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

KEVIN LOR, individually, and on behalf
of other members of the general public
similarly situated and on behalf of
aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

ANTECH DIAGNOSTICS, INC., a
California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No. 34-2020-00282790-CU-OE-GDS

Honorable Shama H. Mesiwala
Department 53

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) and [Proposed] Order filed
concurrently herewith]

[Reservation ID: 2567281]

Hearing Date: June 23, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Dept. 53

Filed: August 4, 2020
FAC Filed: March 2, 2021
Trial: None Set

1 **PLEASE TAKE NOTICE** that on June 23, 2021 and at 1:30 p.m., or as soon as the
2 matter may be heard before the Honorable Shama H. Mesiwala of the Sacramento County
3 Superior Court – Law and Motion Department 53, located at 813 6th Street, Sacramento, CA
4 95814, Plaintiff Kevin Lor, (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Joint Stipulation of Class Action Settlement and
7 Release (“Settlement Agreement”), attached as “**EXHIBIT 2**” to the Declaration
8 of Douglas Han, including, and not limited to, the means of allocation and
9 distribution of funds, and the allocations for penalties under the California Labor
10 Code Private Attorneys General Act of 2004 (“PAGA”), attorneys’ fees and costs,
11 Enhancement Award, and approval of the allocation for the PAGA payment and
12 the Settlement Administration Expenses;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as “Exhibit A” to the Settlement Agreement;
- 18 • Directing the mailing of the proposed Class Notice with a postage-paid return
19 envelope to the proposed Class Members;
- 20 • Approving the proposed Claim Form (“Claim Form”) attached as “Exhibit B” to
21 the Settlement Agreement;
- 22 • Approving the proposed deadlines for the notice and Settlement Administration
23 process;
- 24 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement, at which time the Court will also consider whether to grant Final Approval of the requests for Class Counsel Award, Cost Award, Service Award, and approval of the allocation for the PAGA payment and the Settlement Administration Expenses.

This motion is based upon the following memorandum of points and authorities; the Declaration of proposed Class Counsel (Douglas Han); and the [Proposed] Order filed concurrently with this motion, as well as 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.

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

Dated: May 20, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff Kevin Lor (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of
3 Class Action Settlement and Release (“Settlement Agreement”) entered into by and between
4 Plaintiff, individually and on behalf of the proposed Class, and Defendant Antech Diagnostics,
5 Inc. (“Antech” or “Defendant”). Subject to Court approval, Plaintiff and Defendant (“Parties”)
6 have agreed to settle this lawsuit for a Maximum Settlement Amount of up to \$850,000. A copy
7 of the Settlement Agreement is attached as “**EXHIBIT 2**” to the Declaration of Douglas Han
8 (“Han Decl.”).

9 The Maximum Settlement Amount includes the following: (a) attorneys’ fees of up to
10 \$323,000 (38% of the Maximum Settlement Amount) to compensate Class Counsel for work
11 already performed and all work remaining to be performed in documenting the settlement,
12 administrating the settlement and securing Court approval; (b) actual litigation costs of up to
13 \$25,000 for serving as Class Counsel;¹ (c) an Enhancement Award to the Plaintiff in a sum not to
14 exceed \$10,000 for his efforts and service leading to this Settlement; (d) an allocation of
15 Settlement Administration Expenses to Simpluris, Inc. (“Settlement Administrator” or
16 “Simpluris”), estimated at approximately \$20,000; and (e) payment for \$50,000 in civil penalties
17 under the California Private Attorneys General Act of 2004, as amended, California Labor Code
18 sections 2698, *et seq.* (“PAGA”), of which seventy-five (75%) will be paid to the California
19 Labor and Workforce Development Agency (“LWDA”) and the remaining twenty-five (25%)
20 will remain part of the Net Settlement Amount. (Settlement Agreement, 8:9-9:6.)

21 Plaintiff seeks to certify the following Class for settlement purposes, consisting of
22 approximately eight-hundred and seventy-four (874) Class Members: (Han Decl. ¶ 29.)

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26 ¹ The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for final
27 approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. If Plaintiff’s actual costs
28 exceed \$25,000, Plaintiff will only seek reimbursement in the amount of \$25,000. If Plaintiff’s actual costs are
 lower than \$25,000, Plaintiff will seek reimbursement of his actual litigation costs and the difference shall become
 part of the Net Settlement Amount and be available for distribution to Participating Class Members.

1 All persons who are or have been employed by Defendant in the State of
2 California as hourly workers from August 4, 2016 through April 30, 2021.
(individually referred to as “Class Member”).

3 Class Members who timely submit valid Claim Forms to Simpluris will be issued a share
4 of the Net Settlement Amount on a *pro rata* basis based upon the number of workweeks they
5 have worked as hourly-paid employees during the Class Period. Workweeks will be calculated
6 by Simpluris for each Class Member by dividing the total days employed as a Class Member
7 during the Class Period by seven. (Settlement Agreement, 9:11-12.) The Net Settlement Amount
8 refers to the Maximum Settlement Amount, less Court-approved attorneys’ fees and litigation
9 costs, Enhancement Award, Settlement Administration Expenses, employer’s share of payroll
10 taxes and the PAGA civil penalty payment to the LWDA. (Settlement Agreement, 8:9-9:6.) This
11 proposed Settlement Agreement resolves all of Plaintiff’s and the Class Members’ Released
12 Claims against Defendant.

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 detailed knowledge of the issues
15 present in this action. The length and risks of trial and perils of litigation that affect the value of
16 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 Antech Diagnostics, Inc. is a provider of diagnostic services and imaging
22 solutions to the veterinary industry, namely, by using scientific inquiry and data analysis to
23 develop new platforms to address the health conditions of veterinary patients. (Declaration of
24 Douglas Han (“Han Decl.”) ¶ 8.) This case involves all current and former hourly-paid or non-
25 exempt employees employed by Defendant in the State of California at any time during the
26 period from August 4, 2016 to the date the Court issues an order granting preliminary approval
27 of the Settlement or April 30, 2021. (*Ibid.*)

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1 On August 4, 2020, Plaintiff filed a representative PAGA complaint in the Superior Court
2 for the County of Sacramento on behalf of himself and on behalf of aggrieved employees under
3 the Private Attorneys General Act of 2004. (Han Decl. ¶ 9.) The complaint alleged a single cause
4 of action under the California Labor Code section 2698 *et seq.* for civil penalties predicated on
5 claims for unpaid overtime, failure to provide meal periods and rest breaks (and correspondingly,
6 unpaid meal period and rest period premiums), unpaid minimum wages, untimely payment of
7 final wages, non-compliant wage statements, and unreimbursed business expenses. (*Ibid.*)

8 The Parties agreed to attend a mediation of Plaintiff's claims on January 27, 2021. (Han
9 Decl. ¶ 10.) At the conclusion of the mediation, the Parties were able to reach an agreement as a
10 result of arms-length negotiations with mediator David A. Rotman, Esq. (*Ibid.*) Upon the
11 conclusion of the mediation, on the same day, January 27, 2021, the parties executed a
12 confidential memorandum of understanding finalizing the terms of the Settlement. (*Ibid.*)

13 As part of the settlement of this Action, the Parties agreed that Plaintiff would file a First
14 Amended Complaint, asserting the individual and class action claims on behalf of himself and on
15 behalf of all current and former hourly-paid or non-exempt employees who worked for Antech
16 for the Labor Code violations that underlie Plaintiff's representative action under PAGA. (Han
17 Decl. ¶ 11.) Plaintiff filed his First Amended Complaint in the Superior Court for the County of
18 Sacramento on March 2, 2021. (*Ibid.*)

19 Defendant denies the allegations of the class action in their entirety, denies any liability
20 or wrongdoing of any kind associated with the claims alleged in this action, and further denies
21 that, for any purpose other than settling this action, this matter is appropriate for class treatment.
22 (Han Decl. ¶ 12.) Defendant further contends that it has complied at all times with all applicable
23 California laws, the California Labor Code, the applicable California Wage Order(s), and the
24 Unfair Competition Law. Defendant finally contends that, if this matter were to be litigated
25 further, it would have strong defenses to class certification and on the merits. (*Ibid.*)

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III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed the original complaint, Plaintiff engaged in discovery. On September 1, 2020, Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production on Defendant. Defendant did not respond to these discovery requests, given that the parties agreed on proceeding with early mediation. (Han Decl. ¶ 13.) On October 9, 2020, Plaintiff sent Defendant correspondence informally requesting class-wide data needed to prepare for the mediation, upon which the parties began to informally meet and confer on discovery. (*Ibid.*)

As the result of discovery conducted by Plaintiff, Defendant produced a large volume of documents including employee handbooks, meal and rest period policies, Plaintiff's personnel files, payroll records, and time records. (Han Decl. ¶ 14.)

Plaintiff also was in constant communication with numerous current and former non-exempt employees of Defendant. (Han Decl. ¶ 15.) These employees apprised Plaintiff of their experiences working for Defendant. (*Ibid.*)

Based upon Defendant's discovery responses, informal exchange of information, and document production, as well as interviews Plaintiff's counsel had with non-exempt employees, Plaintiff contends—and Defendant denies—that he and the class members did not receive all regular and overtime wages to which they were entitled to. (Han Decl. ¶ 16.) Moreover, Plaintiff contends that he and the class members were rarely afforded timely, uninterrupted meal and rest breaks while working, and in doing so, Defendant did not maintain a code-compliant meal break or rest break policy during the class period. (*Ibid.*) Plaintiff contends that Defendant failed to pay premium wage compensation owed to non-exempt employees for the non-compliant meal and rest periods. (*Ibid.*) Plaintiff also contends that Defendant failed to properly compensate employees for off-the-clock pre- and post-shift work at the applicable minimum, regular, or overtime rate. (*Ibid.*)

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1 In addition, Plaintiff contends—and Defendant denies—that Defendant failed to timely
2 pay wages and failed to provide employees with accurate wage statements. (Han Decl. ¶ 17.)
3 Plaintiff also contends that Defendant failed to pay minimum wages to Plaintiff and other class
4 members. (*Ibid.*) Lastly, Plaintiff contends—and Defendant denies—that Defendant failed to
5 reimburse employees for all necessary expenditures incurred by employees. (*Ibid.*)

6 Defendant denies Plaintiff’s contentions in their entirety. (Han Decl. ¶ 18.) Among other
7 things, Defendant denies Plaintiff’s overtime contentions, contending that employees were
8 properly paid for all hours worked, received all regular and overtime wages to which Plaintiff
9 and other employees were entitled to, and provided them with complaint meal and rest breaks in
10 accordance with California and federal law. (*Ibid.*) In addition, Defendant contends that
11 Plaintiff’s claims are not suitable for class, collective, or representative treatment due to the
12 arbitration agreements with class action waivers. (*Ibid.*) Defendant further contends that it timely
13 paid wages and provided accurate wage statements (*Ibid.*)

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

16 **b. The Parties Attended Mediations Which Led to the Joint Stipulation**

17 The Parties agreed to go to mediation with experienced wage and hour mediator, David
18 A. Rotman, Esq. (Han Decl. ¶ 19.) The mediation took place on January 27, 2021. (*Ibid.*) During
19 the mediation, the parties discussed the risks of continued litigation and the merits of the claims
20 versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the parties were able
21 to reach an agreement on settlement, the terms of which were memorialized in a “Joint
22 Stipulation of Class Action Settlement and Release” (referred to herein as the “Settlement
23 Agreement”) that the Parties seek preliminary approval of in the instant motion. (*Id.*; Ex. 1.)
24 Attached to Declaration of Douglas Han as **EXHIBIT 2** is a true and correct copy of the
25 Settlement Agreement.

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

2 **i. Deductions from the Settlement**

3 Under the terms of the Settlement Agreement, Defendant will pay a Maximum
4 Settlement Amount (“MSA”) of up to \$850,000 to all Class Members on a claims-made basis.
5 (Han Decl. ¶ 20.) Subject to Court approval, the Net Settlement Amount (“NSA”), which is the
6 maximum amount that will be made available to pay the Class Members, will be calculated by
7 deducting the following amounts from the MSA: (a) attorneys’ fees of up to \$323,000 (38% of
8 the MSA) to compensate Class Counsel for work already performed and all work remaining to
9 be performed in documenting the settlement, administrating the settlement and securing Court
10 approval; (b) actual litigation costs of up to \$25,000 for serving as Class Counsel;² (c) an
11 Enhancement Award to the Plaintiff in a sum not to exceed \$10,000 for his efforts and service
12 leading to this Settlement; (d) an allocation of Settlement Administration Expenses to Simpluris,
13 estimated at approximately \$20,000; and (e) the PAGA civil penalty payment to the LWDA of
14 \$37,500 (which is 75% of \$50,000 allocated to Plaintiff’s claims under PAGA). (*Ibid.*)

15 **ii. Calculation of the Class Settlement Awards to Class Members**

16 The Net Settlement Amount will be divided and distributed *pro rata* to Class Members
17 based upon the number of Workweeks worked during the Class Period (“Individual Settlement
18 Award.”). (Han Decl. ¶ 21.) To be valid, a Claim Form must be duly signed, dated, and
19 postmarked by the Class Member to Simpluris no later than sixty (60) calendar days after
20 Simpluris mails the Class Notice and the Claim Form, together with a postage-paid return
21 envelope to the Class Members. (*Ibid.*)

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27 ² The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for final
28 approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. If Plaintiff’s actual costs
exceed \$25,000, Plaintiff will only seek reimbursement in the amount of \$25,000. If Plaintiff’s actual costs are lower
than \$25,000, Plaintiff will seek reimbursement of his actual litigation costs and the difference shall become part of
the Net Settlement Amount and be available for distribution to Participating Class Members.

1 The gross amount of each Class Member's Individual Settlement Award will be
2 calculated as follows and as described in Paragraph 14(i) of the Settlement Agreement:

3 (a) **"Class Workweeks:"** The Settlement Administrator will calculate the total number
4 of Workweeks for each Class Member by dividing the total days employed as a Class
5 Member during the Class Period by seven. (*Ibid.*)

6 (b) **"Individual Settlement Award:"** The Settlement Administrator will use the
7 following formula: (Net Settlement Amount / Class Workweeks) x Individual
8 Workweeks for each individual Class Member. (*Ibid.*)

9 Defendant will pay no less than fifty percent (50%) of the Net Settlement Amount to
10 Class Members who submit timely and valid Claim Forms. (Han Decl. ¶ 22.) In the event that
11 fewer than fifty percent (50%) of the workweeks are claimed by participating Class Members
12 who submit timely and valid Claim Forms, the amount claimed shall be grossed up to fifty
13 percent (50%) of the Net Settlement Amount on a pro rata basis. (*Ibid.*)

14 The Individual Settlement Award for each Class Members will be allocated as follows:
15 twenty percent (20%) will be allocated to alleged unpaid wages for which IRS Forms W-2 will
16 issue; forty percent (40%) will be allocated to alleged unpaid penalties for which IRS Forms
17 1099-MISC will issue; and forty percent (40%) will be allocated to alleged unpaid interest for
18 which IRS Forms 1099-MISC will issue. (Han Decl. ¶ 23.) The employer's share of payroll taxes
19 on the wage-portion of each Individual Settlement Award will be included in the Maximum
20 Settlement Amount. Individual Settlement Awards will be subject to the employee's share of
21 employment taxes and withholdings with respect to the wage portion (*Ibid.*)

22 Class Members may exclude themselves from the Settlement by submitting a timely
23 written request to Simpluris. The written request ("Request for Exclusion") should state that
24 he/she has received the Settlement Agreement, decided not to participate in the Settlement, and
25 words to the effect that he/she desires to be excluded from the Settlement. (Han Decl. ¶ 24.) The
26 Request for Exclusion must also state the individual's (a) full name; (b) address; (c) date of birth;
27 and (d) generally the dates he/she was working as a non-exempt employee for Defendant in
28 California. (*Ibid.*) The Request for Exclusion must also be signed, dated, and mailed by First

1 Class U.S. Mail, or the equivalent, to Simpluris. (*Ibid.*) All Requests for Exclusion must be
2 postmarked and mailed to Simpluris no later than sixty (60) calendar days after Simpluris mails
3 the Class Notice to the Class Members. Any individual who submits a Request for Exclusion will
4 not be allowed to object to the terms of the Settlement. (*Ibid.*)

5 If any Class Member wishes to object to any aspect of the proposed Settlement, he/she
6 may do so by filing a written objection and a notice of intention to appear at the Final Approval
7 hearing with Simpluris. (Han Decl. ¶ 25.) Any written objection must state each specific reason
8 in support of the objection and any legal support for each objection. (*Ibid.*) The written objection
9 must include: (a) the objector's full name, address, telephone number and the last four digits of
10 the objector's Social Security Number; and (b) the dates he/she worked as a non-exempt
11 employee in California with Defendant. (*Ibid.*) To be valid and effective, any objections to
12 approval of the Settlement must be delivered to Simpluris, Class Counsel, and counsel for
13 Defendant no later than sixty (60) calendar days after Simpluris mails the Class Notice to the
14 Class Members. (*Ibid.*)

15 Within thirty (30) calendar days after the Effective Date (as defined in paragraph 14 of
16 the Settlement Agreement), Simpluris will cause the Settlement Awards to be mailed to the Class
17 Members. (Han Decl. ¶ 26.)

18 The Individual Settlement Award checks will remain negotiable for one-hundred and
19 eighty (180) calendar days from which the date on which they were issued to the Class Members.
20 (Han Decl. ¶ 27.) Any checks that remain uncashed after 180 days of issuance will be sent to the
21 State of California State Controller's Unclaimed Wages Fund. (*Ibid.*)

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1 **iii. Release of Claims**

2 In exchange for a Class Settlement Payment, Participating Class Members release the
3 Released Parties from the Released Class Claims. (Han Decl. ¶ 28.) Released Class Claims
4 means all claims, actions, demands, causes of action, suits obligations, damages, restitution,
5 penalties, rights, liabilities, or legal theories of relief, under state or federal wage and hour law
6 arising out of or related to claims that were alleged or could have been alleged based on the
7 factual allegations in the Actions, including but not limited to all of the following: (1) all claims
8 for alleged failure to pay minimum wages, straight time, overtime, or double time wages, failure
9 to pay wages for off-the-clock work, and failure to pay other wages of any kind during
10 employment under Labor Code sections 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and
11 Industrial Welfare Commission (“IWC”) Order No. 5-2001; (2) failure to provide meal periods
12 or pay meal period premiums under Labor Code sections 512, 226.7, and IWC Wage Order No.
13 5-2001; (3) failure to provide rest periods or pay rest period premiums under Labor Code section
14 226.7, and IWC Wage Order No. 5-2001; (4) failure to provide accurate and itemized wage
15 statements under Labor Code section 226; (5) untimely wages and waiting time penalties under
16 Labor Code sections 201, 202, 203, 204 and 210; (6) unreimbursed business expenses under
17 Labor Code sections 2800 and 2802; (7) violation of Business & Professions Code section 17200
18 *et seq.* including, but not limited to, all claims for unfair, unlawful and harmful conduct to class
19 members, the general public and Defendant’s competitors and claims of unlawfully gaining an
20 unfair advantage over other businesses; (8) PAGA claims for civil penalties due to any Labor
21 Code violations by Defendant arising out of or related to events alleged in the complaint
22 including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7,
23 245, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800 and 2802,
24 and IWC Wage Order No. 5-2001; (9) penalties of any nature; (10) interest; (11) attorneys’ fees
25 and costs; (12) and any other claims arising out of or related to the respective Complaints filed in
26 the Action during the Class Period (collectively the “Released Claims”). (*Ibid.*)

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1 The release will be as to the Released Parties, which shall include: (i) Defendant, Antech
2 Diagnostics, Inc.; (ii) Vicar Operating, Inc.; (iii) VCA Inc.; (iv) Sound Technologies, Inc.; (v)
3 each of Defendant’s respective past, present and future parents, subsidiaries and affiliates
4 including, without limitation, any corporation, limited liability company, partnership, trust,
5 foundation and non-profit entity which controls, is controlled by, or is under common control
6 with Defendant Antech Diagnostics, Inc., Vicar Operating, Inc., VCA Inc., and Sound
7 Technologies, Inc.; (vi) the past, present and future shareholders, directors, officers, agents,
8 employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants,
9 representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors
10 and assigns of any of the foregoing; and (vii) any individual or entity which could be jointly
11 liable with any of the foregoing, including, but not limited to, temporary agencies (collectively
12 “Released Parties”), from all claims based on the factual allegations made in the Complaint and
13 which could have been made based on the factual allegations in the Complaint for the period
14 August 4, 2016 through April 30, 2021 or preliminary approval of the Settlement, whichever
15 date is earlier. (Han Decl. ¶ 29.)

16 **iv. Range of Individual Settlement Awards That Will Likely Be Issued to**
17 **Class Members**

18 Class Members who submit claims to the Settlement Administrator (Simpluris) will be
19 issued payments based on the total number of Individual Workweeks they worked as a member
20 of the Class during the Class Period (“Class Workweeks”). (Han Decl. ¶ 30.) As discussed *supra*,
21 the Individual Settlement Awards will be calculated by dividing the Net Settlement Amount by
22 the Class Workweeks worked by the entire Class Period, and multiplying that sum by the
23 Individual Workweeks for each individual Class Member resulting in the estimated Individual
24 Settlement Award. (*Ibid.*)

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For example, some ranges of Individual Settlement Awards to Class Members, based on various potential lengths of employment during the Class Period, are listed below:

Approximately 1 year: $((\$434,500 / 81,478) \times 52) = \277.30^3

Approximately 2 years: $((\$434,500 / 81,478) \times 104) = \554.60

Approximately 3 years: $((\$434,500 / 81,478) \times 156) = \831.91

Approximately 4 years: $((\$434,500 / 81,478) \times 208) = \$1,109.21^4$ (*Ibid.*)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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

...

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

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.)

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³ The number of Workweeks used for these calculations is based on the dates of employment extrapolated to the anticipated preliminary approval date.

⁴ These calculations assume a 100% claims rate.

⁵ 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 The approval process of any class action settlement is done in two steps: (1) an earlier
2 conditional review by the court; and (2) a later detailed review after the period during which
3 notice is distributed to class members for their comment or objections. Conte & Newberg,
4 *Newberg on Class Actions* (4th ed. 2002) § 11.24. This procedure, which is commonly utilized
5 by both federal and state courts, assures class members of the protection of procedural due
6 process safeguards and enables a court to fulfill its role as the guardian of the interests of the
7 settlement class.

8 Accordingly, preliminary approval does not require a court to make a final determination
9 that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the
10 final approval stage, after notice of the settlement has been given to the class members, and they
11 have had an opportunity to voice their views of the settlement or to exclude themselves from the
12 settlement. See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court also
13 need not reach any ultimate conclusions on the issues of fact and law which underlie the merits
14 of the dispute, and need not engage in a trial on the merits. (See *City of Detroit v. Grinnell*
15 *Corporation* (2d Cir. 1974) 495 F. 2d 448, 456; *Officers for Justice v. Civil Service Commission*
16 *of City and County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625.) Neither formal notice
17 nor a hearing is required for the trial court to grant provisional class certification and preliminary
18 approval; the court may grant such relief upon an informal application by the settling parties and
19 may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*,
20 at § 11.25.

21 **b. Preliminary Approval of the Proposed Settlement is Appropriate**

22 To grant preliminary approval of a class action settlement, the trial court must
23 preliminarily determine whether the settlement is fundamentally fair, adequate, and reasonable.
24 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800. The court has broad powers to
25 determine whether a proposed settlement is fair under the circumstances of the case. *Id.* at p.
26 1801. To make this fairness determination, courts must consider several relevant factors,
27 including “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of
28 further litigation, the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
2 experience and views of counsel [.]” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors
3 is not exclusive and the court is free to engage in a balancing and weighing of the factors
4 depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91
5 Cal.App.4th 224, 245. Furthermore, courts give “proper deference to the private consensual
6 decision of the parties[.]” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027
7 (citation omitted).

8 The burden is on the proponent of the settlement to show that it is fair and reasonable.
9 *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of fairness exists where: (1)
10 the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
11 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
12 litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at p.
13 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
14 1151.

15 **c. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

16 The Settlement was reached as a result of arms-length negotiations. (Han Decl. ¶ 31)
17 Though cordial and professional, the settlement negotiations have been, at all times, adversarial
18 and non-collusive in nature. (*Ibid.*) At both mediations, Counsel for the Parties conducted
19 extensive arm’s length settlement negotiations until the parties could not reach settlement.
20 However, these negotiations led to an agreement that was later acceptable by the Parties. (*Ibid.*)
21 The terms of the Settlement are memorialized in the Settlement Agreement. (*Ibid.*; Ex. 1).

22 Plaintiff believes in the merits of his case, but also recognize the inherent risks of
23 litigation and understands the benefit of the Class receiving settlement funds immediately, as
24 opposed to risking continued litigation, the merits of the case before and after trial, damages
25 awarded, and an appeal that could take years to litigate. (Han Decl. ¶ 32.)

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1 **d. The Settlement Agreement is Fair, Reasonable, and Adequate**

2 In deciding whether to approve a proposed class action settlement under Code of Civil
3 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and
4 reasonable.” *Dunk*, 48 Cal.App.4th at 1801. A proposed class action settlement is presumed fair
5 under the following circumstances: (1) the parties reached settlement after arms-length
6 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
7 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
8 is small. (*Id.* at p. 1802.)

9 Here, a Maximum Settlement Amount of up to \$850,000 represents a fair, adequate, and
10 reasonable resolution of the case. (Han Decl. ¶ 33.) The proposed Settlement was calculated
11 using information and data uncovered through litigation, formal and informal discovery, case
12 investigation, and the informal exchange of information in the context of mediation. (*Ibid.*) The
13 proposed Settlement takes into account the potential risks and rewards inherent in any case and,
14 in particular, with this case. Considering all of the facts in this case, the amount of the proposed
15 Settlement represents a substantial global recovery for all Class Members. (*Ibid.*)

16 Assuming that all of the requested payments, fees, and costs are approved and paid in the
17 full amounts requested, the Net Settlement Amount is currently estimated to be approximately
18 \$434,500. (Han Decl. ¶ 34.) No less than fifty percent (50%) of this sum will be paid out to the
19 Class Members. (*Ibid.*) Each Individual Settlement Award will be calculated based upon the
20 number of Workweeks attributable to the Class Member during the Class Period. There is no
21 reason to doubt the fairness of the proposed plan of allocation of the Settlement funds for
22 purposes of preliminary approval. Even at the final approval stage, “[a]n allocation formula need
23 only have a reasonable, rational basis [to warrant approval], particularly if recommended by
24 experienced and competent counsel.” *In re American Bank note Holographics, Inc., Securities*
25 *Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. (*Ibid.*)

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1 In light of the above considerations, Class Counsel believe that the proposed Settlement
2 as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.
3 (Han Decl. ¶ 35.) Although the recommendations of Class Counsel are not conclusive, the Court
4 can properly take the recommendations into account, particularly if Class Counsel appear to be
5 competent, have experience with this type of litigation, and significant discovery and
6 investigation have been completed. *Newberg* §11.47. Accordingly, the Court should grant
7 preliminary approval of the proposed Settlement.

8 **e. Value of Settlement**

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, Plaintiffs
10 have conducted a significant amount of discovery and investigation in order to evaluate the
11 potential value and merit of all of the claims. (Han Decl. ¶ 36.) The discovery and information
12 obtained in this case allowed Plaintiff to develop a damages model and complete evaluation of
13 the defenses that Defendant has asserted. (*Ibid.*). As outlined in the Declaration of Douglas Han,
14 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
15 to entering into the proposed Settlement. (*Ibid.*)

16 In addition to being able to discover the strengths and vulnerabilities associated with
17 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
18 time and pay records and information regarding the estimated number of workweeks worked by
19 putative class members and the hourly rates for class members. (Han Decl. ¶ 37.) Plaintiff's
20 expert extrapolated that, as of January 27, 2021, the Class Period includes approximately 81,478
21 workweeks. (*Ibid.*) Plaintiff determined the average hourly rate for class members was \$19.07.
22 (*Ibid.*)

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1 Specifically, Plaintiff claims—and Defendant denies—that Defendant’s employees are
2 not provided with compliant meal periods and rest breaks. (Han Decl. ¶ 38.) Plaintiff contends
3 that Defendant has not maintained any code-compliant (or written) meal break or rest break
4 policy during the entire class period. (*Ibid.*) Rather, Defendant maintained an informal policy of
5 failing to provide employees with meal and rest breaks during the entire class period. (*Ibid.*)

6 Regarding rest breaks, Defendant has not paid a single rest premium during the entire
7 class period, a claim which Defendant denies. (Han Decl. ¶ 39.) Moreover, Plaintiff alleges that
8 Defendant never provided third rest breaks for putative class members who worked over ten
9 hours in a workday. (*Ibid.*) Additionally, due to heavy workloads, pressure to work efficiently,
10 and time sensitive deadlines, Defendant’s meal and rest break practices forced employees to
11 forego, interrupt, or postpone taking their meal and rest breaks. (*Ibid.*)

12 Utilizing the sampling time and pay data records for 561 Class Members, Plaintiff was
13 able to establish that 12.2% of all shifts had at least one unique meal break violation. (Han Decl.
14 ¶ 40.) Importantly, 64.1% of shifts between 10 and 12 hours did not have a recorded second meal
15 break, and 74.4% of shifts between 5 and 6 hours did not have a recorded first meal break. (*Ibid.*)
16 Accordingly, extrapolated to the total number of workweeks (81,478), using Plaintiff’s
17 calculated average of 4.8 shifts per workweek, Plaintiff calculates Defendant’s maximum
18 potential exposure for the meal period claim to be approximately \$909,896.77.⁶ (*Ibid.*)

19 Moreover, 35.8% of all shifts had at least one unique rest break violation. (Han Decl. ¶
20 41.) Thus, Plaintiff calculates Defendant’s maximum potential exposure for the rest period claim
21 to be approximately \$2,670,024.93.⁷ (*Ibid.*)

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27 ⁶**Maximum Potential Exposure for Meal Period Claim** = 81,478 workweeks x 4.8 shifts/workweek x .122
violations/shift x \$19.07/violation = **\$909,896.77**

28 ⁷**Maximum Potential Exposure for Rest Period Claim** = 81,478 workweeks x 4.8 shifts/workweek x .358
violations/shift x \$19.07/violation = **\$2,670,024.93**

1 Additionally, Plaintiff claims—and Defendant denies—that Defendant failed to factor
2 non-discretionary bonuses in employees’ regular rate of pay for purposes of overtime. (Han
3 Decl. ¶ 42.) Specifically, Defendant failed to factor in non-discretionary bonuses and incentives
4 such as the Annual Bonus [USA], BONUS, Bonus [USA], Commission [USA], CORP BONUS,
5 REG BONUS, Sales Commission [USA] and into the regular rate. (*Ibid.*) For the 172 employees
6 and 14,218 workweeks analyzed, Plaintiff calculated that Defendant failed to pay \$5,793 to
7 employees under this theory of liability. (*Ibid.*) Thus, extrapolated to a Class Period of 81,478
8 workweeks, Plaintiff calculates Defendant’s maximum potential exposure for the unpaid
9 overtime claim to be approximately \$33,197.50.⁸ (*Ibid.*)

10 Further, Plaintiff claims—and Defendant denies—that Defendant’s failure to factor non-
11 discretionary bonuses into employees’ regular rate for purposes of overtime, and failure to pay
12 meal break and rest break premiums resulted in Defendant issuing inaccurate wage statements in
13 violation of *California Labor Code* section 226(a). (Han Decl. ¶ 43.) Plaintiff calculates
14 Defendant’s maximum potential exposure as to this claim to be approximately \$2,244,000.00⁹
15 (based on 561 employees within the one-year statute of limitations). (*Ibid.*)

16 If Plaintiff can prove Defendant’s failure to pay all wages owed, Plaintiff is then entitled
17 to waiting time penalties in the amount of 30 days’ worth of wages. (Han Decl. ¶ 44.) Plaintiff
18 calculates Defendant’s maximum potential exposure as to this claim to be approximately
19 \$1,807,836.00¹⁰ (based on 395 terminated employees within the three-year statute of limitations).
20 (*Ibid.*)

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26 ⁸**Maximum Potential Exposure for Unpaid Overtime (Regular Rate) Claim** = (81,478 workweeks/14,218
workweeks) x \$5,793 = **\$33,197.50**

27 ⁹ **Maximum Potential Exposure for Wage Statement Violations** = (561 eligible Class Members x \$4,000 (28.8
avg. pay periods) = **\$2,244,000.00**

28 ¹⁰ **Maximum Potential Exposure for Waiting Time Penalties** = (8 hours x \$19.07/average hourly rate x
approximately 395 former non-exempt employees x 30 days) = **\$1,807,836.00**

1 Plaintiff also claims – and Defendant denies– that employees were regularly required to
2 perform job duties off-the-clock pre- and post-shift, for which they were not compensated at the
3 applicable minimum, regular, or overtime rate. Plaintiff estimates that on average, employees
4 were regularly spending thirty (30) minutes to one hour past the end of their scheduled shifts to
5 complete their daily tasks. (Han Decl. ¶ 45.) In addition, employees were often required to
6 perform other small tasks, such as cleaning up their workstations and taking out the trash, which
7 employees spent about five to ten (5-10) minutes doing so. In taking the most conservative
8 potential time of thirty minutes for purposes of this analysis, Plaintiff calculates Defendant's
9 maximum potential exposure for Plaintiff's off-the-clock claim to be approximately
10 \$776,892.73.¹¹ (*Ibid.*)

11 Plaintiff claims – and Defendant denies – that employees were required to use their own
12 personal vehicles to drop off collected samples for shipping when they were not able to complete
13 their work and have their samples prepared in time for pickup. Plaintiff alleges that Defendant
14 was required to reimburse employees for this expense, under Labor Code § 2802, but failed to do
15 so. (Han Decl., ¶ 46.) Defendant attributed no value to this claim. (*Ibid.*) However, Plaintiff
16 argued that Defendant had to reimburse for the mileage. (*Ibid.*) Based upon investigation with
17 class members, Plaintiff estimates that on average of two to three (2-3) times per month,
18 employees would drive approximately three (3) miles to the nearest FedEx facility and back. For
19 the 172 employees and 14,218 workweeks analyzed, in using an estimate of about 18
20 unreimbursed miles a month, Plaintiff calculates that Defendant failed to pay \$1780.20¹² under
21 this theory of liability. (*Ibid.*) Thus, extrapolated to a Class Period of 81,478 workweeks,
22 Plaintiff calculates Defendant's maximum potential exposure for the business reimbursements
23 claim to be approximately \$10,201.66¹³. (*Ibid.*)

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26 ¹¹ **Maximum Potential Exposure for Off-the-Clock Claim** = 81,478 workweeks x (.5 x \$19.07/average hourly
27 rate) = **\$776,892.73**

¹² 18 x .575 (IRS rate) x 172 employees = \$1,780.20.

28 ¹³ **Maximum Potential Exposure for Reimbursement of Business Expenses** = (81,478 workweeks/14,218
workweeks) x \$1,780.20 = \$10,201.66.

1 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
2 include but are not limited to Labor Code sections 201-204, 226(a), 226.7, 246, 510, 512(a),
3 1174, 1194, 1197, 1198, 2800, and 2802. (Han Decl. ¶ 47.) Defendant asserted that, regardless of
4 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
5 and discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against
6 the underlying claims, it had a strong argument that it would be unjust to award maximum
7 PAGA penalties given the current unsettled state of law. (*Ibid.*)

8 Class Counsel calculated penalties under this cause of action by multiplying the number
9 of active Class Members (because of the shortened statutory period for this claim), by the civil
10 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
11 section 2699.5 that were applicable in this case. (Han Decl. ¶ 48.) Class Counsel then applied
12 discounts in light of the countervailing arguments concerning the other causes of action, as well
13 as the Court's power to award "a lesser amount than the maximum civil liability." (*Ibid.*) Lab.
14 Code § 2699(e)(2).

15 Given the state of the law and the range of PAGA penalties requested and actually
16 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
17 for PAGA penalties. (Han Decl. ¶ 49.) However, if PAGA penalties are granted on any one of
18 the violations alleged in Plaintiff's operative complaint, the total penalties exposure could be
19 approximately \$0 to \$16,169,000 (874 employees x [(1 initial violation x \$100) + (92 subsequent
20 violations x \$200)]). (*Ibid.*) Plaintiff calculated Defendant's PAGA exposure using a 100%
21 violation rate based on the average number of pay periods (93.2) during the one-year statutory
22 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
23 PAGA theories of recovery (8) gives potential civil penalties of \$0 to \$129,352,000. (*Ibid.*)

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1 Although Plaintiff argued he could obtain over \$40,000,000 for PAGA penalties, it
2 seemed highly unlikely that the Court would award such a large amount. PAGA's plain
3 language indicates that an employer will be assessed a lower, "initial" penalty for each initial pay
4 period in which a violation occurs, and a higher, "subsequent" penalty for each subsequent pay
5 period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.*
6 (2008) 163 Cal.App.4th 1157; however, the court held, "Until the employer has been notified
7 that it is violating a Labor Code provision (whether or not the commissioner or court chooses to
8 impose penalties), the employer cannot be presumed to be aware that its continuing
9 underpayment of employees is a 'violation' subject to penalties [and will be assessed only the
10 'initial' violation rate]." (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could be
11 interpreted as indicating that until the Labor Commissioner or a court informs an employer that it
12 has violated the Labor Code, the employer can only be assessed the "initial" violation rate.
13 Under this interpretation, the maximum individual civil penalty for one statutory violation is
14 \$87,400 (874 employees x 100 (initial violation)), and for all possible Labor Code violations is
15 \$699,200.

16 Furthermore, PAGA's statutory language is unclear as to whether PAGA penalties may
17 be "stacked" – that is, whether multiple civil penalties can be recovered in the same pay period
18 for different Labor Code violations. On the one hand, Labor Code section 2699, subdivision (f)
19 establishes "a civil penalty for a violation" (emphasis added), implying a separate civil penalty
20 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
21 (g)(1), which states that "an aggrieved employee may recover the civil penalty described in
22 subdivision (f)...on behalf of himself or herself and other current or former employees against
23 whom one or more of the alleged violations was committed" (emphasis added). However,
24 Defendant contended that the Ninth Circuit's opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*
25 (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057,
26 which, preclude the aggregation of PAGA penalties for purposes of removal, prevents "stacking"
27 of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties
28 would be limited to \$87,400 on the low end and \$699,200 on the high end based on eight (8)

1 major theories of recovery. (Han Decl. ¶ 49-52).

2 To the extent Defendant's exposure remains in the millions of dollars, the civil penalties
3 would certainly be "unjust, arbitrary and oppressive, or confiscatory." In fact, many courts have
4 taken liberties to dramatically reduce the civil penalties. (*See e.g., Vicerol v. Mistras Grp., Inc.*
5 (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* (preliminarily approving class action
6 settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims' full
7 potential value, where "Plaintiffs face[d] a substantial risk of recovering nothing on either class
8 or PAGA claims"); *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
9 (preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
10 the PAGA claims' potential value, where the defendant's obligations were "genuinely unclear"
11 and there was no evidence the defendant acted deliberately or negligently failed to learn about its
12 obligations).) (Han Decl. ¶ 50.)

13 Under a more conservative approach, Named Plaintiff's counsel considered the
14 possibility that the Court could assess only the initial violation rate, bringing the basic PAGA
15 penalty to \$699,200 [874 employees x \$100 x 8 theories of recovery]. (Han Decl. ¶ 51.)

16 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
17 Many of the causes of action brought were duplicative of the statutory claims such as violations
18 of California Labor Code §§ 226(e), 226.7, 510, 512(a), 1194, 1198 and 2802. (Han Decl. ¶ 52.)
19 Of these violations, section 226(e) is a derivative claim. (Han Decl. ¶ 53.) However, employees
20 may have waived meal breaks and rest breaks. (*Ibid.*) Thus, the maximum penalties for each pay
21 period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the
22 maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties,
23 based on a rate of approximately \$3.09 per violation, was reasonable (16,172 Pay Periods in
24 PAGA Date Range x \$3.09 = \$50,000). (*Ibid.*) *See Carrington v. Starbucks Corp.* (2018) 30
25 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000
26 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of
27 \$70,000,000). (*Ibid.*) Where PAGA penalties are negotiated in good faith and "there is no
28 indication that [the] amount was the result of self-interest at the expense of other Class

Members,” such amounts are generally considered reasonable. (*Ibid.*) (*Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *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.”).) Also, negotiations were under the auspices of a well-respected mediator, David A. Rotman, Esq. who regularly mediates wage and hour litigation involving PAGA claims. Plaintiff’s counsel gave deference to an experienced mediator’s proposal which provided approximately \$3.09 per pay period for this claim.

i. 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 \$8,211,593.39. (Han Decl. ¶ 54.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Meal Premiums	\$909,896.77	25%	50%	\$341,211.29
Rest Premiums	\$2,670,024.93	25%	50%	\$1,001,259.35
Unpaid Overtime: Regular Rate	\$33,197.50	25%	50%	\$12,449.06
Wage Statement Penalty	\$2,244,000.00	50%	50%	\$561,000
Off the Clock	\$776,892.00	75%	50%	\$97,111.50
Reimbursement	\$10,201.66	0%	75%	\$2,550.42
Waiting Time Penalty	\$1,807,836.00	50%	25%	\$677,938.50
MAXIMUM TOTAL EXPOSURE	\$8,452,048.86			\$2,693,520.12

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1 Plaintiff applies a 25% certification risk discount for meal period exposure. Because
2 Defendant had a policy to never provide second meal breaks for shifts between 10 and 12 hours,
3 Class Counsel believes that the certification is likely. (*Ibid.*) Class Counsel believes that a 25%
4 discount is justified. (*Ibid.*) Also, there is a 50% risk on the merits because Defendant may
5 submit evidence and testimony that meal breaks were provided, Class Members chose to take
6 non-compliant breaks (late or short), and Class Members waived their meal breaks altogether.
7 (*Ibid.*)

8 Plaintiff applies a 25% certification risk for rest period claims because 35.8% of all shifts
9 had a rest period violation. (Han Decl. ¶ 55.) Moreover, Plaintiff applies a 50% merits risk
10 because Defendant may submit evidence that rest breaks were provided and that Class members
11 waived their rest breaks. (*Ibid.*)

12 For unpaid overtime claims, Plaintiff discounts the potential exposure by only 25% for
13 certification risk. (Han Decl. ¶ 56.) However, if and once certified, there is a 50% merits risk
14 because Defendant will certainly argue that the bonuses are discretionary and not related to the
15 performance of work. (*Ibid.*) Specially, Defendant may argue that under Labor Code § 207(e)(2),
16 its bonuses and incentives were correctly excluded from the regular rate because they qualify as,
17 “other similar payments to an employee which are not made as compensation for his hours of
18 employment.” (*Ibid.*) Thus, a 50% merits risk is justified.

19 Defendant’s potential exposure for inaccurate wage statement claims has a 50%
20 certification risk because it is not certain that all wage statements were inaccurate, and many of
21 the alleged inaccuracies in the wage statements are derivative of claims for missed meal and rest
22 breaks. (Han Decl. ¶ 57.) Moreover, there is a 50% merits risk because Defendant may argue that
23 its failure to provide accurate wage statements was not “knowing and intentional” under Labor
24 Code § 226. (*Ibid.*) Defendant may also argue that meal and rest premium payments are not
25 wages, so failure to make these payments to employees does not constitute a violation under
26 Labor Code § 226. (*Ibid.*) Additionally, Defendant may argue that, as to unpaid overtime claims
27 (failure to factor bonuses into regular rate), Defendant’s wage statements were accurate because
28 the wage statements properly reflected the “applicable hourly rates during the pay period” for

overtime. Labor Code § 226(a). (*Ibid.*) Although the overtime rate may not have been calculated using the regular rate including bonuses, the overtime rate listed on the wage statements was identical to the overtime rate that Defendant used to compensate employees for overtime work. (*Ibid.*) Thus, a 50% merits risk is justified. (*Ibid.*)

Plaintiff also applies a 75% certification risk discount for his off-the-clock claim, because it is not certain that each employee spent 30 minutes on off-the-clock work, let alone performed any off-the-clock work pre-shift or post-shift. (Han Decl. ¶ 58.) There is also a 50% merits risk because Defendant could bring testimonial or documentary evidence showing that a number of employees did not work off-the-clock, or that off-the-clock work could have been less than 30 minutes total. (*Ibid.*)

Finally, Plaintiff applies a 50% certification risk discount for waiting time penalty exposure because it is not certain that Defendant paid all 874 terminated employees in an untimely manner. (Han Decl. ¶ 59.) In fact, Defendant may bring evidence showing that it paid a portion of employees in a timely manner. (*Ibid.*) And there is a 25% merits risk because Defendant may argue that any failure to timely pay employees was not “willful” under Labor Code § 203. (*Ibid.*) As for the reimbursement claim, the certification is fairly certain, justifying no discount. (Han Decl., ¶ 60.) However, not all class members may have even needed to use their personal vehicles, and Plaintiff may not be able to prove up the full extent of damages. Thus, a 75% discount was justified. (*Ibid.*)

Based on this analysis, the realistic recovery for this case is \$2,693,520.12. (Han Decl. ¶ 61.) The Maximum Settlement Amount of \$850,000 is approximately 10.1% of the maximum potential exposure and approximately 31.6% of the realistic exposure at trial, which is in the ballpark of reasonableness. (*Ibid.*)

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1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal.
3 2007).) “The fact that a proposed settlement may only amount to a fraction of the potential
4 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
5 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
6 455, see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,1242 (“[I]t is
7 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
8 that induce consensual settlements. The proposed settlement is not to be judged against a
9 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)

10 **f. Conditional Certification of the Class is Appropriate**

11 For settlement purposes only, the requisites for establishing conditional class certification
12 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
13 of a common or general interest, of many persons, or when the parties are numerous, and it is
14 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
15 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
16 “both [1] an ascertainable class and [2] a well-defined community of interest among class
17 members.” (*Ibid.*)

18 **i. The Proposed Class is Ascertainable and Sufficiently Numerous**

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

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1 This action involves eight-hundred and seventy-four (874) Class Members. (Han Decl. ¶
2 62) This Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
3 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
4 former employees” is sufficiently numerous).) Further, all Class Members can and will be
5 identified by Defendant to the Settlement Administrator through a review of Defendant’s
6 employment records concerning non-exempt or hourly employees who worked for Defendant in
7 the State of California during the Class Period.

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.” (*Ibid.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).)

18 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
19 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
20 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)
21 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor
22 policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

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1 Here, Plaintiff asserts that common issues of fact and law predominate as to each of the
2 claims alleged by Plaintiff. All hourly-paid or non-exempt employees who worked for
3 Defendant during the Class Period were subject to the same or similar employment practices,
4 policies, and procedures. (Han Decl. ¶¶ 16-18.) All of the claims surround Defendant's
5 common practice and scheme of failing to properly account for all hours worked by non-exempt
6 employees and failing to pay them, *inter alia*, for overtime work, and non-compliant meal and
7 rest periods, and associated inaccurate wage statements and waiting time penalties. (*Ibid.*)

8 Specifically, Plaintiff contends 64.1% of shifts between 10 and 12 hours did not have a
9 recorded second meal break, evidence a uniform practice to not provide and authorize proper
10 meal breaks. (Han Decl. ¶ 63.) Additionally, Plaintiff contends 20.9% of shifts greater than 12
11 hours did not have a recorded second meal break. (*Ibid.*) As a result, all of the Class Members,
12 including Plaintiff, were uniformly not paid for all of the hours they worked for Defendant
13 during the Class Period. Based on these facts, Plaintiff concludes that the proposed Class is
14 readily certifiable in this case. Accordingly, the Court should provisionally certify the Class for
15 settlement purposes only.

16 **g. The Settlement Is the Result of Thorough Investigation and Discovery**

17 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
18 before reaching the proposed settlement, and engaged in sufficient investigation, research and
19 discovery to support the settlement. (Han Decl. ¶¶ 13-15.) The proposed settlement was only
20 possible following discovery and evaluation of Defendant's policies and procedures, as well as
21 the data produced for the putative class, which permitted Class Counsel to engage in a
22 comprehensive analysis of liability and potential damages. (Han Decl. ¶ 64.) The case is at the
23 stage where "the Parties certainly have a clear view of the strengths and weaknesses of their
24 cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp.
25 610, 617.)

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1 **h. Request for Attorneys' Fees and Costs Award**

2 Class Counsel have actively investigated and litigated this case for months, and were
3 actively preparing for class certification. (Han Decl. ¶ 65). The ongoing work has been
4 extensive, demanding, and ultimately successful in achieving a substantial settlement resolution.
5 Class Counsel conducted formal and informal investigations and discovery into the facts of the
6 case, including obtaining the class contact list, interviewing Plaintiffs and dozens of other
7 putative class members, and reviewing and analyzing a volume of documents and data produced
8 by Defendant and obtained through other sources. (*Ibid.*). These documents and data included,
9 and were not limited to, personnel records for Plaintiffs and other putative class members
10 (including detailed time and pay records), payroll and pay history data for Class Members, and
11 Defendant's operations and employment policies, procedures, and practices. (*Ibid.*). Class
12 Counsel also prepared multiple forms of written discovery requests and met and conferred with
13 defense counsel on numerous occasions regarding issues relating to the pleadings, discovery,
14 proper jurisdiction and venue, among other issues. (*Ibid.*). Class Counsel will provide evidence
15 as to the time worked, litigation efforts, and further argument at the time of filing their
16 memorandum in connection with the final fairness hearing and in support of their request for
17 Attorneys' Fees and Costs.

18 The proposed Settlement establishes a Maximum Settlement Amount of up to \$850,000.
19 The proposed Settlement provides for Class Counsel to apply to the Court for an award of
20 attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Maximum
21 Settlement Amount (or \$323,000) and litigation costs and expenses in an amount not to exceed
22 \$25,000. (Han Decl. ¶ 66.) The requested attorneys' fee award is commensurate with (1) the
23 risk the Class Counsel took in bringing and litigating this case, (2) the extensive time, effort and
24 expense dedicated to the case, (3) the skill and determination they have shown, (4) the results
25 they have achieved throughout the litigation, (5) the value of the Settlement they have achieved
26 for Class Members, and (6) the other cases they turned down in order to devote their time and
27 efforts to this matter. (*Ibid.*) The proposed Notice of Class Action Settlement will provide the
28 Class Members with information as to the amounts allocated toward Attorneys' Fees and Costs

1 under the Settlement Agreement, and that Class Counsel will apply for Attorneys' Fees and
2 Costs, as provided for by the Settlement. (*Ibid.*)

3 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
4 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
5 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
6 "experienced trial judge is the best judge of the value of professional services rendered in his
7 court[.]" *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that
8 attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for
9 the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47. In *Lealao*, the
10 court held that when an action leads to a recovery that can be "monetized" with a reasonable
11 degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees
12 freely negotiated in the legal marketplace in comparable litigation." *Id.* at p. 50. In cases where
13 class members present claims against a maximum settlement fund and the settlement agreement
14 provides that the defendant agrees to paying the attorneys a percentage of the same, use of the
15 percentage method is appropriate. *Id.* at p. 32.

16 Class Counsel's application for attorneys' fees in light of the facts and circumstances
17 surrounding the case is well within the range of reasonableness. Historically, courts have
18 awarded fees as high as fifty percent (50%) of the settlement fund, depending on the
19 circumstances of the case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D.
20 D.C. 1981) 526 F. Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million
21 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480
22 F. Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees). California
23 Courts routinely approve attorneys' fees "averag[ing] around one-third of the recovery." *Chavez*
24 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
25 contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr.*
26 *Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage
27 and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage
28 and hour). In the present case, Class Counsel have borne all the risks and costs of litigation and

1 will not receive any compensation until recovery is obtained. (Han Decl. ¶ 67.) Considering the
2 amount of the fees requested, the work performed, and the risks incurred, the requested fees and
3 costs are reasonable and should be awarded.

4 **i. Counsel for Both Parties Are Experienced in Similar Litigation**

5 Both Plaintiff's counsel and Defendant's counsel are particularly experienced in wage
6 and hour employment law and class actions. Plaintiff's counsel has significant experience in
7 litigating unpaid wages, non-compliant meal period, and non-compliant rest period, and unfair
8 business practices class actions. (Han Decl. ¶¶ 1-7 Exhibit 1.)

9 Plaintiff's counsel has prosecuted numerous cases on behalf of employees for California
10 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to
11 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
12 defenses. (*Id.*) This experience instructed Plaintiff's counsel on the risks and uncertainties of
13 further litigation and guided their determination to endorse the proposed settlement.¹⁴ (*Id.*)

14 **j. Appointment of Simpluris, Inc. as the Settlement Administrator**

15 The parties have agreed to select Simpluris, Inc. as the Settlement Administrator to
16 administer the proposed Settlement. (Han Decl. ¶ 68.). The Settlement Administrator will mail
17 the mail the Notice and Claim Form to Class Members. The Settlement Administrator will
18 receive, review, and process Claim Forms, any written requests for exclusion or objections to the
19 proposed Settlement (including distribution to counsel for the parties), and any written disputes
20 and supporting documentation as to the validity of the information regarding the number of each
21 Class Member's Workweeks preprinted on the Claim Form. The Settlement Administrator will
22 calculate each Class Member's Individual Settlement Award, withhold applicable employment
23 taxes, prepare and deliver necessary tax documentation, transmit the appropriate payroll taxes
24 and informational and other tax return filings on behalf of Defendant, transmit the payments
25 provided by the Settlement, prepare weekly reports for the parties, and perform any other usual
26 and customary duties for administering a class action settlement.

27 ¹⁴The 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 The Settlement Administration Expenses are set not to exceed \$20,000, which will be
2 paid out of the Maximum Settlement Amount in accordance with the payment schedule provided
3 for by the Settlement Agreement. (Han Decl. ¶ 69.) Considering the number of Class Members,
4 the estimated costs are reasonable. (*Ibid.*) Accordingly, the Court should appoint Simpluris, Inc.
5 as the Settlement Administrator and direct the mailing of the Class Notice and Claim Form to the
6 Class Members in the manner requested and based on the proposed deadlines as set forth in the
7 Settlement Agreement and described in section (IV)(1), *infra*.

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

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

10 If the court has certified the action as a class action, notice of the final approval
11 hearing must be given to class members in the manner specified by the court. The
12 notice must contain an explanation of the proposed settlement and procedures for
13 class members to follow in filing written objections to it and in arranging to
14 appear at the settlement hearing and state any objections to the proposed
15 settlement.

16 The proposed Class Notice provides information on the meaning and nature of the Class;
17 the terms and provisions of the proposed Settlement, including the Class Members' release of
18 claims if they do not opt-out; the relief the proposed Settlement Agreement will provide to the
19 Class Members; and the requests for Plaintiffs' Attorneys' Fees and Costs and Class
20 Representative Enhancement Payment, and approval of the PAGA Payment and Settlement
21 Administration Expenses. (Han Decl. ¶ 70.) The proposed Notice of Class Action Settlement
22 also sets forth the date, time, and place of the Final Approval/Settlement Fairness Hearing; and
23 the procedures and deadlines for submitting a Claim Form, Request for Exclusion, or Notice of
24 Objection to the proposed Settlement Agreement (*See* Han Decl.; Ex. A to Ex 1.).

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1 The proposed Notice of Class Action Settlement will be mailed to the Class Members,
2 together with the proposed Claim Form¹⁵, which will provide pertinent employment information
3 for each Class Member, including the number of his or her Workweeks. The proposed Claim
4 Form will state the estimated gross amount of each Class Member's Individual Settlement
5 Award and provide detailed instructions on how to properly complete the Claim Form and timely
6 submit it to the Settlement Administrator, as well as the procedure and deadline for challenging
7 the number of Workweeks provided on the Claim Form.

8 The proposed notice procedure provided by the proposed Settlement fulfills the
9 requirement of neutrality in class notices. *Newberg*, at § 8.39. "Sufficient information about the
10 case should be provided to enable class members to make an informed decision about their
11 participation." *Manual for Complex Litigation* (4th ed. 2004) § 21.311. The proposed Class
12 Notice summarizes the proceedings to date and the terms and conditions of the proposed
13 Settlement in an informative and coherent manner. The proposed Class Notice recognizes that
14 the Court has not yet granted final approval and apprises the Class Members of how to object to
15 the proposed Settlement. The proposed Notice Packet satisfies all due process requirements and
16 complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2)
17 and 23(e); *Newberg*, at §§ 8.21, 8.39; *Manual*, at §§ 21.311, 21.312; *See Cartt, supra*, 50 Cal.
18 App. 3d at 960. Accordingly, the Court should approve the proposed Class Notice and the
19 proposed Claim Form.

20 **I. Proposed Deadlines for the Notice Process**

21 At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines
22 for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process
23 entails the mailing of the Class Notice and Claim Form to all known and reasonably
24 ascertainable Class Members based on Defendant's payroll records. Within twenty (20) calendar
25 days following preliminary approval of the Settlement, Defendant will provide the Settlement
26 Administrator a spreadsheet of the Class Members' names, last-known home addresses, last-

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¹⁵ Settlement Agreement, Exh. B.

1 known home telephone numbers, Social Security Numbers or Federal Employment Identification
2 Numbers, and workweeks during the Class Period. (Han Decl. ¶ 71.)

3 Within thirty (30) calendar days after the Court’s preliminary approval of this Settlement,
4 Simpluris will mail the Class Notice and Claim Form to Class Members. (Han Decl. ¶ 72.).
5 Notices returned to Simpluris as non-delivered during the period for the filing of claims shall be
6 resent to the forwarding address, if any, on the returned envelope. If there is no forwarding
7 address, Simpluris will do an NCOA check and will skip-trace return mail and re-mail within
8 three (3) business days of receipt using the Class Member’s Social Security Number; this search
9 will be performed only once per Class Member by Simpluris. (*Ibid.*)

10 Class Members will have sixty (60) calendar days from the initial mailing of the Class
11 Notice and Claim Form to submit their Claim Forms, Requests for Exclusion, or Notice of
12 Objection to Simpluris, as measured by the postmark date or facsimile-stamped date. (Han Decl.
13 ¶ 73.).

14 Within thirty (30) calendar days after the Effective Date as defined in Paragraph 14 of the
15 Settlement Agreement, Simpluris will cause the Settlement Awards to be mailed to the Class
16 Members. (Han Decl. ¶ 26.) The Individual Settlement Award checks will remain negotiable for
17 one-hundred and eighty (180) calendar days from which the date on which they were issued to
18 the Class Members. (Han Decl. ¶ 27.) Any checks that remain uncashed after 180 days of
19 issuance will be sent to the State of California State Controller’s Unclaimed Wages Fund. (*Ibid.*)

20 **m. Appointment of the Class Representative and Approval of the Class**
21 **Representative Enhancement Award**

22 A named plaintiff is eligible for payment that reasonably compensates him for
23 undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone*
24 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange*
25 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their
26 efforts in bringing the case); *Stevens v. Safeway, Inc.* (C.D. Cal. Feb. 25, 2008) Case No. 05-
27 01988, 2008 U.S. Dist. LEXIS 17119 (\$20,000 and \$10,000 to two class representatives); *In Re*
28 *Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D. Pa. July 16, 2009) Case No.

1 06-3202, 2009 U.S. Dist. LEXIS 60790 (\$20,000 each to three class representatives.)

2 Plaintiff spent a substantial amount of time and effort in producing relevant documents
3 and employment records and provided the facts and evidence necessary to prove the allegations.
4 (Han Decl. ¶ 74.). Plaintiff was available whenever the Class Counsel needed him and actively
5 tried to obtain information that would benefit the Class. (*Ibid.*). Class Counsel believe that no
6 action would likely have been taken by Class Members individually and that Plaintiff's services
7 on behalf of the Class have advanced California's public policy goal of enforcing wage-and-hour
8 laws. *See Sav-On*, 34 Cal.4th at 340.

9 The requested Class Representative Enhancement Payment is fair and reasonable
10 compensation for Plaintiffs' efforts in bringing the action, assisting counsel with the
11 investigation, litigation, and settlement, regularly conferring with Class Counsel on the status of
12 the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to
13 ensure that its terms are fair and that it provides adequate relief to the proposed Class.
14 Accordingly, it is appropriate and just for the Class Representatives to receive reasonable Class
15 Representative Enhancement Payments, in addition to their shares of the Net Settlement Amount,
16 for their services on behalf of the Class Members. (Han Decl. ¶ 75.)

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1 **V. CONCLUSION**

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

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8 Dated: May 20, 2021

JUSTICE LAW CORPORATION

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11 Douglas Han
12 Shunt Tatavos-Gharajeh
13 Phillip Song
14 *Attorneys for Plaintiff*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 20, 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: **Lor v. Antech Diagnostics, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 791119-20**
Court Case No.: 34-2020-00282790
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

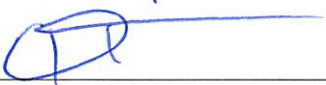
[X] BY ELECTRONIC SUBMISSION

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 May 20, 2021, at Pasadena, California.



Allana Rivera