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10 on behalf of himself and others similarly situated

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

13 HAROUTYOUN KIOUDJIAN, an
individual, on behalf of himself and others
14 similarly situated,

15 Plaintiffs,

16 vs.

17 BODY VISION JEWELRY, INC., a
California corporation; and DOES 1 through
18 50, inclusive,

19 Defendants.

Case No.: 20STCV13964

CLASS ACTION

Assigned for All Purposes To:

Hon. Ann I. Jones
Department 11, Spring Street Courthouse

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

*[Filed concurrently with Notice of Motion and
Motion; Declarations of David Yeremian and
Alvin B. Lindsay; and [Proposed] Order]*

Date: TBD
Time: TBD
Department 11

Complaint Filed: April 9, 2020
First Amended Complaint: August 4, 2020
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff HAROUTYOUN KIOUDJIAN (“Plaintiff”), on behalf of himself and all other
3 similarly situated employees of Defendants BODY VISION JEWELRY, INC. (“BVLA”) and
4 DOE 1, which will be identified as BV & CO for settlement purposes (collectively “Defendants”)
5 (with Plaintiff, “the parties”)¹, without opposition from Defendants, respectfully requests
6 preliminary approval of the parties’ Class and PAGA Action Settlement Agreement and Release
7 (“Settlement” or “Settlement Agreement”) pursuant to California Code of Civil Procedure § 382
8 and Rule 3.769 of the California Rule of Court.

9 **1. INTRODUCTION**

10 Plaintiff was employed by Defendants as a jeweler making the many and varied jewelry
11 pieces which Defendants sell to customers on-line and through catalogs and studio sales. Plaintiff
12 and the Class members were employed by Defendants in non-exempt, hourly jewelry
13 manufacturing and related and supporting positions, including jewelers, gem handlers and
14 polishers, wax injectors, and stone setters, and those related to packaging and shipping. (*See*
15 Declaration of David Yeremian in support of Motion for Preliminary Approval (“Yeremian
16 Decl.”), ¶ 10). Plaintiff filed his Class Action Complaint on **April 9, 2020** in Los Angeles County
17 Superior Court alleging ten causes of action against Defendants for (1) Failure to Pay Minimum
18 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Misclassification of
19 Employees Under Labor Code §§ 2750.3 and 226.8; (4) Meal Period Liability Under Labor Code
20 § 226.7; (5) Rest Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code §
21 226(a); (7) Violation of Labor Code § 221; (8) Violation of Labor Code § 204; (9) Violation of
22 Labor Code § 203; and (10) Violation of Business and Professions Code § 17200 *et seq.*
23 (Yeremian Decl., ¶ 11).

24 On **August 4, 2020**, Plaintiff filed a First Amended Complaint adding an eleventh cause of
25 action for Penalties Under Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”).
26 (Yeremian Decl., ¶ 15). The parties’ counsel then conducted conferences to discuss the case and
27

28

¹ Pursuant to the parties’ Settlement Agreement, BV & CO is a Released Party and will be added
as a named Defendant after the filing of these motion for preliminary approval documents.

1 claims and agreed to proceed with early mediation following informal discovery. (Yeremian Decl.,
2 ¶ 13). The parties then completed their mediation with William Kampf, Esq. on **September 17,**
3 **2020**, and following a full day's mediation and comprehensive informal discovery exchanged in
4 advance of mediation, they were able to arrive at an agreement on the general terms for settling
5 Plaintiff's class-wide and PAGA claims against Defendants. (*Id.* at ¶ 16). The parties continued
6 negotiation and then accepted a mediator's proposal, and the then entered into a Memorandum of
7 Understanding detailing the general terms of their proposed Settlement. (*Id.*). In connection with
8 mediation, informal discovery, and numerous conferences of counsel and correspondence, the
9 parties agreed they will stipulate to the filing of a Second Amended Complaint adding BV & CO
10 as a named Defendant. Plaintiff's counsel will draft the Second Amended Complaint, and will file
11 it with the Court. On February 22, 2021, Plaintiff through counsel also provided the California
12 Labor Workforce & Development Agency ("LWDA") with an amended PAGA Notice Letter
13 adding BV & CO as an additional defendant employer. (Yeremian Decl., ¶ 17).

14 Without opposition from Defendants, Plaintiff requests that the Court grant preliminary
15 approval of the parties' Settlement Agreement, at **Exhibit A** to the concurrently filed Declaration of
16 David Yeremian ("Yeremian Decl."), and the Class Notice provided at **Exhibit 1** to the Settlement.
17 Defendants' records establish there are approximately **94** Settlement Class members satisfying the
18 following Class definition: "all individuals employed by Defendants at any time during the period
19 of four years prior to the filing of this lawsuit and ending on the date of preliminary approval ("the
20 Class Period") and who have been employed as non-exempt, hourly employees at Defendants'
21 facilities within the State of California," and the "Class Period" is **April 9, 2016** through the date
22 that the court grants preliminary approval of the Settlement. (Yeremian Decl., ¶¶ 9, 36; Exhibit A,
23 Settlement, ¶¶ 2, 7).

24 After engaging in substantial investigation and extensive negotiations with the assistance of
25 a respected third-party neutral, William Kampf, Esq., the parties were able to arrive at an
26 agreement on the general terms for settling Plaintiff's class-wide and PAGA claims against
27 Defendants. The parties continued negotiation and then accepted a mediator's proposal, and then
28 entered into a Memorandum of Understanding detailing the general terms of their proposed

1 Settlement. (Yeremian Decl., ¶¶ 16, 32, Exhibit A, Settlement, ¶ 36). The terms of the Settlement
2 were then memorialized in the Settlement Agreement now before the Court for preliminary
3 approval.

4 The agreed upon “Gross Fund Value” is Two Hundred Seventy Five Thousand Dollars
5 (\$275,000.00), inclusive of all fees and costs. (Yeremian Decl., ¶ 34). All 94 Settlement Class
6 Members will automatically receive a settlement share unless they opt out and will divide, on a
7 *pro-rata* basis, a Net Fund Value of approximately \$153,333.33, if all allocations are approved.
8 The estimated average gross individual settlement payment to the Class members, using a straight
9 average, is \$1,599.29. (Yeremian Decl., ¶¶ 35-37, 71-72). The Gross Fund Value of \$275,000.00
10 therefore represents a recovery for the Class members of approximately 20.39% of the total
11 maximum liability exposure Plaintiff estimated Defendants could face on the class-wide claims.
12 (*Id.* at ¶¶ 70-71).

13 The proposed Settlement is fair, reasonable, and adequate, and in the best interests of the
14 Class. Plaintiff, with the consent of Defendants, respectfully requests that this Court issue an
15 Order in the form provided herewith: (1) preliminarily approving the proposed class-wide
16 settlement of this action; (2) approving the form and method for providing class-wide notice; (3)
17 directing that notice of the proposed settlement be given to the class; (4) appointing Plaintiff
18 Haroutyoun as Class Representative for settlement purposes only; (5) appointing David Yeremian
19 and Alvin B. Lindsay of David Yeremian & Associates, Inc. and Walter Haines of United
20 Employees Law Group, PC as Class Counsel for settlement purposes only; and (6) scheduling a
21 hearing date for Final Approval of the Settlement and Plaintiff’s Application for attorneys’ fees
22 and costs.

23 **2. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION**

24 **A. Plaintiff’s Claims and Defendants’ Denials**

25 Plaintiff’s operative First Amended Complaint asserts that Defendants’ Management
26 exerted pressure and job production demands on Plaintiff and the Class members that required
27 them to work substantially more than these scheduled hours, but Defendants failed to pay them for
28 all their hours worked. Plaintiff has also asserted Defendants failed to pay those additional hours at

1 the required overtime rate. (Yeremian Decl., ¶ 19). Plaintiff further alleged that Defendants
2 implemented a company-wide timekeeping policy and procedures which required Plaintiff and the
3 Class members to utilize two separate timekeeping systems for recording their hours worked.
4 Defendants required Plaintiff and the Class members to clock out of the Regular Hours clock and
5 clock into a second timekeeping system referred to as the “Overtime Clock.” Plaintiff alleged
6 further that Defendants did not pay hours logged in the Overtime Clock at the correct overtime
7 rate. Plaintiff further claims that Defendants would require him and the Class members to work off
8 the clock by not counting all their hours worked or otherwise requiring them to work before
9 clocking in or after clocking out. (Yeremian Decl., ¶ 20).

10 Plaintiff further alleged that the above described off the clock work resulted in Class
11 members incurring overtime hours before they were paid for them. Plaintiff also claims
12 Defendants would compile the hours recorded in the Overtime Clock and unlawfully and untimely
13 pay Plaintiff and the Class members only once monthly for the previous month, and Defendants
14 paid all listed and totaled hours only at the Employee’s regular hourly rate without paying any
15 overtime premium. With all this in mind, Plaintiff has also asserted that Defendants misclassified
16 Plaintiff and the Employee Class members as independent contractors for a substantial portion of
17 their hours worked during their work shifts, work weeks, and pay periods. (Yeremian Decl., ¶ 21).

18 Plaintiff has also asserted class claims for meal and rest break violations for the occasions
19 when he and the Class members were not provided with breaks or the ones they were provided
20 were untimely or shortened or interrupted by work demands, and that Defendants failed to provide
21 second meal periods and third rest breaks on shifts over ten hours. (Yeremian Decl., ¶ 22). Plaintiff
22 also contended that Defendants exerted control over employees during their rest breaks or
23 otherwise required them to respond to work duties and customer demands during breaks. (*Id.*).
24 Plaintiff further alleged derivative claims deriving from the above alleged violations, including for
25 failure to provide accurate itemized wage statements and failure to timely pay all wages and pay
26 all wages at termination or separation, and for unfair competition and the above-addressed PAGA
27 claims. (Yeremian Decl., ¶¶ 19, 22-23).

1 Defendants deny all of Plaintiff's Class and PAGA claims, and contend, among other
2 things, they have complied at all times with all applicable laws and asserted that the Settlement
3 Class Members were properly compensated for all time worked, and otherwise treated at all times
4 in compliance with all applicable laws. (Yeremian Decl., ¶¶ 23, 27, Exhibit 1, Settlement, ¶ 38).

5 Defendants contend they maintained legally compliant policies and have properly, timely
6 and fully paid all earned wages, that they did not require employees to work without pay, nor did
7 Defendants have knowledge of any purported work performed off-the-clock, and that they have
8 paid all required overtime and provided breaks. Defendants also argued they authorized and
9 permitted timely meal and rest breaks, and that, to the extent an individual employee did not take a
10 provided break, employees waived their right to them and to seek relief herein. Defendants also
11 asserted they provided accurate wage statements and neither Plaintiff nor any of the putative class
12 members are entitled to any penalties for alleged inaccurate wage statements. (Yeremian Decl., ¶¶
13 23, 27, 46-72; Ex. A, Settlement, ¶ 38).

14 After extensive investigation and informal discovery, including analysis of relevant
15 documents and other gathered data and after relying upon and completing an assessment of
16 Defendants' potential liability exposure, Class Counsel believed that this case was appropriate for
17 resolution *via* mediation. Given the high level of risk present for both sides, and the substantial
18 uncertainty and expense of protracted litigation, the parties elected to mediate Plaintiff's claims and
19 explore settlement, which they achieved and now ask the Court to preliminarily approve. (Yeremian
20 Decl., ¶¶ 24-33; Exhibit A, Settlement, ¶¶ 35, 37, 67).

21 **B. Investigation and Discovery**

22 Before filing, Class Counsel investigated and researched the circumstances and facts
23 underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶¶ 24-33; 46-72;
24 Exhibit A, Settlement, ¶¶ 35-38). This required thorough discussions and interviews between Class
25 Counsel and Plaintiff, in addition to the above described research into the various legal issues
26 involved in the case. (Yeremian Decl., ¶¶ 86-91). After filing the lawsuit, Class Counsel conducted
27 a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting
28 informal and formal discovery, and meeting and conferring with defense counsel about same; (2)

1 reviewing and analyzing time and pay records as well as employment handbooks, Plaintiff's
2 personnel file, relevant policies and other documentation; (3) interviewing class members; (4)
3 researching the applicable law and potential defenses; (5) constructing damage models based on
4 interpretations of California law; and (6) reviewing other relevant information provided by
5 Defendants in advance of the mediation. (*Id.* at ¶ 25; Exhibit A, Settlement, ¶ 35).

6 Upon agreeing to schedule mediation, and leading up to their agreement, the parties
7 conducted informal discovery and exchanged details regarding the claims and defenses and the
8 items Plaintiff believed were required to file a motion for class certification and complete a
9 constructive and meaningful mediation. (Yeremian Decl., ¶¶ 27-29). Plaintiff provided a
10 comprehensive listing of data and items required to which Defendants responded, including by
11 producing all relevant policy related documents. Plaintiff also used informal discovery to establish
12 and address the relationship between the named Defendants, and production prior to mediation
13 included relevant policies and other documents. (*Id.* at ¶ 29). Plaintiff's counsel and Defendants'
14 counsel also exchanged class-wide data and numbers, including the total numbers of Class
15 members, work weeks, pay periods, average wage rates, etc., and Plaintiff's counsel reviewed the
16 documents and data and provided summaries and recommendations to the mediator and defense
17 counsel. (*Id.* at ¶ 29-32). After conducting the initial investigation, Class Counsel determined
18 Plaintiff's claims were suited for class action adjudication based on what they believed was a
19 common course of conduct affecting a similarly situated group of employees. (*Id.* at ¶¶ 33, 46-72,
20 Exhibit A, Settlement, ¶¶ 35-38).

21 **C. Mediation and Settlement Efforts**

22 On **September 17, 2020**, the parties completed their mediation with William Kampf, Esq.,
23 and after accepting a mediator's proposal, entered into a Memorandum of Understanding detailing
24 the general terms of their proposed Settlement. (Yeremian Decl., ¶ 32, Exhibit A, Settlement, ¶
25 36). Mr. Kampf is a respected mediator in wage and hour class actions. The mediation took place
26 only after the parties exchanged extensive informal information, documents, and data. During the
27 mediation, the parties discussed all aspects of the case, including the risks of litigation and the risks
28 to both parties of proceeding with a motion for class certification as well as the law relating to

1 meal periods and rest breaks and off the clock work and overtime. (Yeremian Decl., ¶¶ 14-15, 32).
2 Upon completion of the mediation and formulating the general details of their class-wide
3 settlement, the parties agreed to a Memorandum of Understanding setting forth the material terms
4 of their Settlement, which were later memorialized in the Settlement Agreement now before the
5 Court for preliminary approval. (*Id.* at ¶¶ 16, 32).

6 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
7 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Counsel
8 believes that the recovery for each Class Member is fair and reasonable taking into consideration
9 the amounts received in other wage and hour class actions, the risks inherent in litigation of this
10 genre, and the reasonable tailoring of each Class Member’s claim to the settlement award he or she
11 will receive. (Yeremian Decl., ¶ 33). Based on the settlement negotiations, which were extensive
12 and conducted in good faith and at arm’s length between attorneys with substantial experience
13 litigating wage and hour cases, the Settlement was the product of a non-collusive settlement process
14 and compromises in the interest of reaching a full and complete settlement. (*Id.*; Exhibit A,
15 Settlement, ¶¶ 35-38).

16 **3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE**

17 Defendants have agreed to pay a Gross Fund Value of **\$275,000.00** on a non-reversionary
18 basis to settle and release all claims asserted by Plaintiff and the Class. (Yeremian Decl., ¶ 34;
19 Exhibit A, Settlement, ¶¶ 15, 49(b), 49(f) through 49(i)). The Settlement Agreement defines the
20 “Class Members” or “Class” as “all individuals employed by Defendants at any time during the
21 period of four years prior to the filing of this lawsuit and ending on the date of preliminary
22 approval (“the Class Period”) and who have been employed as non-exempt, hourly employees at
23 Defendants’ facilities within the State of California,” and the “Class Period” is April 9, 2016
24 through the date that the court grants preliminary approval of the Settlement. (Exhibit A,
25 Settlement, ¶¶ 2, 7). The “Settlement Class” or “Settlement Class Members” are all Class
26 Members who have not opted out of the Class by submitting a timely Request for Exclusion.
27 (Exhibit A, Settlement, ¶¶ 32, 47(d)). Defendants’ records establish approximately **94** Settlement
28 Class Members. (Yeremian Decl., ¶¶ 26, 37, 71, 93).

1 The “Net Fund Value” is the Gross Fund Value, less Court-approved Settlement
2 Administration Costs (up to \$10,000.00), Attorneys’ Fees (up one-third of the Gross Fund Value,
3 \$91,666.67) and Costs (up to \$8,000.00), the Class Representative Enhancement Award
4 (\$7,500.00), and the 25% portion of the PAGA Penalties payable to the Settlement Class Members
5 (i.e. \$2,500.00). Each Class Member who does not opt out will be entitled to a share of the Net
6 Fund Value, which will be a fixed proportional amount of the Net Fund Value per workweek.
7 (Yeremian Decl., ¶ 35, Exhibit A, Settlement, ¶¶ 18, 49(b), 49(f) through 49(i)).

8 If the Court approves all requested allocations and awards above, the Net Fund Value is
9 estimated to be **\$150,333.33**. For the approximately **94** estimated Settlement Class Members (if no
10 exclusions), the average gross individual settlement payment, using a straight average, is
11 **\$1,599.29**. (Yeremian Decl., ¶ 37). Any amounts not approved by the Court as a Class
12 Representative Service Award, or Class Counsel Fees and Costs, or Settlement Administration
13 costs or for the PAGA claim will be added back to the Net Fund Value to be distributed to the
14 Settlement Class Members who are Class participants. (*Id.* at Exhibit A, Settlement, ¶¶ 4, 49(g)).

15 For each Class Participant’s “Individual Settlement Payment,” the Settlement
16 Administrator will calculate the total Compensable Workweeks for all Settlement Class Members.
17 The respective Compensable Workweeks for each Settlement Class Member will be divided by the
18 total Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio
19 for each Settlement Class Member. Each Settlement Class Member’s Payment Ratio is then
20 multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.
21 Workweeks will include only those weeks an employee was actively employed as a non-exempt
22 employee during the Class Period. (Yeremian Decl., ¶ 38, Exhibit A, Settlement, ¶¶ 49, 49(a)).

23 Each Individual Settlement Payment will be allocated 33% to wages and 67% to penalties
24 and pre-judgment interest. The Settlement Administrator will issue an IRS Form 1099 – MISC to
25 each Class Member for 67% of each Individual Settlement Payment, and a form W2 for 33% of
26 each Individual Settlement Payment. (Yeremian Decl., ¶ 39; Exhibit A, Settlement, ¶ 49(b)).

27 “Effective Date” means the date the Court enters an order granting final approval and enters a
28 Final Judgment, if no objections are filed to the Settlement. If objections are filed and overruled,

1 and no appeal is taken of the final approval order, then the effective date of final approval will be
2 sixty-five (65) days after the trial court enters a Final Judgment. (*Id.* at Settlement, ¶ 13).

3 Checks issued to Settlement Class Members pursuant to the Settlement Agreement will
4 remain negotiable for One Hundred Eighty (180) days. Any settlement checks that are not claimed
5 or not negotiated within 180 calendar days after the distribution of Individual Settlement Payments
6 to Settlement Class Members will be void and the funds not disbursed as a result. They will instead
7 be paid to the State Controller's Office Unclaimed Property Fund to be held in the name of the
8 Class Member and in accordance with the procedures set forth in Code of Civil Procedure §1520.
9 (Yeremian Decl., ¶ 40, Exhibit A, Settlement, ¶ 49(c)).

10 Upon final approval and as of the Effective Date, all Class Members will release
11 Defendants and the "Released Parties" from the "Released Claims," which are defined as those
12 "arising out of the allegations and claims asserted in the Complaint, including without limitation
13 to, any and all claims for alleged unpaid wages (including but not limited to minimum wage,
14 failure to pay overtime, vacation, and final pay upon termination), misclassification leading to
15 unpaid wages and overtime, alleged unpaid meal and rest break premiums, itemized wage
16 statement penalties, waiting time penalties under the California Labor Code, reimbursement of
17 business expenses, and claims for restitution and other equitable relief, liquidated damages,
18 punitive damages, or penalties; and any other benefit claimed on account of the allegations
19 asserted in Complaint..." (Yeremian Decl., ¶¶ 40, 40(a), 41; Exhibit A, Settlement, ¶¶ 26-27).
20 The Settlement and Notice provide further details on the release, and Plaintiff will provide a
21 general release and a Section 1542 waiver specific to all his claims rather than just those alleged in
22 the pleadings. (*Id.* at ¶ 25).

23 The parties have selected ILYM Group, Inc. as the Settlement Claims Administrator.
24 (Yeremian Decl., ¶ 26, 37, 77; Exhibit A, Settlement, ¶¶ 30, 31, 46, 47, 49(h); *see also* Exhibit 1
25 thereto, Class Notice). Based on a quote from ILYM Group, the Settlement Agreement budgets up
26 to \$10,000.00 for its services. (*Id.*). Notice of the Settlement will be provided by the Administrator
27 to the Settlement Class in the form of the Class Notice attached to the Settlement as Exhibit .
28 (Yeremian Decl., ¶ 43; Exhibit A, ¶ 47; and Settlement Class Notice at Exhibit 1 thereto). The

1 Class Notice includes a summary of the case and settlement terms and provides Class Members
2 with instructions on how to exclude themselves, dispute their workweeks, and object to the
3 settlement, and addresses the deadlines and procedures for doing so. (Yeremian Decl., ¶¶ 43-45;
4 Exhibit A, Settlement, ¶¶ 28, 47(d), 47(e), Exhibit 1 thereto, Class Notice).

5 **4. THE THREE-STEP APPROVAL PROCESS**

6 California Rule of Court 3.769 requires court approval of the settlement of class action
7 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval
8 procedure for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44
9 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is
10 dissemination of notice of the settlement to all Class Members. *Id.* The third step is a final
11 settlement approval hearing, at which evidence and argument concerning the fairness, adequacy,
12 and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

13 The determinations of whether a settlement should be preliminarily approved requires,
14 “basic information about the nature and magnitude of the claims in question and the basis for
15 concluding that the consideration being paid for the release of those claims represents a reasonable
16 compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). However, the
17 record need not contain an explicit statement of the maximum theoretical amount that the class
18 could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399,
19 409 (2010) (“*Kullar* does not, ... require any such explicit statement of value; it requires a record
20 which allows “an understanding of the amount that is in controversy and the realistic range of
21 outcomes of the litigation.”). Nonetheless, Class Counsel performed a potential liability exposure
22 analysis in advance of mediation, which the parties addressed in detail with the mediator.
23 (Yeremian Decl., ¶¶ 16-17, 24-32, 46-72). “If the proposed settlement appears to be the product of
24 serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
25 grant preferential treatment to class representatives or segments of the class, and falls within the
26 range of possible approval, then the court should direct that notice be given to the class members
27 of a formal fairness hearing, at which evidence may be presented in support of and in opposition to
28 the settlement.” Manual for Complex Litigation, Second § 30.44, at 229.

1 In deciding whether to approve a proposed class action settlement under California Code
2 of Civil Procedure § 382 and the California Rules of Court, the Court must find that a proposed
3 settlement is “fair, adequate, and reasonable” and falls within the “range of approval.” *Dunk*, 48
4 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength of
5 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
6 maintaining class action status through trial, the amount offered in settlement, the extent of
7 discovery completed and the stage of the proceedings, the experience and views of counsel, the
8 presence of a governmental participant, and the reaction of the class members to the proposed
9 settlement.” *Id.* The instant settlement satisfies all of these requirements.

10 **5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

11 The Court’s decision to preliminarily approve a settlement is granted great deference, as an
12 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-
13 235 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to
14 the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

15 **A. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations**

16 The proposed settlement was reached as a result of arm’s length negotiations after the
17 completion of substantial discovery and the exchange of necessary class data. (Yeremian Decl., ¶¶
18 16-17, 24-32). The negotiations have been, at all times, adversarial and non-collusive in nature.
19 *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over
20 litigation, “a court will presume that a proposed class action settlement is fair when certain factors
21 are present, particularly evidence that the settlement is the product of arms-length negotiation,
22 untainted by collusion.”). While Plaintiff believes in the merits of his case, he and counsel also
23 recognized the inherent risks of litigation and understood the benefit of the Settlement Class
24 receiving funds immediately, as opposed to risking an unfavorable decision on class certification,
25 or then at trial and appeal, that would take several more years to litigate. (Yeremian Decl., ¶¶ 24,
26 27, 32-33, 43, 46-70, 73-76). Assistance from a well-respected mediator ensured negotiations were
27 non-collusive and well-informed.
28

1 **B. The Parties Engaged In Extensive Discovery and Investigation**

2 As discussed above, the parties engaged in substantial informal discovery before the
3 Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses.
4 (Yeremian Decl., ¶¶ 16-17, 24-32, 76). This litigation has reached the stage where the parties have
5 a clear view of the strengths and weaknesses of their cases sufficient to support the settlement.

6 **C. Class Counsel Are Experienced Class Action and Employment Attorneys**

7 Experienced counsel, operating at arm's length, have weighed the strengths of the case
8 and examined all the issues and risks of litigation and endorse the proposed settlement. Class
9 Counsel are experienced in class actions, have represented their clients zealously, and have no
10 conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 84, 97; Declaration of Alvin Lindsay ("Lindsay
11 Decl.") filed concurrently herewith, ¶¶ 3-12). Class counsel submits the Settlement is fair,
12 adequate and reasonable in view of the risks and other considerations addressed, and is well-
13 suited for final approval upon completion of the administration process. (Yeremian Decl., ¶¶ 28,
14 37, 71-74, 78-82; Settlement, ¶¶ 37, 67; Lindsay Decl., ¶ 12).

15 **D. The Presence of a Governmental Participant**

16 Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently
17 with the filing of this motion pursuant to Labor Code § 2699(1)(2). (Yeremian Decl., ¶ 18).

18 **E. The Strength of Plaintiff's Case and the Risks and Cost of Further Litigation.**

19 As with all litigation, there was risk that Plaintiff would not prevail on the merits of his
20 class claims. (Yeremian Decl., ¶¶ 24, 27, 32-33, 43, 46-70, 73-76). Class counsel has addressed
21 the strengths of each of the main class claims, Defendants' arguments against liability, and the
22 estimated potential liability exposure Defendants faced on each. (Yeremian Decl., ¶¶ 46-72). For
23 example, Plaintiff contends he and the other class members were not properly provided meal and
24 rest periods. (Yeremian Decl., ¶¶ 50-56). Defendants contended that Plaintiff and other class
25 members were provided with the opportunity to take proper meal and rest periods, on-duty breaks
26 were not required, their policies were lawful and they provided timely breaks without
27 interruption, and the lack of records for rest periods created individualized issues. (*Id.* at ¶ 53; *see*
28 *also, Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1028-29).

1 Plaintiff also alleged he was not paid for all hours worked, including overtime pay, due to
2 Defendants' policy and practice of requiring off the clock work and miscalculating and/or failing
3 to pay overtime. (Yeremian Decl., ¶¶ 48-49). Defendants again argued these claims were not
4 suitable for class treatment, they did not require off the clock work, and they did not miscalculate
5 or improperly pay overtime or the regular rate, and paid for all hours worked. (*Id.*). If Defendants
6 prevailed, there would have been no recovery.

7 There were also risks in proving liability for failure to provide accurate wage statements
8 under Labor Code § 226 and failure to pay all wages at termination under Labor Code § 203.
9 (Yeremian Decl., ¶¶ 57-63). These derivative claims require that the underlying claims be proven
10 first, and there are conflicting interpretations as to whether alleged meal and rest claims can even
11 provide the predicate violations for inaccurate wage statement and waiting time penalties claims.²

12 Defendants also disputed liability for the underlying wage and meal and rest claims, and
13 penalties under Labor Code § 203 are available only if "an employer willfully fails to pay...any
14 wages of an employee who is discharged or quits..." With these penalties, there is always the risk
15 that the trier of fact will not find Defendants' actions willful. There was also risk associated with
16 the PAGA claim given the Court's discretion to award a lesser amount. *See*, Labor Code §
17 2699(e)(2). Plaintiff's counsel addresses these risks. (Yeremian Decl., ¶¶ 62-67, 69-72).

18 While Plaintiff believes and continues to believe this is a strong case for certification,
19 there is risk and significant expense associated with class certification proceedings. As set forth
20 above, Defendants disputed liability and the anticipated class certification motion, arguing
21 significant legal uncertainties are associated with wage and hour cases, which can be factually
22 complex and require protracted litigation to resolve. Plaintiff alleges there were company-wide
23 policies that affected the employees uniformly, and which could be established using
24 representative testimony and company documents that would not require separate mini-trials on
25 liability, but Defendants vigorously contested liability and would have presented several

26
27 ² *See, Stewart v. San Luis Ambulance, Inc.*, 878 F.3d 883, 887 (9th Cir. 2017) (recognizing that the
28 "*Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094 (2007) "Court characterized the
extra hours paid for meal period violations as a 'premium wage' rather than a penalty," but, in
Kirby v. Immoos Fire Protection, Inc., 53 Cal. 4th 1244 1167–68 (2012), "the Court held that a
meal-period violation is not tied to the nonpayment of wages.").

significant defenses to the wage claims as well as to class certification. (Yeremian Decl., ¶¶ 24, 27, 46-70, 72, 73-76; Exhibit A, Settlement, ¶¶ 35-38).

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (Yeremian Decl., ¶¶ 22, 75, 100, 103). Cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) address the complexity of using statistical samples in class actions, and decertification is a real risk that Class Counsel must take into account. (*See also*, Yeremian Decl., ¶ 75). A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and commitment of extensive further time and financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the class members who have already waited years for resolution in this matter. (*Id.* at ¶ 76). Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and that uncertainty.

F. The Amount Offered in Settlement and Method of Allocation are Fair

In light of the uncertainties and risks of certification and litigation, the parties agreed to a compromise settlement of **\$275,000.00**. Class Counsel estimated **\$1,348,619.58** in potential liability exposure to Defendants for Plaintiff's main claims for damages and penalties, and the Gross Fund Value of **\$275,000.00** therefore represents a recovery for the Class members of approximately **20.39%** of the total estimated maximum liability exposure. (Yeremian Decl., ¶¶ 71-72). Under the Settlement, if the Court approves all requested allocations and awards, the Net Fund Value is estimated to be **\$1,348,619.58**. For the approximately **94** estimated Settlement Class Members (if no exclusions), the average gross individual settlement payment, using a straight average, is **\$1,599.29**. (Yeremian Decl., ¶¶ 37, 71, Exhibit A, Settlement, ¶¶ 4, 49(g)). Any amounts not approved by the Court will be added back to the Net Fund Value to be distributed to the Settlement Class Members who do not opt-out. (*Id.*).

Plaintiff and Class counsel submit this is an excellent result and the Settlement is fair, reasonable, and certainly advantageous to the Class. (Yeremian Decl., ¶¶ 24, 26, 27, 32, 41, 46, 64-66, 70, 74, 95-97). Each Settlement Class Member will be compensated using a formula based

1 on the total number of workweeks he/she held a non-exempt position with Defendants during the
2 Class Period. (Yeremian Decl., ¶ 38, Exhibit A, Settlement, ¶¶ 49, 49(a)). Basing the size of the
3 award on Settlement Class Members' work weeks during the Class Period ensures that those with
4 more valuable potential claims receive more money. All Settlement Class Members will enjoy
5 benefits under the same formula, and none are singled out for special treatment, save for
6 Plaintiff's requested representative enhancement award. (Yeremian Decl., ¶¶ 86-91).

7 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

8 In deciding whether to approve the settlement, the Court must balance these risk factors
9 against an "understanding of the amount in controversy and the realistic range of outcomes of the
10 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
11 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop
12 short of the detailed and thorough investigation that it would undertake if it were actually trying
13 the case" *Munoz*, at 408. Plaintiff's counsel used the comprehensive data and documents
14 provided to perform an analysis of the potential liability exposure Defendants faced on Plaintiff's
15 main class-wide claims, establishing the realistic upper range of the outcome here. (Yeremian
16 Decl., ¶¶ 14-16, 24-32, 46-72, 74). As noted above, the Gross Settlement Amount represents a
17 recovery of approximately **20.39%** of the total maximum liability exposure Plaintiff estimated.
18 (Yeremian Decl., ¶¶ 37, 71-72).

19 The fact remains there was a very real prospect that nothing would be recovered if
20 litigation continued and class certification was ultimately denied. At the same time, further
21 litigation would require the expenditure of significant time and financial resources, and there is
22 always the possibility of adverse developments in the law and the likelihood of extended battles in
23 both the trial court and the courts of appeal. Settlement is a prudent compromise that benefits the
24 Class Members promptly and eliminates such concern.

25 **6. THE NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS**

26 To be deemed proper, a Notice must provide the class members with sufficient information
27 to make an informed decision as to whether to accept or object to the settlement. *Mullane v.*
28 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the class

members of the pendency of the action; reasonably convey information regarding the settlement and the class members' rights, entitlements, and obligations; and afford class members the opportunity to present their objections. *Id.* The Notice (at Yeremian Decl., Exhibit A, Settlement, Exhibit 1 thereto) provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all Class members of the terms of the settlement, of its effect on their rights, of their options as Class members (i.e., participate, object, opt out, and dispute work weeks), and of the consequences of and procedures for exercising those options. (Yeremian Decl., ¶¶ 43-45, 77-79; Exhibit A, Settlement, ¶¶ 47(b), 47(d)-(e); and Settlement Class Notice at Exhibit 1 thereto). The Notice also directs Class members who have questions or concerns to contact the settlement administrator or Class Counsel. (*Id.* at ¶ 37, 78).

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each of the 2,400 Class members at their addresses from Defendants' records. (Yeremian Decl., ¶ 77; Exhibit A, Settlement, ¶¶ 46-47). If any Notice Packets are returned undeliverable without a forwarding address, the Claims Administrator will use the national change of address database and perform a skip trace to locate the Class member and mail a new Notice to the correct address. (*Id.*). The Class Notice (at Settlement, Exhibit 1) should be approved as the best and most practicable way to ensure the greatest possible number of Class members will receive notice.

7. CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.). Plaintiff requests a reasonable service award as an enhancement payment for his effort and initiative in bringing and helping to prosecute this class action. Plaintiff has dedicated significant time and effort to these proceedings. (Yeremian Decl., ¶¶ 86-91). Plaintiff's courage in proceeding with his class-wide claims should not be underestimated. By suing Defendants, Plaintiff contends he increased his risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (Yeremian Decl., ¶ 88). Plaintiff

1 contends this risk is particularly real in the information age, where employers can perform
2 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*).

3 Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively
4 develop and prosecute this action at every stage of the litigation. (Yeremian Decl., ¶¶ 86-91). Both
5 before and after filing, Plaintiff conferred with Class Counsel to discuss every aspect of this case.
6 He provided Class Counsel with information about Defendants and the industry, reviewed
7 documents, identified witnesses, consulted Class Counsel throughout the litigation, helped
8 complete discovery, spoke with Class Members, and participated in the mediation process and
9 reviewed and signed the settlement agreement after several conferences with Class Counsel. (*Id.*)

10 Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge
11 of Defendants' practices. He has diligently, adequately, and fairly represented the Class members,
12 and has not placed his interests above any member of the putative Class. This sort of payment to a
13 Class representative has been a common feature of settlements negotiated by Class Counsel and
14 has been routinely approved by trial courts. The representative enhancement award in the amount
15 of **\$7,500.00** to the Class Representative is fair and reasonable. (Yeremian Decl., ¶¶ 86-91; Exhibit
16 A, Settlement, ¶ 49(f)).

17 **8. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

18 Class Counsel respectfully requests, without opposition from Defendants, an award of
19 attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Fund Value (i.e. up to
20 **\$91,666.67**), and for an award of reasonable costs and expenses in an amount not to exceed
21 **\$8,000.00**, subject to approval by the Court. (Yeremian Decl., ¶¶ 81-85; Settlement, ¶ 49(g)).

22 Class counsel submits it has the requisite experience, knowledge, and resources to serve as
23 Class counsel and to zealously represent the Class. (Yeremian Decl., ¶¶ 3-9, 84, 97; Lindsay Decl.,
24 ¶¶ 3-12). Plaintiff's counsel has incurred substantial fees and costs thus far in the litigation,
25 including over \$7,000.00 in litigation costs, and will provide further details regarding hourly rates,
26 lodestar, and hours, and will document expenses incurred, in support of final approval and its fees
27 and costs motion. (Yeremian Decl., ¶ 84). It is anticipated that no lodestar multiplier will be
28 required to award the requested fees of one third of the benefit created for the Class.

1 **9. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

2 Certification is appropriate when the moving party has demonstrated the existence of an
3 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
4 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Defendants do not dispute, for
5 settlement purposes only, that all of the elements for class certification are met here. Defendants
6 do not concede that certification is appropriate outside of this Settlement and preserve all rights to
7 oppose certification if, for any reason, the settlement does not become effective. (Yeremian Decl.,
8 ¶ 92, Exhibit A, Settlement Agreement, ¶ 42).

9 **A. There Is A Numerous and Ascertainable Class**

10 Whether a class is ascertainable is determined by examining the class definition, the size of
11 the class and the means available for identifying class members. *See, Vasquez v. Superior Court*
12 (1971) 4 Cal. 3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.
13 App. 3d 1263, 1271. Defendants’ records at the time of the mediation reflected approximately 94
14 total Class members. Defendants estimate that, given the passage of time and turnover since the
15 mediation, the total number of Class members upon preliminary approval may slightly increase.
16 (Yeremian Decl., ¶ 26). Defendants do not dispute, for settlement purposes, that approximately 94
17 Class Members are ascertainable and sufficiently numerous. (Yeremian Decl., ¶¶ 93-94).

18 **B. There Is a Well-Defined Community of Interest**

19 A community of interest is established by predominant common issues of law and fact. *See*
20 *Vasquez*, 4 Cal. 3d at 811. It “does not depend upon an identical recovery,...The mere fact that
21 separate transactions are involved does not of itself preclude a finding of the requisite community
22 of interest so long as every member of the alleged class would not be required to litigate numerous
23 and substantial questions to determine his individual right to recover...” *Id.* at 809.

24 Plaintiff contends, and Defendants do not dispute for settlement purposes, that common
25 issues of fact and law predominate as to each of the claims alleged by Plaintiff. (Yeremian Decl.,
26 ¶¶ 99-100). California courts show “no hesitancy” in inferring class-wide causation, injury, and
27 damages when a common course of action has been shown. *B.W.I. Custom Kitchens v. Owens-*
28 *Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350. This inference ““eliminates the need for each

1 class member to prove individually the consequences of the defendants' actions to him or her.”
2 *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753).

3 This action involves, *inter alia*, a determination about Defendants' alleged failure to
4 provide meal and rest periods, failure to pay wages and overtime due to allegedly common and
5 unlawful wage rate calculations and off the clock work policies, the resulting failure to pay final
6 wages when required, the failure to provide accurate paystubs, and largely derivative claims under
7 the UCL and PAGA. (Yeremian Decl., ¶¶ 19-23, 46-70). Plaintiff contends these practices
8 affected Class members in the same way and present questions that are suitable for common
9 adjudication because all Class members were subject to the same employment policies and
10 practices, which applied uniformly to all Class members. The outcome of litigation on this matter
11 depends upon questions that are common to Class members. (Yeremian Decl., ¶¶ 99-100). While
12 Defendants maintained otherwise, these issues will not be decided on the basis of facts peculiar to
13 each Class member, but rather on facts common to them all, and liability can be determined on a
14 class-wide basis. (*Id.*)

15 **C. The Named Plaintiff's Claims Are Typical**

16 A class representative's claims are typical when they arise from the same event, practice,
17 or course of conduct that gives rise to the claims of other putative class members, and if their
18 claims rest on the same legal theories. The class representative's claims must be “typical” but not
19 necessarily identical to the claims of other class members. It is sufficient that the representative is
20 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
21 *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
22 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
23 representative must have identical interests with the class members.”). Thus, it is not necessary
24 that the class representative should have personally incurred all of the damages suffered by each of
25 the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

26 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
27 Plaintiff's claims are typical of class members' claims because they arose from the same factual
28 basis and are based on the same legal theories. (Yeremian Decl., ¶¶ 95-96).

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