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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

ALEXANDRA PELGRIFT, individually, on
behalf of other members of the general
public similarly situated, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act of 2004 ("PAGA");

Plaintiffs,

v.

THE 21ST AMENDMENT BREWERY
CAFE, LLC; a California limited liability
company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CGC-20-585227

Honorable Anne-Christine Massullo
Department 304

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 Joan Graff; and
[Proposed] Order filed concurrently herewith]

Hearing Date: December 9, 2021
Hearing Time: 10:30 a.m.
Hearing Place: Department 304

Complaint Filed: June 29, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 9, 2021 at 10:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Anne-Christine Massullo in Department 304 of the
3 San Francisco County Superior Court, located at 400 McAllister Street, San Francisco,
4 California 94102, Plaintiff Alexandra Pelgrift (“Plaintiff”) will and hereby moves for an order:

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

28 ///

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

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

Dated: November 10, 2021

JUSTICE LAW CORPORATION

By:



Douglas Han

Shunt Tatavos-Gharajeh

Haig Hogdanian

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$200,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of herself and any and all persons who
4 have been employed by Defendant The 21st Amendment Brewery Cafe, LLC (“Defendant”) as
5 non-exempt employees in California at any time from October 7, 2018 through October 15,
6 2021 (“Class” and “Class Period”). At the time of this filing, the number of Class Members
7 provided by Defendant is currently estimated to be three hundred sixteen (316). (Declaration of
8 Douglas Han (“Han Dec.”), ¶ 8.)

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
11 proposed settlement of \$200,000 – with an average Individual Settlement Payment amount
12 estimated at \$221.52¹ – is well within the “ballpark” of reasonableness.

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

20 **II. BACKGROUND**

21 Defendant is an independent brewery that was founded in 2000 in San Francisco’s
22 historic South Park neighborhood. (Han Dec., *supra*, ¶ 9.) This case involves any and all
23 persons who have been employed by Defendant as non-exempt employees in California at any
24 time from October 7, 2018 through October 15, 2021. (*Ibid.*) Plaintiff alleges that employees
25 worked for Defendant on an hourly basis. (*Ibid.*)

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27
28 ¹ \$70,000 (Net Settlement Amount) / 316 (Class Members) = \$221.52.

1 On April 15, 2020, Plaintiff, a former employee of Defendant, provided written notice to
2 the California Labor and Workforce Agency (“LWDA”) and Defendant of the specific
3 provisions of California Labor she contends were violated and the theories supporting her
4 contentions. (Han Dec., *supra*, ¶ 10.) Plaintiff believes that on or about July 19, 2020, the sixty-
5 five (65) day notice period expired, and the LWDA failed to take any action to investigate or
6 prosecute the matter. (*Ibid.*)

7 On June 29, 2020, Plaintiff filed a representative PAGA action in the Superior Court of
8 California, County of San Francisco, Case No. CGC-20-585227. (Han Dec., *supra*, ¶ 11.)

9 The Parties attended mediation on Plaintiff’s claims on August 30, 2021. (Han Dec.,
10 *supra*, ¶ 12.) Under the auspices of the mediator Jeffrey A. Ross, the Parties were eventually
11 able to reach an agreement on the settlement of the action. (*Ibid.*)

12 Pursuant to the Settlement Agreement, Plaintiff will file a First Amended Complaint
13 (“FAC”) in the Superior Court of California, County of San Francisco. (Han Dec., *supra*, ¶ 13.)
14 The FAC will add several wage-and-hour class action causes of action. (*Ibid.*)

15 Defendant generally and specifically denies any and all liability or wrongdoing of any
16 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
17 any sort, and contends that for any purpose other than settlement, the Class Action is not
18 appropriate for class or representative treatment. (Han Dec., *supra*, ¶ 14.)

19 **III. INVESTIGATION/ LITIGATION HISTORY**

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

21 After Plaintiff filed her representative PAGA action, both Parties engaged in discovery.
22 (Han Dec., *supra*, ¶ 15.) Specifically, Plaintiff propounded one (1) set of form interrogatories,
23 one (1) set of special interrogatories, one (1) set of requests for admissions; and one (1) set of
24 requests for production of documents. (*Ibid.*) Afterwards, the Parties met and conferred
25 regarding this discovery. (*Ibid.*)

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1 Prior to mediation On August 30, 2021, the Parties conducted significant investigation
2 and discovery of the facts and law both before and after the Class Action was filed. (Han Dec.,
3 *supra*, ¶ 16.) Specifically, Defendant produced hundreds of documents relating to its policies,
4 practices, and procedures. (*Ibid.*) Furthermore, Plaintiff also interviewed Class Members who
5 worked for Defendant throughout the Class Period. (*Ibid.*)

6 Based upon Defendant's document production as well as interviews Class Counsel had
7 with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant failed
8 to provide employees legally mandated meal and rest breaks. (Han Dec., *supra*, ¶¶ 18-19.)
9 Specifically, Defendant's improper, uniform policies and practices purportedly prevented
10 employees from receiving compliant meal and rest breaks. (*Ibid.*)

11 Plaintiff also alleges – and Defendant denies – that Defendant failed to compensate
12 employees for all hours worked. (Han Dec., *supra*, ¶ 20.) That is, allegedly stringent policies
13 coupled with improper, uniform practices pressured employees to work off-the-clock without
14 recording all hours worked. (*Ibid.*)

15 Furthermore, Plaintiff contends – and Defendant denies – Defendant's alternative
16 workweek schedules were invalid. (Han Dec., *supra*, ¶ 21.) Specifically, Defendant supposedly
17 did not conduct elections prior to implementing alternative workweek schedules and failed to
18 pay short-shift penalties or the equivalent (overtime pay). (*Ibid.*)

19 Next, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse
20 employees for necessary business-related expenses. (Han Dec., *supra*, ¶ 22.) This apparently
21 extended to not reimbursing employees for business purchases (*i.e.*, shoes, uniforms) and use of
22 personal cell phones and vehicles for business-related purposes. (*Ibid.*)

23 Plaintiff contends – and Defendant denies – that Defendant is liable for issuing
24 noncompliant wage statement and waiting time penalties. (Han Dec., *supra*, ¶¶ 23-24.)

25 Defendant denies Plaintiff's contentions in their entirety. (Han Dec., *supra*, ¶ 25.) As
26 demonstrated above, the Parties took staunchly conflicting positions concerning Defendant's
27 policies and procedures and their effect on non-exempt employees.

28 ///

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

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

4 The Parties agreed to go to mediation with experienced wage-and-hour mediator Jeffrey
5 A. Ross that took place on August 30, 2021. (Han Dec., *supra*, ¶ 26.) During the mediation, the
6 Parties discussed the risks of continued litigation, risks of certification, and risks on the merits
7 of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the
8 Parties were eventually able to reach an agreement on a settlement of the Class Action, the
9 terms of which were memorialized in a Settlement Agreement, that the Parties now seek
10 Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

11 **ii. The Settlement Was Reached Because of Arm's-Length Negotiations**

12 Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
13 *supra*, ¶ 44.) Though cordial and professional, the settlement negotiations have been, always,
14 adversarial, and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel
15 conducted extensive arm's length negotiations until an agreement was reached. (*Ibid.*)

16 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
17 expense and length of continued proceedings. (Han Dec., *supra*, ¶ 45.) Plaintiff and Class
18 Counsel have also considered the uncertainty and risk of further litigation. (*Ibid.*) Moreover,
19 Plaintiff and Class Counsel have conducted extensive settlement negotiations, including formal
20 mediation on August 30, 2021. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel
21 believe the settlement set forth in the Agreement is a fair, adequate, and reasonable settlement,
22 and is in the best interests of the Class. (*Ibid.*)

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

25 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
26 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
27 discovery to support the settlement. (Han Dec., *supra*, ¶ 46.) The proposed settlement was only
28 possible following significant discovery and evaluation of Defendant's relevant policies and

procedures, as well as the data it produced for the putative Class. (*Ibid.*) Furthermore, this case has reached 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.) (Han Dec., *supra*, ¶ 46.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$200,000 (“Maximum Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to Class Counsel in an amount not to exceed \$70,000; (b) the Cost Award to Class in a sum not to exceed \$20,000; (c) the Class Representative Enhancement Payment to Plaintiff in the amount of \$10,000; (d) the Administration Costs to Phoenix, the Settlement Administrator, in a sum not to exceed \$10,000; and (e) PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) shall be paid to the LWDA and twenty-five percent (25%) of which (\$5,000) shall be distributed to Eligible Aggrieved Employees proportionate to the number of pay periods that he or she worked during the PAGA Timeframe. (Han Dec., *supra*, ¶ 27.)

ii. Calculation of the Individual Settlement Payments to Class Members

After all Court-approved deductions from the Maximum Settlement Amount, it is estimated that \$70,000 (“Net Settlement Amount”) will be distributed to Class Members – with an average Individual Settlement Share estimated at \$221.52. (Han Dec., *supra*, ¶ 29.)

Individual Settlement Share will be apportioned as follows: thirty-three percent (33.33%) wages, thirty-three percent (33.33%) interest, and thirty-three percent (33.33%) penalties. (Han Dec., *supra*, ¶ 30.)

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 during the Class Period based on the Class List provided by Defendant, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class List, which is then multiplied by the Net Settlement Amount. (Han Dec., *supra*, ¶ 31.)

Furthermore, the portion of the PAGA Payment that will be paid to Eligible Aggrieved Employees will be calculated by:

determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number the \$5,000 allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. (Han Dec., *supra*, ¶ 32.)

iii. Notice to the Class

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class List. (Han Dec., *supra*, ¶ 34.)

Within fourteen (14) calendar days after the receipt of the Class List from Defendant, the Settlement Administrator will mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available. (Han Dec., *supra*, ¶ 35.) Class Members and Eligible Aggrieved Employees are not required to submit a claim form to receive their share of the Net Settlement Amount. (*Ibid.*)

iv. Distribution of Funds

No later than thirty (30) calendar days after the entry of the order granting final approval of the Settlement, Defendant shall deposit the Maximum Settlement Amount of \$200,000 needed to pay the entire Maximum Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, ¶ 36.) Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share. (*Ibid.*) Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. (*Ibid.*) The Settlement Administrator will also forward a check for the PAGA Payment to the LWDA for settlement of the PAGA claim. (*Ibid.*)

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1 **v. The *Cy Pres* Recipient is Appropriate**

2 Participating Class Members must cash or deposit their Individual Settlement Share
3 checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han
4 Dec., *supra*, ¶ 37.) If any checks are not redeemed or deposited within ninety (90) calendar days
5 after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks
6 remain uncashed or not deposited by the expiration of the 90-day period after mailing the
7 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days
8 after the checks are mailed, cancel the checks, and pay the amount of the Individual Settlement
9 Share to Legal Aid At Work (“LAAW”). (*Ibid.*) This also applies to the portion of the PAGA
10 Payment that will be paid to Eligible Aggrieved Employees. (*Ibid.*)

11 The Parties have agreed to designate the nonprofit organization LAAW as the *cy pres*
12 recipient. (Han Dec., *supra*, ¶ 38.) LAAW satisfies the requirements of Code of Civil
13 Procedure section 384(a): “to ensure that the unpaid cash residue and unclaimed or abandoned
14 funds in class action litigation are distributed, to the fullest extent possible, in a manner
15 designed to further the purposes of the underlying class action or causes of action, or to promote
16 justice for all Californians.” (*Ibid.*) Code of Civil Procedure section 384(d) adds:

17 [T]he court shall amend the judgment to direct the defendant to pay the sum of the
18 unpaid residue or unclaimed or abandoned class member funds, plus any interest that has
19 accrued thereon, to nonprofit organizations or foundations to support projects that will
20 benefit the class or similarly situated persons, or that promote the law consistent with the
objectives and purposes of the underlying cause of action, to child advocacy programs,
or to nonprofit organizations providing civil legal services to the indigent. (*Ibid.*)

21 LAAW directly satisfies the legislature’s purpose and goal under Code Civil Procedure
22 section 384. (Han Dec., *supra*, ¶ 39.) The core of LAAW’s work is providing free legal
23 services to low-wage workers with employment claims. (*Ibid.*) LAAW litigates cases that
24 address an array of issues important to low-wage workers, including (a) violations of wage-and-
25 hour laws; (b) workplace retaliation; (c) discrimination on account of race, national origin,
26 disability, sex, gender identity, sexual orientation, immigration status and language proficiency;
27 (d) harassment; and (e) failure to comply with equal pay laws and family medical leave laws.
28 (*Ibid.*) Additionally, LAAW’s Community Legal Services Program provides advice and

1 counseling to low-wage workers on the full range of employment law issues they face through
2 twelve statewide Workers' Rights Clinic locations throughout California. (Han Decl., *supra*, ¶
3 39.) There can be no doubt LAWW is the type of non-profit organization the legislature had in
4 mind when drafting and amending Code Civil Procedure section 384. (*Ibid.*) The Parties are not
5 affiliated with and do not have any financial interest in LAAW. (*Ibid.*) Specifically, neither
6 Class Counsel nor Plaintiff have any affiliation with or have any interest pertaining to LAAW.
7 (*Ibid.*)

8 **vi. Release of Claims**

9 Upon Defendant's fulfillment of its payment obligations under section III(L)(7)(a) of the
10 Agreement, Participating Class Members waive, release, promise never to assert in any forum,
11 remise and forever discharge the Released Parties from the Released Claims during the Class
12 Period ("Released Claims"). (Han Decl., *supra*, at ¶ 40; Exhibit 2, §§ I.GG. & III.M.)

13 Upon Defendant's fulfillment of its payment obligations under section III(L)(7)(a) of the
14 Agreement, the LWDA and any other representative, proxy, or agent thereof, including, but not
15 limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are
16 precluded from pursuing any action for civil penalties under the Labor Code sections 2698, *et*
17 *seq.* (PAGA), against the Released Parties based on or arising out of alleged violations of Labor
18 Code sections alleged in Plaintiff's letter to the LWDA and the operative complaints. (Han
19 Decl., *supra*, at ¶ 41; Exhibit 2, § III.N.)

20 The Released Parties shall include Defendant and any and all of its affiliated companies
21 and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents
22 (including, without limitation, any investment bankers, accountants, insurers, reinsurers,
23 attorneys and any past, present or future officers, directors and employees) predecessors,
24 successors, and assigns ("Released Parties"). (Han Decl., *supra*, at ¶ 42; Exhibit 2, § I.HH.)

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1 Upon Defendant’s fulfillment of its payment obligations under section III(L)(7)(a) of the
2 Agreement, and in exchange for the Class Representative Enhancement Payment to the Plaintiff
3 in an amount not to exceed \$10,000, in recognition of her work and efforts in obtaining the
4 benefits for the Class, and undertaking the risk for the payment of costs in the event this matter
5 had not successfully resolved, Plaintiff provides a general release of claims for herself and her
6 respective spouse, heirs, successors and assigns. (Han Decl., *supra*, at ¶ 43; Exhibit 2, §§ I.M.,
7 I.GG., & III.O.)

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

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

17 Both Class Counsel and Defendant’s counsel are particularly experienced in wage-and-
18 hour employment law and class actions. (Han Dec., *supra*, ¶¶ 2-7; Exhibit 1.) Class Counsel
19 have significant experience in litigating unpaid wages, non-compliant meal break, and non-
20 compliant rest break class actions. (*Ibid.*) Class Counsel has prosecuted numerous cases on
21 behalf of employees for California Labor Code violations and, thus, are experienced and
22 qualified to evaluate the class claims, to evaluate settlement versus trial on a fully informed
23 basis, and to evaluate the viability of the defenses. (*Ibid.*) This experience instructed Class
24 Counsel on the risks and uncertainties of further litigation and guided their determination to
25 endorse the proposed Settlement.² (*Ibid.*)

26 ///

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

1 **IV. ARGUMENT**

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

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

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

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

13 Courts act within their discretion in approving settlements that are fair, not collusive, and take
14 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
15 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
16 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981)
17 452 U.S. 905.)

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

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
21 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.*
22 (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los*
23 *Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the
24 strength of the case for plaintiffs on the merits, balanced against the amount offered in
25 settlement.” (*Ibid.*)

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

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

12 As the following subsections show, the Parties' investigation and discovery revealed
13 numerous reasons to discount claims and agree to the Settlement.

14 **i. The Settlement Amount of \$200,000 Is Fair and Reasonable**

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 before reaching the proposed settlement and engaged in sufficient investigation, research, and
17 discovery. (Han Dec., *supra*, ¶ 46.) The proposed settlement was possible following significant
18 discovery and evaluation of Defendant's relevant policies and procedures and the data it
19 produced for the Class. (*Ibid.*) This case has reached the stage where "the Parties certainly have
20 a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement.
21 (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, ¶ 46.)

22 This discovery resulted in Plaintiff's central theories of liability, which are predicated on
23 Plaintiff's claims that Defendant failed to pay overtime wages, failed to pay minimum wages,
24 failed to provide meal and rest breaks and pay applicable premiums, failed to issue compliant
25 wage statements, failed to timely pay final wages, failed to reimburse business expenses,
26 violated PAGA, and violated the Business & Professions Code sections 17200, *et seq.* (Han
27 Dec., *supra*, ¶ 47.) Defendant vehemently denies Plaintiff's theories of liability. (*Id.* at ¶ 48.)

28 ///

1 Although Plaintiff believes the case is suitable for certification on the basis that there are
2 company-wide policies that Plaintiff contends violate California law and uniformly affect the
3 putative class members, uncertainties with respect to certification are always present. (Han
4 Dec., *supra*, ¶ 49.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v.*
5 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's
6 sound discretion. (*Ibid.*) Decisions following *Sav-On* have reached different conclusions
7 concerning certification of wage-and-hour claims.⁴ (*Ibid.*)

8 Although remaining confident in the strengths of her claims, all these factors led
9 Plaintiff to discount the following calculations of potential damage claims:

10 **ii. The PAGA Payment of \$20,000 is Reasonable**

11 The provisions of the Labor Code potentially triggering PAGA penalties in this case
12 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
13 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, ¶ 57.) Defendant
14 asserted that, regardless of the results of the underlying causes of action, PAGA penalties are
15 not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in
16 addition to its strong arguments against the underlying claims, it had a strong argument that it
17 would be unjust to award maximum PAGA penalties given the current unsettled state of law.
18 (*Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30%
19 under this authority). (Han Dec., *supra*, ¶ 57.)

20 Class Counsel calculated penalties under this cause of action by multiplying the number
21 of active Class Members (because of the shortened statutory period for this claim) by the civil
22 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
23 section 2699.5 that were applicable in this case. (Han Dec., *supra*, ¶ 58.) Class Counsel then
24 applied discounts in light of the countervailing arguments with regard to the other causes of
25

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

1 action, as well as the Court’s power to award “a lesser amount than the maximum civil
2 liability.” (Lab. Code § 2699(e)(2).) (Han Dec., *supra*, ¶ 58.)

3 Given the state of the law and the range of PAGA penalties requested and actually
4 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
5 for PAGA penalties. (Han Dec., *supra*, ¶ 59.) However, if PAGA penalties are granted on any
6 one of the violations alleged in Plaintiff’s operative complaints, the total penalties exposure for
7 the eligible pay periods could be approximately **\$393,600** ([24 x \$100] x 164 employees).⁵
8 (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using one hundred percent (100%)
9 violation rate based on the average number of pay periods (24) during the one-year statutory
10 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
11 PAGA theories of recovery (6) gives potential civil penalties of about **\$2,361,600**. (*Ibid.*)

12 Although Plaintiff argued that she could obtain over \$2 million for PAGA penalties, it
13 seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, ¶
14 60.) As noted above, courts have reduced PAGA penalties by about 90% where there are
15 mitigating circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529
16 (affirming trial court’s award of less than 10% of maximum PAGA penalty for meal break
17 violations where company sought to comply with the law).) Furthermore, PAGA’s statutory
18 language is unclear as to whether PAGA penalties may be “stacked” – that is, whether multiple
19 civil penalties can be recovered in the same pay period for different Labor Code violations. On
20 one hand, Labor Code section 2699, subdivision (f) establishes “a civil penalty for a violation”
21 (emphasis added), implying a separate civil penalty for each violation. On the other hand,
22 employers cite Labor Code section 2699, subdivision (g)(1), which states that “an aggrieved
23 employee may recover the civil penalty described in subdivision (f)...on behalf of himself or
24 herself and other current or former employees against whom one or more of the alleged
25 violations was committed” (emphasis added). However, Defendants contended that the Ninth

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27 ⁵ A recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a
28 violation by a Labor Commissioner or court. (*Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 990 F.3d 1157, 1172-
1173.) As a result, Plaintiff estimated the amount of PAGA penalties using the “initial” penalty amount of \$100
under PAGA.

1 Circuit's opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and
2 *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of
3 PAGA penalties for purposes of removal, prevents "stacking" of PAGA penalties. Without
4 stacking and limited to the initial violation, Class Counsel considered the possibility that the
5 Court could assess the PAGA penalty as **\$16,400** (164 employees x \$100 initial violation) on
6 the low end and **\$98,400** (164 employees x \$100 x 6 theories of recovery) on the high end based
7 on six (6) major theories of recovery.

8 To the extent Defendant's exposure remains in the millions of dollars, the civil penalties
9 could be "unjust, arbitrary and oppressive, or confiscatory." In fact, many courts have taken
10 liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v. Mistras Grp., Inc.* (N.D.
11 Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement
12 that included a PAGA set-aside of just 0.15 percent of the PAGA claims' full potential value,
13 where "Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA
14 claims"]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily
15 approving class action settlement allocating a PAGA set-aside worth a fraction of the PAGA
16 claims' potential value, where the defendant's obligations were "genuinely unclear" and there
17 was no evidence the defendant acted deliberately or negligently failed to learn about its
18 obligations].) Thus, under a more conservative approach, Class Counsel considered the
19 possibility that the Court could assess only the initial violation rate, bringing the basic PAGA
20 penalty to **\$98,400** (164 employees x \$100 x 6 theories of recovery). (Han Dec., *supra*, ¶ 60.)

21 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
22 (Han Dec., *supra*, ¶ 61.) Many of the causes of action brought were duplicative of the statutory
23 claims, such as violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a),
24 1174(d), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay
25 period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the
26 maximum penalties under the law. (*Ibid.*) Consequently, allocating \$20,000 to PAGA civil
27 penalties was reasonable based on a rate of \$5.02 per pay period [\$20,000 / 3,981 Pay Periods in
28 PAGA Date Range = \$5.02], given the fact that Defendant is also paying an additional \$180,000

in the class settlement.⁶ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁷ (*Ibid.*)

c. Discount Analysis Justifies the Settlement

Taking into consideration Defendant’s defenses, its supporting evidence, and its position that the Class Action is not suitable for class treatment, the settlement amount of \$200,000 – with an average settlement share estimated at \$221.52—is reasonable and fair.

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$1,901,860.56** on the low end and **\$1,972,863.58** on the high end.

(Han Dec., *supra*, ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$119,568.79	70%	60%	\$14,348.25
Meal Break Premiums	\$18,742.71	50%	50%	\$4,685.68
Overtime/Minimum Wage: Off-the-Clock	\$141,927.06 to \$212,930.08	60%	60%	\$22,708.33 to \$34,068.81
Overtime/Minimum Wage: Alternative Workweek Schedule	\$31,624	30%	50%	\$11,068.40
Unreimbursed Business Expenses	\$126,398	30%	70%	\$26,543.58
Wage Statement Penalty	\$385,400	60%	60%	\$61,664
Waiting Time Penalty	\$1,078,200	60%	60%	\$172,512
MAXIMUM TOTAL EXPOSURE	\$1,901,860.56 to \$1,972,863.58⁸			\$313,530.24 to \$324,890.72⁹

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⁶ (See *Carrington*, *supra*, 30 Cal.App.5th at p. 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

⁷ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

⁸ Han Dec., *supra*, ¶¶ 51-56.

⁹ *Id.* at ¶¶ 63-69.

1 Based on this analysis, the realistic recovery for this case is **\$313,530.24** on the low end
2 and **\$324,890.72** on the high end. (Han Dec., *supra*, ¶ 70.) The Maximum Settlement Amount
3 of \$200,000 is approximately ten percent (10.14%) of the maximum potential exposure and
4 about sixty-one percent (61.56%) of the maximum realistic exposure at trial, which is a good
5 settlement. (*Ibid.*)

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

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

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

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1 The proposed Class is ascertainable and numerous as to make it impracticable to join all
2 Class Members, and there are common questions of law and fact that predominate over any
3 questions affecting any individual Class Member. (Han Dec., *supra*, ¶ 71.) Plaintiff’s claims
4 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
5 protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
6 Class Members would create the risk of inconsistent or varying adjudications, and a class action
7 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*)

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

9 “Ascertainability is required in order to give notice to putative class members as to
10 whom the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home*
11 *Corp.* (2001) 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of
12 unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member
13 of that group to identify himself or herself as having a right to recover based on the
14 description.” (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The
15 proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
16 429, 435.)

17 The Class Action involves three hundred sixteen (316) Class Members. (Han Dec.,
18 *supra*, ¶ 72.) Thus, the Class is sufficiently numerous.¹⁰ (*Ibid.*)

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

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

27
28 ¹⁰ (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class
of “as many as 190 current and former employees” is sufficiently numerous).)

1 . in order to assess whether that common behavior toward similarly situated plaintiffs renders
2 class certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The
3 application of each of these factors is discussed below.

4 **1. Common Issues Predominate**

5 The “common issues” requirement “involves analysis of whether the proponent’s
6 ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First,*
7 *supra*, 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)
8 In other words, courts determine whether the elements necessary to establish liability are
9 susceptible to common proof, even if the class members must individually prove their damages.
10 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
11 certification when the plaintiff can present evidence of common policies. (*See, e.g., Jones v.*
12 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action
13 involving 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case
14 No. 1:14-cv-21244 (court certified class of dancers on state law claims).)

15 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
16 alleged. (Han Dec., *supra*, ¶ 73.) All hourly-paid and non-exempt employees who worked for
17 Defendant during the Class Period were subject to the same or similar employment practices,
18 policies, and procedures that are discussed in greater detail above. (*Ibid.*)

19 **2. Plaintiff’s Claims Are Typical of the Class Claims**

20 Typical claims rely on legal theories and facts that are substantially similar to other class
21 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) 72. Plaintiff was a non-exempt
22 employee and alleges she and the Class Members were employed by the same company and
23 injured by Defendant’s common policies and practices described in greater detail above. (Han
24 Dec., *supra*, ¶ 74.) Plaintiff seeks relief for these claims and derivative claims on behalf of all
25 Class Members. (*Ibid.*) Thus, Plaintiff’s claims arise from the same employment practices and
26 are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

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Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, ¶ 75.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with counsel to provide counsel with a complete understanding of her work environment. (*Ibid.*) Furthermore, Plaintiff does not have any interest that is averse to the interest of other Class Members. Moreover, the proposed Class Counsel is adequate to represent the Class. (*Id.* at ¶¶ 2-7; Exhibit 1.)

Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all Class Members is impractical. Class treatment will permit many similarly-situation persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Also, because several Class Members are current employees, the fear of retaliation further support superiority of class-wide relief.

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

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

Plaintiff submits 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

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Haig Hogdanian
Attorneys for Plaintiff

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