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

JOSEPH JIMENEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

MAKITA U.S.A., INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV21732

Honorable Amy D. Hogue
Department 7

CLASS ACTION

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

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

Hearing Date: January 12, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department 7

Complaint Filed: June 4, 2020
FAC Filed: September 20, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 12, 2021 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Amy D. Hogue in Department 7 of the Los Angeles
3 County Superior Court (Spring Street Courthouse), located at 312 North Spring Street, Los
4 Angeles, California 90012, Plaintiff Joseph Jimenez (“Plaintiff”) will and hereby moves for an
5 order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
8 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
10 the means of allocation and distribution of funds, and the allocations for penalties
11 under the California Labor Code Private Attorneys General Act of 2004
12 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
13 Enhancement Payment, and the Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiff as the Class Representative;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
18 attached as **“Exhibit A”** to the Settlement Agreement;
- 19 • Approving the Election Not To Participate or Opt-out Form (“Exclusion Form”)
20 attached as **“Exhibit B”** to the 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 Settlement Administrators (“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 the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

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

Dated: September 29, 2021

JUSTICE LAW CORPORATION

By:



Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Haig Hogdanian
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$610,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of himself and all hourly-paid or non-
4 exempt employees employed directly by Makita U.S.A. (“Defendant”), Inc. within the State of
5 California during the Class Period, excluding those persons that have signed release agreements
6 (“Class”). The Class Period is the time period from June 4, 2016, to May 31, 2021 (“Class
7 Period”). At the time of this filing, the number of Class Members confirmed by Defendant is
8 approximately one hundred forty-six (146).

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 \$610,000 – with an average Individual Settlement Share estimated at
12 \$2,136.99¹ – is well within the “ballpark” of reasonableness.

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

20 **II. BACKGROUND**

21 Defendant is a major provider of electric motor-powered tools and related services, is
22 recognized as a global brand in over forty (40) countries, is active in eight (8) countries, and has
23 ten (10) plants currently in operation. (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.) This
24 case involves all hourly-paid or non-exempt employees employed directly by Defendant within
25 the State of California during the time period from June 4, 2016, to May 31, 2021, excluding
26 those persons that have signed release agreements. (*Ibid.*) Plaintiff alleges that during the Class
27 Period, Defendant’s non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

28 ¹ \$312,000 (Net Settlement Amount) / 146 (Class Members) = \$2,136.99.

1 On May 28, 2020, Plaintiff provided written notice to the Labor and Workforce
2 Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code he
3 contends were violated and the theories supporting her contentions. (Han Dec., *supra*, at ¶ 10.)

4 On June 4, 2020, Plaintiff, a former employee of Defendant, filed a wage-and-hour class
5 action lawsuit in the Superior Court of California, County of Los Angeles, Case Number
6 20STCV21732, one behalf of all current and former hourly-paid or non-exempt employees
7 (either directly or through a staffing agency or labor contractor) of Defendant within the State of
8 California at any time during the relevant time period. (Han Dec., *supra*, at ¶ 11.) Specifically,
9 Plaintiff’s class action complaint alleged the following causes of action: (1) violation of Labor
10 Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and
11 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest
12 period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum
13 wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6)
14 violation of Labor Code sections 226(a) (noncompliant wage statements); and (7) violation of
15 Business & Professions Code sections 17200 *et seq.* (*Ibid.*)

16 After waiting the requisite sixty-five (65) days for the PAGA notice period to expire,
17 Plaintiff filed a representative PAGA action on August 14, 2020 in the Superior Court of
18 California, County of Los Angeles, Case Number 20NWCV00452, on behalf of all current and
19 former hourly-paid or non-exempt employees of Defendant who worked for Defendant at any
20 time during the relevant period. (Han Dec., *supra*, at ¶ 12.) Plaintiff’s representative PAGA
21 action is premised upon the same underlying violations as his class action lawsuit, as described
22 above, as well as a claim for unreimbursed business expenses. (*Ibid.*)

23 The Parties attended mediation on Plaintiff’s claims on April 20, 2021. (Han Dec.,
24 *supra*, at ¶ 13.) Under the auspices of the mediator Steve Serratore, the Parties were eventually
25 able to reach a settlement that will resolve both lawsuits in their entirety. (*Ibid.*)

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1 In line with the Parties' decision to enter a settlement, Plaintiff filed a First Amended
2 Complaint ("FAC") in the Superior Court of California, County of Los Angeles, Case Number
3 20STCV21732, in September 20, 2021. (Han Dec., *supra*, at ¶ 14.) Specifically, the FAC added
4 a single cause of action: violation of Labor Code sections 2698, *et seq.* (PAGA) and limited the
5 Class as agreed.

6 Defendant generally and specifically denies any and all liability or wrongdoing of any
7 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
8 any sort, and contends that for any purpose other than this Settlement, the Class Action is not
9 appropriate for class or representative treatment. (Han Dec., *supra*, at ¶ 15.) Defendant also
10 asserts several defenses to the claims and has denied any wrongdoing or liability arising out of
11 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 After Plaintiff filed his wage-and-hour class action complaint, both Parties engaged in
15 formal and informal discovery. (Han Dec., *supra*, at ¶ 16.) Plaintiff propounded one (1) set of
16 form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions;
17 and one (1) set of requests for production of documents. (*Ibid.*) Defendant responded to
18 Plaintiff's discovery. (*Ibid.*) Afterwards, the Parties met and conferred regarding this discovery.
19 (*Ibid.*)

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

1 throughout the Class Period. (Han Dec., *supra*, at ¶ 17.)

2 The Parties agree that the above-described investigation and evaluation, as well as the
3 information exchanged during the settlement negotiations, are more than sufficient to assess the
4 merits of the respective Parties' positions and to compromise the issues on a fair and equitable
5 basis. (Han Dec., *supra*, at ¶ 18.)

6 Based upon Defendant's document production and interviews Class Counsel had with
7 non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant failed to
8 provide employees with legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶¶ 19-20.)
9 Specifically, the volume of time-sensitive work assigned coupled with supervisors failing to
10 remind employees to take their breaks purportedly forced employees to work through, cut short,
11 or take late meal and rest breaks. (*Ibid.*) Defendant allegedly attempted to conceal its meal break
12 violations by automatically deducting thirty (30) minutes from timecards. (*Ibid.*)

13 Plaintiff also asserts – and Defendant denies – that Defendant failed to pay employees for
14 all hours worked. (Han Dec., *supra*, at ¶ 21.) Specifically, Plaintiff alleges that employees were
15 forced to begin working before clocking in and continue working after clocking out. (*Ibid.*) This
16 issue was supposedly exacerbated by a rounding policy that was neither fair nor neutral. (*Ibid.*)

17 Next, Plaintiff contends – and Defendant denies – that Defendant failed to properly
18 calculate and pay employees sick leave and did not incorporate non-discretionary annual
19 incentive payments into employees' regular rates for overtime compensation. (Han Dec., *supra*,
20 at ¶¶ 22-23.)

21 Additionally, Plaintiff contends – and Defendant denies – that Defendant failed to
22 reimburse employees for incurring business expenses. (Han Dec., *supra*, at ¶ 24.) Specifically,
23 employees were required to purchase steel-toed boots, box cutters, and flashlights and use their
24 personal cell phones, but Defendant allegedly did not reimburse them for this. (*Ibid.*)

25 Finally, Plaintiff alleges – and Defendant denies – that Defendant is liable for waiting
26 time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 25-26.)

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1 Defendant denies Plaintiff's contentions in their entirety. (Han Dec., *supra*, at ¶ 27.)
2 Among other things, Defendant denies Plaintiff's meal and rest break contentions on the grounds
3 that it provided breaks within compliant times and that non-exempt employees were given
4 discretion as to when to take their breaks. (*Ibid.*) Defendant also contends that non-exempt
5 employees were allowed to use their meal and rest break time for their own purposes. (*Ibid.*)
6 Moreover, Defendant counters that it did not assign frequent time-sensitive workloads that
7 pressured employees to work through their meal and rest breaks and provided employees
8 reasonable opportunities to take breaks more than the required time periods. (*Ibid.*) By
9 extension, Defendant argues it did not automatically deduct meal breaks from employees'
10 timecards if employees did not receive full and timely meal breaks. (*Ibid.*) Defendant further
11 contends that whether non-exempt employees took meal and rest breaks during compliant time
12 frames and were relieved of all duties are questions that could only be resolved by resorting to
13 individualized inquiries to each non-exempt employee and, therefore, class certification would
14 not be appropriate. (*Ibid.*) Defendant also asserts that it paid its employees for all times and all
15 hours worked, including overtime, minimum, and premium wages. (*Ibid.*) Furthermore,
16 Defendant counters that it never pressured employees to work additional hours off-the-clock nor
17 was it made aware that employees were choosing to work off-the-clock. (*Ibid.*) Moreover,
18 Defendant contends that it did factor non-discretionary incentive payments into eligible
19 employees' regular rates for overtime purposes and properly calculated and paid sick leave for
20 employees. (*Ibid.*) Defendant also asserts it reimbursed employees for all business expenses,
21 including making business purchases and using their personal cell phones. (*Ibid.*) Finally,
22 Defendant argues that any failure to comply with California labor laws (which it denies) was an
23 honest mistake made in good faith. (*Ibid.*) Thus, Defendant contends any alleged conduct could
24 not be deemed "willful" under Labor Code section 203. (*Ibid.*)

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

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

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

4 The Parties agreed to go to mediation with experienced wage-and-hour mediator, Steven
5 Serratore. (Han Dec., *supra*, at ¶ 28.) The mediation took place on April 20, 2021. (*Ibid.*)
6 During the mediation, the Parties discussed the risks of continued litigation, risks of certification,
7 and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices
8 of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action,
9 the terms of which were memorialized in a Settlement Agreement, that the Parties now seek
10 Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

11 **ii. The Settlement Was Reached as a Result of Arm's-Length**
12 **Negotiations**

13 The Settlement Agreement was reached because of arm's-length negotiations. (Han
14 Dec., *supra*, at ¶ 47.) Though cordial and professional, the settlement negotiations have been,
15 always, adversarial, and non-collusive in nature. (*Ibid.*) At the mediation, counsel for the Parties
16 conducted extensive arm's-length settlement negotiations until an agreement was ultimately
17 reached by all Parties. (*Ibid.*)

18 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
19 expense and length of continued proceedings necessary to continue the litigation against
20 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
21 *supra*, at ¶ 48.) Plaintiff and Class Counsel have also considered the uncertainty and risk of
22 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
23 (*Ibid.*) Plaintiff and Class Counsel have conducted extensive settlement negotiations, including
24 formal mediation on April 20, 2021. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel
25 believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable
26 settlement, and is in the best interests of the Class. (*Ibid.*)

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
4 discovery to support the settlement. (Han Dec., *supra*, at ¶ 49.) The proposed settlement was
5 only possible following significant discovery and evaluation of Defendant’s relevant policies and
6 procedures, as well as the data they produced for the putative Class, which permitted Class
7 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
8 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
9 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
10 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 49.)

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$610,000 (“Gross
15 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
16 amount not to exceed \$213,500 (thirty-five percent (35%) of the Gross Settlement Amount) to
17 compensate Class Counsel for work already performed and all work remaining to be performed
18 in documenting the settlement, administering the settlement and securing Court approval; (b)
19 Cost Award for actual litigation costs not to exceed \$25,000;² (c) Class Representative
20 Enhancement Payment in the amount of \$5,000 to Class Representative in recognition of his
21 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
22 of costs in the event this matter had not successfully resolved; (d) Administration Costs to
23 Phoenix, the Settlement Administrator, in the sum currently estimated at \$4,500, but not to
24 exceed \$5,000; and (e) PAGA Payment of \$50,000, seventy-five percent (75%) of which

25 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for
26 final approval. (Han Dec., *supra*, at ¶ 30.) At that time, Plaintiff will ask the Court to approve the amount of these
27 costs. (*Ibid.*) If Plaintiff’s actual litigation costs exceed \$25,000, Plaintiff will only seek reimbursement in the
28 amount of \$25,000. (*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.*)

(\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all hourly-paid or non-exempt employees directly employed by Defendant within the State of California during the period between May 28, 2019 to May 31, 2021, excluding those persons that signed release agreements (“Eligible Aggrieved Employees,” “Individual PAGA Payments,” “PAGA Payment,” and “PAGA Period”), on a pro rata basis. (Han Dec., *supra*, at ¶ 29.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$312,000 (“Net Settlement Amount”) will be distributed to Class Members – with an average Individual Settlement Share estimated at \$2,136.99. (Han Dec., *supra*, at ¶ 31.)

Each Participating Class Member’s Individual Settlement Share will be apportioned as follows: ten percent (10%) wages and ninety percent (90%) interest, penalties, and reimbursements. (Han Dec., *supra*, at ¶ 32.) The Settlement Administrator will withhold the amount of the Participating Class Members’ portion of normal payroll withholding taxes out of each person’s Individual Settlement Share payment apportioned as wages. (*Ibid.*) The Settlement Administrator will also calculate the amount of the Participating Class Members’ and Defendant’s portion of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator will submit Defendant’s portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person’s Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*)

The Settlement Administrator will pay each Participating Class Member an Individual Settlement Share from the Net Settlement Amount. (Han Dec., *supra*, at ¶ 33.) The Individual Settlement Share is calculated based on each Participating Class Member’s pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows:

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

Furthermore, the Settlement Administrator shall also pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 34.) The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on pay periods during the PAGA Period as follows:

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

Each Eligible Aggrieved Employee's Individual PAGA Payments will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. (Han Dec., *supra*, at ¶ 35.) Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 36.) No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 37.) The Class Data will be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class Member's Social Security and Employee ID number, if any; and (iv) the Class Member's relevant dates of employment ("Class Data"). (*Ibid.*)

1 Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data
2 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
3 identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 38.) Class
4 Members are not required to submit a claim form to receive their Individual Settlement Share
5 pursuant to the Agreement. (*Ibid.*) Similarly, Eligible Aggrieved Employees are also not
6 required to submit a claim form to receive their Individual PAGA Payment. (*Ibid.*) The
7 proposed Class Notice and Exclusion Form are attached as Exhibits A and B to the Settlement
8 Agreement respectively, which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

9 **iv. Distribution of Funds**

10 No later than thirty (30) calendar days after the date the Final Approval of the Settlement
11 can no longer be appealed or, if there are no objectors and no Plaintiff in intervention at the time
12 the Court grants Final Approval of the Settlement, the date the court enters judgment granting
13 Final Approval of the Settlement, Defendant shall deposit the Gross Settlement Amount of
14 \$610,000 needed to pay the entire Gross Settlement Amount and employer's share of payroll
15 taxes by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶ 39.) Defendant
16 shall also at this time provide the dates of employment and any other information in its
17 possession that the Settlement Administrator may reasonably need to calculate each Participating
18 Class Members' Individual Settlement Shares. (*Ibid.*)

19 Within fourteen (14) calendar days after the Administrator's receipt of the Gross
20 Settlement Amount, the Settlement Administrator shall calculate and disburse all payments due
21 under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA
22 Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement
23 Payment, the PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 40.)
24 Additionally, Settlement Administrator will forward a check for seventy-five percent (75%) of
25 the PAGA Payment to the LWDA for settlement of the PAGA claim. (*Ibid.*)

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1 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
2 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
3 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 41.) If any
4 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
5 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed
6 or not deposited by the expiration of the 90-day period after mailing the reminder notice, the
7 Settlement Administrator will, within two hundred (200) calendar days after the checks are
8 initially mailed, pay the amount of the unclaimed sums to Legal Aid at Work (“LAAW”). (*Ibid.*)

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

10 The Parties have agreed to designate the nonprofit organization LAAW as the *cy pres*
11 recipient. (Han Dec., *supra*, at ¶ 42.) LAAW satisfies the policy of the State of California under
12 Cal. Code Civ. Proc. section 384(a) “to ensure that the unpaid cash residue and unclaimed or
13 abandoned funds in class action litigation are distributed, to the fullest extent possible, in a
14 manner designed to further the purposes of the underlying class action or causes of action, or to
15 promote justice for all Californians.” (Cal. Code Civ. Proc. § 384(a).) (Han Dec., *supra*, at ¶ 42.)
16 The Code further states: “the court shall amend the judgment to direct the defendant to pay the
17 sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that
18 has accrued thereon, to nonprofit organizations or foundations to support projects that will
19 benefit the class or similarly situated persons, or that promote the law consistent with the
20 objectives and purposes of the underlying cause of action, to child advocacy programs, or to
21 nonprofit organizations providing civil legal services to the indigent.” (Cal. Code Civ. Proc. §
22 384(b).) (Han Dec., *supra*, at ¶ 42.)

23 LAAW directly satisfies the legislature’s purpose and goal under Cal. Code Civ. Proc.
24 section 384. (Han Dec., *supra*, at ¶ 43.) The core of LAAW’s work is providing free legal
25 services to low-wage workers with employment claims. (*Ibid.*) LAAW litigates cases that
26 address an array of issues important to low-wage workers, including (a) violations of wage-and-
27 hour laws; (b) workplace retaliation; (c) discrimination on account of race, national origin,
28 disability, sex, gender identity, sexual orientation, immigration status and language proficiency;

(d) harassment; and (e) failure to comply with equal pay laws and family medical leave laws. (Han Dec., *supra*, at ¶ 43.) Additionally, LAAW’s Community Legal Services Program provides advice and counseling to low-wage workers on the full range of employment law issues they face through twelve statewide Workers’ Rights Clinic locations throughout California. (*Ibid.*) There can be no doubt LAWW is the type of non-profit organization the legislature had in mind when drafting and amending Cal. Code of Civ. Proc. section 384. (*Ibid.*) The Parties are not affiliated with and do not have any financial interest in LAAW. (*Ibid.*) Specifically, Class Counsel and Plaintiff have no affiliation with or have any interest pertaining to LAAW. (*Ibid.*)

vi. Release of Claims

As of the Effective Final Settlement Date, in exchange for the consideration set forth in the Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period (“Released Claims”). *See* Exhibit 2 §§ I(JJ), III(J). (Han Dec., *supra*, at ¶ 44.)

As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly barred from bringing for the PAGA Released Claims during the PAGA Period. (Han Dec., *supra*, at ¶ 45.) The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion (“PAGA Released Claims”). *See* Exhibits 2 §§ I(EE), III(K). (*Ibid.*)

The Released Parties include Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (“Released Parties”). *See* Exhibit 2 § I(KK). (Han Dec., *supra*, at ¶ 46.)

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

2 Both Class Counsel and Counsel for Defendant are particularly experienced in wage and
3 hour employment law and class actions. Class Counsel has significant experience in litigating
4 unpaid wages, non-compliant meal period, and non-compliant rest period class actions. (Han
5 Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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

12 **IV. ARGUMENT**

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

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

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

21 ...

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

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

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

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

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

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

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

2 The proposed Settlement was only possible following significant discovery and
3 evaluation of Defendant's relevant policies and procedures, as well as the data Defendant
4 produced for the putative class as referenced in Section III above, which permitted Class Counsel
5 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
6 49.)

7 This discovery informed Plaintiff's central theories of liability, which are predicated on
8 Plaintiff's claims that Defendant failed to pay overtime wages, failed to pay minimum wages,
9 failed to provide meal and rest breaks and pay applicable premiums, failed to pay wages in a
10 timely manner, failed to issue compliant wage statements, failed to reimburse business expenses,
11 violated Labor Code section 2698, *et seq.* (PAGA), and violated the Business & Professions
12 Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 50.)

13 Defendant vehemently denies Plaintiff's theories of liability and contend that all meal and
14 rest breaks were provided in compliance with California law, that all wages were properly paid
15 to Class Members, that it paid all wages in a timely manner, that it provided wage statements in
16 compliance with Labor Code section 226, and that it reimbursed all business expenses. (Han
17 Dec., *supra*, at ¶ 51.) Defendant further contends that any mistakes made (which it denies) were
18 honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to continue, it
19 feels confident that it would prevail. (*Ibid.*)

20 Although Plaintiff believes the case is suitable for certification on the basis that there are
21 company-wide policies that Plaintiff contends violate California law and uniformly affect the
22 putative class members, uncertainties with respect to certification are always present. (Han Dec.,
23 *supra*, at ¶ 52.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34
24 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
25 Decisions following *Sav-On* have reached different conclusions concerning certification of
26 wage-and-hour claims.⁵ (*Ibid.*)

27 ⁵(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
28 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,

1 Although remaining confident in the strengths of his claims, all these factors led Plaintiff
2 to discount the following calculations of potential damage claims.

3 **ii. The Settlement Amount of \$610,000 Is Reasonable**

4 In addition to being able to discover the strengths and vulnerabilities associated with
5 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
6 time and pay records and information regarding the estimated number of pay periods and
7 workweeks worked by putative class members and the average hourly rate for class members.
8 (Han Dec., *supra*, at ¶ 53.) Defendant also confirmed that there were approximately 20,500
9 workweeks worked by Class Members. (*Ibid.*) Plaintiff was also able to determine that the
10 average hourly rate for Class Members was \$18.54. (*Ibid.*)

11 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
12 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
13 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 61.) Defendant asserted that,
14 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
15 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong
16 arguments against the underlying claims, it had a strong argument that it would be unjust to
17 award maximum PAGA penalties given the law's unsettled state. (*Thurman v. Bayshore Transit*
18 *Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) (Han
19 Dec., *supra*, at ¶ 61.)

20 Class Counsel calculated penalties under this cause of action by multiplying the number
21 of active Class Members (because of the shortened statutory period for this claim) by the civil
22 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
23 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 62.) Class Counsel then
24 applied discounts in light of the countervailing arguments with regard to the other causes of
25 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
26 (Lab. Code § 2699(e)(2).) (Han Dec., *supra*, at ¶ 62.)

27 148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
28 (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 Given the state of the law and the range of PAGA penalties requested and actually
2 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
3 for PAGA penalties. (Han Dec., *supra*, at ¶ 63.) However, if PAGA penalties are granted on
4 any one of the violations alleged in Plaintiff’s operative complaint, the total penalties exposure
5 for the eligible pay periods could be approximately \$402,900 ([51 x \$100] x 79 employees).⁶
6 (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using one hundred percent (100%)
7 violation rate based on the average number of pay periods (51) during the one-year statutory
8 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
9 PAGA theories of recovery (6) gives potential civil penalties of \$2,417,400. (*Ibid.*)

10 Although Plaintiff argued he could obtain over \$2 million for PAGA penalties, it seems
11 unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 64.) As noted
12 above, courts have reduced PAGA penalties by about 90% where there are mitigating
13 circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
14 trial court’s award of less than 10% of maximum PAGA penalty for meal break violations where
15 company sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as
16 to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be
17 recovered in the same pay period for different Labor Code violations. On one hand, Labor Code
18 section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added),
19 implying a separate civil penalty for each violation. On the other hand, employers cite Labor
20 Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the
21 civil penalty described in subdivision (f)...on behalf of himself or herself and other current or
22 former employees against whom one or more of the alleged violations was committed”
23 (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino v.*
24 *Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir.
25 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of

26 _____
27 ⁶ A recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a violation
28 by a Labor Commissioner or court. (*Bernstein v. Virgin America, Inc.* (9th Cir. Feb. 23, 2021) 2021 WL 867583, at
*11-12.) Thus, Plaintiff estimated the amount of PAGA penalties using the “initial” penalty amount of \$100 under
PAGA.

1 removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial
2 violation, the PAGA penalties would be limited to \$7,900 (79 employees x \$100 initial violation)
3 on the low end and \$47,400 on the high end based on six (6) major theories of recovery.

4 To the extent Defendant’s exposure remains in the millions of dollars, the civil penalties
5 could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken
6 liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v. Mistras Grp., Inc.* (N.D.
7 Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that
8 included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where
9 “Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims”];
10 *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class
11 action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential
12 value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the
13 defendant acted deliberately or negligently failed to learn about its obligations].) Thus, under a
14 more conservative approach, Class Counsel considered the possibility that the Court could assess
15 only the initial violation rate, bringing the basic PAGA penalty to \$47,400 [79 employees x \$100
16 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 64.)

17 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
18 (Han Dec., *supra*, at ¶ 65.) Many of the causes of action brought were duplicative of the
19 statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a),
20 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
21 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
22 under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based
23 on a rate of \$12.49 per pay period [$\$50,000 \div 4,004$ Pay Periods in PAGA Date Range =
24 \$12.49], given the fact that Defendant are also paying an additional \$560,000 in the class
25 settlement. (Citing *Carrington, supra*, 30 Cal.App.5th at 529 (affirming a rate of \$5 per
26 violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75
27 per violation and a total PAGA penalty of \$70,000,000).)) (Han Dec., *supra*, at ¶ 65.) Where
28 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. (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.”).) (Han Dec., *supra*, at ¶ 65.)

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 \$610,000— with an average Individual Settlement Share estimated at \$2,136.99—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 \$2,244,400.53 on the low end and \$2,434,435.53 on the high end. (Han Dec., *supra*, at ¶ 66.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$540,887.81	70%	60%	\$64,906.54
Meal Break Premiums	\$477,961.20	60%	50%	\$95,592.24
Overtime/Minimum Wage: Off-the-Clock	\$380,070 to \$570,105	40%	50%	\$114,021 to \$171,031.50
Overtime/Minimum Wage: Rounding	\$148,282.92	40%	60%	\$35,587.90
Overtime/Minimum Wage: Non-Discretionary Incentive Pay and Sick Leave Pay	\$19,477	30%	40%	\$8,180.34
Unreimbursed Business Expenses	\$90,296	30%	70%	\$18,962.16
Wage Statement Penalty	\$316,000	30%	50%	\$110,600
Waiting Time Penalty	\$271,425.60	30%	50%	\$94,998.96
MAXIMUM TOTAL EXPOSURE	\$2,244,400.53 to \$2,434,435.53⁷			\$542,849.14 to \$599,859.64⁸

⁷ Han Dec., *supra*, at ¶¶ 54-60.

⁸ *Id.*, at ¶¶ 67-74.

1 Based on this analysis, the realistic recovery for this case is \$542,849.14 on the low end
2 and \$599,859.64 on the high end. (Han Dec., *supra*, at ¶ 75.) The Gross Settlement Amount of
3 \$610,000 is approximately twenty-five percent (25.06%) of the maximum potential exposure and
4 is approximately one hundred one percent (101.69%) of the maximum realistic exposure at trial,
5 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. Ceullar 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 is in line with the realistic exposure had Plaintiff prevailed at trial
16 and provides 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
21 one of a common or general interest, of many persons, or when the parties are numerous, and it
22 is 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 ¶ 76.) Plaintiff contends
4 that as hourly-paid employee of Defendant, his claims are typical of the claims of the Class
5 Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)
6 Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would
7 create the risk of inconsistent or varying adjudications, and a class action is superior to other
8 available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed below,
9 this case is amenable to class certification. (*Ibid.*)

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

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

18 The Class Action involves approximately one hundred forty-six (146) Class Members,
19 which was confirmed by Defendant. (Han Dec., *supra*, at ¶ 77.) This Class is sufficiently
20 numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531,
21 n.5 (finding that a proposed class of “as many as 190 current and former employees” is
22 sufficiently numerous).) (Han Dec., *supra*, at ¶ 77.) Further, all Class Members can and will be
23 identified by Defendant to the Settlement Administrator through a review of Defendant’s
24 employment records concerning hourly-paid and/or non-exempt employees employed by
25 Defendant within the State of California during the Class Period. (Han Dec., *supra*, at ¶ 77.)

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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.*
20 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving
21 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-
22 21244 (court certified class of dancers on state law claims).)

23 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
24 alleged by Plaintiff. (Han Dec., *supra*, at ¶ 78.) Specifically, Plaintiff contends all hourly-paid
25 and non-exempt employees who worked for Defendant during the Class Period were subject to
26 the same or similar employment practices, policies, and procedures. (*Ibid.*) All Plaintiff’s claims
27 surround Defendant’s alleged common practice and scheme of failing to maintain compliant
28 meal and rest break policies and practices, failing to reimburse business expenses, and failing to

1 fully and properly compensate employees, *inter alia*, for noncompliant rest and meal breaks, off-
2 the-clock work, overtime work, sick leave pay, associated wage statement, and waiting time
3 penalties. (Han Dec., *supra*, at ¶ 78.)

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

5 Typical claims rely on legal theories and facts that are substantially similar to other class
6 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff was a non-exempt
7 employee and alleges he and the Class Members were employed by the same company and
8 injured by Defendant's common policies and practices related to meal and rest breaks,
9 uncompensated off-the-clock work, unpaid overtime, improperly calculated sick leave pay,
10 untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses.
11 (Han Dec., *supra*, at ¶ 79.) Plaintiff seeks relief for these claims and derivative claims on behalf
12 of all Class Members. (*Ibid.*) Thus, Plaintiff's claims as alleged arise from the same employment
13 practices and are based on the same legal theories as those applicable to the other Class
14 Members. (*Ibid.*)

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

16 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 80.)
17 He has conducted himself diligently and responsibly in representing the Class in this litigation,
18 understands his fiduciary obligations, and has actively participated in the prosecution of this
19 case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with counsel to provide
20 counsel with a complete understanding of his work environment and requirements. (*Ibid.*)
21 Furthermore, Plaintiff does not have any interest that is adverse to the interest of other Class
22 Members. (*Ibid.*) The proposed Class Counsel is also adequate to represent the Class. (*Id.*, at ¶¶
23 2-7, Exhibit 1.)

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25 ///

26 ///

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

3 A class action is superior to other available means for the fair and efficient adjudication
4 of this controversy. Plaintiff contends the joinder of all members of the proposed class is
5 impractical and that class treatment will permit many similarly-situation persons to prosecute
6 their common claims in a single forum simultaneously for settlement purposes without the
7 necessary duplication of effort and expense that numerous individual actions would engender.
8 Moreover, because several Class Members are current employees, Plaintiff believes the fear of
9 retaliation further support superiority of class-wide relief because that fear of retaliation often
10 discourages victims from seeking legal redress while currently employed by the same employer.

11 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

21 **f. Notice to Class Members Complies with California Rule of Court 3.769(f)**

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

23
24 If the court has certified the action as a class action, notice of the final approval
25 hearing must be given to class members in the manner specified by the court. The
26 notice must contain an explanation of the proposed settlement and procedures for
27 class members to follow in filing written objections to it and in arranging to
28 appear at the settlement hearing and state any objections to the proposed
settlement.

///
28

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

5 **V. CONCLUSION**

6 Plaintiff respectfully submits that the proposed Settlement is in the best interests of the
7 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
8 guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class
9 should be conditionally certified for purposes of settlement only, and the Notice Packet should
10 be approved.

11
12 Dated: September 29, 2021

JUSTICE LAW CORPORATION

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Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Haig Hogdanian
Attorneys for Plaintiff

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On October 1, 2021, I served the foregoing document described as

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

for the following case: **Jimenez v. Makita U.S.A., Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-791526-20**
Court Case No.: 20STCV21732
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

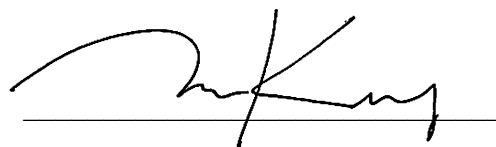
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on October 1, 2021, at Pasadena, California.



Madeline King