: April 24, 2020
FAC Filed: November 10, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 1, 2022 at 9:00 a.m., or as soon as the matter may
2 be heard, before the Honorable Tana L. Coates in Department 9 of the San Luis Obispo County
3 Superior Court, located at 1050 Monterey St., San Luis Obispo, California 93408, Plaintiff Leroy
4 Rost (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 3** to
8 the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, the allocations for payments under the Labor
10 Code Private Attorneys General Act of 2004 (“PAGA”), Attorney Fee Award, Cost
11 Award, Class Representative Enhancement Payment, and Administration Costs;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff as the Class Representative;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
16 attached as **Exhibit A** to the Agreement;
- 17 • Approving the Election Not To Participate In (“Opt-Out” Form) Class Action
18 Settlement (“Exclusion Form”) attached as **Exhibit B** to the Agreement;
- 19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
21 to the proposed Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving ILYM Group, Inc. (“ILYM Group”) as the Settlement Administrator;
25 and

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

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

Dated: April 26, 2022

JUSTICE LAW CORPORATION

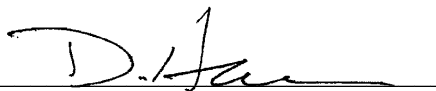
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$850,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all current and
4 former California-based hourly-paid or non-exempt employees (whether hired directly or through
5 a staffing agency or labor contractor) of Defendant Hanson Aggregates Mid-Pacific, LLC
6 (formerly known as Hanson Aggregates Mid-Pacific, Inc.) (“HAMP”) within the State of
7 California at any time during the period from April 24, 2016, to March 26, 2022 (“Class,” “Class
8 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
9 estimated to be two hundred forty-five (245). (Declaration of Douglas Han In Support of
10 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶¶ 8-9.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims alongside Defendants Lehigh Hanson, Inc.’s, Hanson
13 Aggregates, LLC’s, and HAMP’s (collectively, “Defendants”) potential liability exposure, this
14 proposed Settlement of \$850,000 is well within the range of reasonableness. Class Counsel and
15 Plaintiff are convinced that the proposed Settlement is in the best interests of the Class Members
16 based on the negotiations and a detailed knowledge of the issues present in this action.

17 **II. BACKGROUND**

18 On April 21, 2020, Plaintiff, a former hourly-paid, non-exempt employee of Defendants,
19 provided written notice to the California Labor and Workforce Development Agency (“LWDA”)
20 and Defendants. (Han Dec., *supra*, at ¶ 10.) On April 24, 2020, Plaintiff filed a wage-and-hour
21 class action lawsuit in the Superior Court of California, County of San Luis Obispo, alleging eight
22 (8) causes of action. (*Id.* at ¶ 11.)

23 The Parties attended mediation on Plaintiff’s claims with mediator Carl J. West on October
24 20, 2021 that resulted in the settlement of this case. (Han Dec., *supra*, at ¶ 12.)

25 Pursuant to the settlement, on November 10, 2021, Plaintiff filed First Amended Complaint
26 that added an additional cause of action for PAGA penalties pursuant to Labor Code sections 2698,
27 *et seq.* (Han Dec., *supra*, at ¶ 13.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Both Parties engaged in discovery. (Han Dec., *supra*, at ¶ 15.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of to each Defendant. (*Ibid.*) Defendants responded to Plaintiff's discovery requests. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of information and then attend mediation. (*Ibid.*)

Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after this case was filed. (Han Dec., *supra*, at ¶ 16.) Specifically, HAMP produced hundreds of documents relating to their policies, practices, and procedures. (*Ibid.*) As part of HAMP's production, Class Counsel also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Class Counsel also interviewed several dozens of Class Members who worked for HAMP throughout the Class Period. (*Ibid.*)

Based upon the information provided by Defendants and interviews Class Counsel had with non-exempt employees, Plaintiff contends – and Defendants deny – that Defendants: (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay employees for all hours worked; (c) failed to include non-discretionary bonuses and/or commissions in employees' regular rates of pay for purposes of overtime compensation; (d) failed to reimburse employees for necessary business expenses; (e) issued noncompliant wage statements; and (f) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 18-26.)

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, Carl J. West that took place on October 20, 2021. (Han Dec., *supra*, at ¶ 27.) With the assistance of the mediator, the Parties were eventually able to reach an agreement on settlement, the terms of which were memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval of. (*Id.* at ¶ 27; Exhibit 3.)

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

2 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Dec.,
3 *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have always been
4 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
5 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
7 and length of continued proceedings necessary to continue the litigation against Defendants. (Han
8 Dec., *supra*, at ¶ 41.) Plaintiff and Class Counsel have also considered the inherent uncertainty and
9 risk of further litigation, the potential outcome, and the difficulties and delays of such litigation.
10 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
11 adequate, and reasonable settlement, and is in the Class’s best interests. (*Ibid.*)

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

13 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
14 Plaintiff’s claims and Defendants’ defenses before reaching the Settlement and engaged in
15 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
16 42.) The Settlement was only possible following significant investigation and evaluation of
17 Defendants’ relevant policies and procedures, as well as the data Defendants produced. (*Ibid.*)
18 Furthermore, this case has also reached the stage where “the Parties certainly have a clear view of
19 the strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness,
20 adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

22 **i. Deductions from the Settlement**

23 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
24 action be settled and compromised for the non-reversionary total sum of \$850,000 (“Gross
25 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
26 Class Counsel of \$297,500 (35% of the Gross Settlement Amount); (b) the Cost Award to Class
27 Counsel of \$30,000 for litigation costs and expenses; (c) the Class Representative Enhancement
28 Payment of \$10,000 to Plaintiff; (d) Administration Costs to ILYM Group, the Settlement

1 Administrator, of \$15,000; and (e) the PAGA Payment of \$60,000 to the LWDA and Eligible
2 Aggrieved Employees. (Han Dec., *supra*, at ¶ 28.)

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

4 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
5 that \$437,500 ("Net Settlement Amount") will be distributed to Class Members – with an average
6 gross Individual Settlement Share estimated at \$1,785.71.¹ (Han Dec., *supra*, at ¶ 30.)

7 The Settlement Administrator will pay an Individual Settlement Share from the Net
8 Settlement Amount to each Participating Class Member in accordance with the formula listed in
9 the Agreement. (Han Dec., *supra*, at ¶ 31.) Individual Settlement Shares will be apportioned as
10 follows: one-third (1/3) wages and two-thirds (2/3) penalties and interests. (*Ibid.*)

11 Furthermore, the Settlement Administrator will pay a portion of the PAGA Payment of
12 \$15,000 to each Eligible Aggrieved Employee in accordance with the formula listed in the
13 Agreement. (Han Dec., *supra*, at ¶ 32.)

14 **iii. Notice to the Class**

15 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
16 Defendants shall deliver to the Settlement Administrator the Database. (Han Dec., *supra*, at ¶ 34.)
17 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, the
18 Settlement Administrator will mail the Notice Packet to all identified Class Members via first-
19 class regular U.S. Mail. (*Ibid.*) Class Members are not required to submit a claim form to receive
20 their Individual Settlement Shares. (*Ibid.*)

21 **iv. Distribution of Funds**

22 The Settlement will be funded pursuant to the timeline and manner set forth in the
23 Agreement. (Han Dec., *supra*, at ¶ 35.) Uncashed settlement checks will be mailed to the
24 California Rural Legal Assistance pursuant to the term set forth in the Agreement. (*Ibid.*)

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28 ¹ \$437,500 (Net Settlement Amount) / 245 (Class Members) = \$1,785.71.

1 **v. Release of Claims**

2 As of the Effective Final Settlement Date, Class Members, who do not submit a timely and
3 valid request for exclusion, release, remise, and forever discharge the Released Parties from the
4 Released Claims for the Class Period. Participating Class Members agree not to sue or otherwise
5 make a claim against any of the Released Parties for any of the Released Claims (“Released
6 Claims”). (Han Dec., *supra*, at ¶ 36.)

7 As of the Effective Final Settlement Date, the Settlement forever bars Plaintiff, the LWDA,
8 and any other representative, proxy, or agent thereof, including, but not limited to, any and all
9 Eligible Aggrieved Employees during the PAGA Timeframe, from pursuing any action under
10 PAGA, Labor Code sections 2698, *et seq.*, against the Released Parties based on or arising out of
11 alleged violations of Labor Code sections alleged in this case. (Han Dec., *supra*, at ¶ 37.)

12 As of the Effective Final Settlement Date, and in exchange for the Class Representative
13 Enhancement Payment to the Plaintiff in an amount not to exceed \$10,000, in recognition of his
14 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
15 of costs if this matter had not successfully resolved, Plaintiff provides a general release of claims
16 for himself and his spouse, heirs, successors and assigns. Plaintiff’s Release of Claims also
17 includes a waiver of Civil Code section 1542. (Han Dec., *supra*, at ¶ 38.)

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

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

2 Counsel for both Parties are experienced in wage-and-hour employment law and class
3 actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibits 1-2.) Class Counsel has prosecuted numerous cases
4 on behalf of employees for Labor Code violations and, thus, are experienced and qualified to
5 evaluate the class claims, the settlement versus trial on a fully informed basis, and the viability of
6 the defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of
7 further litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

8 **IV. ARGUMENT**

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

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

- 14 (a) A settlement or compromise of an entire class action, or a cause of action in
15 a class action, or as to a party, requires the approval of the court after
16 hearing.
17 ...
18 (c) Any party to a settlement agreement may serve and file a written notice of
19 motion for preliminary approval of the settlement. The settlement
20 agreement and proposed notice to class members must be filed with the
21 motion, and the proposed order must be lodged with the motion.

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25 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
26 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
27 had an opportunity to respond. This information will be provided to the Court in conjunction with
28 the Motion for Final Approval of Class Action Settlement.

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

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

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

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

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

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

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

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1 Plaintiff's claims are predicated on Defendants' purported: (1) failure to properly calculate
2 and pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums;
3 (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant
4 wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code section
5 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.*
6 (Han Dec., *supra*, at ¶ 43.) Defendants deny Plaintiff's theories of liability. (*Id.* at ¶ 44.)

7 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
8 to certification are always present. (Han Dec., *supra*, at ¶ 45.) As the California Supreme Court
9 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
10 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
11 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
12 (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

13 **ii. The PAGA Payment of \$60,000 Is Reasonable**

14 The provisions of the Labor Code potentially triggering PAGA penalties in this case
15 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
16 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Han Dec., *supra*, at
17 ¶ 55.) Defendants assert that, regardless of the results of the underlying causes of action, PAGA
18 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain
19 that, in addition to their strong arguments against the underlying claims, they had a strong
20 argument that it would be unjust to award maximum PAGA penalties given the law's unsettled
21 state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
22 penalties by 30% under this authority].) Defendants argued that without stacking and limited to
23 the initial violation, the PAGA penalties would be limited to **\$18,300** (183 employees x \$100 initial

24
25 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

violations) on the low end and **\$109,800** (183 employees x \$100 x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 56-59.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 60.) Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$60,000 to PAGA civil penalties was reasonable based on a rate of **\$4.13** per pay period [$\$60,000 \div 14,523$ pay periods in PAGA date range = **4.13**], given the fact that Defendants are also paying an additional \$790,000 in the class settlement.⁵ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁶ (*Ibid.*)

Considering Defendants’ defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the Settlement of \$850,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$7,284,409.13** on the low end and about **\$7,904,009.13** on the high end. (Han Dec., *supra*, at ¶ 61.)

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⁵ (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].)

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

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$699,305.70	70%	60%	\$83,916.68
Meal Break Premiums	\$2,972,748.36	60%	60%	\$475,639.74
Overtime/Minimum Wage: Off-the-Clock Work	\$1,238,800 to \$1,858,400	60%	50%	\$247,760 to \$371,680
Overtime/Minimum Wage: Rounding	\$2,096.67	40%	40%	\$754.80
Overtime/Minimum Wage: Regular Rate	\$43,146	40%	50%	\$12,943.80
Unreimbursed Business Expenses	\$236,110	30%	70%	\$49,583.10
Wage Statement Penalty	\$732,000	60%	60%	\$117,120
Waiting Time Penalty	\$1,360,202.40	60%	60%	\$217,632.38
MAXIMUM TOTAL EXPOSURE	\$7,284,409.13 to \$7,904,009.13⁷			\$1,205,350.50 to \$1,329,270.50⁸

Based on this analysis, the realistic recovery for this case is **\$1,205,350.50** on the low end and **\$1,329,270.50** on the high end. (Han Dec., *supra*, at ¶ 70.) The Gross Settlement Amount of \$850,000 is about eleven percent (10.75%) of the maximum potential exposure and sixty-four percent (63.94%) of the maximum realistic exposure at trial, which is a good settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a

⁷ (Han Dec., *supra*, at ¶¶ 46-54.)

⁸ (*Id.* at ¶¶ 62-69.)

significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

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

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately two hundred forty-five (245) Class Members. (Han Dec., *supra*, at ¶ 72.) Thus, the Class is sufficiently numerous. (*Ibid.*; *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].)

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

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

11 **1. Common Issues Predominate**

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

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

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3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 75.) Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understand his fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Plaintiff has no interest that is averse to the interests of the other Class Members. (*Ibid.*)

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

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In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (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; and (4) the percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

The proposed Notice Packet meets all these requirements. The proposed Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval hearing. (See Han Dec., *supra*; Exhibits A-B to Exhibit 3.)

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

JUSTICE LAW CORPORATION

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