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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LANZELL SMITH, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

AMERICAN CAMPUS COMMUNITIES
SERVICES, INC., a Delaware corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2020-00280934

Honorable Shama H. Mesiwala
Department 53

CLASS ACTION

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

[Reservation ID: 2577696]

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

Hearing Date: August 19, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Department 53

Complaint Filed: June 18, 2020
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on August 19, 2021 at 1:30 p.m., or as soon as the matter
2 may be heard before the Honorable Shama H. Mesiwala in Department 53 of the Sacramento
3 County Superior Court – Law and Motion Department 53, located at 813 6th Street, Sacramento,
4 California 95814, Plaintiffs Lanzell Smith and Rande McCormick (“Plaintiffs,” “Plaintiff
5 Smith,” and “Plaintiff McCormick”) will and hereby move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
8 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
10 the means of allocation and distribution of funds, and the allocations for penalties
11 under the California Labor Code Private Attorneys General Act of 2004
12 (“PAGA”), Attorney Fee Award, Cost Award, Class Representative Enhancement
13 Payments, and the Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class 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 with a postage-paid return
22 envelope to the proposed Class;
- 23 • Approving the proposed deadlines for the notice and Settlement Administration
24 process;
- 25 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and

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

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

10 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of
11 this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative
12 rulings for the department may be downloaded off the court's website. If the party does not have
13 online access, they may call the dedicated phone number for the department as referenced in the
14 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before
15 the hearing and receive the tentative ruling. If you do not call the court and the opposing party by
16 4:00 p.m. the court day before the hearing, no hearing will be held.

17
18 Dated: July 26, 2021

JUSTICE LAW CORPORATION

19
20
21 By:



22 Douglas Han
23 Shunt Tatavos-Gharajeh
24 Arsiné Grigoryan
25 Haig Hogdanian
26 *Attorneys for Plaintiff*
27
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,000,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 non-exempt employees of American Campus Communities Services, Inc. (“Defendant”) in
5 California during the Class Period (“Class”). The Class Period is the time period from June 18,
6 2016, through August 6, 2021, or the date of Preliminary Approval, whichever date is earlier
7 (“Class Period”). At the time of this filing, the number of Class Members estimated by Plaintiffs’
8 analysis provided by Defendants is seven hundred thirty-one (731).

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 \$2,000,000 – with an average settlement share amount estimated at
12 \$1,463.06¹ – 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 Since 1993, Defendant has been the nation’s leading provider of academically oriented
22 student communities. (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.) Specifically, Defendant
23 is the nation’s largest developer, owner, and manager of high-quality student housing
24 communities. (*Ibid.*) This case involves all current and former non-exempt employees of
25 Defendant in California during the time period from June 18, 2016, through August 6, 2021, or
26 the date of Preliminary Approval, whichever date is earlier. (*Ibid.*) Plaintiffs allege that at all
27

28 ¹ \$1,069,500 (Net Settlement Amount) / 731 (Class Members) = \$1,463.06.

1 times during the Class Period, Defendant’s non-exempt employees work and/or worked on an
2 hourly basis. (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.)

3 Plaintiff Smith, a former employee of Defendant, filed a wage-and-hour class action
4 complaint against Defendant on June 18, 2020 in the Superior Court of California, County of
5 Sacramento (“Smith Action” or “Class Action”). (Han Dec., *supra*, at ¶ 10.) The Smith Action
6 was brought on behalf of all current and former California-based (*i.e.*, currently “residing” in
7 California with the intent to remain in California indefinitely) hourly-paid or non-exempt
8 employees of Defendant within the State of California at any time during the relevant period.
9 (*Ibid.*) The Smith Action alleged the following eight (8) causes of action: (1) violation of
10 California Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code
11 sections 226.7 and 512(a) (unpaid meal break premiums); (3) violation of Labor Code section
12 226.7 (unpaid rest break premiums); (4) violation of Labor Code section 1194 and 1197 (unpaid
13 minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely
14 paid); (6) violation of Labor Code section 226(a) (non-compliant wage statements); (7) violation
15 of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of
16 California Business & Professions Code section 17200, *et seq.* (*Ibid.*)

17 On July 31, 2020, Defendant removed the Smith Action to the United States District
18 Court, Eastern District of California. (Han Dec., *supra*, at ¶ 11.) Plaintiff Smith filed a Motion to
19 Remand on August 31, 2020, Defendant opposed the motion, and Plaintiff Smith replied. (*Ibid.*)
20 The Smith Action was remanded back to the Superior Court of California, County of
21 Sacramento, on June 30, 2021. (*Ibid.*)

22 On May 28, 2020, Plaintiff McCormick, also a former employee of Defendant, provided
23 written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of
24 the specific provisions of the Labor Code he contends were violated and the theories supporting
25 his contention. (Han Dec., *supra*, at ¶ 12.) The sixty-five (65) day notice period expired on or
26 about August 1, 2020, and the LWDA did not take any action to investigate or prosecute this
27 matter. (*Ibid.*)

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1 On August 3, 2020, Plaintiff McCormick filed his PAGA representative action against
2 Defendant in the Superior Court of California, County of San Diego (“McCormick Action”).
3 (Han Dec., *supra*, at ¶ 13.) The matter was brought on behalf of all current or former hourly-paid
4 or non-exempt employees (whether hired directly or through a staffing agency or labor
5 contractor) of Defendant who worked for Defendant at any time during the period from May 28,
6 2019 to the present. (*Ibid.*) Plaintiff McCormick alleged that Defendant: (1) failed to pay
7 minimum and overtime wages; (2) failed to provide meal and rest breaks; (3) failed to timely pay
8 wages during employment; (4) failed to timely pay wages upon termination; (5) failed to provide
9 complete and accurate wage statements; and (6) failed to reimburse all business expenses. (*Ibid.*)

10 The Parties attended mediation on Plaintiffs’ claims on April 29, 2021. (Han Dec.,
11 *supra*, at ¶ 14.) Under the auspices of the mediator Lynn S. Frank, the Parties were eventually
12 able to reach an agreement on the settlement of the action via a mediator’s proposal. (*Ibid.*)

13 In July 2021, in line with the settlement reached between the Parties at mediation,
14 Plaintiff Smith filed a First Amended Complaint (“FAC”) of the Smith Action in the Superior
15 Court of California, County of Sacramento, on behalf of themselves and all current and former
16 California-based (*i.e.*, currently “residing” in California with the intent to remain in California
17 indefinitely) non-exempt employees of Defendant within the State of California at any time
18 during the relevant period. (Han Dec., *supra*, at ¶ 15.) The FAC added Plaintiff McCormick as
19 an additional Plaintiff and added a PAGA cause of action. (*Ibid.*)

20 Defendant generally and specifically denies all liability or wrongdoing of any sort
21 regarding any of the claims alleged, makes no concessions or admissions of liability of any sort,
22 and contends that for any purpose other than settlement, the Class Action is not appropriate for
23 class treatment. (Han Dec., *supra*, at ¶ 16.) Furthermore, Defendant asserts several defenses to
24 the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or
25 conduct in the Class Action. (*Ibid.*)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Prior to the Parties' mediation held on April 29, 2021, the Parties conducted significant investigation and discovery of the facts and law both before and after the initial Class Action was filed. (Han Dec., *supra*, at ¶ 17.) Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying Class Members for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiffs and Defendant also interviewed several of Class Members, and others, who worked for Defendant throughout the Class Period. (*Ibid.*)

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

Based upon the Parties' discovery, and interviews Plaintiffs' counsel had with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to provide employees legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶¶ 19-20.) Specifically, Defendant allegedly had in place improper, uniform policies and practices that forced employees to skip, cut short, or take late meal and rest breaks. (*Ibid.*)

Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate employees for all hours worked. (Han Dec., *supra*, at ¶ 21.) Specifically, Defendants policies and practices forced employees to work off-the-clock for no compensation, downplay their overtime hours, and not be compensated for being on-call. (*Ibid.*) Plaintiffs also contend that Defendant failed to incorporate non-discretionary bonuses and incentives into employees' regular rates for overtime compensation purposes. (Han Dec., *supra*, at ¶ 22.)

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1 Next, Plaintiffs allege – and Defendant denies – that Defendant failed to reimburse
2 employees for necessary business-related expenses incurred. (Han Dec., *supra*, at ¶ 23.) For
3 instance, Defendant did not reimburse employees for using their personal cell phones and
4 personal vehicles for business-related purposes. (*Ibid.*)

5 Finally, Plaintiffs contend – and Defendant denies – that Defendant is liable for waiting
6 time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 24-25.)

7 Defendant denies Plaintiffs’ contentions in their entirety. (Han Dec., *supra*, at ¶ 26.)
8 Among other things, Defendant denies Plaintiffs’ meal and rest break contentions, on the
9 grounds that it provided breaks within compliant times and that non-exempt employees were
10 given discretion as to when to take their breaks. (*Ibid.*) Defendant also contends that both its
11 meal and rest break policies complied with California law and that non-exempt employees were
12 allowed to use their breaks for their own purposes. (*Ibid.*) Moreover, Defendant counters that its
13 policies were never intended to discourage or deter employees from taking duty-free meal and
14 rest breaks nor did it regularly assign heavy workloads that pressured noncompliant breaks.
15 (*Ibid.*) Defendant further contends that whether non-exempt employees took meal and rest breaks
16 during compliant time frames and were relieved of all duties are questions that could only be
17 resolved by resorting to individualized inquiries to each non-exempt employee and, therefore,
18 class certification would not be appropriate. (*Ibid.*) Defendant also asserts that it paid its
19 employees for all times worked, including overtime, minimum, and premium wages. (*Ibid.*)
20 Defendant counters that its policies or practices rarely, if ever, forced employees work additional
21 hours off-the-clock without asking for compensation. Defendant also adds that it properly
22 compensated employees for being on-call. (*Ibid.*) Further, Defendant contends that Plaintiffs’
23 claims regarding off-the-clock work and unpaid overtime are trivial as only a small number of
24 employees worked off-the-clock. (*Ibid.*) Moreover, Defendant contends it did factor non-
25 discretionary bonuses and incentives into eligible employees’ regular rates for overtime
26 purposes. (*Ibid.*) Defendant also asserts that it reimbursed employees for all business expenses,
27 including using their personal cell phones and personal vehicles. (*Ibid.*) Finally, Defendant
28 argues that its failure to comply with California labor laws was an honest mistake made in good

1 faith. (Han Dec., *supra*, at ¶ 26.) Therefore, Defendant’s conduct could not be deemed “willful”
2 under Labor Code section 203. (*Ibid.*)

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

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

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

8 The Parties agreed to go to mediation with experienced wage and hour mediator, Lynn S.
9 Frank. (Han Dec., *supra*, at ¶ 27.) The mediation took place on April 29, 2021. (*Ibid.*) During
10 the mediation, the Parties discussed the risks of continued litigation, risks of certification, and
11 risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of
12 the mediator, the Parties were able to reach an agreement on a settlement of the Class Action
13 pursuant to a mediator’s proposal, the terms of which were memorialized in a Settlement
14 Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (Han Dec.,
15 *supra*, at ¶ 27.; Exhibit 2.)

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

18 The Settlement Agreement was reached because of arm’s-length negotiations. (Han
19 Dec., *supra*, at ¶ 44.) Though cordial and professional, the settlement negotiations have been,
20 always, adversarial, and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties
21 conducted extensive arm’s length settlement negotiations until an agreement was reached by all
22 Parties via a mediator’s proposal. (*Ibid.*)

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1 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
2 expense and length of continued proceedings necessary to continue the litigation against
3 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
4 *supra*, at ¶ 45.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of
5 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
6 (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including
7 formal mediation on April 29, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel
8 believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable
9 settlement, and is in the best interests of the Class. (*Ibid.*)

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

11 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
12 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
13 discovery to support the settlement. (Han Dec., *supra*, at ¶ 46.) The proposed settlement was
14 only possible following significant discovery and evaluation of Defendant’s relevant policies and
15 procedures, as well as the data they produced for the putative Class, which permitted Class
16 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
17 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
18 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
19 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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

21 **i. Deductions from the Settlement**

22 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
23 action be settled and compromised for the non-reversionary total sum of \$2,000,000 (“Gross
24 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
25 amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount or \$760,000 to
26 compensate Class Counsel for work already performed and all work remaining to be performed
27 in documenting the settlement, administrating the settlement and securing Court approval; (b)
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1 Cost Award for actual litigation costs not to exceed \$25,000²; (c) Class Representative
2 Enhancement Payment in the amount of \$10,000 to each Class Representative in recognition of
3 Plaintiffs’ work and efforts in obtaining the benefits for the Class and undertaking the risk for the
4 payment of costs in the event this matter had not successfully resolved; (d) Administration Costs
5 to CPT Group, the Settlement Administrator that is currently estimated to be \$13,000, but not to
6 exceed \$15,000; and (e) PAGA Payment of \$150,000, seventy-five percent (75%) of which
7 (\$112,500) shall be paid to the LWDA and twenty-five percent (25%) of which (\$37,500) shall
8 be part of the Net Settlement Amount distributed to the aggrieved employees eligible to recover
9 the PAGA Payment that consist of all current and former non-exempt employees who worked for
10 Defendant within the State of California between May 28, 2019, through August 6, 2021, or
11 Preliminary Approval Date, whichever date is earlier (“Eligible Aggrieved Employees,” “PAGA
12 Timeframe,” and “PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 28.)

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

14 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
15 that \$1,069,500 (“Net Settlement Amount”) will be distributed to Class Members – with an
16 average Individual Settlement Share estimated at \$1,463.06. (Han Dec., *supra*, at ¶ 30.)

17 The Settlement Administrator will pay the amount of the Participating Class Members’
18 portion of normal payroll withholding taxes out of each person’s Individual Settlement Share.
19 (Han Dec., *supra*, at ¶ 31.) The Settlement Administrator will calculate the amount of the
20 Participating Class Members’ and Defendant’s portion of payroll withholding taxes and pay
21 those amounts from the Gross Settlement Amount. (*Ibid.*) Finally, the Settlement Administrator
22 will submit Defendant’s portion of payroll withholding tax and forward those amounts along
23 with each person’s Individual Settlement Share withholdings to the appropriate taxing
24 authorities. (*Ibid.*)

25 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiffs’ motion for
26 final approval. (Han Dec., *supra*, at ¶ 29.) At that time, Plaintiffs will ask the Court to approve the amount of these
27 costs. If Plaintiffs’ actual litigation costs exceed \$25,000, Plaintiffs will only seek reimbursement in the amount of
28 \$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 be available for
distribution to all Class Members who do not submit a valid and timely request to exclude themselves from this
Settlement “(Participating Class Members)”. (*Ibid.*)

1 The Settlement Administrator will calculate and pay an Individual Settlement Share from
2 the Net Settlement Amount to each Participating Class Member. (Han Dec., *supra*, at ¶ 32.)
3 Each Participating Class Member will receive a proportionate share of the Net Settlement
4 Amount that is equal to:

5 (i) the number of weeks he or she worked as a Class Member during the
6 Class Period based on the Class data provided by Defendant, divided by
7 (ii) the total number of weeks worked by any and all Class Members
8 during the Class Period based on the same Class data, which is then
9 multiplied by the Net Settlement Amount. A partial week worked in a
10 given week will be credited as a workweek for purposes of this
11 calculation. Therefore, the value of each Participating Class Member's
12 Individual Settlement Share ties directly to the amount of weeks that he or
13 she worked. (*Ibid.*)

14 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
15 according to their proportional share, which will be calculated and will be based upon the total
16 number of pay periods he or she was employed during the PAGA Timeframe. (Han Dec., *supra*,
17 at ¶ 33.) The individual share will be calculated by:

18 determining the total number of pay periods the Eligible Aggrieved Employees
19 were employed during the PAGA Timeframe (i.e., the sum of all pay periods of
20 employment for each eligible aggrieved employee) and dividing that number into
21 the \$37,500 amount allocated to Eligible Aggrieved Employees to determine the
22 monetary value assigned to each pay period. That number will then be multiplied
23 by the individual Eligible Aggrieved Employee's total number of pay periods
24 employed during the PAGA Timeframe to determine that individual's
25 proportional share. (*Ibid.*)

26 The precise number of compensable weeks worked per Class Member will not be known
27 until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 34.)
28 No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

29 **iii. Notice to the Class**

30 Within Thirty (30) calendar days after entry of the Preliminary Approval Order,
31 Defendant shall deliver to the Settlement Administrator an electronic database, which will list for
32 each Class Member: (i) last known addresses, (ii) telephone numbers and/or emails to the extent
33 they are available, and (iii) social security numbers and dates worked ("Database"). (Han Dec.,
34 *supra*, at ¶ 35.)

1 Within fourteen (14) calendar days after the Settlement Administrator’s receipt of the
2 Database, the Settlement Administrator will mail the Class Notice to all identified Class
3 Members via first-class regular U.S. Mail, using the mailing address information provided by
4 Defendant and the results of the National Change of Address database (“NOCA”) search
5 performed on all former Defendant employee Class Members. (Han Dec., *supra*, at ¶ 36.) Class
6 Members are not required to submit a claim form to receive their Individual Settlement Shares.
7 (*Ibid.*) The proposed Class Notice is attached as Exhibit A to the Settlement Agreement, which is
8 Exhibit 2 to the Declaration of Douglas Han.

9 **iv. Distribution of Funds**

10 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
11 Defendant shall deposit the Gross Settlement Amount of \$2,000,000 needed to pay the entire
12 Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec.,
13 *supra*, at ¶ 37.) In the event there are objectors to the Settlement Agreement, payment shall be
14 made within twenty-one (21) calendar days after the time to appeal has run or all appeals have
15 been exhausted, whichever occurs later. (*Ibid.*) Defendant shall also at this time provide any tax
16 information that the Settlement Administrator may need to calculate each Participating Class
17 Members’ Individual Settlement Share, to the extent it is within Defendant’s possession. (*Ibid.*)

18 Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement
19 Administrator shall calculate and pay all payments due under the Settlement Agreement,
20 including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class
21 Representative Enhancements, the PAGA Payment, and the Administration Costs. (Han Dec.,
22 *supra*, at ¶ 38.) The Settlement Administrator will forward a check for seventy-five percent
23 (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. (*Ibid.*)

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1 Participating Class Members must cash or deposit their Individual Settlement Share
2 checks within one hundred twenty (120) calendar days after the checks are mailed to them. (Han
3 Dec., *supra*, at ¶ 39.) If any checks are not redeemed or deposited within ninety (90) calendar
4 days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any
5 checks remain uncashed or not deposited by the expiration of the 30-day period after mailing the
6 reminder notice, the Settlement Administrator will, within one hundred fifty (150) calendar days
7 after the checks are mailed, pay the amount of the Individual Settlement Share to the California
8 State Controller's Unclaimed Property Division in accordance with California Unclaimed
9 Property Law so that the Participating Class Member will have his or her Individual Settlement
10 Share available to him or her per the applicable claim procedure to request that money from the
11 State of California. (*Ibid.*)

12 **v. Release of Claims**

13 As of the Effective Final Settlement Date, Class Members, who do not submit a timely
14 and valid Exclusion Form release, remise, and forever discharge the Released Parties from the
15 Released Claims for the Class Periods. Participating Class Members agree not to sue or
16 otherwise make a claim against any of the Released Parties for any of the Released Claims
17 ("Released Claims"). See Exhibit 2 §§ (I)(EE), (III)(L). (Han Dec., *supra*, at ¶ 40.)

18 As provided in the Release of Claims, as of the Effective Final Settlement Date, this
19 settlement forever bars Plaintiffs, the LWDA, and any other representative, proxy, or agent
20 thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the
21 PAGA Timeframe, from pursuing any action under PAGA, Labor Code §§ 2698, *et seq.*, against,
22 the Released Parties based on or arising out of alleged violations of Labor Code sections alleged
23 in the Case. See Exhibit 2 § (III)(M). (Han Dec., *supra*, at ¶ 41.)

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1 The Released Parties include Defendant and any of their present and former parent
2 companies, subsidiaries, divisions, concepts, related or affiliated companies, and any of those
3 entities' respective partners, shareholders, officers, directors, employees, agents, attorneys,
4 insurers, successors and assigns, and any individual or entity that could be liable for any of the
5 Released Claims in the FAC ("Released Parties"). *See* Exhibit 2 § (I)(FF). (Han Dec., *supra*, at ¶
6 42.)

7 As of the Effective Final Settlement Date, and in exchange for the Class Representative
8 Enhancement Payment to the Plaintiffs in their respective amounts, in recognition of their work
9 and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of
10 costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of
11 claims for themselves and their spouse, heirs, successors and assigns. *See* Exhibit 2 § (III)(N).
12 (Han Dec., *supra*, at ¶ 43.)

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

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

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

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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.

1 **IV. ARGUMENT**

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

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

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

10 . . .

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

15 Courts act within their discretion in approving settlements that are fair, not collusive, and take
16 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
17 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
18 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
19 U.S. 905.)

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

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

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

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

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

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

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
17 discovery to support the settlement. (Han Dec., *supra*, at ¶ 46.) The proposed settlement was only
18 possible following significant discovery and evaluation of Defendant’s relevant policies and
19 procedures, as well as the data they produced for the putative Class, which permitted Class
20 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
21 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
22 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
23 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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1 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal and rest
3 breaks and pay applicable premiums, failed to pay minimum wages, failed to pay final wages in
4 a timely manner, failed to issue compliant wage statements, failed to reimburse business
5 expenses, violated PAGA, and violated the Business & Professions Code sections 17200, *et seq.*
6 (Han Dec., *supra*, at ¶ 47.)

7 Defendant vehemently denies Plaintiffs' theories of liability and contend, as stated above,
8 that all meal and rest breaks were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that it provided final wages in a timely manner, that it
10 provided wage statements in compliance with Labor Code section 226, and that it reimbursed all
11 business expenses. (Han Dec., *supra*, at ¶ 48.) Defendant further contends that any mistakes
12 made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to
13 continue, it feels confident that it would prevail. (*Ibid.*)

14 Although Plaintiffs believe the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiffs contends violate California law and uniformly affect the
16 putative Class Members, uncertainties with respect to certification are always present. (Han
17 Dec., *supra*, at ¶ 49.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
18 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
20 and hour claims.⁵ (*Ibid.*)

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

23 / / /

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

1 **ii. The Settlement Amount of \$2,000,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 Class Members and the average hourly rate for Class Members. (Han Dec., *supra*, at ¶ 50.)
6 Defendant confirmed that there were approximately 45,773 workweeks worked by Class
7 Members. (Han Dec., *supra*, at ¶ 50.) Plaintiffs were also able to determine that the average
8 hourly rate for Class Members was \$15.90. (*Ibid.*)

9 The provisions of the Labor Code potentially triggering PAGA penalties in this case
10 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
11 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 56.) Defendant asserted that, regardless of
12 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
13 and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments
14 against the underlying claims, it had a strong argument that it would be unjust to award
15 maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

16 Class Counsel calculated penalties under this cause of action by multiplying the number
17 of active Class Members (because of the shortened statutory period for this claim), by the civil
18 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
19 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 57.) Class Counsel then
20 applied discounts in light of the countervailing arguments with regard to the other causes of
21 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
22 (Lab. Code § 2699(e)(2).) (*Ibid.*)

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1 Given the state of the law and the range of PAGA penalties requested and actually
2 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
3 for PAGA penalties. (Han Dec., *supra*, at ¶ 58.) However, if PAGA penalties are granted on
4 any one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure
5 for the eligible pay periods could be approximately \$2,155,500 $(([1 \times \$100] + [22 \times \$200]) \times 479$
6 employees). (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent
7 (100%) violation rate based on the average number of pay periods (23) during the one-year
8 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
9 under the PAGA theories of recovery (6) gives potential civil penalties of \$12,933,000. (*Ibid.*)

10 Although Plaintiffs argued they could obtain over \$12 million for PAGA penalties, it
11 seems unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 59.)
12 PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty for
13 each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each
14 subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral*
15 *v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has
16 been notified that it is violating a Labor Code provision (whether or not the commissioner or
17 court chooses to impose penalties), the employer cannot be presumed to be aware that its
18 continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed
19 only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could
20 be interpreted as indicating that until the Labor Commissioner or a court informs an employer
21 that it has violated the Labor Code, the employer can only be assessed the “initial” violation rate.
22 Under this interpretation, the maximum individual civil penalty for one statutory violation is
23 \$47,900 (479 employees x 100 (initial violation)), and for all possible Labor Code violations is
24 \$287,400.

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1 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may
2 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period
3 for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
4 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
5 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
6 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in
7 subdivision (f)...on behalf of himself or herself and other current or former employees against
8 whom one or more of the alleged violations was committed” (emphasis added). However,
9 Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*
10 (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057,
11 which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking”
12 of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties
13 would be limited to \$47,900 on the low end and \$287,400 on the high end based on six (6) major
14 theories of recovery.

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

25 Under a more conservative approach, Class Counsel considered the possibility that the
26 Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$287,400
27 [479 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 59.)

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1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Dec., *supra*, at ¶ 60.) Many of the causes of action brought were duplicative of the
3 statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a),
4 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
5 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
6 under the law. (*Ibid.*) Thus, allocating \$150,000 to PAGA civil penalties was reasonable based
7 on a rate of \$13.34 per pay period [$\$150,000 \div 11,241$ Pay Periods in PAGA Date Range =
8 \$13.34], given the fact that Defendant are also paying an additional \$1,850,000 in the class
9 settlement. (*Id.* (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
10 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff
11 requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where
12 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
13 result of self-interest at the expense of other Class Members,” such amounts are generally
14 considered reasonable. (Han Dec., *supra*, at ¶ 60.) (citing *Hopson v. Hanesbrands Inc.* (N.D.
15 Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g.,
16 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
17 discretion in approving a settlement which does not allocate any damages to the PAGA
18 claims.”).)

19 Accordingly, taking into consideration Defendants’ defenses, their supporting evidence,
20 and their position that the Class Action is not suitable for class treatment, the settlement amount
21 of \$2,000,000— with an average Individual Settlement Share estimated at \$1,463.06—is
22 reasonable and fair.

23 c. Discount Analysis Justifies the Settlement

24 Excluding the civil penalties, which could be completely discretionary, for the reasons
25 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
26 be approximately \$5,641,027.72 on the low end and \$6,095,896.90 on the high end. (Han Dec.,
27 *supra*, at ¶ 61.)

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Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$750,139.74	70%	60%	\$90,016.77
Meal Break Premiums	\$798,561.60	60%	50%	\$159,712.32
Overtime/Minimum Wage: Off-the-Clock	\$909,738.38 to \$1,364,607.56	60%	60%	\$145,558.14 to \$218,337.21
Unreimbursed Business Expenses	\$359,142	40%	70%	\$64,645.56
Wage Statement Penalty	\$1,083,350	50%	50%	\$270,837.50
Waiting Time Penalty	\$1,740,096	50%	50%	\$435,024
MAXIMUM TOTAL EXPOSURE	\$5,641,027.72 to \$6,095,896.90⁶			\$1,165,794.29 to \$1,238,573.36⁷

Based on this analysis, the realistic recovery for this case is \$1,165,794.29 on the low end and \$1,238,573.36 on the high end. (Han Dec., *supra*, at ¶ 68.) The Gross Settlement Amount of \$2,000,000 is approximately thirty-two percent (32.81%) of the maximum potential exposure and is approximately one hundred sixty-one percent (161.48%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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

⁶ Han Dec., *supra*, at ¶¶ 51-55.

⁷ Han Dec., *supra*, at ¶¶ 62-67.

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

2 For settlement purposes only, the requisites for establishing conditional class certification
3 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
4 of a common or general interest, of many persons, or when the parties are numerous, and it is
5 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
6 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
7 “both [1] an ascertainable class and [2] a well-defined community of interest among class
8 members.” (*Ibid.*)

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

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

18 “Ascertainability is required in order to give notice to putative class members as to whom
19 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
20 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
21 by describing a set of common characteristics sufficient to allow a member of that group to
22 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
23 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
24 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

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1 The Class Action involves seven hundred thirty-one (731) Class Members. (Han Dec.,
2 *supra*, at ¶ 70.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
3 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
4 many as 190 current and former employees” is sufficiently numerous.) Further, all Class
5 Members can and will be identified by Defendant to the Settlement Administrator through a
6 review of Defendant’s employment records concerning hourly-paid and non-exempt employees
7 employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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

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

19 **1. Common Issues Predominate**

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

1 (court certified class of dancers on state law claims).)

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

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

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

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

21 Plaintiffs have proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶
22 73.) They have conducted themselves diligently and responsibly in representing the Class in this
23 litigation, understand their fiduciary obligations, and have actively participated in the
24 prosecution of this case. (*Ibid.*) Plaintiffs have also spent time in meetings and conferences with
25 counsel to provide counsel with a complete understanding of their work environment and
26 requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the
27 interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to
28 represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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. Joinder of all members of the proposed class is impractical. Class treatment
5 will permit a large number of similarly-situation persons to prosecute their common claims in a
6 single forum simultaneously for settlement purposes without the necessary duplication of effort
7 and expense that numerous individual actions would engender. Moreover, because a number of
8 the Class Members are current employees, the fear of retaliation further support superiority of
9 class-wide relief because that fear of retaliation often discourages victims from seeking legal
10 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 of these elements are present here. Thus, Plaintiffs request that this Court grant their motion
20 for 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.

///

1 The proposed Class Notice meets all of these requirements. The proposed Class Notice
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*; Exhibit A to Exhibit 2.)

5 **V. CONCLUSION**

6 Plaintiffs respectfully submit 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 Class Notice should be
10 approved.

11
12 Dated: July 26, 2021

JUSTICE LAW CORPORATION

13 

14 _____
15 Douglas Han
16 Shunt Tatavos-Gharajeh
17 Arsiné Grigoryan
18 Haig Hogdanian
19 *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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is aokada@justicelawcorp.com.

On July 27, 2021, I served the foregoing document described as

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

for the following case: **Smith v. American Campus Communities Services, Inc.**
LWDA/Court Case No.: **LWDA-CM-791525-20**
34-2020-00280934
Sacramento 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 July 27, 2021, at Pasadena, California.


Anna Okada