

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
AREEN BABAJANIAN (SBN 290130)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOHN HERNANDEZ, CHRISTOPHER
LEMUS, and MINH NGUYEN,
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.

TRIANGLE DISTRIBUTING CO., a
California corporation; and DOES 1 through
100, inclusive;

Defendant.

Case No.: 20STCV13172

Honorable Maren Nelson
Department 17

CLASS ACTION

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

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

Hearing Date: May 24, 2021
Hearing Time: 9:00 a.m.
Hearing Place: Department 17

Complaint Filed: April 2, 2020
FAC Filed: February 26, 2021
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on May 24, 2021 at 9:00 a.m. or as soon as the matter
2 may be heard before the Honorable Maren Nelson in Department 17 of the Spring Street
3 Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs John
4 Hernandez, Christopher Lemus, and Minh Nguyen (“Plaintiffs,” “Plaintiff Hernandez,” “Plaintiff
5 Lemus,” and “Plaintiff Nguyen”) will and hereby moves for an order:

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

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- Approving Smpluris, Inc. (“Smpluris”) as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

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

Dated: April 12, 2021

JUSTICE LAW CORPORATION

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

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$750,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all persons who
4 worked for Defendant Triangle Distributing Co. (“Defendant”) in California as an hourly-paid or
5 non-exempt employee during the Class Period (“Class”). The Class Period is the time period
6 from April 2, 2016, to October 2, 2020 (“Class Period”). At the time of this filing, the number of
7 Class Members provided by Defendants is currently estimated to be two hundred ninety-seven
8 (297).

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 \$750,000 – with an average settlement share amount estimated at
12 \$1,282.83¹ – is well within the “ballpark” of reasonableness.

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

20 **II. BACKGROUND**

21 Defendant was a diversified distributor of high-quality alcoholic beverages that was
22 founded in 1957 and has been serving southeastern Los Angeles retailers for over sixty (60)
23 years. (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.) Partly due to the COVID-19 pandemic
24 devastating businesses at bars and restaurants, Defendant was purchased by Anheuser-Busch, the
25 world’s largest brewery on October 1, 2020. (*Ibid.*) As a result, Defendant ceased its operations
26 on October 2, 2020, and terminated its employees. (*Ibid.*) This case involves all persons who
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28 ¹ \$381,000 (Net Settlement Amount) / 297 (Class Members) = \$1,282.83.

1 worked for Defendant in California as an hourly-paid or non-exempt employee during the time
2 period from April 2, 2016, to October 2, 2020. (Han Dec., at ¶ 9.) Plaintiffs allege that at all
3 times during the Class Period, Defendant’s non-exempt employees work and/or worked on an
4 hourly basis. (*Ibid.*)

5 Plaintiff Hernandez is a former employee of Defendant who filed a class action on behalf
6 of all current and former California-based (i.e., currently “residing” in California with the intent
7 to remain in California indefinitely) hourly-paid or non-exempt employees (either directly or
8 through a staffing agency or labor contractor) of Defendant within the State of California at any
9 time during the period from April 2, 2016 to the present. (Han Dec., *supra*, at ¶ 10.) Plaintiff
10 Hernandez filed his complaint on April 2, 2020 in the Superior Court of Los Angeles, alleging
11 eight (8) causes of action for numerous violations of the California Labor Code and California
12 Business & Professions Code. (*Ibid.*) Plaintiff Hernandez alleged the following causes of action:
13 (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor
14 Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code
15 section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194 and 1197
16 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not
17 timely paid); (6) violation of Labor Code sections 226(a) (non-compliant wage statements); (7)
18 violation of Labor Code section 2800 and 2802 (unreimbursed business expenses); and (8)
19 violation of Business & Professions Code section 17200 et seq. (*Ibid.*)

20 On April 7, 2020, Plaintiff Lemus, another former employee of Defendant, provided
21 written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of
22 the specific provisions of the Labor Code he contends were violated and the theories supporting
23 his contention. (Han Dec., *supra*, at ¶ 11.) On April 8, 2020, Plaintiff Nguyen also provided
24 written notice to the LWDA and Defendant. (*Ibid.*)

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1 After waiting the requisite sixty-five (65) days for PAGA notice period to expire,
2 Plaintiffs Lemus and Nguyen filed their representative PAGA action on June 24, 2020 in the
3 Superior Court of Los Angeles on behalf of all current and former hourly-paid or non-exempt
4 employees (whether hired directly or through a labor contractor or staffing agency) of Defendant
5 who worked for Defendant at any time during the period from April 7, 2019 to the present. (Han
6 Dec., *supra*, at ¶ 12.) Plaintiffs Lemus and Nguyen's allegations were that, since April 7, 2019,
7 Defendant violated the Labor Code by failing to pay minimum and overtime wages, failing to
8 provide meal periods and rest breaks, failing to timely pay wages during employment and upon
9 termination, failing to provide complete and accurate wage statements, and failing to reimburse
10 business expenses. (*Ibid.*)

11 The Parties attended mediation on Plaintiffs' claims on January 28, 2021. (Han Dec.,
12 *supra*, at ¶ 13.) Under the auspices of the mediator Jeffrey Krivis, the Parties were eventually
13 able to reach an agreement on the settlement of the action. (*Ibid.*)

14 On February 26, 2021, in line with the settlement reached between the Parties at
15 mediation, Plaintiffs filed their First Amended Class Action Complaint in the Superior Court of
16 Los Angeles on behalf of themselves and the putative class, which consists of all persons who
17 worked for Defendant in California as an hourly-paid or non-exempt employee during the period
18 from April 2, 2016, to October 2, 2020. (Han Dec., *supra*, at ¶ 14.) Plaintiffs' First Amended
19 Class Action Complaint alleges causes of action for (1) violation of California Labor Code §§
20 510 and 1198 (unpaid overtime); (2) violation of Labor Code §§ 226.7 and 512(a) (unpaid meal
21 period premiums); (3) violation of Labor Code § 226.7 (unpaid rest period premiums); (4)
22 violation of California Labor Code §1194 and 1197 (unpaid minimum wages); (5) violation of
23 California Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California
24 Labor Code § 226(a) (non-compliant wage statements); (7) violation of Labor Code § 2800 and
25 2802 (unreimbursed business expenses); (8) violation of PAGA; and (9) violation of Business &
26 Professions Code §§ 17200, et seq. (*Ibid.*)

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Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class or representative treatment. (Han Dec., *supra*, at ¶ 15.) Furthermore, Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action (*Ibid.*)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff Lemus and Plaintiff Nguyen filed their representative PAGA action, both Parties engaged in discovery. Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions; and one (1) set of requests for production of documents. (Han Dec., *supra*, at ¶ 16.) Afterwards, the Parties met and conferred regarding this discovery. (*Ibid.*)

Prior to the mediation and both before and after the Class Action was filed, the Parties conducted significant investigation and discovery of the facts and law. (Han Dec., *supra*, at ¶ 17.) Prior to the mediation with Jeffrey Krivis on January 28, 2021, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*)

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1 Furthermore, Plaintiffs also interviewed several Class Members who worked for
2 Defendant throughout the Class Period. (Han Dec., *supra*, at ¶ 18.) The Parties agree that the
3 above-described investigation and evaluation, as well as the information exchanged during the
4 settlement negotiations, are more than sufficient to assess the merits of the respective Parties'
5 positions and to compromise the issues on a fair and equitable basis. (*Ibid.*)

6 Based upon Defendant's discovery responses and document production, as well as
7 interviews Plaintiffs' counsel had with non-exempt employees, Plaintiffs contend – and
8 Defendant denies – Defendant failed to provide employees legally mandated rest breaks. (Han
9 Dec., *supra*, at ¶ 19.) Specifically, while Defendant had a *Brinker*-compliant rest break policy,
10 Defendant maintained uniform, improper practices that prevented employees from having
11 reasonable opportunities to take their rest breaks. (*Ibid.*) In other words, employees were often
12 unable to take their rest breaks because their supervisors would constantly pressure employees to
13 finish their tasks and avoid falling behind on their schedules. (*Ibid.*) For example, drivers and
14 merchandisers often could not take their rest breaks because they needed to drive to different
15 locations, and there was no time to stop their trucks for rest breaks. (*Ibid.*) Their rests breaks
16 would even be interrupted by phone calls from their supervisors, meaning they were not
17 genuinely relieved of their duties during their rest breaks. (*Ibid.*) Similarly, warehouse pickers
18 and loaders were often pressured into skipping their rest breaks because their workload left them
19 with little to no opportunities to actually take their rest breaks. (*Ibid.*) Finally, Plaintiffs also
20 assert that Defendant failed to pay employees premium wages in spite of several instances of
21 failing to provide compliant rest breaks. (*Ibid.*)

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Moreover, Plaintiffs assert – and Defendant denies – that Defendant failed to provide employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 20.) Firstly, Defendant’s meal break policy from July 2011 to December 2017 failed to advise employees of their right to receive second meal breaks for working shifts that exceeded ten (10) hours. (*Ibid.*) Moreover, Defendant’s meal break policy during this time did not initially state the timing in which meal breaks were to be taken (i.e., before the fifth (5th) and tenth (10th) hour of work). (*Ibid.*) Plaintiffs also assert that despite later amending its meal break policy to be *Brinker*-compliant, Defendant still maintained uniform, improper practices that prevented employees from receiving compliant meal break. (*Ibid.*) Specifically, employees often had late, missed, short, or interrupted meal breaks because of their workload, pressures to make timely deliveries and complete their assignments, and not having reasonable opportunities to park their vehicles. (*Ibid.*) For example, drivers were often forced to miss their meal breaks at least three (3) times a week due to the number of stops, the number of cases, and the difficulty in finding parking for their trucks. (*Ibid.*) Their meal breaks would also be constantly interrupted by phone calls from their supervisors, and they were not provided second meal breaks for working shifts that exceeded ten (10) hours. (*Ibid.*) Similarly, warehouse pickers and loader were often forced to miss their meal breaks due to the amount of work they had to complete (i.e., unable to load pallets onto trucks quickly enough). (*Ibid.*) Warehouse associates and loaders also did not receive second meal breaks for working shifts that exceeded ten (10) hours. (*Ibid.*) Moreover, Defendant would automatically deduct thirty (30) minutes from employees’ shifts to reflect that they had received meal breaks even if they had not. (*Ibid.*) Finally, Plaintiffs contend that Defendant did not pay employees premium wages in spite of these many instances of non-compliant meal breaks. (*Ibid.*)

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1 Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate
2 employees for all hours worked. (Han Dec., *supra*, at ¶ 21.) Specifically, Defendant’s uniform,
3 improper practices frequently pressured employees into working off-the-clock for which they
4 were not compensated. (*Ibid.*) For example, two to three (2-3) times a week, drivers would be
5 directed by their supervisors to participate in pre-trip inspections and pre-shift off-the-clock work
6 (before clocking in). (*Ibid.*) This included changing trucks, speaking to mechanics, updating
7 registrations, and loading products to their trucks. (*Ibid.*) Defendant also maintained a vehicle
8 maintenance policy since July 2011 where employees assigned to a company vehicle were
9 responsible for daily maintenance of their assigned vehicle. (*Ibid.*) Since drivers were already
10 pressured into working off-the-clock, this vehicle maintenance also occurred off-the-clock.
11 (*Ibid.*) Similarly, merchandisers were also pressured to work off-the-clock as well, which
12 included answering management calls and being instructed on daily tasks before clocking in.
13 (*Ibid.*) Even after merchandisers clocked out, their supervisors would still call them to instruct
14 them of their tasks for the next workday. (*Ibid.*) Warehouse pickers and loaders were even
15 forced to work off-the-clock (i.e., assisting a customer waiting for a load in the morning before
16 clocking in; assisting drivers unload empty pallets and breakage after clocking out) since
17 Defendant prioritized customer service over all other needs. (*Ibid.*)

18 Furthermore, Plaintiffs contend – and Defendant denies – that employees were not
19 compensated at their regular rate of pay for non-discretionary incentive payments. (Han Dec.,
20 *supra*, at ¶ 22.) Specifically, Defendant would periodically pay employees non-discretionary
21 safety incentive payments that were not factored into employees’ regular rates of pay for
22 purposes of overtime compensation. (*Ibid.*) For example, drivers’ receipt of non-discretionary
23 safety incentive payments was based on meeting various metrics and goals, such the number of
24 stops in an hour and the number of cases in an hour. (*Ibid.*) Warehouse pickers and loaders
25 would also receive non-discretionary incentive payments at the end of the year of up to \$1,500
26 using objective factors, such as maintenance, safety, and performance. (*Ibid.*) Despite paying
27 employees non-discretionary safety incentive payments, Defendant failed to include them into
28 employees’ regular rates to change their overtime rates. (*Ibid.*)

1 Additionally, Plaintiffs assert – and Defendant denies – that Defendant failed to
2 reimburse employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 23.) For
3 example, employees were not reimbursed for purchasing steel toed boots, gloves, rain jackets,
4 hats, rain gear, box cutter, and clipboards, which cost them approximately \$200 per year. (*Ibid.*)
5 Plaintiffs also assert that employees were not reimbursed for being required to use their personal
6 cell phones for business-related purposes. (*Ibid.*) This included merchandisers receiving calls
7 from management and store accounts management on their personal cell phones to discuss
8 business. (*Ibid.*) Moreover, even warehouse associates and loaders were forced to use their
9 personal cell phones to receive calls from drivers to let them know the drivers were approaching
10 or to receive calls from their supervisors to receive instructions for tasks. (*Ibid.*)

11 Furthermore, Plaintiffs contend – and Defendant denies – that Defendant is liable for
12 issuing non-compliant wage statements. (Han Dec., *supra*, at ¶ 24.) Specifically, Defendant
13 issued wage statements in violation of Labor Code section 226(a) because of the underlying
14 violations that are discussed above. (*Ibid.*) Even if Defendant asserts that its violation of section
15 226(a) is trivial, the California courts have held that strict compliance of section 226(a) is exactly
16 what is intended. (*Ibid.*)

17 Finally, Plaintiffs contend – and Defendant denies – that Defendant is liable for waiting
18 time penalties. (Han Dec., *supra*, at ¶ 25.) Specifically, Defendant’s hourly-paid or non-exempt
19 employees are entitled to back underpaid overtime and compensation for time worked off-the-
20 clock as well as missed meal and rest breaks, thereby triggering waiting time penalties under
21 Labor Code section 203. (*Ibid.*) Thus, Defendant owes compensation for underpaid work and
22 missed meal and rest breaks as a matter of fact and law but intentionally failed or refused to
23 perform an act, which was required to be done, constituting “willful” conduct and justifying
24 “waiting-time” penalties under section 203 to former employees. (*Ibid.*)

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1 Defendant denies Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 26.)
2 Among other things, Defendant denies Plaintiffs' rest and meal break contentions, on the
3 grounds that it provided rest and meal periods within compliant times and that non-exempt
4 employees were given discretion as to when to take their rest and meal periods. (*Ibid.*)
5 Defendant also contends that both its meal and rest break policies complied with California law
6 by July 2017 and that non-exempt employees were allowed to use their rest period and meal
7 period time for their own purposes. (*Ibid.*) Defendant further contends that whether non-exempt
8 employees took meal and rest breaks during compliant time frames and were relieved of all
9 duties are questions that could only be resolved by resorting to individualized inquiries to each
10 non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*)
11 Defendant also asserts that it paid its employees for all times worked, including overtime,
12 minimum, and premium wages. (*Ibid.*) Moreover, Defendant contends that it did factor non-
13 discretionary safety incentive payments into eligible employees' regular rates for overtime
14 purposes. (*Ibid.*) Further, Defendant contends that Plaintiffs' claims regarding off-the-clock
15 work and unpaid overtime are trivial as only a small number of employees actually worked off-
16 the-clock. (*Ibid.*) Defendant also asserts that it reimbursed employees for all business expenses,
17 including the use of personal cell phones for business-related purposes. (*Ibid.*) Finally,
18 Defendant argues that its failure to comply with California labor laws was an honest mistake
19 made in good faith. (*Ibid.*) Thus, Defendant's conduct could not be deemed "willful" under
20 Labor Code section 203. (*Ibid.*)

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

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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 Krivis. The mediation took place on January 28, 2021. (Han Dec., *supra*, at ¶ 27.) During the
6 mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
7 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the
8 mediator, the Parties were 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 as a Result of Arm's-Length**
12 **Negotiations**

13 The Settlement Agreement was reached as a result of arm's-length negotiations. (Han
14 Dec., *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have been, at
15 all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediations, Counsel for the
16 Parties conducted extensive arm's length settlement negotiations until an agreement was
17 ultimately reached by all Parties. (*Ibid.*)

18 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
19 expense and length of continued proceedings necessary to continue the litigation against
20 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
21 *supra*, at ¶ 43.) Plaintiffs and Class Counsel have also taken into account the uncertainty and risk
22 of further litigation, the potential outcome, and the difficulties and delays inherent in such
23 litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations,
24 including formal mediation on January 28, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and
25 Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate,
26 and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
4 discovery to support the settlement. (Han Dec., *supra*, at ¶ 44.) The proposed settlement was
5 only possible following significant discovery and evaluation of Defendant’s relevant policies and
6 procedures, as well as the data they produced for the putative Class, which permitted Class
7 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
8 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
9 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
10 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$750,000 (“Maximum
15 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
16 amount not to exceed \$262,500 (thirty-five percent (35%) of the Maximum Settlement Amount)
17 to compensate Class Counsel for work already performed and all work remaining to be
18 performed in documenting the settlement, administrating the settlement and securing Court
19 approval; (b) Cost Award for actual litigation costs not to exceed \$20,000²; (c) Class
20 Representative Enhancement Payments in the amount of \$10,000 to each Class Representative in
21 recognition of Plaintiffs’ work and efforts in obtaining the benefits for the Class and undertaking
22 the risk for the payment of costs in the event this matter had not successfully resolved; (d)
23 Administration Costs to Simpluris, Inc. (“Simpluris”), the Settlement Administrator, that are
24 currently estimated at approximately \$6,500 but not to exceed \$15,000; and (e) PAGA Payment

25 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiffs’ motion for
26 final approval. At that time, Plaintiffs will ask the Court to approve the amount of these costs. (Han Dec., *supra*, at
27 ¶ 29.) If Plaintiffs’ actual litigation costs exceed \$20,000, Plaintiffs will only seek reimbursement in the amount of
28 \$20,000. (*Ibid.*) If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee
Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and will be distributed to
all Class Members who do not submit a valid and timely request to exclude themselves from the class action
Settlement (“Participating Class Members”). (*Ibid.*)

of \$50,000, seventy-five percent (75%) of which (\$37,500) be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all hourly-paid or non-exempt employees of Defendant in California during the period from April 7, 2019, to October 2, 2020 (“Eligible Aggrieved Employees,” “PAGA Period,” and “Individual PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 28.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the Maximum Settlement Amount, it is estimated that \$381,000 (“Net Settlement Amount”) will be distributed to Class Members – with an average settlement share estimated at \$1,282.83. (Han Dec., *supra*, at ¶ 30.) The Settlement Administrator will withhold the amount of the Participating Class Members’ portion of normal payroll withholding taxes out of each person’s Individual Settlement Share. (*Ibid.*) The Settlement Administrator will calculate the amounts of the Participating Class Members’ and Defendant’s portions of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator will submit Defendant’s portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person’s Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*) The Individual Settlement Share is calculated based on each Participating Class Member’s pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows:

(i) the number of weeks he or she worked as a hourly-paid or non-exempt employee during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Class Member based on their dates of employment for purposes of this calculation. (*Ibid.*)

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Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee according to his or her proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 31.) The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to Eligible Aggrieved Employees based on pay periods during the PAGA Period as follows:

(i) the number of pay periods he or she worked as a hourly-paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of periods worked by each Eligible Aggrieved Employee based on their dates of employment for purposes of this calculation. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 32.) No portion of the Maximum Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 33.) The Class Data will be formatted as a Microsoft Excel spreadsheet and will include: (i) each Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class Member's Social Security and Employee ID number, if any; (iv) the Class Member's relevant dates of employment; (v) number of workweeks worked by the Class Member during the Class Period (excluding weeks where the Class Member performed no work for Defendant) ("Class Data"). (*Ibid.*)

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1 Within fourteen (14) calendar days after Defendant’s deadline to provide the Class Data
2 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
3 identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 34.) Class
4 Members are not required to submit a claim form to receive their Individual Settlement Payments
5 pursuant to the Settlement. (*Ibid.*) Eligible Aggrieved Employees are not required to submit a
6 claim form to receive their Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and
7 Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively,
8 which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

9 **iv. Distribution of Funds**

10 No later than twenty-one (21) calendar days after the date the Final Approval of the
11 Settlement can no longer be appealed or, if there are no objectors and no Plaintiffs in
12 intervention at the time the Court grants Final Approval of the Settlement, the date the Court
13 enters judgment granting Final Approval of the Settlement, Defendant shall deposit the
14 Maximum Settlement Amount of \$750,000 needed to pay the entire Maximum Settlement
15 Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶ 35.)

16 Within fourteen (14) calendar days after the deadline to fund the Settlement, the
17 Settlement Administrator shall calculate and disburse all payments due under the Settlement
18 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
19 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the
20 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 36.) The Settlement
21 Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the
22 LWDA for settlement of the PAGA claim. (*Ibid.*)

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1 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
2 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
3 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 37.) If any
4 checks are returned as undeliverable and without a forwarding address, the Settlement
5 Administrator will conduct a skip trace search to find the most up-to-date mailing addresses and
6 re-mail the checks promptly. (*Ibid.*) If any checks are not redeemed or deposited within ninety
7 (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard.
8 (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period
9 after mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
10 calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or
11 Individual PAGA Payment (as applicable) to the California State Controller’s Office in
12 accordance with California Unclaimed Property Law so that the Participating Class Member
13 and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or
14 Individual PAGA Payment available to him or her per the applicable claim procedure to request
15 that money from the State of California. (*Ibid.*)

16 **v. Release of Claims**

17 Upon Defendant’s fulfillment of its payment obligations under Section III (I)(8)(a) of the
18 Settlement, in exchange for the consideration set forth in the Settlement, Plaintiffs and the
19 Participating Class Members release the Released Parties from the Released Claims arising
20 during the Class Period (“Released Claims”). *See* Exhibit 2 §§ (I)(KK) (III)(J). (Han Dec., *supra*,
21 at ¶ 38.)

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1 Upon Defendant’s fulfillment of its payment obligations under Section III (I)(8)(a) of the
2 Settlement, the LWDA and each Eligible Aggrieved Employee, including Plaintiffs, individually
3 and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and
4 assigns hereby voluntarily and knowingly is barred from bringing any action for the PAGA
5 Released Claims during the PAGA Period (“PAGA Released Claims”). The release of the
6 PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee
7 submits a timely and valid request for exclusion. *See* Exhibit 2 §§ (I)(FF), (III)(K). (Han Dec.,
8 *supra*, at ¶ 39.)

9 The Released Parties include Defendant and its past or present officers, directors,
10 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
11 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
12 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
13 employers (“Released Parties”). *See* Exhibit 2 § (I)(LL). (Han Dec., *supra*, at ¶ 40.)

14 Upon Defendant’s fulfillment of its payment obligations under Section III (I)(8)(a) of the
15 Settlement, and in exchange for the Class Representative Enhancement Payments to the
16 Plaintiffs in amounts not to exceed \$10,000 each, in recognition of their work and efforts in
17 obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event
18 this matter had not successfully resolved, Plaintiffs provide a general release of claims for
19 themselves and their spouses, heirs, successors and assigns. *See* Exhibit 2 §§ (III)(L). (Han Dec.,
20 *supra*, at ¶ 41.)

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

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

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1 Plaintiffs' counsel has prosecuted numerous cases on behalf of employees for California
2 Labor Code violations and thus are experienced and qualified to evaluate the class claims, to
3 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
4 defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.) This experience instructed Plaintiffs' counsel
5 on the risks and uncertainties of further litigation and guided their determination to endorse the
6 proposed Settlement.³ (*Ibid.*)

7 **IV. ARGUMENT**

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

9 California Rule of Court 3.769 requires court approval for class action settlements.⁴
10 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
11 settlement." (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
12 motion for preliminary approval of class settlements:

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

16 . . .

17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
19 agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion.

21 Courts act within their discretion in approving settlements that are fair, not collusive, and take
22 into account "all the normal perils of litigation as well as the additional uncertainties inherent in
23 complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
24 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452
25 U.S. 905.)

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27 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
28 Action Settlement has been provided to the Class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

1 **b. 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.” (*Ibid.*)

8 In weighing the strength of the plaintiff’s 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
11 require an explicit statement of the maximum amount the class could recover if the plaintiff
12 prevailed on all his claims, provided there is a record that allows “an understanding of the
13 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
14 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
15 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
16 itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
17 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
18 499-500.).)

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

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

22 The proposed Settlement was only possible following significant discovery and
23 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant
24 produced for the putative Class as referenced in Section III above, which permitted Class
25 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Han Dec.*,
26 *supra*, at ¶ 44.)

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1 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal breaks and
3 pay applicable premiums, failed to provide rest periods and pay applicable premiums, failed to
4 pay minimum wages, failed to pay final wages in a timely manner, failed to issue compliant
5 wage statements, failed to reimburse business expenses, violated PAGA, and violated the
6 Business & Professions Code sections 17200, et seq. (Han Dec., *supra*, at ¶ 45.)

7 Defendant vehemently denies Plaintiffs' theories of liability and contend, as stated above,
8 that all meal and rest periods were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that it provided final wages in a timely manner, that it
10 provided wage statements in compliance with Labor Code section 226, and that it reimbursed all
11 business expenses. (Han Dec., *supra*, at ¶ 46.) Defendant further contends that any mistakes
12 made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to
13 continue, it feels confident that it would prevail. (*Ibid.*)

14 Although Plaintiffs believe the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiffs contends violate California law and uniformly affect the
16 putative Class Members, uncertainties with respect to certification are always present. (Han
17 Dec., *supra*, at ¶ 47.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
18 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
20 and hour claims.⁵ (*Ibid.*)

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

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26 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,
148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th
1422 (affirming denial of certification).)

1 **ii. The Settlement Amount of \$750,000 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 average hourly rate for class members. (Han Dec., *supra*, at ¶
6 48.) Defendant also confirmed that there were approximately 26,880 workweeks worked by
7 Class Members. (*Ibid.*) Plaintiffs were also able to determine that the average hourly rate for
8 Class Members was \$19.74. (*Ibid.*)

9 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
10 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
11 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 55.) Defendant asserted that,
12 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
13 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong
14 arguments against the underlying claims, it had a strong argument that it would be unjust to
15 award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

16 Class Counsel calculated penalties under this cause of action by multiplying the number
17 of active Class Members (because of the shortened statutory period for this claim), by the civil
18 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
19 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 56.) Class Counsel then
20 applied discounts in light of the countervailing arguments with regard to the other causes of
21 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
22 (*Id.* (citing Lab. Code § 2699(e)(2).).) (*Ibid.*)

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1 Given the state of the law and the range of PAGA penalties requested and actually
2 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
3 for PAGA penalties. (Han Dec., *supra*, at ¶ 57.) However, if PAGA penalties are granted on
4 any one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure
5 for the eligible pay periods could be approximately \$678,500 $(([1 \times \$100] + [29 \times \$200]) \times 115$
6 employees). (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent
7 (100%) violation rate based on the average number of pay periods (30) during the one-year
8 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
9 under the PAGA theories of recovery (6) gives potential civil penalties of \$4,071,000. (*Ibid.*)

10 Although Plaintiffs argued they could obtain over \$4 million for PAGA penalties, it
11 seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶
12 58.) PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty
13 for each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for
14 each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In
15 *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the
16 employer has been notified that it is violating a Labor Code provision (whether or not the
17 commissioner or court chooses to impose penalties), the employer cannot be presumed to be
18 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties [and
19 will be assessed only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.)
20 This language could be interpreted as indicating that until the Labor Commissioner or a court
21 informs an employer that it has violated the Labor Code, the employer can only be assessed the
22 “initial” violation rate. Under this interpretation, the maximum individual civil penalty for one
23 statutory violation is \$11,500 (115 employees x 100 (initial violation)), and for all possible Labor
24 Code violations is \$69,000.

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Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the civil penalty described in subdivision (f)...on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed” (emphasis added). However, Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$11,500 on the low end and \$69,000 on the high end based on six (6) major theories of recovery.

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

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1 Under a more conservative approach, Plaintiffs’ counsel considered the possibility that
2 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$69,000
3 [115 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 58.)

4 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
5 (Han Dec., *supra*, at ¶ 59.) Many of the causes of action brought were duplicative of the
6 statutory claims such as violations of California Labor Code §§ 226(a), 226.7, 510, 512(a), 1194,
7 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
8 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
9 under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based
10 on a rate of \$15.01 per pay period [$\$50,000 \div 3,331$ Pay Periods in PAGA Date Range =
11 \$15.01], given the fact that Defendant are also paying an additional \$700,000 in the class
12 settlement. (*Id.* (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
13 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff
14 requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where
15 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
16 result of self-interest at the expense of other Class Members,” such amounts are generally
17 considered reasonable. (Han Dec., *supra*, at ¶ 59.) (citing *Hopson v. Hanesbrands Inc.* (N.D.
18 Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g.,
19 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
20 discretion in approving a settlement which does not allocate any damages to the PAGA
21 claims.”).)

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Accordingly, taking into consideration Defendants’ defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$750,000— with an average settlement share estimated at \$1,282.83—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$3,672,362.95 on the low end and \$3,937,668.55 on the high end. (Han Dec., *supra*, at ¶ 60.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$313,481.07 ⁶	70%	60%	\$37,617.73
Meal Break Premiums	\$994,935.48 ⁷	40%	50%	\$298,480.64
Overtime/Minimum Wage: Off-the-Clock	\$530,611.20 to \$795,916.80 ⁸	60%	50%	\$106,122.24 to \$159,183.36
Overtime/Minimum Wage: Non-Discretionary Safety Incentive Payments	\$257,754 ⁹	30%	40%	\$108,256.68
Waiting Time Penalty	\$1,028,059.20 ¹⁰	50%	50%	\$257,014.80
Wage Statement Penalty	\$339,250 ¹¹	50%	50%	\$84,812.50
Unreimbursed Business Expenses	\$208,272 ¹²	30%	70%	\$43,737.12
MAXIMUM TOTAL EXPOSURE	\$3,672,362.95 to \$3,937,668.55			\$936,041.71 to \$989,102.83

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⁶ Han Dec., *supra*, at ¶ 49.

⁷ Han Dec., *supra*, at ¶ 60.

⁸ *Id.*, at ¶ 50.

⁹ *Id.*, at ¶ 51.

¹⁰ *Id.*, at ¶ 54.

¹¹ *Id.*, at ¶ 53.

¹² *Id.*, at ¶ 52.

1 Based on the rest period theories described above, Class Counsel believes a seventy
2 percent (70%) certification risk and sixty percent (60%) merits risk are warranted. (Han Dec.,
3 *supra*, at ¶ 61.) While Defendant did maintain a *Brinker*-compliant rest break policy, employees
4 were often forced to forgo or cut short their rest breaks. (*Ibid.*) This was largely due to
5 supervisors pressuring employees to finish their tasks first in order to avoid falling behind on
6 schedule. (*Ibid.*) This ranged from drivers and merchandisers being forced to skip their rest
7 breaks to make timely deliveries and warehouse pickers and loaders have no reasonable
8 opportunities to take their rest breaks due to the heavy workload they were expected to
9 undertake. (*Ibid.*) Conversely, Class Counsel also understands that obtaining certification for
10 non-compliant rest breaks due to improper practices can be difficult and problematic because rest
11 breaks are not recorded like meal breaks. (*Ibid.*) Defendant could present evidence and
12 testimony at trial showing that employees were not pressured into taking non-compliant rest
13 breaks nor were employees assigned excessive workloads. (*Ibid.*) Instead, employees who
14 skipped or cut their rest breaks short did so at their own volition. (*Ibid.*) Moreover, Defendant
15 can introduce testimony that it was unaware that employees were skipping or cutting short their
16 rest breaks, especially drivers and merchandisers who worked off the work premises. (*Ibid.*)
17 Defendant may even produce evidence that employees waived their right to take rest breaks at
18 their discretion. (*Ibid.*) Finally, as stated above, since rest breaks are not recorded like meal
19 breaks, it will be difficult for Plaintiffs to prove that employees were actually deprived of
20 receiving compliant rest breaks. (*Ibid.*) Thus, Class Counsel believes a seventy percent (70%)
21 certification risk and sixty percent (60%) merits risk are warranted. (*Ibid.*)

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1 Class Counsel also applies a forty percent (40%) certification risk and fifty percent (50%)
2 risk on the merits based on the meal period theories. (Han Dec., *supra*, at ¶ 62.) Firstly,
3 Plaintiffs assert that unlike Defendant's rest break policy, its meal break policy was not *Brinker*-
4 compliant from July 2011 to December 2017. (*Ibid.*) Moreover, the heavy workload employees
5 were expected to complete, pressures to timely complete their assignments and make deliveries,
6 and lack of reasonable opportunities to take meal breaks frequently prevented employees from
7 receiving compliant meal breaks. (*Ibid.*) For instance, drivers were forced to skip their meal
8 breaks at least three (3) times a week due to the number of stops they had to make, number of
9 cases they had, and difficulty finding parking for their trucks. (*Ibid.*) Even employees working
10 shifts exceeding ten (10) hours did not always receive second meal breaks. (*Ibid.*) Moreover,
11 Defendant would automatically deduct thirty (30) minutes from employees' shift to reflect that
12 they received meal breaks regardless of whether they did. (*Ibid.*) Finally, non-compliant meal
13 breaks are easier to prove than rest breaks because they are recorded. (*Ibid.*) However, Class
14 Counsel also understands that there are risks associated with certification with regards to meal
15 breaks. (*Ibid.*) Defendant can introduce evidence and testimony at trial that it did not have
16 constructive knowledge that employees were skipping, cut short, taking late meal breaks. (*Ibid.*)
17 This is particularly applicable for drivers and merchandisers who were frequently working off
18 the work premises making deliveries. (*Ibid.*). In other words, employees were choosing to take
19 non-compliant meal breaks rather being pressured to do so by their workloads, which also
20 extends to employees choosing not to take their second meal breaks if working shifts exceeding
21 ten (10) hours. (*Ibid.*) Finally, Defendant can introduce evidence and testimony that its practice
22 of deducting thirty (30) minutes from employees' shifts is not necessarily indicative that
23 employees did not receive meal breaks since employees could have still taken their meal breaks.
24 (*Ibid.*) Thus, Class Counsel believes even if certified, an additional fifty percent (50%) risk on
25 the merits along with a forty percent (40%) certification risk are justified. (*Ibid.*)

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1 As for unpaid wages involving off-the-clock work, including overtime work, Class
2 Counsel believes a sixty percent (60%) certification risk and a fifty percent (50%) merits risk are
3 justified. (Han Dec., *supra*, at ¶ 63.) Plaintiffs contend that despite employees' workload and
4 pressures from supervisors forcing employees to work off-the-clock, Defendant did not
5 compensate them for all hours worked. (*Ibid.*) This includes truck drivers being forced by their
6 supervisors to participate in pre-trip inspections before clocking in, merchandisers being called
7 by their supervisors after clocking out, and warehouse pickers and loaders being forced to assist
8 customers in the morning before clocking in. (*Ibid.*) In other words, Defendant prioritized
9 employees completing their duties above all else even if it meant forcing employees to work off-
10 the-clock without compensation. (*Ibid.*) However, Defendant may produce evidence and
11 testimony at trial that only a small number of employees actually worked off-the-clock. (*Ibid.*)
12 Defendant may even introduce evidence that the small number of employees who worked off-
13 the-clock did so at their volition and without Defendant's knowledge, meaning they were not
14 pressured into doing so. (*Ibid.*) Finally, Defendant could even produce evidence and testimony
15 that employees who worked off-the-clock were compensated for their additional hours of work.
16 (*Ibid.*) Thus, Class Counsel believes this justifies a sixty percent (60%) certification risk and fifty
17 percent (50%) risk on the merits. (*Ibid.*)

18 Furthermore, Class Counsel believes a thirty percent (30%) certification risk and a forty
19 percent (40%) regarding non-discretionary safety incentive payments not being factored into
20 employees' regular rates of pay for overtime purposes are reasonable. (Han Dec., *supra*, at ¶
21 64.) Plaintiffs assert that Defendant had a practice of paying employees non-discretionary safety
22 incentive payments that required employees to satisfy objective criteria. (*Ibid.*) But Defendant
23 did not incorporate these safety incentive payments into employees' regular rates. Hence, these
24 regular rate claims are readily certified, which justifies Class Counsel's small risk discount.
25 (*Ibid.*) However, Defendant could also provide testimony at trial that not all employees were
26 eligible for or may have received such safety incentive payments. (*Ibid.*) Moreover, Defendant
27 may produce evidence indicating that these safety incentive payments were not paid during every
28 pay period, meaning most pay periods were unaffected. (*Ibid.*) Finally, Defendant could

1 introduce evidence and testimony that not all employees who received these safety incentive
2 payments also worked overtime. (Han Dec., *supra*, at ¶ 64.) Thus, Class Counsel believes a
3 thirty percent (30%) certification risk and a forty percent (40%) merits risks are warranted.
4 (*Ibid.*)

5 Plaintiffs' Labor Code section 203 claim for waiting time penalties is based on Plaintiffs'
6 claims for unpaid overtime, time worked off-the-clock, and missed rest and meal breaks. (Han
7 Dec., *supra*, at ¶ 65.) If Plaintiffs prevail on these underlying claims, it will lead to waiting time
8 penalties. (*Ibid.*) However, Defendant may argue that any failure to pay wages due and owing to
9 employees in a timely manner was not "willful" under section 203 and was instead an honest
10 mistake made in good faith. (*Ibid.*) For these reasons and the reasons explained in the previous
11 sections, Class Counsel believes a fifty percent (50%) certification risk and fifty percent (50%)
12 merits risk are justified. (*Ibid.*)

13 Plaintiffs' Labor Code section 226(a) claim for wage statement penalties is based on
14 Defendant's failure to maintain accurate records. (Han Dec., *supra*, at ¶ 66.) In other words,
15 Defendant failed to accurately record all hours worked by putative class members and factor in
16 non-discretionary safety incentive payments into employees' regular rates to change their
17 overtime rates. (*Ibid.*) This subsequently resulted in Defendant issuing wage statements that
18 failed to accurately state the numbers of hours worked and the proper overtime rates in violation
19 of the California Labor Code. (*Ibid.*) However, Defendant's error most likely did not affect all
20 employees. (*Ibid.*) In addition, Defendant may argue that its failure to provide accurate wage
21 statements was not "knowing and intentional" under section 226(a). (*Ibid.*) Therefore, Class
22 Counsel believes a fifty percent (50%) certification risk and fifty percent (50%) merits risk are
23 justified. (*Ibid.*)

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1 Finally, Class Counsel believes that a thirty percent (30%) certification risk and seventy
2 percent (70%) for unreimbursed business expenses are warranted. (Han Dec., *supra*, at ¶ 67.)
3 Plaintiffs contend that employees were forced to spend approximately \$200 per year to purchase
4 work equipment in order to effectively perform their duties for which they were not reimbursed.
5 (*Ibid.*) Furthermore, employees were also forced to use their personal cell phone for business-
6 related purposes (i.e., speaking to supervisors, account store accounts management, incoming
7 drivers) for which Defendant failed to reimburse them for the usage. (*Ibid.*) But Defendant may
8 be able to produce evidence at trial that only a small parentage of employees actually purchased
9 work equipment at their own expense or used their personal cell phones for business-related
10 purposes. (*Ibid.*) Defendant could even bring in evidence to show that the employees who did
11 purchase work equipment and opted to use their personal cell phones were promptly reimbursed.
12 (*Ibid.*) Finally, Defendant may introduce evidence and testimony to show that some employees
13 were not reimbursed for their purchases because they were not reasonable business expenses.
14 (*Ibid.*) Therefore, Class Counsel believes this warrants a thirty percent (30%) certification risk
15 and seventy percent (70%) risk on the merits. (*Ibid.*)

16 Based on this analysis, the realistic recovery for this case is \$936,041.71 on the low end
17 and \$989,102.83 on the high end. (Han Dec., *supra*, at ¶ 68.) The Maximum Settlement Amount
18 of \$750,000 is approximately nineteen percent (19.05%) of the maximum potential exposure and
19 is approximately seventy-five percent (75.83%) of the maximum realistic exposure at trial, which
20 is an excellent settlement. (*Ibid.*)

21 The only question at preliminary approval is whether the settlement is within the range of
22 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
23 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
24 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
25 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
26 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
27 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
28 that induce consensual settlements. The proposed settlement is not to be judged against a

hypothetical or speculative measure of what might have been achieved by the negotiators.”.)
Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have prevailed at trial
and provide a significant recovery for the Class Members. Thus, there can be no doubt that this
settlement is fair and reasonable.

d. Conditional Certification of the Class Is Appropriate

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

The proposed Class is ascertainable and numerous as to make it impracticable to join all
Class Members, and there are common questions of law and fact that predominate over any
questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 69.) Plaintiffs’ claims
are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
Class Members would create the risk of inconsistent or varying adjudications, and a class action
is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
discussed below, this case is amenable to class certification. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

1 The Class Action involves two hundred ninety-seven (297) Class Members. (Han Dec.,
2 *supra*, at ¶ 70.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
3 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
4 many as 190 current and former employees” is sufficiently numerous).) Further, all Class
5 Members can and will be identified by Defendant to the Settlement Administrator through a
6 review of Defendant’s employment records concerning hourly-paid and non-exempt employees
7 employed by Defendant within the State of California during the Class Period. (Han Dec.,
8 *supra*, at ¶ 70.)

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

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

20 **1. Common Issues Predominate**

21 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
22 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
23 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
24 other words, courts determine whether the elements necessary to establish liability are
25 susceptible to common proof, even if the class members must individually prove their damages.
26 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
27 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v.*
28 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving

1 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-
2 21244 (court certified class of dancers on state law claims).)

3 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
4 alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 71.) All hourly-paid and non-exempt employees
5 who worked for Defendant during the Class Period were subject to the same or similar
6 employment practices, policies, and procedures. (*Ibid.*) All of Plaintiffs' claims surround
7 Defendant's common practice and scheme of failing to maintain compliant meal and rest break
8 policies and practices, failing to reimburse business expenses, and failing to fully and properly
9 compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work,
10 overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

11 **2. Plaintiffs' Claims Are Typical of the Class Claims**

12 Typical claims rely on legal theories and facts that are substantially similar to other class
13 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 Plaintiffs were non-exempt
14 employees and allege they and the Class Members were employed by the same company and
15 injured by Defendant's common policies and practices related to meal and rest breaks,
16 uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage
17 statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 72.) Plaintiffs seek
18 relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus,
19 Plaintiffs' claims arise from the same employment practices and are based on the same legal
20 theories as those applicable to the other Class Members. (*Ibid.*)

21 **3. Plaintiffs are Adequate to Represent the Class**

22 Plaintiffs have proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶
23 73.) They have conducted themselves diligently and responsibly in representing the Class in this
24 litigation, understands their fiduciary obligations, and have actively participated in the
25 prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with
26 counsel to provide counsel with a complete understanding of their work environment and
27 requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the
28 interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to

represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

**4. Class Action is Superior for the Fair and Efficient
Adjudication of this Controversy**

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-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. Moreover, because a number of the class members are current employees, the fear of retaliation further support superiority of class-wide relief because that fear of retaliation often discourages victims from seeking legal redress while currently employed by the same employer.

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

The proposed Notice Packet meets all of 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*; Exhibit A to Exhibit 2.)

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 Class should be conditionally certified for purposes of settlement only, and the Notice Packet should be approved.

JUSTICE LAW CORPORATION

Douglas Han
Shunt Tatavos-Gharajeh
Areen Babajianian
Haig Hogdanian
Attorneys for Plaintiff

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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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is arivera@justicelawcorp.com

On April 12, 2021, I served the foregoing document described as

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

for the following case: **Hernandez, et al. v. Triangle Distributing Co.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-782172-20**
LWDA-CM-782330-20
Court Case No.: 20STCV13172
Los Angeles 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

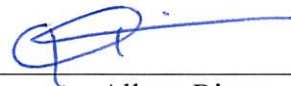
[X] BY ELECTRONIC SUBMISSION

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 April 12, 2021, at Pasadena, California.



Allana Rivera