

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 326572)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

ANTONESHA HOSHAW, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

SUTHERLAND HEALTHCARE
SOLUTIONS INC., a Delaware corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 19STCV33165

Honorable Carolyn B. Kuhl
Department 12

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) filed concurrently herewith]

Hearing Date: November 5, 2020
Hearing Time: 11:00 a.m.
Hearing Place: Dept. 12

Filed: September 18, 2019
FAC Filed: July 7, 2020
Trial: None Set

1 **PLEASE TAKE NOTICE** that on November 5, 2020, and at 11:00 a.m., or as soon as
2 the matter may be heard before the Honorable Carolyn B. Kuhl in Department 12 of the Los
3 Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street,
4 Los Angeles, California 90012, Plaintiff Antonesha Hoshaw, (“Plaintiff”) will and hereby move
5 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,” or “Settlement Agreement”), attached as “**Exhibit**
9 **1**” to the Declaration of Douglas Han, including, and not limited to, the means of
10 allocation and distribution of funds, and the allocations for penalties under the
11 California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
12 Attorney Fee Award, Cost Award, Class Representative Incentive Payment, and
13 the Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiff as the Class Representative;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
18 attached as “**Exhibit A**” to the Settlement Agreement;
- 19 • Directing the mailing of the proposed Class Notice with a postage-paid return
20 envelope (hereinafter collectively referred to as the “Notice Packet”) to the
21 proposed Class;
- 22 • Approving the proposed deadlines for the notice and Settlement Administration
23 process;
- 24 • Approving CPT Group, Inc. as the Settlement Administrator; and

25 ///

26 ///

27 ///

- 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 Attorney Fee Award, Cost Award, Class Representative Incentive Payment, and approval of the allocation for PAGA penalties and the Administration Costs.

This motion is based upon the following memorandum of points and authorities, the Declaration of proposed Class Counsel (Douglas Han), and the [Proposed] Order lodged together 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.

Dated: July 16, 2020

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	INVESTIGATION/LITIGATION HISTORY	3
	a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	3
	b. The Parties Attended Mediation Which Led to the Joint Stipulation.....	4
	c. Terms of the Proposed Settlement.....	5
	i. Deductions from the Settlement	5
	ii. Calculation of the Settlement Payments to Class Members	5
	iii. Notice to the Class	6
	iv. Distribution of Funds.....	6
	v. Release of Claims	7
IV.	ARGUMENT	8
	a. Class Action Settlements are Subject to Court Review.....	8
	b. Conditional Certification of the Class is Appropriate	8
	c. The Settlement is Fair, Reasonable, and Adequate	9
	i. The Proposed Class is Ascertainable and Sufficiently Numerous	9
	ii. The Class Memembers Share a Well-Defined Community of Interest	10
	d. The Settlement was Reached as a Result of Arm's-Length Negotiations.....	11
	e. The Settlement is the Result of Thorough Investigation and Discovery	12
	f. Counsel for Both Parties are Experienced in Similar Litigation	12
	g. The Proposed Settlement is a Reasonable Compromise of Claims.....	13
	i. The Settlement is Fair and Reasonable.....	13
	ii. The Settlement Amount of \$750,000 is Reasonable	15
	h. Discount Analysis Justifies the Settlement.....	18
	i. Notice to Class Members Complies with California Rule of Court 3.769(f)	21
V.	CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	14
<i>Bartold v. Flendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	9
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	8
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979).....	12
<i>Bowles v. Superior Court,</i>	
283 P2 704 (1955)	10
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	10
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	18
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2 nd Cir. 1974).....	21
<i>Dunbar v. Albertson’s Inc.,</i>	
141 Call. App. 4 th 1422 (2006).....	14
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	9, 12
<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
169 Cal. App. 4 th 1524 (2008)	10
<i>Green v. Obledo,</i>	
29 Cal. 3d 126 (1981).....	8
<i>Harris v. Superior Court,</i>	
154 Cal. App. 4 th 164 (2007)	14

1	<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
2	89 Cal. App. 4 th 908 (2001)	9
3	<i>Hopson v. Hanesbrands Inc.,</i>	
4	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	18
5	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
6	452 U.S. 905 (1981)	8
7	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
8	168 Cal. App. 4 th 116 (2008)	13
9	<i>Linder v. Thrifty Oil Co.,</i>	
10	23 Cal. 4 th 429 (2000)	9
11	<i>Linney v. Cellular Alaska Partnership,</i>	
12	151 F. 3d 1234 (9 th Cir. 1998)	21
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
14	186 Cal. App. 4 th 399 (2010)	13
15	<i>Nordstrom Com. Cases,</i>	
16	186 Cal. App. 4 th 576 (2010)	18
17	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
18	34 Cal. 4 th 319 (2004)	8, 10, 14
19	<i>In re Tableware Antitrust Litig.,</i>	
20	484 F. Supp. 2d 1078 (N.D. Cal. 2007)	21
21	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
22	38 Cal. 3d 488 (1985)	13
23	<i>Vasquez v. Superior Court,</i>	
24	4 Cal. 3d 800 (1971)	8
25	<i>Walsh v. IKON Solutions, Inc.,</i>	
26	148 Cal. App. 4 th 1440 (2007)	14
27	<u>Statutes</u>	
28	Business and Professions Code § 17200	2

1	Code of Civil Procedure § 382	8, 9, 10
2	Code of Civil Procedure § 877.6	13
3	Federal Rule of Civil Procedure 23	10
4	Labor Code § 203	16
5	Labor Code § 204	16
6	Labor Code § 226	14, 16
7	Labor Code § 226.7	16, 17
8	Labor Code § 510	16, 17
9	Labor Code § 512	16, 17
10	Labor Code § 558	16
11	Labor Code § 1174	16
12	Labor Code § 1194	16, 17
13	Labor Code § 1197	16
14	Labor Code § 1197.1	16
15	Labor Code § 1198	16, 17
16	Labor Code § 2699	16
17	Labor Code § 2699.5	16
18	Labor Code § 2802	16
19	Rule 3.769	8, 21

20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 This motion seeks Preliminary Approval of a non-reversionary \$750,000 proposed wage
3 and hour class action settlement by Plaintiff Antonesha Hoshaw (“Plaintiff”) on behalf of herself
4 and all persons who are or have been employed by Defendant Sutherland Healthcare Solutions,
5 Inc. (“Sutherland Healthcare” or “Defendant”) as non-exempt or hourly-paid employees in
6 California during the period from September 18, 2015, through September 18, 2020. At the time
7 of this filing, Defendant estimates that there are approximately one hundred and nineteen (119)
8 individuals that would be included in this settlement.

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 \$750,000 – **with an average settlement share amount estimated at**
12 **\$3,584¹** – 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 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 Sutherland Healthcare Solutions, Inc. (“Sutherland Healthcare” or “Defendant”) provides
22 services such as billing and coding, revenue cycle management, healthcare information
23 technology, data management, and other business solutions to the healthcare industry.
24 (Declaration of Douglas Han “Han Decl.” ¶ 8.) This case involves all current and former hourly-
25 paid or non-exempt employees of Defendant in California during the period from September 18,
26 2015 to September 18, 2020. (*Ibid.*)

27 ///

28 ¹ \$426,500 (Net Fund Value) / 119 (Class Members) = \$3,584

1 On September 18, 2019, Plaintiff filed a putative class action in Los Angeles County
2 Superior Court against Defendant alleging wage and hour violations on behalf of all non-exempt
3 and hourly-paid current and former employees who worked for Defendant in the four years
4 preceding the Complaint. (Han Decl., *supra*, at ¶ 9.) The Complaint alleged causes of action
5 under the California Labor Code for unpaid overtime, unpaid meal period premiums, unpaid rest
6 period premiums, unpaid minimum wages, untimely payment of final wages, non-compliant
7 wage statements, and violation of California Business and Professions Codes § 17200. (*Ibid.*)

8 On July 7, 2020, Plaintiff also filed a First Amended Complaint in the Superior Court for
9 the County of Los Angeles, individually, and on behalf of other members of the public similarly
10 situated, adding an additional cause of action under the Private Attorneys General Act of 2004.
11 (Han Decl., *supra*, at ¶ 10.) The First Amended Complaint specifically includes separate causes
12 of action based on the facts and theories in the original Complaint, including a PAGA cause of
13 action. (*Ibid.*)

14 The Parties agreed to attend a mediation of Plaintiff's claims on May 14, 2020. (Han
15 Decl., *supra*, at ¶ 11.) At the conclusion of the mediation, the Parties were able to reach an
16 agreement on a settlement of the Action. (*Ibid.*)

17 Defendant generally and specifically denies any and all liability or wrongdoing of any
18 sort with regard to any sort of the claims alleged, makes no concessions or admissions of liability
19 of any sort, and contends that for any purpose other than settlement, the Action is not appropriate
20 for class treatment. (Han Decl., *supra*, at ¶ 12.) Defendant asserts a number of defenses to the
21 claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or
22 conduct in the Action. (*Ibid.*)

23 ///

24 ///

25 ///

III. INVESTIGATION/ LITIGATION HISTORY

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

After filing Plaintiff's Complaint, Plaintiff engaged in discovery. (Han Decl., *supra*, at ¶ 13.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admission, and one (1) set of requests for production on Defendant. (*Ibid.*) Defendant responded to this discovery. (*Ibid.*) After which, the Parties met and conferred regarding this discovery. (*Ibid.*)

As the result of discovery and investigation conducted by Plaintiff as well as an agreement to produce informal discovery, Defendant produced a large volume of documents including, but not limited to, employee handbooks, meal and rest period policies, payroll records, and time records. (Han Decl., *supra*, at ¶ 14.) Plaintiff also interviewed Class Members who worked for Defendant during the Class Period, who 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 Class Members, Plaintiff contends – and Defendant denies – that Defendant did not provide lawful meal and rest periods. (Han Decl., *supra*, at ¶ 15.) Plaintiff asserts that Defendant's meal and rest period policies were non-compliant until February of 2020. (*Ibid.*) Moreover, Plaintiff contends that, after February 2020, Defendant continued to maintain a policy of requiring employees to take late, short, or interrupted meal breaks. (*Ibid.*) Plaintiff contends that Defendant has not maintained any written meal or rest premium policies and has not paid a single meal or rest premium. (*Ibid.*) Defendant denies these allegations. (*Ibid.*)

In addition, Plaintiff contends – and Defendant denies – that Defendant did not compensate employees for all time worked. (Han Decl., *supra*, at ¶ 16.) Plaintiff asserts that Plaintiff and the Class Members are entitled to waiting time and wage statement penalties as a result of Defendant's illegal rounding policies and failure to pay meal and rest premiums. (*Ibid.*)

///

///

1 Defendant denies Plaintiff's contentions in their entirety. (Han Decl., *supra*, at ¶ 17.)
2 Among other things, Defendant denies Plaintiff's rest and meal break contentions, and contends
3 that as of February 2020, its rest and meal period policies complied with California law. (*Ibid.*)
4 Moreover, Defendant argues that its failure to comply with California labor laws was an honest
5 mistake made in good faith and, therefore, cannot be deemed "willful" under Labor Code § 203.
6 (*Ibid.*)

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

9 **b. The Parties Attended Mediation Which Led to the Joint Stipulation**

10 The Parties agreed to go to mediation with experienced wage and hour mediator, Steven
11 J. Rottman. (Han Decl., *supra*, at ¶ 18.) The mediation took place on May 14, 2020. (*Ibid.*)
12 During the mediation, the parties discussed the risks of continued litigation, risks of certification
13 and on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of
14 the mediator, the parties were able to reach an agreement on settlement, the terms of which were
15 memorialized in a "Joint Stipulation and Settlement Agreement" (referred to herein as the "Joint
16 Stipulation" or "Settlement") that the Parties seek Preliminary Approval of in the instant motion.
17 (*Ibid.*; Exhibit 1.)

18 ///

19 ///

20 ///

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 Action be settled and compromised for the non-reversionary total sum of \$750,000 (“Gross Fund
5 Value” or “GFV”) which includes, subject to Court approval: (a) Attorney Fee Award of up to
6 \$262,500 (35% of the GFV) to compensate Class Counsel for work already performed and all
7 work remaining to be performed in documenting the Settlement, administrating the Settlement
8 and securing Court approval; (b) Cost Award for actual litigation costs not to exceed \$20,000;²
9 (c) Class Representative Incentive Payment to the named Class Representative in a sum not to
10 exceed \$10,000 for Plaintiff in consideration for a general release of claims, for initiating and
11 prosecuting the class action Complaint, serving as a Class Representative, work performed, and
12 risks undertaken for the payment of attorneys’ fees and costs in the event they had been
13 unsuccessful in their matters; (d) Administration Costs and expenses to CPT Group, Inc. (“CPT
14 Group”), estimated at approximately \$8,500 but not to exceed \$15,000; and (e) LWDA payment
15 of \$22,500 (which is 75% of \$30,000 allocated to Plaintiff’s claims under PAGA). (Han Decl.,
16 *supra*, at ¶ 19.)

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

18 After all Court-approved deductions from the GFV, it is estimated that \$426,500 (“Net
19 Fund Value” or “NFV”), less all applicable employee taxes on the wage portion of the Individual
20 Settlement Share, will be distributed to Class Members – **with an average settlement share**
21 **estimated at \$3,584.** (Han Decl., *supra*, at ¶ 21.) Subject to the terms and conditions of the
22 Settlement, the Settlement Administrator will calculate and issue Individual Settlement Shares
23 based on the following formula:

24 ///

25 ² The actual amount of litigation costs will be provided to the Court in conjunction with
26 Plaintiff’s motion for Final Approval. (Han Decl., *supra*, at ¶ 20.) At that time, Plaintiff will ask
27 the Court to approve the amount of these costs. (*Ibid.*) If Plaintiff’s actual costs exceed \$20,000,
28 Plaintiff will only seek reimbursement in the amount of \$20,000. (*Ibid.*) If Plaintiff’s actual
costs are lower than \$20,000, Plaintiff will seek reimbursement of her actual litigation costs and
the difference shall become part of the Net Fund Value and be available for distribution to
Participating Class Members. (*Ibid.*)

Each Participating Class Member will receive a proportionate share of the Net Fund Value that is equal to (i) the number of weeks he or she worked based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Fund Value. One day worked in a given week will be credited as a week for purposes of this calculation. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following Preliminary Approval. (Han Decl. at ¶ 21.) Under no circumstances will any portion of the \$750,000 settlement revert to Defendant. (*Ibid.*)

iii. Notice to the Class

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database for purposes of mailing Class Notices to Participating Class Members. (Han Decl., *supra*, at ¶ 22.) Within ten (10) business days after receipt of this information from Defendant, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail. (*Ibid.*) The Notice advises the Class of their rights to participate in the Settlement and how to and when to object to or request exclusion from the Settlement. (*Ibid.*) Class Members are not required to submit a claim form to receive payment. (*Ibid.*) The proposed Notice is attached as **Exhibit A** to the Joint Stipulation, which is **Exhibit 1** to the Declaration of Douglas Han.

iv. Distribution of Funds

No later than thirty (30) calendar days after the Effective Final Settlement Date Defendant shall pay the Gross Fund Value of Seven Hundred and Fifty Thousand Dollars (\$750,000) into the Qualified Settlement Fund set up by the Settlement Administrator by wiring the funds. (Han Decl., *supra*, at ¶ 23.)

Within fifteen (15) days after the settlement is funded, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Incentive, the PAGA Payment, and the Administration Costs. (Han Decl., *supra*, at ¶ 24.)

///

///

Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days after the checks are mailed to them. (Han Decl., *supra*, at ¶ 25.) If any checks are not redeemed or deposited within two hundred (200) calendar days after the checks are mailed, the Settlement Administrator will pay the amount of the Individual Settlement Share to the State Controller’s Office in the name of the Settlement Class Member under the unclaimed Property Laws. (*Ibid.*)

v. Release of Claims

As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion release all claims, demands, rights, liabilities and causes of action that were pled in the Operative Complaint in the Action, or which could have been pled in the Operative Complaint in the Action based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to pay all wages at the agreed upon rate; (d) failure to provide meal periods, or premium pay for non-compliant meal periods; (e) authorize and permit rest periods, or premium pay for non-compliant rest periods; (f) failure to pay all wages upon termination of employment; (g) claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; and (h) all claims under the Private Attorney’s General Act (“PAGA”). (Han Decl., *supra*, at ¶ 26.)

The release will be as to the Released Parties, which shall include Defendant and any of its past, present and future parents, affiliates, subsidiaries, division, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf. (Han Decl., *supra*, at ¶ 27.)

///

///

///

1 **IV. ARGUMENT**

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

3 Rule 3.769 requires court approval for class action settlements.³ “Before final approval,
4 the court must conduct an inquiry into the fairness of the proposed settlement.” (California
5 Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary
6 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
16 take into account “all the normal perils of litigation as well as the additional uncertainties
17 inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (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. Conditional Certification of the Class is Appropriate**

21 For settlement purposes only, the requisites for establishing conditional class certification
22 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is
23 one of a common or general interest, of many persons, or when the parties are numerous, and it
24 is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*
25 (2004) 34 Cal.4th 319, 326.) California courts certify class actions where the plaintiff identifies
26 “both [1] an ascertainable class and [2] a well-defined community of interest among class
27 members.” (*Ibid.*)

28 ³The 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; *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 Here, the proposed Class is ascertainable and numerous as to make it impracticable to
2 join all Class Members, and there are common questions of law and fact that predominate over
3 any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 28.) Plaintiff's
4 claims are typical of the claims of the Class Members, and Class Counsel will fairly and
5 adequately protect the interests of the Class. (*Ibid.*) Further, prosecution of separate actions by
6 individual Class Members would create the risk of inconsistent or varying adjudications, and a
7 class action is superior to other available means for the fair and efficient adjudication of the case.
8 (*Ibid.*) As discussed below, this case is amenable to class certification.

9 **c. The Settlement is Fair, Reasonable, and Adequate**

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

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

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

27 ///

28 ///

1 This Action involves one hundred and nineteen (119) Class Members. (Han Decl., *supra*,
2 at ¶ 29.) Unlike Rule 23 of the Federal Rules of Civil Procedure, California Code of Civil
3 Procedure § 382 does not require a minimum number to satisfy the numerosity requirement.
4 (*Ibid.*) The language of section 382 allows a class action “when the question is one of common
5 or general interest, of many persons, or when the parties are numerous, and it is impracticable to
6 bring them all before the court.” (*Ibid.*) In fact, in *Bowles v. Superior Court* (1955), 283 P2 704,
7 the California Supreme Court approved a class consisting of just ten beneficiaries. (*Id.* at 713.)
8 (*Ibid.*) This Class is sufficiently numerous. (*Ibid.*) Further, all Class Members can and will be
9 identified by Defendant to the Settlement Administrator through a review of Defendant’s
10 employment records concerning hourly or non-exempt employees who worked for Defendant in
11 the State of California during the Class Period. (*Ibid.*)

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

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

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

27 ///

28 ///

1 Here, Plaintiff asserts that common issues of fact and law predominate as to each of the
2 claims alleged by Plaintiff. All non-exempt hourly employees who worked for Defendant during
3 the Class Period were subject to the same or similar employment practices, policies, and
4 procedures. (Han Decl., *supra*, at ¶¶ 15-16.) All of Plaintiff's claims surround Defendant's
5 common practice and scheme of failing to compensate employees for all time worked, *inter alia*,
6 non-compliant meal and rest periods and associated waiting time and wage statement penalties.
7 (*Ibid.*) Particularly, Plaintiff alleges, and Defendant denies, that Defendant did not provide
8 lawful meal and rest periods. (*Id.* at ¶ 15.) Plaintiff contends, and Defendant denies, that
9 Defendant's meal and rest period policies were non-compliant until February of 2020, and, after
10 February 2020, Defendant continued to maintain a policy of requiring employees to take late,
11 short, or interrupted meal breaks. (*Ibid.*) Plaintiff also contends that the meal break violation
12 rates of 64.8% of the first meal breaks and over 95% of the second meal breaks evidence a
13 uniform practice to not provide and authorize proper meal breaks. (*Id.* at ¶ 37.) As a result, all
14 of the Class Members, including Plaintiff, were uniformly not paid for all of the hours they
15 worked for Defendant during the Class Period. Based on these facts, Plaintiff concludes that the
16 proposed Class is readily certifiable in this case. Accordingly, the Court should provisionally
17 certify the Class for settlement purposes only.

18 **d. The Settlement was Reached as a Result of Arm's-Length Negotiations**

19 The Settlement was reached as a result of arm's-length negotiations. (Han Decl., *supra*,
20 at ¶ 30.) Though cordial and professional, the settlement negotiations have been, at all times,
21 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties
22 conducted extensive arm's-length settlement negotiations until an agreement was ultimately
23 reached by all parties. (*Ibid.*) The terms of the Settlement are memorialized in the Joint
24 Stipulation. (*Ibid.*; Exhibit 1.)

25 Plaintiff believes in the merits of her case, but also recognize the inherent risks of
26 litigation and understands the benefit of the Class receiving settlement funds immediately as
27 opposed to risking continued litigation, the merits of the case before and after trial, damages
28 awarded, and an appeal that can take years to litigate. (Han Decl., *supra*, at ¶ 31.)

1 **e. The Settlement is the Result of Thorough Investigation and Discovery**

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed Settlement, and engaged in sufficient investigation, research and
4 discovery to support the Settlement. The proposed Settlement was only possible following
5 discovery and evaluation of Defendant’s policies and procedures, as well as the data produced
6 for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of
7 liability and potential damages. (Han Decl., *supra*, ¶ 32.) This litigation has reached the stage
8 where “the Parties certainly have a clear view of the strengths and weaknesses of their cases”
9 sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610,
10 617.)

11 **f. Counsel for Both Parties are Experienced in Similar Litigation**

12 Both Plaintiff’s counsel and Defendant’s counsel are particularly experienced in wage
13 and hour employment law and class actions. Plaintiff’s counsel has significant experience in
14 litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions.
15 (Han Decl., *supra*, at ¶¶ 4-7.)

16 Plaintiff’s counsel has prosecuted numerous cases on behalf of employees for California
17 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to
18 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
19 defenses. (Han Decl., *supra*, at ¶¶ 4-7.) This experience instructed Plaintiff’s counsel on the
20 risks and uncertainties of further litigation and guided their determination to endorse the
21 proposed Settlement.⁴

22 ///

23 ///

24 ///

25
26 _____
27 ⁴ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Notice of Class 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 **g. The Proposed Settlement is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

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

18 As the following subsections show, the Parties’ investigation and discovery revealed
19 plenty of reasons to discount claims and agree to this Settlement.

20 **i. The Settlement is Fair and Reasonable**

21 The proposed Settlement was only possible following discovery and evaluation of
22 Defendant’s relevant policies and procedures, as well as the data Defendant produced for the
23 putative Class as referenced in Section III above, which permitted Class Counsel to engage in a
24 comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 32.)

25 ///

26 ///

27 ///

1 This discovery and informal exchange of information resulted in Plaintiff's central
2 theories of liability, which are predicated on Plaintiff's claims that Defendant employed uniform
3 practices and procedures of failing to compensate employees for minimum and overtime wages,
4 failing to provide legally mandated meal and rest breaks, failing to pay timely wages, and failing
5 to provide accurate and itemized wage statements. (Han Decl., *supra*, at ¶ 33.)

6 Defendant vehemently denies Plaintiff's theories of liability and contends, as stated
7 above, that all meal and rest periods were provided in compliance with California law, that all
8 wages were properly paid to Class Members, and that it provided wage statements in compliance
9 with Labor Code § 226. (Han Decl., *supra*, at ¶ 34.) Defendant argues that if litigation were to
10 continue, it feels confident that it would prevail. (*Ibid.*)

11 Although Plaintiff believes the case is suitable for certification on the claimed basis that
12 there are company-wide policies that Plaintiff contends violate California law and uniformly
13 affect the putative Class Members, uncertainties concerning certification are always present.
14 (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in *Sav-On v. Superior Court*
15 (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion.
16 Decisions following *Sav-On* have reached different conclusions, concerning certification of wage
17 and hour claims.⁵ (*Ibid.*)

18 Although remaining confident in the strengths of her claims, all of these factors led
19 Plaintiff to discount the following calculations of potential damage claims.

20 ///

21 ///

22 ///

23
24
25 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of
26 class claiming misclassification and ordering summary adjudication in favor of employees),
27 review granted, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes
28 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 \$750,000 is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 putative Class Members and the average hourly rate for Class Members. (Han Decl., *supra*, at ¶
6 36.) Plaintiff hired an expert to analyze this data and calculate damages for Plaintiff's various
7 claims. (*Ibid.*) Based on the information Defendant provided, Plaintiff's expert calculated that
8 there were approximately 15,267 workweeks worked by putative Class Members. (*Ibid.*)
9 Plaintiff's expert was also able to determine that the average hourly rate for Class Members was
10 \$19.22. (*Ibid.*)

11 Specifically, Plaintiff claims – and Defendant denies – that Defendant's employees are
12 not provided with compliant meal and rest breaks. (Han Decl., *supra*, at ¶ 37.) Plaintiff
13 contends that Defendant maintained an informal policy of failing to provide employees with
14 compliant meal and rest breaks during the entire Class Period, a claim which Defendant denies.
15 (*Ibid.*) Moreover, Plaintiff alleges that until February 2020, Defendant did not have a compliant
16 meal and rest period policy. (*Ibid.*) Also, it is abundantly clear from the data analyzed that
17 Defendant had a policy of requiring employees to take late, short, or interrupted meal breaks.
18 (*Ibid.*) Utilizing the sampling time and pay data records for 33 Class Members, Plaintiff's expert
19 was able to establish a violation rate of 64.8% of the first meal breaks (52.9% violation rate on
20 late meals and 20.5% violation rate on short meals) and established a violation rate of over 95%
21 of the second meal. (*Ibid.*) Accordingly, Plaintiff argues that, pursuant to Labor Code § 226.7,
22 Plaintiff and Class Members may recover two hours' worth of premium wages for Defendant's
23 failure to provide both meal and rest breaks each day. (*Ibid.*) Based on the sampling time and
24 pay data records, Plaintiff's expert calculates Defendant's total exposure for meal break damages
25 to be \$677,117 [35,230 (number of unique meal break violations) x \$19.22 (average hourly rate)]
26 and Defendant's total exposure for rest break damages to be \$239,056 [12,438 (number of
27 unique rest break violations) x \$19.22 (average hourly rate)]. (*Ibid.*)

28 ///

1 Further, Plaintiff claims – and Defendant denies – that she and the Class Members are
2 entitled to waiting time penalties for underpaid minimum and overtime and missed meal and rest
3 breaks, justifying the full payment of § 203 penalties and § 204 civil penalties. (Han Decl.,
4 *supra*, at ¶ 38.) Plaintiff also alleges that Defendant is liable for unpaid wages due to rounding.
5 (*Ibid.*) Based on the sampling time and pay data records, Plaintiff’s expert calculates
6 Defendant’s total exposure as to Plaintiff’s claim for waiting time penalties to be approximately
7 \$255,678 [7.8 hours (average shift length) x \$19.22 (average hourly rate) x 57 (number of
8 terminated employees) x 30 days]. (*Ibid.*) Specifically, Plaintiff’s expert calculates Defendant’s
9 total exposure as to Plaintiff’s claim for unpaid wages due to rounding to be \$15,823 [472.9 (net
10 number of underpaid hours due to rounding) x \$28.83 (average overtime rate)]. (*Ibid.*)

11 Plaintiff claims – and Defendant denies – that Defendant failed to maintain accurate
12 records in violation of Labor Code § 226(a). (Han Decl., *supra*, at ¶ 39.) Plaintiff alleges that
13 because Defendant failed to pay and record earned meal and rest premium wages due and owed
14 to employees, Defendant’s wage statements did not reflect these earned wages. (*Ibid.*)
15 Plaintiff’s expert calculates Defendant’s total exposure as to the claim for wage statement
16 penalties to be \$262,550 [69 employees x ([1 initial violation x \$50] + [38 subsequent violations
17 x \$100])]. (*Ibid.*)

18 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
19 include but are not limited to Labor Code sections 204, 226(a), 226.7, 510, 512(a), 558, 1174(d),
20 1194, 1197, 1197.1, 1198 and 2802. (Han Decl., *supra*, at ¶ 40.) Defendant asserted that,
21 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
22 but permissive and discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong
23 arguments against the underlying claims, it had a strong argument that it would be unjust to
24 award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

25 ///

26 ///

27 ///

1 Class Counsel calculated penalties under this cause of action by multiplying the number
2 of active Class Members (because of the shortened statutory period for this claim), by the civil
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
4 section 2699.5 that were applicable in this case. (Han Decl., *supra*, at ¶ 41.) Class Counsel then
5 applied discounts in light of the countervailing arguments concerning the other causes of action,
6 as well as the Court’s power to award “a lesser amount than the maximum civil liability.” Lab.
7 Code § 2699(e)(2). (*Ibid.*)

8 Given the state of the law and the range of PAGA penalties requested and actually
9 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
10 for PAGA penalties. (Han Decl., *supra*, at ¶ 42.) However, if PAGA penalties are granted on
11 any one of the violations alleged in Plaintiff’s Operative Complaint, the total penalties exposure
12 for the eligible pay periods could be approximately \$0 to \$531,300 [69 employees x ([1 initial
13 violation x \$100] + [38 subsequent violations x \$200])]. (*Ibid.*) Plaintiff calculated Defendant’s
14 PAGA exposure using a 100% violation rate based on the average number of pay periods during
15 the one-year statutory period. (*Ibid.*) If this amount were to be multiplied by the alleged
16 violations under the PAGA theories of recovery (5), the civil penalties could be \$0 to
17 \$2,656,500. (*Ibid.*)

18 ///

19 ///

20 ///

1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Decl., *supra*, at ¶ 43.) Many of the causes of action brought were duplicative of the
3 statutory claims such as violations of California Labor Code sections 226.7, 510, 512(a), 1194
4 and 1198. (*Ibid.*) It is possible the meal and rest period violations did not occur every single pay
5 period. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was
6 indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*)
7 Thus, allocating \$30,000 to PAGA civil penalties was reasonable. (*Ibid.*) Where PAGA
8 penalties are negotiated in good faith and “there is no indication that [the] amount was the result
9 of self-interest at the expense of other Class Members,” such amounts are generally considered
10 reasonable. (*Hopson v. Hanesbrands Inc.*, (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009
11 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 579
12 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not
13 allocate any damages to the PAGA claims.”).) (*Ibid.*)

14 Moreover, negotiations were under the auspices of a well-respected mediator, Steven J.
15 Rottman, who regularly mediates wage and hour litigation involving PAGA claims. (Han Decl.,
16 *supra*, at ¶ 44.) Plaintiff’s counsel negotiated that approximately an average of \$11 in penalties
17 per aggrieved pay period would be fair and reasonable. (*Ibid.*) Considering the recent cases
18 justifying \$5 per pay period, see, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504,
19 \$11 per pay period is a fair allocation. (*Ibid.*)

20 Accordingly, taking into consideration Defendant’s defenses and its supporting evidence,
21 the settlement amount of \$750,000 – **with an average settlement share amount estimated at**
22 **\$3,584 and considering Defendant’s financial condition** - is a reasonable and fair settlement.

23 **h. 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 \$521,737.25. (Han Decl., *supra*, at ¶ 45.)

27 ///

28 ///

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Unpaid Wages due to Rounding	\$15,823	0%	50%	\$7,911.50
Rest Break Damages	\$239,056	50%	50%	\$59,764
Meal Break Damages	\$677,117	50%	50%	\$169,279.25
Waiting Time Penalty	\$255,678	0%	50%	\$127,839
Wage Statement Penalty	\$262,550	0%	50%	\$131,275
MAXIMUM TOTAL EXPOSURE	\$1,450,224			\$496,068.75

Plaintiff applies 50% certification risks for both rest and meal break exposure. (Hann Decl., *supra*, at ¶ 46.) Until February 2020, Defendant lacked compliant rest and meal period policies. (*Ibid.*) Specifically, Defendant’s rest period policies contained no provision for duty-free rest periods, and Defendant lacked a policy to schedule rest breaks for shifts between 3.5 hours and 4 hours, second rest breaks for shifts between 6 and 8 hours, and third rest breaks for shifts longer than 10 hours. (*Ibid.*) In addition, Defendant’s meal period policies did not provide for the timing of the meal period, and did not authorize or permit putative Class Members to take a second meal break for shifts exceeding 10 hours. (*Ibid.*) Thus, Defendant regularly failed to provide employees with the requisite number of breaks and routinely required employees to take late, short, or interrupted meal breaks. (*Ibid.*) However, Defendant’s rest and meal period policies after February 2020 were compliant, which Class Counsel believes justifies a 50% certification risk. (*Ibid.*) A further discount of 50% is justified due to risk on the merits. (*Ibid.*) Defendant may submit evidence and testimony that Defendant maintained a practice of providing employees with proper rest and meal breaks, despite maintaining non-compliant rest and meal break policies, or that that Class Members chose to take non-compliant breaks (i.e., late or short). (*Ibid.*)

///

///

1 Class Counsel believes that the certification for waiting time and wage statement
2 penalties is fairly certain. (Han Decl., *supra*, at ¶ 47.) These penalties claims derive from
3 Plaintiff's claims for underpaid minimum and overtime – resulting, in part, from unpaid wages
4 due to rounding – and missed meal and rest breaks. (*Ibid.*) As discussed above, based on the
5 non-compliant rest and meal break policy Defendant maintained until February 2020, Class
6 Counsel believes 50% certification risks and risks on the merits are justified. (*Ibid.*) As for
7 Plaintiff's claim for unpaid wages due to rounding, the certification is fairly certain because
8 Defendant's practice of rounding led to a disproportionately larger percentage of employees
9 harmed than benefited: 54.5% harmed vs. 12.1% benefited. (*Ibid.*) Class Counsel believes this
10 justifies no discount. (*Ibid.*) However, not all employees were affected by Defendant's rounding
11 policy, which leads Class Counsel to believe that a 50% discount is justified due to risk on the
12 merits. (*Ibid.*)

13 Furthermore, based on unpaid wages/rounding theory, waiting time penalties should be
14 easily certifiable. (Han Decl., *supra*, at ¶ 48.) Class Counsel believes this justifies no
15 certification discount. (*Ibid.*) However, Defendant may point to the fact that not all Class
16 Members were subject to rounding and some Class Members even benefited from the practice,
17 which leads Class Counsel to believe that a 50% discount is justified due to risk on the merits.
18 (*Ibid.*) As to wage statement penalties, certification is fairly certain, justifying no discount.
19 (*Ibid.*) Defendant policies and practices of depriving employees of meal and rest premium
20 wages owed to them resulted in a failure to maintain accurate records. (*Ibid.*) However,
21 Defendant may not owe meal and rest premium wages to all employees, which leads Class
22 Counsel to believe that a 50% discount is justified due to risk on the merits. (*Ibid.*)

23 Based on this analysis, the realistic recovery for this case is \$496,068.75. (Han Decl.,
24 *supra*, at ¶ 49.) The Gross Fund Value of \$750,000 is approximately 52% of the maximum
25 potential exposure and approximately 151% of the realistic exposure at trial, which is an
26 excellent settlement. (*Ibid.*)

27 ///

28 ///

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
3 1079.) “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 **i. Notice to Class Members Complies with California Rule of Court 3.769(f)**

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

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

18 The proposed Notice meets all of these requirements. The proposed Notice advises the
19 Class of their rights to participate in the Settlement, how to and when to object to or request
20 exclusion from the Settlement, and the date, time, and location of the final approval hearing.
21 (See Han Decl., *supra*, Exhibit A to Exhibit 1.)

22 ///

23 ///

24 ///

1 **V. CONCLUSION**

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

7
8 Dated: July 16, 2020

JUSTICE LAW CORPORATION

9
10 

11 Douglas Han
12 Shunt Tatavos-Gharajeh
13 Phillip Song
14 *Attorneys for Plaintiff*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 16, 20, 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: **Hoshaw v. Sutherland Healthcare Solutions, Inc.**
LWDA/Court Case No.: **LWDA-CM-787036-20**
19STCV33165
Los Angeles County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on July 16, 2020, at Pasadena, California.



Allana Rivera