

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 335182)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ROBIN QUIUSKY, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

INTEVAC, INC., a Delaware corporation;
INTEVAC PHOTONICS, INC., a
Delaware corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 20CV368343

Assigned for All Purposes to:
Honorable Sunil Kulkarni
Department 1

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

Hearing Date: June 30, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department 1

Complaint Filed: July 14, 2020
FAC Filed: July 2, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 30, 2022, at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Sunil Kulkarni in Department 1 of the Santa Clara County
3 Superior Court, located at 191 North First Street, San Jose, California 95113, Plaintiff Robin
4 Quiusky (“Plaintiff”) 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 (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or “Settlement”),
8 attached as “**EXHIBIT 2**” to the Declaration of Douglas Han, including, and not
9 limited to, the means of allocation and distribution of funds, the allocations for
10 payments under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class and PAGA
12 Representative Enhancement Payments, and the Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff Quiusky as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action and PAGA Settlement (“Class
17 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 Packet”) with a postage-paid return envelope
23 to the proposed Class;
- 24 • Approving the proposed deadlines for the notice and settlement administration
25 process;
- 26 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and
27 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
28 Agreement, at which time the Court will also consider whether to grant Final

1 Approval of the requests for the Attorney Fee Award, the Cost Award, the Class
2 and PAGA Representative Enhancement Payments, the Administration Costs, and
3 approval of the allocation of the PAGA Payment.

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

8
9 Dated: June 6, 2022

JUSTICE LAW CORPORATION

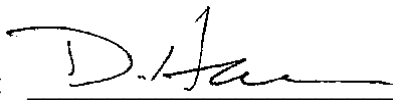
10
11 By: 
12 Douglas Han
13 *Attorneys for Plaintiff*

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	12
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	12
ii.	The Settlement Was Reached as a Result of Arm's-length Negotiations.	12
iii.	The Settlement Is the Result of Thorough Investigation and Discovery .	13
c.	Terms of the Proposed Settlement	13
i.	Deductions from the Settlement.....	13
ii.	Calculation of the Class Members' Individual Settlement Shares.....	13
iii.	The allocating one-third of the Individual Settlement Share as taxable Wages is Justified due to the Realistic Exposure of Case	14
iv.	Notice to the Class	14
v.	Distribution of Funds	14
vi.	Release of Claims	15
d.	Counsel for Both Parties Are Experienced in Similar Litigation	16
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review	16
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	17
i.	The Settlement Amount of \$975,000 Is Fair and Reasonable	17
ii.	The PAGA Payment of \$50,000 Is Reasonable.....	18
c.	Discount Analysis Justifies the Settlement	19
d.	Conditional Certification of the Class Is Appropriate	21
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	21
ii.	The Class Members Share a Well-defined Community of Interest	22

1	1.	Common Issues Predominate.....	22
2	2.	Plaintiff’s Claims Are Typical of the Class Claims.....	23
3	3.	Plaintiff 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	24
7	f.	Notice to Class Members Complies with California Rules of Court,	
8		Rule 3.769(f)	24
9	V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	18
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	15, 16
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	21
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	17
<i>Boyd v. Bechtel Corp.</i>	
(N.D. Cal. 1979) 485 F.Supp. 610	13
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1004	22
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	22
<i>Carrington v. Starbucks Corp.</i>	
(2018) 30 Cal.App.5th 504	19
<i>City of Detroit v. Grinnell Corporation</i>	
(2d Cir. 1974) 495 F.2d 448.....	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	23
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	18
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	16, 24
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016) 2016 U.S.Dist.LEXIS	22

Cases	Page(s)
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	22
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	16
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	18
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	21
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal.App. 3, 2009) 2009 U.S.Dist.LEXIS 33900	19
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	17
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012) 2012 U.S.Dist.LEXIS 185042	22
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	17
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	21
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234	20
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	17
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	19
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	18, 21, 22

Cases	Page(s)
<i>In re Tableware Antitrust Litig.</i>	
(N.D.Cal. 2007) 484 F.Supp.2d 1059	20
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	16
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	19
<i>Walsh v. IKON Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	18
Rules	
California Rules of Court, Rule 3.769	16, 24
Federal Rule 23	16
Statutes	
Business and Professions Code § 17200.....	11, 18
Code of Civil Procedure § 382.....	21, 24
Code of Civil Procedure § 877.6.....	17
Labor Code § 201.....	11, 18, 19
Labor Code § 202.....	11, 18, 19
Labor Code § 203.....	11, 18, 19
Labor Code § 204.....	11, 18
Labor Code § 210.....	18
Labor Code § 218.5.....	18
Labor Code § 226.....	11, 18
Labor Code § 226.3.....	18, 19
Labor Code § 226.7.....	10, 18, 19
Labor Code § 510.....	10, 18, 19
Labor Code § 512.....	10, 18, 19
Labor Code § 1191.....	10

Statutes	Page(s)
Labor Code § 1194.....	10, 18, 19
Labor Code § 1197.....	19
Labor Code § 1197.1.....	10, 18
Labor Code § 1198.....	10, 18, 19
Labor Code § 2698, et seq.	18
Labor Code § 2699.....	18
Labor Code § 2800.....	11, 18, 19
Labor Code § 2802.....	11, 18, 19

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$975,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of themselves and on behalf of all employee
4 who are or previously employed by Intevac, Inc. and Intevac Photonics, Inc. (“Defendants”) within
5 the State of California and who were classified as non-exempt employees during the period of July
6 14, 2016 to February 1, 2022, (“Class,” “Class Members,” and Class Period”) and/or were
7 employed by any third-party staffing company that assigned any individuals to provide service to
8 Defendants during the Class Period. At the time of this filing, the number of Class Members
9 confirmed by Defendants is one hundred forty-one (141). (Declaration of Douglas Han (“Han
10 Dec.”), ¶ 7.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims alongside Defendants’ potential liability exposure, this proposed
13 settlement of \$975,000 is well within the range of reasonableness. Class Counsel and Plaintiff are
14 convinced that the proposed Settlement is in the best interests of the Class Members based on the
15 negotiations and a detailed knowledge of the issues present in this action.

16 **II. BACKGROUND**

17 Defendants manufacture night vision imaging sensors and camera systems. (Han Dec.,
18 *supra*, at ¶ 8.) On April 21, 2021, Plaintiff Quiusky, a former non-exempt worker at Defendants’
19 facility, provided written notice to the California Labor and Workforce Development Agency
20 (“LWDA”) of the specific provisions of the Labor Code he contends Intevac, Inc. and Intevac
21 Photonics, Inc. violated and the theories supporting his contentions. (Han Dec., *supra*, at ¶ 10.)
22 On July 14, 2020, Plaintiff filed a representative PAGA action against Intevac, Inc. and Intevac
23 Photonics, Inc. in the Superior Court of California, County of Santa Clara. (*Id.* at ¶ 11.)

24 On July 2, 2021, Plaintiff filed a First Amended Complaint in the Superior Court of
25 California, County of Santa Clara, adding the following wage-and-hour class action claims: (1)
26 violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code
27 sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section
28 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194, 1197.1, and 1191

(unpaid minimum wages); (5) violation of Labor Code sections 201, 202, 203 (final wages not timely paid), and 204; (6) violation of Labor Code section 226 (non-compliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (failure to reimburse business expenses); and (8) violation of California Business and Professions Code section 17200, *et seq.* (Han Dec., *supra*, at ¶ 12.)

The Parties attended mediation on Plaintiff claims with mediator Mark S. Rudy, Esq. on February 1, 2022. (*Id.* at ¶ 13.) With the help of the mediator, the Parties were eventually able to reach an agreement on settlement of the action. (*Ibid.*)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed the representative PAGA action, both Parties engaged in discovery. (*Id.* 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 documents to each Defendant. Defendants responded to Plaintiff's discovery, and parties engaged in the *Belaire-West* opt-out process to obtain the contact information. Once the pleadings were amended to include the class allegations, Plaintiff provided a second set of form interrogatories, special interrogatories, request for admissions, and request for production of documents focusing on class allegations. (*Ibid.*) Plaintiff took the deposition of Defendants' PMQ Kimberly Burke for an entire day and also produced Plaintiff for his deposition.. (*Ibid.*)

Prior to the mediation on February 1, 2022, and both before and after the lawsuit was first filed, the Parties conducted a significant investigation of the facts and law. (*Id.* at ¶ 15.) Specifically, Defendants produced hundreds of pages of documentation relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, payroll and operational policies, and time and pay records. (*Ibid.*) Plaintiff reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. Plaintiff also interviewed multiple Class Members who worked for Defendants during the Class Period. (*Ibid.*)

1 Based upon the above-mentioned discovery, Plaintiff contends – and Defendants deny –
2 that Defendants: (a) failed to pay for all hours worked, (b) failed to pay minimum and overtime
3 wages; (c) failed to provide compliant meal and rest breaks; (d) failed to timely pay wages during
4 employment; (d) failed to timely pay wages upon termination; (e) failed to provide complete and
5 accurate wage statements; and (f) failed to reimburse business expenses. (Han Dec., *supra*, at ¶¶
6 18-23.) Defendants deny Plaintiff’s contentions in their entirety. (*Id.* at ¶ 24.)

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

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

10 During the Parties’ mediation with Mark S. Rudy, Esq., on February 1, 2022, the Parties
11 discussed the risks of continued litigation, certification, and the merits of the claims and defenses
12 versus settlement benefits. (Han Dec., *supra*, at ¶ 25.) With the assistance of the mediator, the
13 Parties were able to reach an agreement on settlement, the terms of which were memorialized in
14 the Settlement Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

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

16 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Dec.,
17 *supra*, at ¶ 33.) Though cordial and professional, the settlement negotiations have always been
18 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
19 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

20 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
21 and length of continued proceedings necessary to continue the litigation against Defendants
22 through class certification, trial, and any possible appeals. (Han Dec., *supra*, at ¶ 34.) Plaintiff and
23 Class Counsel have also considered the uncertainty and risk of further litigation, the potential
24 outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class
25 Counsel have conducted extensive settlement negotiations, including formal mediation on
26 February 1, 2022. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the settlement
27 set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the
28 Class’s best interests. (*Ibid.*)

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

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

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court's approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$975,000 ("Gross
15 Settlement Amount") which includes, subject to Court approval: (a) the Attorney Fee Award to
16 Class Counsel in an amount not to exceed \$341,250; (b) the Cost Award to Class Counsel in an
17 amount not to exceed \$20,000 for reimbursement of litigation costs and expenses; (c) the Class
18 Representative Enhancement Payment in the sum of \$10,000 to Plaintiff; (d) Administration Costs
19 to Simpluris, the Settlement Administrator, in an amount not to exceed \$5,000; and (e) the PAGA
20 Payment of \$50,000, seventy-five percent (75%) of which (\$37,500) will be paid to the LWDA
21 and twenty-five percent (25%) of which (\$12,500) ("PAGA Distribution") will be part of the Net
22 Settlement Amount to be distributed to Class Members, on a pro rata basis, in accordance with the
23 Agreement. (Han Dec., *supra*, at ¶ 26.)

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

25 If the Court approves all proposed deductions from the Gross Settlement Amount, it is
26 estimated that \$548,750 ("Net Settlement Amount") will be distributed to Class Members – with
27 an average gross Individual Settlement Share estimated at \$3,891.84.¹ (Han Dec., *supra*, at ¶ 28.)

28 ¹ \$548,750 (Net Settlement Amount) / 141 (Class Members) = \$3,891.84.

1 The Net Settlement Amount will be distributed to the Participating Class Members based on the
2 formula set forth in the Settlement – based on workweeks. (*Settlement Agreement*, III.G.2) The
3 PAGA Payment will also be distributed to Eligible Aggrieved Employees based on the number of
4 pay periods. (*Settlement Agreement*, III.H.6)

5 **iii. The allocating one-third of the Individual Settlement Share as taxable**
6 **Wages is Justified due to the Realistic Exposure of Case.**

7 Each Individual Settlement Share will be apportioned as follows: 1/3 wages which will be
8 taxable and the rest will remain non-taxable. (*Settlement Agreement*, III.G.2) This allocation of
9 1/3 taxable wages and 2/3 non-taxable penalties and interest was based on the realistic exposure
10 Plaintiff prevails at trial. (Han Dec., *supra*, at ¶ 30.) The realistic exposure could obtain
11 \$1,903,612.93. (Han Dec., *supra*, at ¶ 52.) Defendant's exposure for wage claim at a minimum of
12 \$666,678.27 which is roughly one-third of the exposure. (*Ibid.*)

13 **iv. Notice to the Class**

14 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
15 Defendants will use commercially reasonable efforts to provide the Class Data to the Settlement
16 Administrator. (*Settlement Agreement*, III.J.2.a.) Within fourteen (15) calendar days of the
17 Settlement Administrator's receipt of the Class Data, the Settlement Administrator will mail the
18 Notice Packets to all identified Class Members via First Class Mail. (*Settlement Agreement*,
19 III.J.2.b.) Class Members are not required to submit a claim form to receive their Individual
20 Settlement Shares. (Han Dec., *supra*, at ¶ 32.)

21 **v. Distribution of Funds**

22 Within sixty-five (65) calendar days of the Final Approval Date, Defendants shall deposit
23 the Gross Settlement Amount of \$975,000 by wiring the funds to the Settlement Administrator.
24 (*Settlement Agreement*, III.J.9.a.) Within fourteen (14) calendar days after the deadline to fund the
25 Settlement, the Settlement Administrator shall calculate and disburse all payments due under the
26 Settlement Agreement, including all Individual Settlement Shares, Attorney Fee Award, Cost
27 Award, Class and PAGA Representative Enhancement Payments, portion of the PAGA Payment
28 to the LWDA, and Administration Costs. (*Settlement Agreement*, III.J.9.b.)

1 Participating Class Members must cash or deposit their Individual Settlement Share checks
2 within one hundred eighty (180) calendar days from the date of their issuance(*Settlement*
3 *Agreement*, III.J.10.) If any checks are not cashed or deposited within ninety (90) calendar days
4 after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks
5 remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder
6 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks
7 are mailed, cancel the checks and pay the amount of the Individual Settlement Shares to the
8 California State Controller Unpaid Wages Fund.

9 **vi. Release of Claims**

10 Upon final approval by the Court, Plaintiff and the Participating Class Members will fully
11 and finally release and discharge the Released Parties from the Released Claims. (*Settlement*
12 *Agreement*, III.K.) Moreover, upon final approval by the Court, Plaintiff, the LWDA, and any
13 other representative, proxy, or agent thereof, including, but not limited to, the Eligible Aggrieved
14 Employees, will fully and finally release and discharge the Released Parties from the PAGA
15 Released Claims. (*Settlement Agreement*, III.L.)

16 Upon Final Approval, and in exchange for the Class Representative Enhancement Payment
17 in amount not to exceed \$10,000 to Plaintiff, in recognition of his work and efforts in obtaining
18 the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter
19 had not successfully resolved, and in exchange for the enhanced release below, Plaintiff provides
20 a general release of claims for himself and his spouses, heirs, successors and assigns. (*Settlement*
21 *Agreement*, III.M.)

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

1 LLC (2021) 69 Cal.App.5th 521, 537.) In other words, the released claims do not ““go beyond
2 the scope of the allegations in the operative complaint”” (*Ibid.*)

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

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

12 **IV. ARGUMENT**

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

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

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

21 (c) Any party to a settlement agreement may serve and file a written notice of
22 motion for preliminary approval of the settlement. The settlement

23 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
24 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
25 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.

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

1 agreement and proposed notice to class members must be filed with the
2 motion, and the proposed order must be lodged with the motion.

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

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

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

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

25 **i. The Settlement Amount of \$975,000 Is Fair and Reasonable**

26 The proposed Settlement was only possible following significant investigation and
27 evaluation of Defendants’ relevant policies and procedures, as well as the data Defendants
28 produced for the putative class, as referenced in Section III above, which permitted Class Counsel

1 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
2 35.)

3 This investigation and evaluation informed Plaintiff's central theories of liability. These
4 claims are predicated on Defendants' alleged failure to: (a) properly pay all wages, including
5 minimum wages and overtime ; (b) failure to provide meal and rest breaks and pay applicable
6 premiums; (c) failure to timely pay wages; (d) failure to issue compliant wage statements; (e)
7 failure to reimburse business expenses; (f) violation of Labor Code section 2698, et seq. (PAGA);
8 and (g) violation of Business & Professions Code sections 17200, et seq. (Han Dec., *supra*, at ¶
9 36.) Defendants denies Plaintiff's theories of liability and asserted several defenses. (*Id.* at ¶ 37.)

10 Although Plaintiff believes the case is suitable for certification on the basis that there are
11 company-wide policies that Plaintiff contends violate California law and uniformly affect the
12 putative class members, uncertainties with respect to certification are always present. (*Id.* at ¶ 38.)
13 As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34
14 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions
15 following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of
16 wage-and-hour claims.⁴ (*Ibid.*) While confident in the strength of their claims, these factors led
17 Plaintiff to discount calculations of potential damages.

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

19 The provisions of the Labor Code potentially triggering PAGA penalties in this case
20 include but are not limited to Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3,
21 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2699, 2800, and 2802. (Han Dec., *supra*, at ¶ 46.)
22 Defendants asserts that, regardless of the results of the underlying causes of action, PAGA
23 penalties are not mandatory but permissive and discretionary. (Han Dec., *supra*, at ¶ 46.)

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].)

Defendants also maintains that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) It could be argued that without stacking and limited to the initial violation, PAGA penalties would be limited to **\$41,700** (141 employees x \$100 initial violation) on the low end and **\$84,600** (141 employees x \$100 x 6 theories of recovery). (Han Dec., *supra*, at ¶¶ 48-50.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Dec., *supra*, at ¶ 51.) Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 226.3, 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. 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. Thus, allocating \$50,000 to PAGA civil penalties was reasonable based on a rate of **\$15.62** per pay period [$\$50,000 \div 3,201$ pay periods in PAGA date range = **\$15.62**], given the fact that Defendants is also paying an additional \$925,000 in the class settlement.⁵ 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 \$975,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the potential civil penalties, which could be completely discretionary, for the

⁵ (See *Carrington, supra*, 30 Cal.App.5th at p. 529 [affirming a rate of \$5.00 per violation and a total PAGA penalty of \$150,000.00 while the plaintiff requested a rate of \$25.00 to \$75.00 per violation and a total PAGA penalty of \$70,000,000.00].)

⁶ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 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.”.)

reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$4,193,117.12** on the low end and **\$4,713,959.52** on the high end. (Han Dec., *supra*, at ¶ 52.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic ⁷ Exposure
Rest Break Premiums	\$416,673.92	50%	60%	\$83,334.78
Meal Break Premiums	\$2,083,369.60	25%	70%	\$468,758.01
Overtime/Minimum Wage: Off-the-Clock Work	\$1,041,684.80 to \$1,562,527.20	20%	20%	\$666,678.27 to \$1,000,017.30
Unreimbursed Business Expenses	\$46,848.00	30%	70%	\$9,761.64.00
Wage Statement Penalty	\$108,000.00	20%	15%	\$73,440.00
Waiting Time Penalty	\$496,540.80	20%	30%	\$278,062.84
MAXIMUM TOTAL EXPOSURE	\$4,193,117.12 to \$4,713,959.52			\$1,570,273.90 to \$1,903,612.93

Based on this analysis, the realistic recovery for this case is **\$1,570,273.90** on the low end and **\$1,903,612.93** on the high end. (Han Dec., *supra*, at ¶ 59.) The Gross Settlement Amount of \$975,000 is about twenty percent (20.6%) of the maximum potential exposure and is approximately sixty-two percent (62%) 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

⁷ A detailed discount analysis is in Han Decl. ¶¶ 40-58.

1 settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a
2 significant recovery for the Class Members.

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

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

10 The proposed Class is ascertainable and numerous as to make it impracticable to join all
11 Class Members, and there are common questions of law and fact that predominate over any
12 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 60.) Plaintiff contends
13 that as a former non-exempt employee of Defendant, his claims are typical of the claims of the
14 Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also,
15 Plaintiff asserts that the prosecution of separate actions by individual Class Members would create
16 the risk of inconsistent or varying adjudications, and a class action is, therefore, superior to other
17 available means for the fair and efficient adjudication of the case. As discussed below, this case is
18 amenable to class certification. (*Ibid.*)

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

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

27 ///

1 This case involves one hundred forty-one (141) Class Members, which was confirmed by
2 Defendant. (Han Dec., *supra*, at ¶ 61.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan*
3 *v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of
4 “as many as 190 current and former employees” is sufficiently numerous].)

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

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

15 **1. Common Issues Predominate**

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

27 Plaintiff asserts common issues of fact and law predominate as to each of the claims
28 alleged. (Han Dec., *supra*, at ¶ 62.) Specifically, Plaintiff contend all Class Members were subject

1 to the same or similar employment practices, policies, and procedures described in detail above.
2 (Han Dec., *supra*, at ¶ 62.)

3 **2. Plaintiff's Claims Are Typical of the Class Claims**

4 Typical claims rely on legal theories and facts that are substantially like those of other class
5 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of
6 Defendants and alleges she and the Class Members were employed by the same company and
7 injured by Defendants' common policies and practices related to the claims described above. (Han
8 Dec., *supra*, at ¶ 62.) Plaintiff seeks relief for these claims and derivative claims on behalf of all
9 Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are
10 based on the same legal theories as those applicable to the Class. (*Ibid.*)

11 **3. Plaintiff Are Adequate to Represent the Class**

12 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 64.) He
13 has conducted himself diligently and responsibly in representing the Class in this litigation,
14 understands his fiduciary obligations, and has actively participated in the prosecution of this case.
15 (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class
16 Counsel with a complete understanding of their work environment and requirements and provided
17 his testimony in a deposition to prosecute this case. (*Ibid.*) Further, Plaintiff has no interest that is
18 adverse to the interests of the other Class Members. (*Ibid.*)

19 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 20 **of this Controversy**

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

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

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

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 Settlement Agreement., *supra*; Exhibits A and B to Exhibit 2.)

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

24

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

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 fgonzalez@justicelawcorp.com

**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**

on interested parties in this action by electronically submitting as follows:

[X] BY ELECTRONIC SUBMISSION

[X] STATE

Executed on June 6, 2022, at Pasadena, California.


Flor Gonzalez