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

PATRICIA ALCANTAR and LEAH
BROWN, individually, and on behalf of
other members of the general public
similarly situated;

Plaintiffs,

v.

BAY EQUITY LLC, a California
Company; and DOES 1 through 100,
inclusive;

Defendants.

Case No. CIV1903376

Honorable James Chou
Department B

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED 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: _____

Hearing Time: _____

Hearing Place: Dept. B

Filed: September 4, 2019

FAC Filed: July 8, 2020

Trial: None Set

1 **PLEASE TAKE NOTICE** that on _____, and at _____ a.m./p.m.,
2 or as soon as the matter may be heard before the Honorable James Chou in Department B of the
3 Marin County Superior Court, located at 3501 Civic Center, San Rafael, California 94903,
4 Plaintiffs Patricia Alcantar and Leah Brown, (“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,” or “Settlement Agreement”), attached as
8 **“EXHIBIT 1”** 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 Payment, 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 Action Settlement (“Class Notice”)
17 attached as “Exhibit A” to the Settlement Agreement;
- 18 • Approving the Election Not To Participate or Exclusion Form (“Exclusion
19 Form”) attached as “Exhibit B” to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Class Notice with a postage-paid return
21 envelope (hereinafter collectively referred to as the “Notice Packet”) to the
22 proposed Class;
- 23 • Approving the proposed deadlines for the notice and Settlement Administration
24 process;
- 25 • Approving Phoenix Class Action Administration Solutions as the Settlement
26 Administrator; and

27 ///

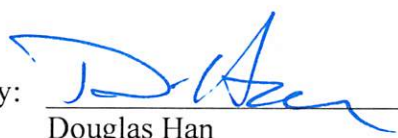
28 ///

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

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

Dated: July 23, 2020

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	INVESTIGATION/LITIGATION HISTORY	3
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	3
b.	The Parties Attended Mediation Which Led to the Settlement	5
c.	Terms of the Proposed Settlement.....	5
i.	Deductions from the Settlement	5
ii.	Calculation of Settlement Payments to Class Members	6
iii.	Notice to the Class	6
iv.	Distribution of Funds.....	7
v.	Release of Claims	7
IV.	ARGUMENT	8
a.	Class Action Settlements are Subject to Court Review.....	8
b.	Conditional Certification of the Class is Appropriate	9
c.	The Settlement is Fair, Reasonable, and Adequate	9
i.	The Proposed Class is Ascertainable and Sufficiently Numerous	10
ii.	The Class Members Share a Well-Defined Community of Interest.....	10
d.	The Settlement was Reached as a Result of Arm's-Length Negotiations.....	11
e.	The Settlement is the Result of Thorough Investigation and Discovery	12
f.	Counsel for Both Parties are Experienced in Similar Litigation	12
g.	The Proposed Settlement is a Reasonable Compromise of Claims.....	13
i.	The Settlement is Fair and Reasonable	13
ii.	The Settlement Amount of \$2,809,965 is Reasonable	15
h.	Discount Analysis Justifies the Settlement.....	20
i.	Notice to Class Members Complies with California Rule of Court 3.769(f)	23
V.	CONCLUSION	23

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	14
<i>Bartold v. Flendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	10
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	9
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979)	12
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	10, 11
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	19
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2 nd Cir. 1974)	22
<i>Dunbar v. Albertson's Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	14
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	9, 12
<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
169 Cal. App. 4 th 1524 (2008)	10, 11
<i>Green v. Obledo,</i>	
29 Cal. 3d 126 (1981)	8
<i>Harris v. Superior Court,</i>	
154 Cal. App. 4 th 164 (2007)	14
<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
89 Cal. App. 4 th 908 (2001)	10

1	<i>Hopson v. Hanesbrands Inc.,</i>	
2	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009).....	19
3	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
4	452 U.S. 905 (1981)	9
5	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
6	168 Cal. App. 4 th 116 (2008)	13
7	<i>Linder v. Thrifty Oil Co.,</i>	
8	23 Cal. 4 th 429 (2000).....	10
9	<i>Linney v. Cellular Alaska Partnership,</i>	
10	151 F. 3d 1234 (9 th Cir. 1998)	22
11	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
12	186 Cal. App. 4 th 399 (2010)	13
13	<i>Nordstrom Com. Cases,</i>	
14	186 Cal. App. 4 th 576 (2010)	19
15	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
16	34 Cal. 4 th 319 (2004).....	9, 10, 11, 14
17	<i>In re Tableware Antitrust Litig.,</i>	
18	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	22
19	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
20	38 Cal. 3d 488 (1985).....	13
21	<i>Vasquez v. Superior Court,</i>	
22	4 Cal. 3d 800 (1971).....	8
23	<i>Walsh v. IKON Solutions, Inc.,</i>	
24	148 Cal. App. 4 th 1440 (2007)	14
25	<u>Statutes</u>	
26	Code of Civil Procedure § 382	9, 10
27	Code of Civil Procedure § 877.6	13
28	Business and Professions Code § 17200, <i>et seq.</i>	2

1	Labor Code § 201	8
2	Labor Code § 202	8
3	Labor Code § 203	8, 22
4	Labor Code § 204	8, 18
5	Labor Code § 218.5	8
6	Labor Code § 221	8
7	Labor Code § 226	<i>passim</i>
8	Labor Code § 226.3	8
9	Labor Code § 226.7	8, 18, 19
10	Labor Code § 246	8, 18
11	Labor Code § 510	8, 18, 19
12	Labor Code § 512	8, 18, 19
13	Labor Code § 558	8
14	Labor Code § 1174	8, 18
15	Labor Code § 1194	8, 18, 19
16	Labor Code § 1197	8, 18
17	Labor Code § 1197.1	8, 18
18	Labor Code § 1198	8, 18, 19
19	Labor Code § 2699	18
20	Labor Code § 2699.5	18
21	Labor Code § 2800	8
22	Labor Code § 2802	8, 17, 18, 19
23	Rule 3.769	8, 23

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,809,965 proposed wage
3 and hour class action settlement by Plaintiffs Patricia Alcantar and Leah Brown (“Plaintiffs”) on
4 behalf of themselves and all persons who or have been employed by Defendant Bay Equity, LLC
5 (“Bay Equity” or “Defendant”) in the following Classes:

- 6 a. Non-Arbitration Class: All individuals who worked for Defendant as hourly
7 and/or non-exempt employees and did not sign an arbitration agreement with
8 class action waiver provision contained during the time period from
9 September 4, 2015, to August 15, 2020 (“Non-arbitration Class Period”); and
10 b. Arbitration Class: All individuals who worked for Defendant as hourly and/or
11 non-exempt employees and who signed an arbitration agreement with a class
12 action waiver provision contained during the time period from April 20, 2019,
13 to August 15, 2020 (“Arbitration Class Period”).

14 At the time of this filing, Defendant estimates that there are approximately eight hundred
15 and thirty-three (833) individuals that would be included in this Settlement.

16 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
17 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
18 proposed settlement of \$2,809,965—**with an average settlement share amount estimated at**
19 **\$2,045.05¹**—is well within the “ballpark” of reasonableness.

20 As the following sections show, Class Counsel is convinced that the proposed Settlement
21 is in the best interests of the Class based on the negotiations and detailed knowledge of the issues
22 present in this action. The length and risks of trial and perils of litigation that affect the value of
23 the claims were all carefully weighed. In addition, the defenses asserted by Defendant,
24 particularly the uncertainty of class certification, the difficulties of complex litigation, the
25 lengthy process of establishing specific damages and various possible delays and appeals, were
26 also carefully considered by Class Counsel in arriving at the proposed Settlement.

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28 ¹ \$1,703,527.25 (Net Settlement Amount) / 833 (Class Members) = \$2,045.05

1 **II. BACKGROUND**

2 Defendant Bay Equity, LLC is a full-service retail mortgage lender, and ranks among the
3 top 30 home mortgage companies in the country, according to its website. (Declaration of
4 Douglas Han (“Han Decl.”) ¶ 8.) This case involves two Classes: Non-Arbitration Class: All
5 individuals who worked for Defendant as hourly and/or non-exempt employees and did not sign
6 an arbitration agreement with class action waiver provision contained during the time period
7 from September 4, 2015, to August 15, 2020; and Arbitration Class: All individuals who worked
8 for Defendant as hourly and/or non-exempt employees and who signed an arbitration agreement
9 with a class action waiver provision contained during the time period from April 20, 2019, to
10 August 15, 2020. (*Ibid.*)

11 On September 4, 2019, Plaintiff Patricia Alcantar (“Plaintiff Alcantar”) filed a class
12 action complaint in Marin County Superior Court against Bay Equity alleging wage and hour
13 violations on behalf of all current and former hourly-paid or non-exempt employees who worked
14 for Bay Equity in the four years preceding the complaint. (Han Decl. ¶ 9.) The complaint alleged
15 causes of action under the California Labor Code for unpaid overtime, unpaid meal period
16 premiums, unpaid rest period premiums, unpaid minimum wages, untimely payment of final
17 wages, non-compliant wage statements, unreimbursed business expenses, and violation of
18 California Business and Professions Code § 17200. (*Ibid.*)

19 On July 8, 2020, Plaintiffs filed a First Amended Complaint in the Superior Court for the
20 County of Marin on behalf of himself and on behalf of other members of the general public
21 similarly situated and on behalf of aggrieved employees under the Private Attorneys General Act
22 of 2004. (Han Decl. ¶ 10.) The First Amended Complaint specifically includes separate causes of
23 action based on the facts and theories in the original complaint, including a PAGA cause of
24 action and adds Plaintiff Leah Brown (“Plaintiff Brown”) as an additional Class Representative.
25 (*Ibid.*)

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1 The Parties agreed to attend a mediation of Plaintiffs' claims on April 14, 2020. (Han
2 Decl. ¶ 11.) At the conclusion of the mediation, the Parties were unable to reach an agreement.
3 However, the parties continued to negotiate and ultimately accepted a mediator's proposal on
4 May 14, 2020. (*Ibid.*)

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

12 **III. INVESTIGATION/ LITIGATION HISTORY**

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

14 After Plaintiff Alcantar filed the original complaint, Plaintiff Alcantar engaged in
15 discovery. Plaintiff Alcantar propounded one (1) set of form interrogatories, one (1) set of
16 special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for
17 production on Defendant. (Han Decl. ¶ 13.) The parties engaged in the *Belaire* opt-out notice
18 process to obtain the class contact information as well as engage in informal discovery to prepare
19 for mediation. (*Ibid.*)

20 As the result of discovery conducted by Plaintiff Alcantar, Defendant produced a large
21 volume of documents including employee handbooks, meal and rest period policies, Plaintiffs'
22 personnel files, payroll records, and time records. (Han Decl. ¶ 14.)

23 Plaintiff Alcantar also was in constant communication with numerous current and former
24 non-exempt employees of Defendant. (Han Decl. ¶ 15.) These employees apprised Plaintiffs of
25 their experiences working for Defendant and provided Plaintiffs with relevant documents,
26 including their personnel files and documents they had obtained through their employment.
27 (*Ibid.*)

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1 Based upon Defendant's formal and informal discovery responses, exchange of
2 information, and document production, as well as interviews Plaintiffs' counsel had with non-
3 exempt employees, Plaintiffs contend—and Defendant denies—that Defendant did not maintain
4 a code-compliant meal break or rest break policy during the class period. (Han Decl. ¶ 16.)
5 Moreover, Plaintiffs contend that they and the Class Members were rarely afforded timely,
6 uninterrupted meal and rest breaks while working. (*Ibid.*) Plaintiffs contend that Defendant failed
7 to pay premium wage compensation owed to non-exempt employees for the non-compliant meal
8 and rest periods. (*Ibid.*)

9 In addition, Plaintiffs contend—and Defendant denies—that Defendant failed to
10 authorize overtime and limited their hours, which resulted in off-the-clock work, and Defendant
11 did not include non-discretionary bonuses and commissions in employees' regular rate of pay for
12 purposes of overtime compensation. (Han Decl. ¶ 17.) Moreover, Plaintiffs contend—and
13 Defendant denies—that Defendant failed to timely pay wages and failed to provide employees
14 with accurate wage statements. (*Ibid.*)

15 Defendant denies Plaintiffs' contentions in their entirety. (Han Decl. ¶ 18.) Among other
16 things, Defendant denies Plaintiffs' rest and meal break contentions because it provided rest and
17 meal periods within compliant times and that non-exempt employees were given discretion as to
18 when to take their rest and meal periods. (*Ibid.*) Defendant contends that whether non-exempt
19 employees took meal and rest periods during compliant time frames and were relieved of all
20 duties are questions that could only be resolved by resorting to individualized inquiries to each
21 non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*) And
22 Defendant contends that it timely paid wages and provided accurate wage statements. (*Ibid.*)

23 As demonstrated above, the Parties took staunchly conflicting positions concerning
24 Defendant's policies and procedures and their effect on non-exempt employees.

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1 **b. The Parties Attended Mediation Which Led to the Settlement**

2 19. The Parties agreed to go to mediation with an experienced wage and hour
3 mediator, Lynn S. Frank. (Han Decl. ¶ 19.) The mediation took place on April 14, 2020. (*Ibid.*)
4 During the mediation, the parties discussed the risks of continued litigation, risks of certification,
5 and on the merits of the claims versus the benefits of settlement. (*Ibid.*) While the parties were
6 unable to settle at mediation, under the auspices of the mediator, the parties were able to reach an
7 agreement on a settlement, the terms of which were memorialized in a “Joint Stipulation and
8 Settlement Agreement” (referred to herein as the “Joint Stipulation” or “Settlement”) that the
9 Parties seek preliminary approval of in the instant motion. (*Id.*; Ex. 1.)

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

11 **i. Deductions from the Settlement**

12 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
13 action be settled and compromised for the non-reversionary total sum of \$2,809,965 (“Gross
14 Settlement Amount” or “GSA”) which includes, subject to Court approval: (a) Attorney Fee
15 Award of up to \$983,487.75 (35% of the GSA) to compensate Class Counsel for work already
16 performed and all work remaining to be performed in documenting the settlement, administering
17 the settlement and securing Court approval; (b) Cost Award for actual litigation costs not to
18 exceed \$25,000;² (c) Class Representative Enhancement Payment to the named Class
19 Representatives in a sum not to exceed \$7,500 for each Plaintiffs in consideration for a general
20 release of claims, for initiating and prosecuting the class action complaint, serving as the Class
21 Representatives, work performed, and risks undertaken for the payment of attorneys’ fees and
22 costs in the event they had been unsuccessful in the matter; (d) Administration Costs and
23 expenses to Phoenix Class Action Administration Solutions (“Phoenix”), estimated at
24

25 ² The actual amount of litigation costs will be provided to the Court in conjunction with
26 Plaintiffs’ motion for final approval. (Han Dec. ¶ 21.) At that time, Plaintiffs will ask the Court
27 to approve the amount of these costs. (*Ibid.*) If Plaintiffs’ actual costs exceed \$25,000, Plaintiffs
28 will only seek reimbursement in the amount of \$25,000. (*Ibid.*) If Plaintiffs’ actual costs are
lower than \$25,000, Plaintiffs will seek reimbursement of their actual litigation costs and the
difference shall become part of the Net Settlement Amount and be available for distribution to
Participating Class Members. (*Ibid.*)

approximately \$7,950 but not to exceed \$25,000; and (e) LWDA payment of \$75,000 (which is 75% of \$100,000 allocated to Plaintiffs' claims under PAGA). (Han Decl. ¶ 20.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that \$1,703,527.25 ("Net Settlement Amount" or "NSA"), less all applicable employee taxes on the wage portion of the individual settlement share, will be distributed to Class Members—**with an average settlement share estimated at \$2,045.05**. (Han Decl. ¶ 22.) Subject to the terms and conditions of the Settlement, the Settlement Administrator will calculate and issue Individual Settlement Shares based on the following formula:

Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked as a non-exempt employee employed by Defendant in California during the respective Class Periods based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by any and all Participating Class Members in the respective Classes during the Class Periods based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

(*Ibid.*) The PAGA Payment will be distributed to the Eligible Aggrieved Employees pro-rata based on pay periods worked during the PAGA Timeframe. (*Ibid.*) The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (*Ibid.*) Under no circumstances will any portion of the \$2,809,965 settlement revert to Defendant. (*Ibid.*)

iii. Notice to the Class

Within fifteen (15) calendar days after entry of the preliminary approval order, Defendant shall deliver to the Settlement Administrator an electronic database for purposes of mailing Class Notices to Participating Class members. (Han Decl. ¶ 23.) Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Phoenix shall mail copies of the Class Notice and Exclusion Form to all Class Members via regular First-Class U.S. Mail. (*Ibid.*) The Notice advises the Class of their rights to participate in the settlement and how to and when to object or

request exclusion from the settlement. (Han Decl. ¶ 23.) Class Members are not required to submit a claim form to receive payment. (*Ibid.*) The proposed Class Notice and Exclusion Form are attached as Exhibits A and B to the Joint Stipulation (Exhibit 1 to the Declaration of Douglas Han). (*Ibid.*)

iv. Distribution of Funds

No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Two Million Eight Hundred and Nine Thousand Nine Hundred and Sixty-Five Dollars (\$2,809,965) needed to pay the entire GSA by wiring the funds to Phoenix. (Han Decl. ¶ 24.)

Phoenix shall pay the Individual Settlement Shares, Class Representative Enhancement Payment, Attorney Fee Award, Cost Award, PAGA Payment, and Administration Costs within fourteen (14) calendar days after the GSA has been fully funded. (Han Decl. ¶ 25.)

Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. (Han Decl. ¶ 26.) If any checks remain uncashed or not deposited within two hundred (200) calendar days after the checks are mailed, Phoenix will pay the amount of the to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member will have his or her Individual Settlement Share available to him or her per the applicable claim procedure to request that money from the State of California. (*Ibid.*)

v. Release of Claims

In exchange for a Settlement Payment, Class Members are informed that, by accepting the payment, the claims they are releasing in exchange for the consideration provided for by this Agreement are all claims in the Complaint, the PAGA notice, and claims that could have been pled arising out of the same operative facts including but not limited to claims for 1) failure to pay overtime (including any underpayment resulting from an improper calculation of the regular rate of pay); 2) failure to provide meal periods (or appropriate premiums in cases where meal periods were not provided); 3) failure to provide rest breaks (or appropriate premiums in cases where rest periods were not provided); 4) failure to pay minimum wages; 5) final wages not

1 timely paid; 6) failure to comply with itemized employee wage statement provisions; 7) failure to
2 reimburse business expenses; 8) violations of the Private Attorneys General Act of 2004
3 (including violations of California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a),
4 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the
5 IWC Wage Orders; and 9) violation of the Unfair Competition Law. The release only applies to
6 periods of time when Class Members were members of the Classes (i.e., excluding periods of
7 time in an exempt position or when employed outside of California). (Han Decl. ¶ 27.)

8 The release will be as to the Released Parties, which shall include Defendant and its past
9 or present officers, directors, shareholders, employees, agents, principals, heirs, representatives,
10 accountants, auditors, consultants, insurers and reinsurers, and their respective successors and
11 predecessors in interest, subsidiaries, affiliates, parents and attorneys. (Han Decl. ¶ 28.)

12 **IV. ARGUMENT**

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

14 California Rule of Court 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.” (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
17 motion for preliminary approval of class settlements:

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

20 . . .

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

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26 ³The California Supreme Court also has authorized California’s trial courts to use Federal Rule
27 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
28 (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 Courts act within their discretion in approving settlements that are fair, not collusive, and
2 take into account “all the normal perils of litigation as well as the additional uncertainties
3 inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607
4 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*
5 (1981) 452 U.S. 905.)

6 **b. Conditional Certification of the Class is Appropriate.**

7 For settlement purposes only, the requisites for establishing conditional class certification
8 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
9 of a common or general interest, of many persons, or when the parties are numerous, and it is
10 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
11 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
12 “both [1] an ascertainable class and [2] a well-defined community of interest among class
13 members.” (*Ibid.*)

14 Here, the proposed Classes are ascertainable and numerous as to make it impracticable to
15 join all class members, and there are common questions of law and fact that predominate over
16 any questions affecting any individual Class Member. (Han Decl. ¶ 29.) Plaintiffs’ claims are
17 typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect
18 the interests of the Class. (*Ibid.*) Further, prosecution of separate actions by individual Class
19 Members would create the risk of inconsistent or varying adjudications, and a class action is
20 superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
21 discussed below, this case is amenable to class certification.

22 **c. The Settlement Is Fair, Reasonable, and Adequate**

23 In deciding whether to approve a proposed class action settlement under Code of Civil
24 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and
25 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class
26 action settlement is presumed fair under the following circumstances: (1) the parties reached
27 settlement after arms-length negotiations; (2) investigation and discovery were sufficient to
28 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 following analysis shows, all three elements of Section 382 are present here.
3 Thus, Plaintiffs request that this Court grant their motion for preliminary approval.

4 **i. The Proposed Class is Ascertainable and Sufficiently Numerous**

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

12 This action involves eight hundred and thirty-three (833) Class Members with sixty-three
13 (63) percent of the Class Members subject to mandatory arbitration agreements. (Han Decl. ¶
14 30.) This Classes are sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
15 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
16 former employees” is sufficiently numerous).) Further, all Class Members can and will be
17 identified by Defendant to the Settlement Administrator through a review of Defendant’s
18 employment records concerning non-exempt or hourly employees who worked for Defendant in
19 the State of California during the Class Periods. (*Ibid.*)

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

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

certification appropriate.” (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).)

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).) Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

Here, Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. All non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (Han Decl. ¶¶ 16-17.) All of the claims surround Defendant’s common practice and scheme of failing to properly account for all hours worked by non-exempt employees (i.e., off-the-clock work) and failing to pay them, *inter alia*, for overtime work, and non-compliant meal and rest periods, and associated inaccurate wage statements and waiting time penalties. (*Ibid.*)

Specifically, 82% of shifts between 10 and 12 hours did not have a recorded second meal break, evidencing a uniform practice to not provide and authorize proper meal breaks. (*Id.* at ¶ 38.) Additionally, 35.2% of all shifts had at least one unique rest break violation, and \$247,908 were underpaid due to Defendant’s failure to properly calculate the regular rate of pay. (*Id.* at ¶¶ 38-39.) As a result, all of the Class Members, including Plaintiffs, were uniformly not paid for all of the hours they worked for Defendant during the Class Period. Based on these facts, Plaintiffs conclude that the proposed Classes are readily certifiable in this case. Accordingly, the Court should provisionally certify the Classes for settlement purposes only.

d. The Settlement Was Reached as a Result of Arm’s-Length Negotiations

The Settlement was reached as a result of arms-length negotiations. (Han Decl. ¶ 31.) Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties conducted extensive arm’s length settlement negotiations until the parties could not settle. However, these negotiations led to a mediator’s proposal that was later accepted by the Parties. (*Ibid.*) The terms

of the Settlement are memorialized in the Joint Stipulation. (Han Decl. ¶ 31; Ex. 1).

Plaintiffs believe in the merits of their case, but also recognize the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately, as opposed to risking continued litigation, the merits of the case before and after trial, damages awarded, and an appeal that could take years to litigate. (Han Decl. ¶ 32.)

e. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. (Han Decl. ¶¶ 13-15.) The settlement was only possible following discovery and evaluation of Defendant’s policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl. ¶ 33.) The case is at the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

f. Counsel for Both Parties Are Experienced in Similar Litigation

Both Plaintiffs’ counsel and Defendant’s counsel are particularly experienced in wage and hour employment law and class actions. The plaintiffs’ counsel has significant experience in litigating unpaid wages, non-compliant meal periods, and non-compliant rest periods, and unfair business practices class actions. (Han Decl. ¶¶ 4-7.)

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 and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (*Id.*) This experience instructed the Plaintiffs’ counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.⁴ (*Id.*)

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⁴The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **g. The Proposed Settlement is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.*)

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

18 As the following subsections show, the Parties’ investigation and discovery revealed
19 numerous reasons to discount claims and agree to this settlement.

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

21 The proposed settlement was only possible following significant discovery and
22 evaluation of Defendants’ relevant policies and procedures, as well as the data they produced for
23 the putative Class as referenced in Section IV(c)(ii) above, which permitted Class Counsel to
24 engage in a comprehensive analysis of liability and potential damages. (Han Decl. ¶ 33.)

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1 This discovery and informal exchange of information resulted in Plaintiffs' central
2 theories of liability, which are predicated on Plaintiffs' claims that Defendant employed uniform
3 policies of not providing compliant meal and rest periods, failing to authorize overtime forcing
4 thus forcing class members to work off-the-clock, and not including bonuses in employees'
5 regular rate of pay for purposes of overtime compensation. (Han Decl. ¶ 34.)

6 Defendant vehemently denies Plaintiffs' theories of liability and contends, as stated
7 above, that all meal and rest periods were provided in compliance with California law, the
8 regular rate of pay complied with California law, all wages were timely paid to class members,
9 and that it provided wage statements in compliance with Labor Code § 226. (Han Decl. ¶ 35.)
10 Defendant argues that if litigation were to continue, it feels confident that it would prevail. (*Ibid.*)

11 Although Plaintiffs believe the case is suitable for certification on the claimed basis that
12 there are company-wide policies that Plaintiffs contend violate California law and uniformly
13 affect the putative class members, uncertainties concerning certification are always present. (Han
14 Decl. ¶ 36.) As the California Supreme Court ruled in *Sav-On Drugs, supra*, 34 Cal.4th at p. 319,
15 class certification is always a matter of the trial court's sound discretion. Decisions following
16 *Sav-On* have reached different conclusions, concerning certification of wage and hour claims.⁵
17 Still remaining confident in the strengths of their claims, all of these factors led Plaintiffs to
18 discount the following calculations of potential damage claims. (*Ibid.*)

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25 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of
26 class claiming misclassification and ordering summary adjudication in favor of employees),
27 *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes
28 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 \$2,809,965 is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendant 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 hourly rates for class members. (Han Decl. ¶ 37.) Defendant
6 represents that, as of April 14, 2020, the Class Periods includes approximately 46,065
7 workweeks. (*Ibid.*) Plaintiffs determined the average hourly rate for class members was \$21.66.
8 (*Ibid.*)

9 Specifically, Plaintiffs claim—and Defendant denies—that Defendant's employees are
10 not provided with compliant meal periods and rest breaks. (Han Decl. ¶ 38.) Plaintiffs contend
11 that Defendant has not maintained any code-compliant meal break policy that provides for timely
12 meal breaks or rest break policy that provides a duty-free break during the entire class period.
13 (*Ibid.*) Rather, Defendant maintained an informal policy of failing to provide employees with
14 meal and rest breaks during the entire class period. (*Ibid.*)

15 Regarding meal and rest breaks, Defendant has not paid a single premium during the
16 entire class period, a claim which Defendant denies. (*Ibid.*) Moreover, Plaintiffs allege that
17 Defendant required Plaintiffs and other class members to take rest breaks on-site, violating the
18 law that rest breaks must be duty-free. (*Ibid.*) Additionally, due to heavy workloads, the pressure
19 to work efficiently, and time-sensitive deadlines, Defendant's meal and rest break practices
20 forced employees to forego, interrupt, or postpone taking their meal and rest breaks. (*Ibid.*)

21 Utilizing the sampling time and pay data records for 171 Class Members, Plaintiffs were
22 able to establish that 35.2% of all shifts had at least one unique meal break violation. (*Ibid.*) 82%
23 of shifts between 10 and 12 hours did not have a recorded second meal break, and importantly
24 78.7% of shifts greater than 12 hours, for which a meal break cannot be waived, did not have a
25 recorded second meal break. (*Ibid.*) Accordingly, extrapolated to the total number of workweeks
26 (46,065), using Plaintiffs' calculated average of 4.6 shifts per workweek, Plaintiffs calculates
27 Defendant's maximum potential exposure for the meal period claim to be approximately
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1 \$3,576,673.11.⁶ (Han Decl. ¶ 38.)

2 Moreover, 15.2% of all shifts had at least one unique rest break violation (Han Decl. ¶
3 38). However, it could be argued that 100% shifts included a violation due to the on-site rest
4 period policy. Thus, Plaintiffs calculate Defendant's maximum potential exposure for the rest
5 period claim to be approximately \$1,481,137.64.⁷ (*Ibid.*)

6 Furthermore, Plaintiffs claim—and Defendant denies—that Defendant maintained a strict
7 overtime policy, which deprived the Class Members of wages for all time worked. (Han Decl. ¶
8 39.) Interviews with Class Member reveal that, on average, they are working 15 minutes of off-
9 the-clock work. (*Ibid.*) Thus, Plaintiff calculates that Defendant's maximum potential exposure
10 due to its illegal rounding policy is approximately \$1,758,565.90.⁸ (*Ibid.*)

11 Additionally, Plaintiffs claim—and Defendant denies—that Defendant failed to factor
12 non-discretionary bonuses in employees' regular rate of pay for purposes of overtime. (Han
13 Decl. ¶ 40.) Specifically, Defendant failed to factor in the commission and bonuses into the
14 regular rate. (*Ibid.*) For the 184 employees and 7,051 pay periods analyzed, Plaintiffs' expert
15 calculated that Defendant failed to pay \$40,024 to employees under this theory of liability.
16 (*Ibid.*) Thus, extrapolated to a Class Period of 46,065 workweeks, Plaintiffs calculate
17 Defendant's maximum potential exposure for the unpaid overtime claim to be approximately
18 \$247,908.⁹ (*Ibid.*)

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25 ⁶**Maximum Potential Exposure for Meal Period Claim** = 46,065 workweeks x 4.6 shifts/workweek x .352
violations/shift x \$21.66/violation = **\$1,615,585.70**

26 ⁷**Maximum Potential Exposure for Rest Period Claim** = 46,065 workweeks x 4.6 shifts/workweek x 1
violations/shift x \$21.66/violation = **\$4,589,732.30**

27 ⁸**Maximum Potential Exposure for Off-the-Clock Claim** = 46,065 workweeks x 4.7 shifts/workweek x .25 (15-
minutes unpaid) x \$32.49/overtime hr= **\$1,758,565.90**

28 ⁹**Maximum Potential Exposure for Unpaid Overtime Claim** = (46,065 workweeks/19,986 workweeks) x
\$624,082 = **\$2,275,029.63**

1 Further, Plaintiffs claims—and Defendant denies—that Defendant’s off-the-clock work
2 practice, regular rate calculation, and failure to pay meal break and rest break premiums resulted
3 in Defendant issuing inaccurate wage statements in violation of *California Labor Code* section
4 226(a). (Han Decl. ¶ 41.) Plaintiffs calculate Defendant’s maximum potential exposure as to this
5 claim to be approximately \$996,300¹⁰ (based on 486 employees within the one-year statute of
6 limitations). (*Ibid.*)

7 If Plaintiffs can prove Defendant’s failure to pay all wages owed, Plaintiffs are then
8 entitled to waiting time penalties in the amount of 30 days’ worth of wages. (Han Decl. ¶ 42.)
9 Plaintiffs calculate Defendant’s maximum potential exposure as to this claim to be
10 approximately \$2,609,596.80¹¹ (based on 502 terminated employees within the three-year statute
11 of limitations). (*Ibid.*)

12 Plaintiffs claim – and Defendants deny – that employees were required to use their own
13 cell phones to communicate and make business-related calls. Plaintiffs allege that Defendant was
14 required to reimburse employees for this expense, under Labor Code § 2802, but failed to do so.
15 (Han Decl., ¶ 43.) Defendant claimed that personal cellular phones were not necessary because
16 phones were provided by Defendant and that most Class Members did not work from home or
17 away from the office. (*Ibid.*) Defendant attributed no value to this claim. (*Ibid.*) However,
18 Plaintiffs argued that Defendant had to reimburse for a portion of the phone data service. (*Ibid.*)
19 Based upon investigation with class members, Plaintiffs estimate that on average, each employee
20 attributed approximately five percent or \$4.00 per month on their cell phone plans for this data.¹²
21 Plaintiffs calculate Defendant’s maximum potential exposure as to this claim to be
22 approximately \$42,520 (10,630 months x \$4 per month). (*Ibid.*)

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26 ¹⁰ **Maximum Potential Exposure for Wage Statement Violations** = (486 eligible Class Members x \$2,050 (21
avg. pay periods) = **\$965,250**

27 ¹¹ **Maximum Potential Exposure for Waiting Time Penalties** = (8 hours x \$21.66/average hourly rate x
approximately 502 former non-exempt employees x 30 days) = **\$830,476.80**

28 ¹² Cell phone charges were based on the assumption of \$80 per month of cellular phone bill with 5% allocated to
business purposes including calls and time keeping.

1 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
2 include but are not limited to Labor Code sections 204, 226(a), 226.7, 246, 510, 512(a), 1174(d),
3 1194, 1197, 1197.1, 1198 and 2802. (Han Decl. ¶ 44.) Defendant asserted that, regardless of the
4 results of the underlying causes of action, PAGA penalties are not mandatory but permissive and
5 discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against the
6 underlying claims, it had a strong argument that it would be unjust to award maximum PAGA
7 penalties given the current unsettled state of law. (*Ibid.*)

8 Class Counsel calculated penalties under this cause of action by multiplying the number
9 of active Class Members (because of the shortened statutory period for this claim), by the civil
10 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
11 section 2699.5 that were applicable in this case. (Han Decl. ¶ 45.) Class Counsel then applied
12 discounts in light of the countervailing arguments concerning the other causes of action, as well
13 as the Court's power to award "a lesser amount than the maximum civil liability." Lab. Code §
14 2699(e)(2). (*Ibid.*)

15 Given the state of the law and the range of PAGA penalties requested and actually
16 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
17 for PAGA penalties. (Han Decl. ¶ 46.) However, if PAGA penalties are granted on any one of
18 the violations alleged in Plaintiffs' operative complaint, the total penalties exposure could be
19 approximately \$0 to \$1,992,600 (486 employees x [(1 initial violation x \$100) + (20 subsequent
20 violations x \$200)]). (*Ibid.*) Plaintiffs calculated Defendant's PAGA exposure using a 100%
21 violation rate based on the average number of pay periods (21) during the one-year statutory
22 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
23 PAGA theories of recovery (8) gives potential civil penalties of \$0 to \$15,940,800. (*Ibid.*)

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1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
2 Many of the causes of action brought were duplicative of the statutory claims, such as violations
3 of California Labor Code §§ 226(e), 226.7, 510, 512(a), 1194, 1198 and 2802. (Han Decl. ¶ 47.)
4 Of these violations, section 226(e) is a derivative claim. (*Ibid.*) However, employees may have
5 waived meal breaks and rest breaks, and Defendant’s regular rate violations for underpayment of
6 overtime and sick pay did not occur for every employee for every pay period. (*Ibid.*) Thus, the
7 maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether
8 the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$100,000
9 to PAGA civil penalties, based on a rate of \$9.92 per pay period, was reasonable (10,080 Pay
10 Periods in PAGA Date Range x \$9.92 = \$100,000). (*Ibid.*) (See *Carrington v. Starbucks Corp.*,
11 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of
12 \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA
13 penalty of \$70,000,000).) (*Ibid.*) Where PAGA penalties are negotiated in good faith and “there
14 is no indication that [the] amount was the result of self-interest at the expense of other Class
15 Members,” such amounts are generally considered reasonable. (*Ibid.*) (*Hopson v. Hanesbrands*
16 *Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see*,
17 *e.g.*, *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
18 discretion in approving a settlement which does not allocate any damages to the PAGA
19 claims.”).) Also, negotiations were under the auspices of a well-respected mediator, Lynn Frank,
20 Esq. who regularly mediates wage and hour litigation involving PAGA claims. The plaintiffs’
21 counsel gave deference to an experienced mediator’s proposal, which provided approximately
22 \$10.00 per pay period for this claim.

23 Accordingly, taking into consideration Defendant’s defenses, its supporting evidence, and
24 its position that the action is not suitable for class treatment, the settlement amount of
25 \$2,809,965—**with an average settlement share amount estimated at \$2,045.05**—is reasonable
26 and fair. (Han Decl. ¶ 22.)

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h. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be entirely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$10,050,038.70. (Han Decl. ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Meal Premiums	\$1,615,585.70	50%	50%	\$403,896.42
Rest Premiums	\$4,589,732.30	25%	50%	\$1,721,149.60
Unpaid Overtime: Off-the-Clock	\$1,758,565.90	75%	50%	\$219,820.73
Regular Rate:	\$ 247,908.00	10%	25%	\$167,337.90
Paystub Penalty	\$ 965,250.00	50%	50%	\$241,312.50
Reimbursement	\$ 42,520.00	0%	75%	\$10,630.00
Waiting Time Penalty	\$ 830,476.80	50%	25%	\$311,428.80
MAXIMUM TOTAL EXPOSURE	\$10,050,038.70			\$3,075,575.95

Plaintiffs apply a 50% certification risk discount for meal period exposure. Because Defendant rarely provided second meal breaks and the timing of the first meal break was not clear, there was a chance that this theory would be certified. (Han Decl. ¶ 49.) However, Defendant did have a written policy to provide meal breaks and class certification could depend heavily on witness statements which increases the risk for certification. Also, there is a 50% risk on the merits because Defendant may submit evidence and testimony that meal breaks were provided, but Class Members chose to take non-compliant breaks (late or short), and Class Members waived their meal breaks altogether. (*Ibid.*)

Plaintiffs apply a 25% certification risk for rest period claims based on the on-site rest period policy. (Han Decl. ¶ 50.) Moreover, Plaintiffs apply a 50% merits risk because Defendant may submit evidence that rest breaks were provided and that Class members waived their rest breaks. (*Ibid.*) Furthermore, this area of the law is not settled and may be subject to summary judgment. (*Ibid.*)

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1 For unpaid overtime claims based on off-the-clock, Plaintiffs discount the potential
2 exposure by 75% as off-the-clock theories are difficult to certify (Han Decl. ¶ 51.) However, if
3 and once certified, there is a 50% risk on the merits because Defendant will certainly argue they
4 prohibited off-the-clock work and establish that a large number of Class Members recorded and
5 were paid overtime. (*Ibid.*)

6 For underpaid overtime claims based on the regular rate, Plaintiffs discounts the potential
7 exposure by only 10% for certification risk because regular rate cases are generally certified as
8 Class Actions. (Han Decl. ¶ 52.) However, if and once certified, there is a 25% merits risk
9 because Defendant will undoubtedly argue that the bonuses are discretionary and not related to
10 the performance of work. (*Ibid.*) However, it would be difficult for Defendant to argue that
11 commissions were discretionary. (*Ibid.*) Thus, only 25% risk is justified of the merits.

12 Defendant's potential exposure for inaccurate wage statement claims has a 50%
13 certification risk because it is not certain that all 10,080 wage statements were inaccurate, and
14 many of the alleged inaccuracies in the wage statements are derivative of claims for missed meal
15 and rest breaks. (Han Decl. ¶ 53.) Moreover, there is a 50% merits risk because Defendant may
16 argue that its failure to provide accurate wage statements was not "knowing and intentional"
17 under Labor Code § 226. (*Ibid.*) Defendant may also argue that meal and rest premium payments
18 are not wages, so failure to make these payments to employees does not constitute a violation
19 under Labor Code § 226. (*Ibid.*) Additionally, Defendant may argue that, as to unpaid overtime
20 claims (failure to factor bonuses into regular rate), Defendant's wage statements were accurate
21 because the wage statements accurately reflected the "applicable hourly rates during the pay
22 period" for overtime. Labor Code § 226(a). (*Ibid.*) Although the overtime rate may not have been
23 calculated using the regular rate, including bonuses, the overtime rate listed on the wage
24 statements was identical to the overtime rate that Defendant used to compensate employees for
25 overtime work. (*Ibid.*) Thus, a 50% merits risk is justified. (*Ibid.*)

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1 Finally, Plaintiffs apply a 50% certification risk discount for waiting time penalty
2 exposure because it is not certain that Defendant paid all 502 terminated employees in an
3 untimely manner. (Han Decl. ¶ 54.) In fact, Defendant may bring evidence showing that it paid a
4 portion of employees in a timely manner. (*Ibid.*) And there is a 25% merits risk because
5 Defendant may argue that any failure to timely pay employees was not “willful” under Labor
6 Code § 203. (*Ibid.*)

7 As for the reimbursement claim, the certification is fairly certain, justifying no discount.
8 (Han Decl., ¶ 55.) However, not all class members used their cell phones, and Plaintiffs may not
9 be able to prove up the full extent of damages. Thus, a 75% discount was justified. (*Ibid.*)

10 Based on this analysis, the realistic recovery for this case is \$3,075,575.95. (Han Decl. ¶
11 56.) The Gross Settlement Amount of \$2,809,965 is approximately 27.9% of the maximum
12 potential exposure and approximately 91.3% of the realistic exposure at trial, which is in the
13 ballpark of reasonableness. (*Ibid.*)

14 The only question at preliminary approval is whether the settlement is within the range of
15 possible approval. (*In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal.
16 2007).) “The fact that a proposed settlement may only amount to a fraction of the potential
17 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
18 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
19 455, see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,1242 (“[I]t is
20 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
21 that induce consensual settlements. The proposed settlement is not to be judged against a
22 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)

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

The proposed Class Notice meets all of these requirements. The proposed Class Notice 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 Decl.; Ex. A to Ex 1.)

Plaintiffs respectfully submit 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 Classes should be conditionally certified for purposes of settlement only, and the Notice of Class Action Settlement should be approved.

JUSTICE LAW CORPORATION


Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiffs

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On July 23, 20, I served the foregoing document described as

**PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED 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: **Alcantar v. Bay Equity, LLC**
LWDA/Court Case No.: **LWDA-CM-783756-20**
 CIV1903376
 Marin 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 July 23, 2020, at Pasadena, California.



Allana Rivera