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

BRENDAN KRICK, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

SAG-AFTRA FEDERAL CREDIT UNION,
an unknown business entity; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 20STCV34772

Honorable Elihu M. Berle
Department 6

CLASS ACTION

**PLAINTIFF'S REVISED 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**

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

Hearing Date: September 20, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department 6

Complaint Filed: September 10, 2020
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on September 20, 2021 at 10:00 a.m., or as soon as the
2 matter may be heard before the Honorable Elihu M. Berle in Department 6 of the Los Angeles
3 Superior Court, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles,
4 California 90012, Plaintiff Krick (“Plaintiff”) will and hereby move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Amended Joint Stipulation and Settlement
7 Agreement (“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”), Attorney Fee Award, Cost Award, Class Representative Enhancement
12 Payment, and the Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Amended Notice of Class Action Settlement (“Class
17 Notice”) attached as **“Exhibit A”** to the Settlement Agreement;
- 18 • Approving the Amended Election Not To Participate In (Opt Out From) Class
19 Action Settlement Form (“Exclusion Form”) attached as **“Exhibit B”** to the
20 Settlement 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

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for Attorney Fee Award, Cost Award, 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); the Declaration of the Proposed Class Representative (Brendan Krick); 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: September 7, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$300,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of himself and all hourly-paid or non-
4 exempt employees employed by Defendant SAG-AFTRA Federal Credit Union (“Defendant”)
5 within the State of California during the Class Period (“Class”). The Class Period is the time
6 period from September 10, 2016, through June 1, 2021 (“Class Period”). At the time of this
7 filing, the number of Class Members provided by Defendant is currently estimated to be sixty-
8 four (64).

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 \$300,000– with an average settlement share amount estimated at
12 \$2,277.78¹ – 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.

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¹ \$143,500 (Net Settlement Amount) / 63 (Class Members) = \$2,277.78.

II. BACKGROUND

Established in 1962, Defendant provides a wide array of financial services to individuals in the entertainment industry, including personal loans, home loans, and musical equipment loans. (Amended Declaration of Douglas Han (“Han Dec.”) at ¶ 9.) This case involves all hourly-paid or non-exempt employees employed by Defendant within the State of California during the time period from September 10, 2016, to March 31, 2021. (*Ibid.*) Plaintiff alleges that at all times during the Class Period, Defendant’s non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

On April 6, 2020, Plaintiff, a former employee of Defendant, provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contention. (Han Dec., *supra*, at ¶ 10.) The requisite sixty-five (65) day notice period for the PAGA expired on or about June 10, 2020, and the LWDA did not take any action to investigate or prosecute this matter. (*Ibid.*) On July 15, 2020, Plaintiff provided an amended notice to the LWDA to reflect the cessation of his employment with Defendant. (*Ibid.*) The requisite sixty-five (65) day notice period for PAGA expired on or about September 18, 2020. (*Ibid.*)

Plaintiff filed a wage-and-hour class action on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the relevant period. (Han Dec., *supra*, at ¶ 11.) Plaintiff filed his complaint on September 10, 2020, in the Superior Court of Los Angeles, alleging nine (9) causes of action for numerous violations of the California Labor Code and California Business & Professions Code. (*Ibid.*) Plaintiff alleged the following causes of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (non-compliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); (8) violation of California Labor Code sections 2698, *et*

1 *seq.* (the Private Attorneys General Act of 2004); and (9) violation of Business & Professions
2 Code sections 17200 *et seq.* (*Ibid.*)

3 The Parties attended mediation on Plaintiff's claims on April 14, 2021. (Han Dec., *supra*,
4 at ¶ 12.) Under the auspices of the mediator Steve Pearl, the Parties were eventually able to reach
5 an agreement on the settlement of the action. (*Ibid.*)

6 Defendant generally and specifically denies all liability or wrongdoing of any sort
7 regarding any of the claims alleged, makes no concessions or admissions of liability of any sort,
8 and contends that for any purpose other than settlement, the Class Action is not appropriate for
9 class or representative treatment. (Han Dec., *supra*, at ¶ 13.) Defendant also asserted several
10 defenses to Plaintiff and the putative class members claims and has denied any wrongdoing or
11 liability arising out of any of the alleged facts or conduct in the Class Action. (*Ibid.*)

12 **III. INVESTIGATION/ LITIGATION HISTORY**

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

14 Prior to the mediation, the Parties conducted significant investigation and discovery of
15 the facts and law both before and after the Class Action was filed. (Han Dec., *supra*, at ¶ 14.)
16 Specifically, prior to mediation, Defendant produced hundreds of documents relating to its
17 policies, practices, and procedures regarding reimbursement of business expenses, paying non-
18 exempt employees for all hours worked, meal and rest break policies, and payroll and operational
19 policies. (*Ibid.*) As part of Defendant's production, Plaintiff also reviewed time records, pay
20 records, and information relating to the size and scope of the Class, as well as data permitting
21 Plaintiff to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiff also
22 interviewed various Class Members who worked for Defendant throughout the Class Period.
23 (*Ibid.*)

24 The Parties agree that the above-described investigation and evaluation, as well as the
25 information exchanged during the settlement negotiations, are more than sufficient to assess the
26 merits of the respective Parties' positions and to compromise the issues on a fair and equitable
27 basis. (Han Dec., *supra*, at ¶ 15.)

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1 Based upon the Parties' discovery, and interviews Plaintiff's counsel had with non-
2 exempt employees, Plaintiff contend – and Defendant denies – that Defendant failed to provide
3 employees legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶¶ 16-17.) Specifically,
4 Defendant had in place improper, uniform policies and practices that deprived employees of
5 compliant meal and rest breaks. (*Ibid.*)

6 Plaintiff also asserts – and Defendant denies – that Defendant failed to pay employees for
7 all hours worked. (Han Dec., *supra*, at ¶ 18.) Specifically, Defendant's policies pressured
8 employees to work additional hours off-the-clock without asking for compensation, which
9 resulted in several instances of uncompensated pre-shift and post-shift work. (*Ibid.*)

10 Next, Plaintiff alleges – and Defendant denies – that Defendant failed to reimburse
11 employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 19.) This included
12 employees being required to use their personal cell phones and personal vehicles for business-
13 related purposes and purchasing personal protective equipment ("PPEs") and office supplies for
14 which they were not reimbursed. (*Ibid.*)

15 Finally, Plaintiff contend – and Defendant denies – that Defendant is liable for issuing
16 noncompliant wage statements and for waiting time penalties. (Han Dec., *supra*, at ¶¶ 20-21.)

17 Defendant denies Plaintiff's contentions in their entirety. (Han Dec., *supra*, at ¶ 22.)
18 Among other things, Defendant denies Plaintiff's meal and rest break contentions, on the
19 grounds that it provided breaks within compliant times and that non-exempt employees were told
20 when to take their breaks. (*Ibid.*) Defendant also counters that it did not discourage employees to
21 skip, cut short, or take late meal and rest breaks just to ensure employees provided adequate
22 customer service. (*Ibid.*) Defendant further contends that whether non-exempt employees took
23 meal and rest breaks during compliant time frames and were relieved of all duties are questions
24 that could only be resolved by resorting to individualized inquiries to each non-exempt employee
25 and, therefore, class certification would not be appropriate. (*Ibid.*) Furthermore, Defendant
26 asserts that it paid its employees for all times worked, including overtime, minimum, and
27 premium wages. (*Ibid.*) Defendant also argues that Plaintiff's claims regarding off-the-clock
28 work and unpaid overtime are trivial as none of its employees worked off-the-clock. (*Ibid.*)

1 Defendant adds that its policies and practices rarely, if ever, pressured employees to work off-
2 the-clock and that such employees were promptly compensated. (*Ibid.*) Defendant also asserts
3 that it reimbursed employees for all business expenses, including the purchase of office supplies
4 and the use of personal cell phones and vehicles. (*Ibid.*) Finally, Defendant argues that its failure
5 to comply with California labor laws was an honest mistake made in good faith. (*Ibid.*) Thus,
6 Defendant’s conduct could not be deemed “willful” under Labor Code section 203. (*Ibid.*)

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

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

10 **i. The Parties Attended Mediation Which Ultimately Led to the**
11 **Amended Joint Stipulation and Settlement Agreement**

12 The Parties agreed to go to mediation with experienced wage and hour mediator, Steve
13 Pearl. (Han Dec., *supra*, at ¶ 23.) The mediation took place April 14, 2021. (*Ibid.*) During the
14 mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
15 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the
16 mediator, the Parties were able to reach an agreement on a settlement of the Class Action, the
17 terms of which were memorialized in a Settlement Agreement, that the Parties now seek
18 Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 23.; Exhibit 2.)

19 **ii. The Settlement Was Reached as a Result of Arm’s-Length**
20 **Negotiations**

21 The Settlement Agreement was reached because of arm’s-length negotiations. (Han
22 Dec., *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have been,
23 always, adversarial and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties
24 conducted extensive arm’s length settlement negotiations until an agreement was ultimately
25 reached by all Parties. (*Ibid.*)

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1 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
2 expense and length of continued proceedings necessary to continue the litigation against
3 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
4 *supra*, at ¶ 41.) Plaintiff and Class Counsel have also considered the uncertainty and risk of
5 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
6 (*Ibid.*) Plaintiff and Class Counsel have conducted extensive settlement negotiations, including
7 formal mediation on April 14, 2021. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel
8 believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable
9 settlement, and is in the best interests of the Class. (*Ibid.*)

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

11 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
12 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
13 discovery to support the settlement. (Han Dec., *supra*, at ¶ 42.) The proposed settlement was
14 only possible following significant discovery and evaluation of Defendant’s relevant policies and
15 procedures, as well as the data they produced for the putative Class, which permitted Class
16 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
17 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
18 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
19 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 42.)

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$300,000 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
6 amount not to exceed \$105,000 (thirty-five percent (35%) of the Gross Settlement Amount) to
7 compensate Class Counsel for work already performed and all work remaining to be performed
8 in documenting the settlement, administrating the settlement and securing Court approval; (b)
9 Cost Award for actual litigation costs not to exceed \$20,000²; (c) Class Representative
10 Enhancement Payment in the amount of \$7,500 to the Class Representative in recognition of
11 Plaintiff’s work and efforts in obtaining the benefits for the Class and undertaking the risk for the
12 payment of costs in the event this matter had not successfully resolved; (d) Administration Costs
13 to Phoenix, the Settlement Administrator, currently estimated at \$4,000, but not to exceed
14 \$5,000; and (e) PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) be
15 paid to the LWDA and twenty-five percent (25%) of which (\$5,000) shall be distributed to the
16 aggrieved employees eligible to recover the PAGA Payment that consist of all hourly-paid or
17 non-exempt employees of Defendant in California during the period from April 6, 2019 to June
18 1, 2021 (“PAGA Payment,” “Eligible Aggrieved Employees,” “PAGA Period,” and “Individual
19 PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 24.)

20 **ii. Calculation of the Settlement Payments to Class Members**

21 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
22 that \$143,500 (“Net Settlement Amount”) will be distributed to Class Members – with an
23 average settlement share estimated at \$2,277.78. (Han Dec., *supra*, at ¶ 26.)

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26 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for
27 final approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. (Han Dec., *supra*, at ¶
28 25.) If Plaintiff’s actual litigation costs exceed \$20,000, Plaintiff will only seek reimbursement in the amount of
\$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.*)

1 The Settlement Administrator will withhold the amount of the Participating Class
2 Members' portion of normal payroll withholding taxes out of each person's Individual
3 Settlement Share. (Han Dec., *supra*, at ¶ 27.) The Settlement Administrator will calculate the
4 amounts of the Participating Class Members' and Defendant's portions of payroll withholding
5 taxes. (*Ibid.*) Finally, the Settlement Administrator will submit Defendant's portion of payroll
6 withholding tax calculation to Defendant for additional funding and forward those amounts along
7 with each person's Individual Settlement Share withholdings to the appropriate taxing
8 authorities. (*Ibid.*)

9 The Individual Settlement Share is calculated based on each Participating Class
10 Member's pro rata share of the Net Settlement Amount based on workweeks during the Class
11 Period as follows:

12 (i) the number of weeks he or she worked as a hourly-paid or non-exempt
13 employee during the Class Period, divided by (ii) the total number of
14 weeks worked by all Participating Class Members collectively during the
15 Class Period, which is then multiplied by the Net Settlement Amount. The
16 Settlement Administrator will use the Class Data to calculate the number
17 of workweeks worked by each Class Member based on their dates of
18 employment for purposes of this calculation. (Han Dec., *supra*, at ¶ 28.)

17 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
18 according to their proportional share, which will be based upon the total number of work weeks
19 he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 29.) The Individual
20 PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the
21 PAGA Payment allocated to the Eligible Aggrieved Employees based on work weeks during the
22 PAGA Period as follows:

23 (i) the number of pay periods he or she worked as a hourly-paid or non-exempt
24 employee during the PAGA Period, divided by (ii) the total number of pay
25 periods worked by all Eligible Aggrieved Employees collectively during the
26 PAGA Period, which is then multiplied by the PAGA Payment allocated to the
27 Eligible Aggrieved Employees. The Settlement Administrator will use the Class
28 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.*)

1 The precise number of compensable weeks worked per Class Member will not be known
2 until Defendant have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 30.)
3 No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

4 **iii. Notice to the Class**

5 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
6 Defendant shall deliver to the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
7 31.) The Class Data shall be formatted as a Microsoft Excel spreadsheet and shall include: (i)
8 each Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class
9 Member's Social Security and Employee ID number, if any; and (iv) the Class Member's
10 relevant dates of employment ("Class Data"). (*Ibid.*)

11 Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data
12 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
13 identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 32.) Class
14 Members are not required to submit a claim form to receive their Individual Settlement Payments
15 pursuant to the Settlement. (*Ibid.*) Eligible Aggrieved Employees are not required to submit a
16 claim form to receive their Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and
17 Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively,
18 which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

19 **iv. Distribution of Funds**

20 No later than twenty-one (21) calendar days after the date the Final Approval of the
21 Settlement can no longer be appealed or, if there are no objectors and no Plaintiff in intervention
22 at the time the Court grants Final Approval of the Settlement, the date the court enters judgment
23 granting Final Approval of the Settlement, Defendant shall deposit the Gross Settlement Amount
24 of \$300,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
25 Settlement Administrator. (Han Dec., *supra*, at ¶ 33.) Defendant shall also at this time provide
26 any tax information that the Settlement Administrator may need to calculate each Participating
27 Class Members' Individual Settlement Shares. (*Ibid.*)

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1 Within fourteen (14) calendar days after the deadline to fund the Settlement, the
2 Settlement Administrator shall calculate and disburse all payments due under the Settlement
3 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
4 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the
5 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 34.) The Settlement
6 Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment to
7 the LWDA for settlement of the PAGA claim. (*Ibid.*)

8 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
9 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
10 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 35.) If any
11 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
12 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed
13 or not deposited by the expiration of the 90-day period after mailing the reminder notice, the
14 Settlement Administrator will, within two hundred (200) calendar days after the checks are
15 mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as
16 applicable) to the California State Controller's Unclaimed Property Division in accordance with
17 California Unclaimed Property Law so that the Participating Class Member and/or Eligible
18 Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA
19 Payment available to him or her per the applicable claim procedure to request that money from
20 the State of California. (*Ibid.*)

21 **v. Release of Claims**

22 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
23 the Settlement, Plaintiff and the Participating Class Members release the Released Parties from
24 the Released Claims for the Class Period ("Released Claims"). *See* Exhibit 2 §§ (I)(JJ), (III)(J).
25 (Han Dec., *supra*, at ¶ 36.)

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1 As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved
2 Employee, including Plaintiff, individually and on behalf of their heirs, executors,
3 administrators, representatives, attorneys, successors and assigns hereby voluntarily and
4 knowingly is barred from bringing for the PAGA Released Claims during the PAGA Period.
5 The release of the PAGA Released Claims is effective, regardless of whether the Eligible
6 Aggrieved Employee submits a timely and valid request for exclusion. (“PAGA Released
7 Claims”). *See* Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 37.)

8 The Released Parties include Defendant and its past or present officers, directors,
9 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
10 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
11 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
12 employers (“Released Parties”). *See* Exhibit 2 § (I)(KK). (Han Dec., *supra*, at ¶ 38.)

13 As of the Effective Final Settlement Date, and in exchange for the Class Representative
14 Enhancement Payment to the Plaintiff in an amount not to exceed \$7,500, in recognition of his
15 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
16 of costs in the event this matter had not successfully resolved, Plaintiff provides a general release
17 of claims for himself and his spouse, heirs, successors and assigns. *See* Exhibit 2 § (III)(L). (Han
18 Dec., *supra*, at ¶ 39.)

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

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

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1 Plaintiff's 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 Plaintiff's 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.)

26 ///

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 Parties thoroughly investigated and evaluated the factual strengths and weaknesses
23 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
24 discovery to support the settlement. (Han Dec., *supra*, at ¶ 42.) The proposed settlement was only
25 possible following significant discovery and evaluation of Defendant’s relevant policies and
26 procedures, as well as the data they produced for the putative Class, which permitted Class
27 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
28 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the

1 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
2 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 42.)

3 This discovery resulted in Plaintiff’s central theories of liability, which are predicated on
4 Plaintiff’s claims that Defendant failed to pay overtime wages, failed to provide meal and rest
5 breaks and pay applicable premiums, failed to pay minimum wages, failed to pay final wages in
6 a timely manner, failed to issue compliant wage statements, failed to reimburse business
7 expenses, violated PAGA, and violated the Business & Professions Code sections 17200, *et seq.*
8 (Han Dec., *supra*, at ¶ 43.)

9 Defendant vehemently denies Plaintiff’s theories of liability and contend, as stated above,
10 that all meal and rest breaks were provided in compliance with California law, that all wages
11 were properly paid to Class Members, that it provided final wages in a timely manner, that it
12 provided wage statements in compliance with Labor Code section 226, and that it reimbursed all
13 business expenses. (Han Dec., *supra*, at ¶ 44.) Defendant further contends that any mistakes
14 made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to
15 continue, it feels confident that it would prevail. (*Ibid.*)

16 Although Plaintiff believes the case is suitable for certification on the basis that there are
17 company-wide policies that Plaintiff contends violate California law and uniformly affect the
18 putative Class Members, uncertainties with respect to certification are always present. (Han
19 Dec., *supra*, at ¶ 45.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
20 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*)
21 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
22 and hour claims.⁵ (*Ibid.*)

23 Although remaining confident in the strengths of his claims, all these factors led Plaintiff
24 to discount the following calculations of potential damage claims:

25
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 \$300,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 Class Members and the average hourly rate for Class Members. (Han Dec., *supra*, at ¶ 46.)
6 Defendant also confirmed that there were approximately 8,060 workweeks worked by Class
7 Members. (*Ibid.*) Plaintiff was also able to determine that the average hourly rate for Class
8 Members was \$16.73. (*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 ¶ 52.) 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 ¶ 53.) 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 (Lab. Code § 2699(e)(2).) (*Ibid.*)

23 Given the state of the law and the range of PAGA penalties requested and actually
24 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
25 for PAGA penalties. (Han Dec., *supra*, at ¶ 54.) However, if PAGA penalties are granted on
26 any one of the violations alleged in Plaintiff's operative complaint, the total penalties exposure
27 for the eligible pay periods could be approximately \$533,800 (([1 x \$100] + [78 x \$200]) x 34
28 employees). (*Ibid.*) Plaintiff calculated Defendant's PAGA exposure using one hundred percent

1 (100%) violation rate based on the average number of pay periods (79) during the one-year
2 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
3 under the PAGA theories of recovery (6) gives potential civil penalties of \$3,202,800. (*Ibid.*)

4 Although Plaintiff argued he could obtain over \$3 million for PAGA penalties, it seems
5 unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 55.) PAGA’s
6 plain language indicates that an employer will be assessed a lower, “initial” penalty for each
7 initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each
8 subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral*
9 *v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has
10 been notified that it is violating a Labor Code provision (whether or not the commissioner or
11 court chooses to impose penalties), the employer cannot be presumed to be aware that its
12 continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed
13 only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could
14 be interpreted as indicating that until the Labor Commissioner or a court informs an employer
15 that it has violated the Labor Code, the employer can only be assessed the “initial” violation rate.
16 Under this interpretation, the maximum individual civil penalty for one statutory violation is
17 \$3,400 (34 employees x 100 (initial violation)), and for all possible Labor Code violations is
18 \$20,400.

19 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may
20 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period
21 for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
22 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
23 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
24 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in
25 subdivision (f)...on behalf of himself or herself and other current or former employees against
26 whom one or more of the alleged violations was committed” (emphasis added). However,
27 Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*
28 (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057,

1 which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking”
2 of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties
3 would be limited to \$3,400 on the low end and \$20,400 on the high end based on six (6) major
4 theories of recovery.

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

15 Under a more conservative approach, Plaintiff’s counsel considered the possibility that
16 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$20,400
17 [34 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 55.)

18 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
19 (Han Dec., *supra*, at ¶ 56.) Many of the causes of action brought were duplicative of the
20 statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a),
21 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
22 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
23 under the law. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties was reasonable based
24 on a rate of \$7.43 per pay period [$\$20,000 \div 2,691$ Pay Periods in PAGA Date Range = \$7.43],
25 given the fact that Defendant are also paying an additional \$280,000 in the class settlement. (*Id.*
26 (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5
27 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
28 \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where 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. (Han Dec., *supra*, at ¶ 56.) (citing *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.”).)

Accordingly, taking into consideration Defendant’s defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$300,000— with an average settlement share estimated at \$2,277.78—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 \$845,925.69 on the low end and \$930,253.44 on the high end. (Han Dec., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$121,781.02	70%	60%	\$14,613.72
Meal Break Premiums	\$182,671.52	60%	50%	\$36,534.30
Overtime/Minimum Wage: Off-the-Clock	\$168,554.75 to \$252,882.50	50%	40%	\$50,556.43 to \$75,864.75
Unreimbursed Business Expenses	\$68,280	30%	70%	\$14,338.80
Wage Statement Penalty	\$136,000	25%	40%	\$61,200
Waiting Time Penalty	\$168,638.40	25%	40%	\$75,887.28
MAXIMUM TOTAL EXPOSURE	\$845,925.69 to \$930,253.44⁶			\$253,130.53 to \$278,438.85⁷

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⁶ Han Dec., *supra*, at ¶¶ 47-51.

⁷ Han Dec., *supra*, at ¶¶ 58-63.

1 Based on this analysis, the realistic recovery for this case is \$253,130.53 on the low end
2 and \$278,438.85 on the high end. (Han Dec., *supra*, at ¶ 64.) The Gross Settlement Amount of
3 \$300,000 is approximately thirty-two percent (32.25%) of the maximum potential exposure and
4 is approximately one hundred seven percent (107.74%) of the maximum realistic exposure at
5 trial, which is an excellent settlement. (*Ibid.*)

6 The only question at preliminary approval is whether the settlement is within the range of
7 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 is
12 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
13 that induce consensual settlements. The proposed settlement is not to be judged against a
14 hypothetical or speculative measure of what might have been achieved by the negotiators.”)
15 Nevertheless, this settlement exceeds the realistic exposure Plaintiff could have prevailed at trial
16 and provide a significant recovery for the Class Members. Thus, there can be no doubt that this
17 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 certification
20 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
21 of a common or general interest, of many persons, or when the parties are numerous, and it is
22 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
23 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
24 “both [1] an ascertainable class and [2] a well-defined community of interest among class
25 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*, at ¶ 65.) 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.*) As
8 discussed below, this case is amenable to class certification. (*Ibid.*)

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

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

17 The Class Action involves sixty-three (63) Class Members. (Han Dec., *supra*, at ¶ 66.)
18 This Class is sufficiently numerous. (*Id.* (citing see *Ikonen v Hartz Mountain Corp.*, 122 F.R.D.
19 258,262 (S.D. Cal. 1998); *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524,
20 1531, n.5 (finding that “classes of 40 or more are numerous enough”). Further, all Class
21 Members can and will be identified by Defendant to the Settlement Administrator through a
22 review of Defendant’s employment records concerning hourly-paid and non-exempt employees
23 employed by Defendant within the State of California during the Class Period. (Han Dec., *supra*,
24 at ¶ 66.)

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

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

12 **1. Common Issues Predominate**

13 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
14 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
15 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
16 other words, courts determine whether the elements necessary to establish liability are
17 susceptible to common proof, even if the class members must individually prove their damages.
18 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
19 certification when the plaintiff can present evidence of common policies. (*See, e.g., Jones v. JGC*
20 *Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190
21 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244
22 (court certified class of dancers on state law claims).)

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1 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
2 alleged by Plaintiff. (Han Dec., *supra*, at ¶ 67.) All hourly-paid and non-exempt employees who
3 worked for Defendant during the Class Period were subject to the same or similar employment
4 practices, policies, and procedures. (*Ibid.*) All of Plaintiff's claims surround Defendant's
5 common practice and scheme of failing to maintain compliant meal and rest break policies and
6 practices, failing to reimburse business expenses, and failing to fully and properly compensate
7 employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime
8 work, associated wage statement, and waiting time penalties. (*Ibid.*)

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

10 Typical claims rely on legal theories and facts that are substantially similar to other class
11 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff was a non-exempt
12 employee and alleges he and the Class Members were employed by the same company and
13 injured by Defendant's common policies and practices related to meal and rest breaks,
14 uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage
15 statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 68; Declaration of
16 Brendan Krick ("Krick Dec."), at ¶¶ 2, 5-7, 11-13.) Plaintiff seeks relief for these claims and
17 derivative claims on behalf of all Class Members. (Han Dec., *supra*, at ¶ 68; Krick Dec., *supra*,
18 at ¶¶ 2, 5-7, 11-13.) Thus, Plaintiff's claims arise from the same employment practices and are
19 based on the same legal theories as those applicable to the other Class Members. (Han Dec.,
20 *supra*, at ¶ 68; Krick Dec., *supra*, at ¶¶ 2, 5-7, 11-13.)

21 **3. Plaintiff is Adequate to Represent the Class**

22 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 69.)
23 Plaintiff has conducted himself diligently and responsibly in representing the Class in this
24 litigation, understands his fiduciary obligations and has actively participated in the prosecution
25 of this case. (Han Dec., *supra*, at ¶ 69; Krick Dec., *supra*, at ¶¶ 8-10.) Plaintiff has spent time in
26 meetings and conferences with counsel to provide counsel with a complete understanding of his
27 work environment and requirements. (Han Dec., *supra*, at ¶ 69; Krick Dec., *supra*, at ¶¶ 9-10.)
28 Furthermore, Plaintiff does not have any interest that is adverse to the interest of other Class

Members. (Han Dec., *supra*, at ¶ 69; Krick Dec., *supra*, at ¶¶ 14-17.) 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 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. Moreover, because several 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, Plaintiff requests 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 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 respectfully submits that the proposed Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, and the Notice Packet should be approved.

JUSTICE LAW CORPORATION

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Attorneys for Plaintiff

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 10, 2021, I served the foregoing document described as

**PLAINTIFF'S REVISED 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: **Krick v. SAG-AFTRA Federal Credit Union**
 LWDA/Court Case No.: **LWDA-CM-781853-20**
20STCV34772
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.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 10, 2021, at Pasadena, California.

An Am

Anna Okada