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

GINA DAVIDSON, individually, 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.

AUGUSTA FINANCIAL, INC., a
California corporation; and MICHAEL
JOSEPH MEENA, an individual;

Defendants.

Case No.: 20CHCV00420

Honorable Melvin Sandvig
Department F47

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**

[Reservation ID: 921125129111]

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

Hearing Date: April 5, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department F47

Complaint Filed: July 17, 2020
FAC Filed: February 25, 2021
Trial: None Set

1 **PLEASE TAKE NOTICE** that on April 5, 2021 at 8:30 a.m. or as soon as the matter
2 may be heard before the Honorable Melvin Sandvig in Department F47 of the Los Angeles
3 County Superior Court, located at 9425 Penfield Ave., Chatsworth, California 91311, Plaintiff
4 Gina Davidson (“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 Parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
9 the means of allocation and distribution of funds, and the allocations for penalties
10 under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), Attorney Fee Award, Cost Award, Class Representative Enhancement
12 Payment, and the Administration Costs;
- 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 • Approving the Election Not To Participate or Opt-out Form (“Exclusion Form”)
19 attached as **“Exhibit B”** to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Class Notice and Exclusion Form
21 (collectively, known as the “Notice Packets”) with a postage-paid return
22 envelope to the proposed Class;
- 23 • Approving the proposed deadlines for the notice and Settlement Administration
24 process;
- 25 • Approving CPT Group, Inc. (“CPT Group”), as the Settlement Administrator; and

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

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

Dated: March 9, 2021

JUSTICE LAW CORPORATION

By:



Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,000,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of herself and all hourly-paid or non-
4 exempt employees employed by Defendants Augusta Financial, Inc., and Michael Joseph Meena
5 (“Defendants,” “Defendant Augusta Financial,” and “Defendant Meena”) within the State of
6 California during the Class Period (“Class”). The Class Period is the time period from July 17,
7 2016, to March 31, 2021 (“Class Period”). At the time of this filing, the number of Class
8 Members provided by Defendants is currently estimated to be one hundred eighty-three (183).

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this
11 proposed settlement of \$1,000,000 – with an average settlement share amount estimated at
12 \$3,133.88¹ – is well within the “ballpark” of reasonableness.

13 As the following sections show, Class Counsel is convinced that the proposed Settlement
14 is in the best interests of the Class based on the negotiations and a detailed knowledge of the
15 issues present in this action. The length and risks of trial and perils of litigation that affect the
16 value of the claims were all carefully weighed. In addition, the defenses asserted by Defendants,
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 Augusta Financial is a mortgage banker and a mortgage broker that provides
22 financial solutions that are tailored to specifically meet customer’s financial needs, which range
23 from purchasing homes, refinancing outstanding loans, or consolidating debts. (Declaration of
24 Douglas Han (“Han Dec.”) at ¶ 9.) Defendant Meena is the president/CEO of Defendant Augusta
25 Financial. (*Ibid.*) This case involves all hourly-paid or non-exempt employees employed by
26 Defendants within the State of California during the Class Period. (*Ibid.*) Plaintiff alleges that at
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28 ¹ \$573,500 (Net Settlement Amount) / 183 (Class Members) = \$3,133.88.

all times during the Class Period, Defendants’ non-exempt employees work and/or worked on an hourly basis. (Han Dec., *supra*, at ¶ 9.)

On May 5, 2020, Plaintiff provided notice to Defendants and the California Labor and Workforce Development Agency (“LWDA”) pursuant to Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). (Han Dec., *supra*, at ¶ 10.) As of this date, Plaintiff has not received a notification from the LWDA indicating it intends to pursue claims. (*Ibid.*) On July 17, 2020, after waiting the requisite sixty-five (65) days for the PAGA notice period to expire, Plaintiff filed her representative PAGA action in Los Angeles County on behalf of all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies) of Defendants who worked for Defendants at any time during the period from May 5, 2019 to the present. (*Ibid.*) Plaintiff’s allegations are that since May 5, 2019, Defendants failed to pay minimum an overtime wages, failed to provide meal and rest breaks, failed to timely pay wages during employment and upon termination, failed to provide complete and accurate wage statements, and failed to reimburse all necessary business expenses. (*Ibid.*)

The Parties attended mediation on Plaintiffs’ claims on February 4, 2021. (Han Dec., *supra*, at ¶ 11.) Under the auspices of the mediator Kelly A. Knight, Esq., the Parties were eventually able to reach an agreement on a settlement of the action. (*Ibid.*)

On February 25, 2021, in line with the settlement reach between the Parties at mediation, Plaintiff filed her First Amended Class Action Complaint in the Superior Court of Los Angeles on behalf of herself and the putative class, which consists of all persons who worked for Defendants in California as hourly-paid or nonexempt employees during the period from July 17, 2016 to March 31, 2021. (Han Dec., *supra*, at ¶ 12.) Plaintiff’s class action complaint alleges causes of action for: (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §1194 and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California Labor Code § 226(a) (non-compliant wage statements); (7) violation of Labor Code § 2800 and 2802 (unreimbursed

business expenses); (8) violation of PAGA; and (9) violation of Business & Professions Code §§ 17200, et seq. (Han Dec., *supra*, at ¶ 12.)

Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged and make no concessions or admissions of liability of any sort. (Han Dec., *supra*, at ¶ 13.) Defendants also contend that for any purpose other than settlement, the Class Action is not appropriate for class or representative treatment. (*Ibid.*) Also, Defendants assert a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. (*Ibid.*)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed her representative PAGA action, both Parties engaged in discovery. 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 of documents. (Han Dec., *supra*, at ¶ 14.) Afterwards, the Parties met and conferred regarding this discovery. (*Ibid.*)

Prior to the mediation attended by the Parties on February 4, 2021 before mediator Kelly A. Knight, Esq., the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. (Han Dec., *supra*, at ¶ 15.) Moreover, prior to the mediation, Defendants produced hundreds of documents relating to their policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendants' production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. (*Ibid.*)

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1 Furthermore, Plaintiff interviewed several Class Members who worked for Defendants
2 throughout the Class Period. (Han Dec., *supra*, at ¶ 16.) The Parties agree that the above-
3 described investigation and evaluation, as well as the information exchanged during the
4 settlement negotiations, are more than sufficient to assess the merits of the respective Parties'
5 positions and to compromise the issues on a fair and equitable basis. (*Ibid.*)

6 Based upon Defendants' discovery responses and document production, as well as
7 interviews Plaintiff's counsel had with non-exempt employees, Plaintiff contends – and
8 Defendants deny – Defendants uniformly failed to compensate employees for all hours worked.
9 (Han Dec., *supra*, at ¶ 17.) Specifically, employees were often forced to work off-the-clock in
10 order to complete their assignments due to the heavy workload imposed on them, tight deadlines,
11 and Defendants being understaffed. (*Ibid.*) For example, employees were often forced to review
12 files and loan applications, approve or deny loans within short windows of opportunity, attend
13 meetings, and make several calls off-the-clock for which they were not compensated by
14 Defendant. (*Ibid.*)

15 Moreover, Plaintiff asserts – and Defendants deny – that Defendants failed to provide
16 employees legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Firstly,
17 Defendants' Employee Handbooks were not code-compliant because it did not specify that
18 employees had to clock out for their second meal breaks before the tenth (10) hour of their shift.
19 (*Ibid.*) Furthermore, Plaintiff contends that employees were often pressured to skip, cut short,
20 and take late meal and rest breaks. (*Ibid.*) Specifically, due to the heavy, time-sensitive work
21 that Defendants expected employees to complete along with being understaffed, employees had
22 no choice but to forgo, interrupt, or take late meal and rest breaks. (*Ibid.*) For example, loan
23 processors were forced to skip most of their breaks or take late breaks because Defendants would
24 pressure them to complete their assignments within tight deadlines, which often resulted in loan
25 processors being forced to eat at their desks while continuing to work. (*Ibid.*) Even if loan
26 processors were afforded opportunities to take their meal and rest breaks, management would
27 chastise them for not being at their stations. (*Ibid.*) In other words, Defendants would discourage
28 employees from taking their meal and rest breaks. (*Ibid.*) Similarly, managers would force lock

1 desks to prematurely end their meal breaks in order to resume their duties to avoid having prices
2 increase. (Han Dec., *supra*, at ¶ 18.) Additionally, employees were not provided second meal
3 breaks in spite of being scheduled to work shifts exceeding ten (10) hours. (*Ibid.*) Finally,
4 Plaintiff contends that Defendants did not pay employees premium wages for missed,
5 interrupted, or late meal and rest breaks. (*Ibid.*)

6 Plaintiff also asserts – and Defendants deny – that Defendants failed to include non-
7 discretionary bonuses and commissions in employees’ regular rate of pay for purposes of
8 overtime compensation. (Han Dec., *supra*, at ¶ 19.) Specifically, Defendants paid employees
9 non-discretionary bonuses on a quarterly and monthly basis. (*Ibid.*) Defendants also paid some
10 employees commissions. (*Ibid.*) In spite of paying these non-discretionary bonuses and
11 commissions, Defendants did not include them into employees’ regular rates of pay for overtime
12 compensation. (*Ibid.*)

13 Additionally, Plaintiff contends – and Defendants deny – that Defendants failed to
14 reimburse employees for necessary business expenses. (Han Dec., *supra*, at ¶ 20.) For example,
15 Defendants required loan processors use their personal cell phones to call their assistants to
16 instruct them to call the loan processors for emergencies. (*Ibid.*) Additionally, loan openers and
17 underwriters were required to purchase office supplies for which they were not reimbursed.
18 (*Ibid.*)

19 Furthermore, Plaintiff contends – and Defendants deny – that Defendants are liable for
20 wage statement penalties. (Han Dec., *supra*, at ¶ 21.) Specifically, Defendants issued wage
21 statements in violation of Labor Code section 226(a) because of the underlying violations that
22 are discussed above. (*Ibid.*) Even if Defendants assert that their violation of section 226(a) is
23 trivial, the California courts have held that strict compliance of section 226(a) is exactly what is
24 intended. (*Ibid.*)

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1 Finally, Plaintiff contends – and Defendants deny – that Defendants are liable for waiting
2 time penalties. (Han Dec., *supra*, at ¶ 22.) Specifically, Defendants’ hourly-paid or non-exempt
3 employees are entitled to back underpaid overtime and compensation for time worked off-the-
4 clock as well as missed meal and rest breaks, thereby triggering waiting time penalties under
5 Labor Code section 203. (*Ibid.*) Thus, Defendants owe compensation for underpaid work and
6 missed meal and rest breaks as a matter of fact and law. (*Ibid.*) But Defendants intentionally
7 failed or refused to perform an act, which was required to be done, constituting “willful” conduct
8 and justifying “waiting-time” penalties under section 203 to their former employees. (*Ibid.*)

9 Defendants deny Plaintiff’s contentions in their entirety. (Han Dec., *supra*, at ¶ 23.)
10 Among other things, Defendants deny Plaintiff’s rest and meal break contentions, on the grounds
11 that they provided rest and meal periods within compliant times and that non-exempt employees
12 were given discretion as to when to take their rest and meal periods. (*Ibid.*) Defendants also
13 contend that their rest and meal period policies complied with California law and that non-
14 exempt employees were allowed to use their rest period and meal period time for their own
15 purposes. (*Ibid.*) Defendants further contend that whether non-exempt employees took meal and
16 rest periods during compliant time frames and were relieved of all duties are questions that could
17 only be resolved by resorting to individualized inquiries to each non-exempt employee and,
18 therefore, class certification would not be appropriate. (*Ibid.*) Defendants also assert that they
19 paid their employees for all times worked, including overtime, minimum, and premium wages.
20 (*Ibid.*) Moreover, Defendants contend that they did factor non-discretionary bonuses and
21 commissions into employees’ regular rates for overtime purposes. (*Ibid.*) Further, Defendants
22 contend that Plaintiff’s claims regarding off-the-clock work and unpaid overtime are trivial. As
23 only a small number of employees worked off-the-clock (*Ibid.*) Defendants also assert that they
24 reimbursed employees for all business expenses. (*Ibid.*) Finally, Defendants argues that their
25 failure to comply with California labor laws was an honest mistake made in good faith. (*Ibid.*)
26 Thus, Defendants’ conduct could not be deemed “willful” under Labor Code section 203. (*Ibid.*)

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1 As demonstrated above, the Parties took staunchly conflicting positions concerning
2 Defendants' policies and procedures and their effect on hourly-paid and non-exempt employees.

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

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

6 The Parties agreed to go to mediation with experienced wage and hour mediator, Kelly A.
7 Knight, Esq. (Han Dec., *supra*, at ¶ 24.) The mediation took place on February 4, 2021. (*Ibid.*)
8 During the mediation, the Parties discussed the risks of continued litigation, risks of certification,
9 and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices
10 of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action,
11 the terms of which were memorialized in a Settlement Agreement, that the Parties now seek
12 Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

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

15 The Settlement Agreement was reached as a result of arm's-length negotiations. (Han
16 Dec., *supra*, at ¶ 39.) Though cordial and professional, the settlement negotiations have been, at
17 all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediations, Counsel for the
18 Parties conducted extensive arm's length settlement negotiations until an agreement was
19 ultimately reached by all Parties. (*Ibid.*)

20 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
21 expense and length of continued proceedings necessary to continue the litigation against
22 Defendants through class certification and trial and through any possible appeals. (Han Dec.,
23 *supra*, at ¶ 40.) Plaintiff and Class Counsel have also taken into account the uncertainty and risk
24 of further litigation, the potential outcome, and the difficulties and delays inherent in such
25 litigation. (*Ibid.*) Plaintiff and Class Counsel have conducted extensive settlement negotiations,
26 including formal mediation on February 4, 2021. (*Ibid.*) Based on the foregoing, Plaintiff and
27 Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate,
28 and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
4 discovery to support the settlement. (Han Dec., *supra*, at ¶ 41.) The proposed settlement was
5 only possible following significant discovery and evaluation of Defendants’ relevant policies and
6 procedures, as well as the data they produced for the putative Class, which permitted Class
7 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
8 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
9 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
10 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$1,000,000 (“Gross
15 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
16 amount not to exceed \$350,000 (thirty-five percent (35%) of the Gross Settlement Amount) to
17 compensate Class Counsel for work already performed and all work remaining to be performed
18 in documenting the settlement, administrating the settlement and securing Court approval; (b)
19 Cost Award for actual litigation costs not to exceed \$20,000²; (c) Class Representative
20 Enhancement Payment to the named Class Representative in an amount not exceed \$10,000 in
21 recognition of Plaintiff’s work and efforts in obtaining the benefits for the Class and undertaking
22 the risk for the payment of costs in the event this matter had not successfully resolved; (d)
23 Administration Costs to CPT Group the Settlement Administrator, that are currently estimated at
24 approximately \$9,000 but not to exceed \$10,000; and (e) PAGA Payment of \$50,000, seventy-

25 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for
26 final approval. (Han Dec., *supra*, at ¶ 26.) At that time, Plaintiff will ask the Court to approve the amount of these
27 costs. If Plaintiff’s actual litigation costs exceed \$20,000, Plaintiff will only seek reimbursement in the amount of
28 \$20,000. (*Ibid.*) If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee
Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and will be distributed to
all Class Members who do not submit a valid and timely request to exclude themselves from the class action
Settlement (“Participating Class Members”). (*Ibid.*)

five percent (75%) of which (\$37,500) be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all hourly-paid or non-exempt employees who worked for Defendants within the State of California during the period between May 5, 2019 to March 31, 2021 (“Eligible Aggrieved Employees,” “PAGA Period,” and “Individual PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 25.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$573,500 (“Net Settlement Amount”) will be distributed to Class Members – with an average settlement share estimated at \$3,133.88. (Han Dec., *supra*, at ¶ 27.) The Settlement Administrator will withhold the amount of the Participating Class Members’ portion of normal payroll withholding taxes out of each person’s Individual Settlement Share. (*Ibid.*) The Settlement Administrator will also calculate the amount of the Participating Class Members’ and Defendants’ portion of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator will submit Defendants’ portion of payroll withholding tax calculation to Defendants for additional funding and forward those amounts along with each person’s Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*) The Individual Settlement Share is calculated based on each Participating Class Member’s pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows:

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

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1 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
2 according to their proportional share, which will be based upon the total number of pay periods
3 he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 28.) The Individual
4 PAGA Payment is calculated based on Eligible Aggrieved Employee's pro rata share of the
5 PAGA Payment allocated to the Eligible Aggrieved Employees based on pay periods during the
6 PAGA Period as follows:

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

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

15 **iii. Notice to the Class**

16 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
17 Defendants will deliver to the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
18 30.) The Class Data will be formatted as a Microsoft Excel spreadsheet and will include: (i) each
19 Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class
20 Member's Social Security and Employee ID number, if any; and (iv) the Class Member's
21 relevant dates of employment ("Class Data"). (*Ibid.*)

22 Within fourteen (14) calendar days after Defendants' deadline to provide the Class Data
23 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
24 identified Class Members via first-class regular U.S. Mail. Class Members are not required to
25 submit a claim form to receive their Individual Settlement Shares pursuant to the Settlement.
26 (Han Dec., *supra*, at ¶ 31.) Eligible Aggrieved Employees are not required to submit a claim
27 form to receive their Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and
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1 Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively,
2 which is Exhibit 2 to the Declaration of Douglas Han. (Han Dec., *supra*, at ¶ 31.)

3 **iv. Distribution of Funds**

4 No later than twenty-one (21) calendar days after the date the Final Approval of the
5 Settlement can no longer be appealed or, if there are no objectors and no Plaintiff in intervention
6 at the time the Court grants Final Approval of the Settlement, the date the court enters judgment
7 granting Final Approval of the Settlement, Defendants shall deposit the Gross Settlement
8 Amount of \$1,000,000 needed to pay the entire Gross Settlement Amount by wiring the funds to
9 the Settlement Administrator. (Han Dec., *supra*, at ¶ 32.)

10 Within fourteen (14) calendar days after the deadline to fund the Settlement, the
11 Settlement Administrator shall calculate and disburse all payments due under the Settlement
12 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
13 Attorney Fee Award, the Cost Award, the Class Representative Enhancement, the PAGA
14 Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 33.) The Settlement
15 Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment to
16 the LWDA for settlement of the PAGA claim. (*Ibid.*)

17 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
18 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
19 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 34.) If any
20 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
21 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed
22 or not deposited by the expiration of the 90-day period after mailing the reminder notice, the
23 Settlement Administrator will, within two hundred (200) calendar days after the checks are
24 mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as
25 applicable) to the California State Controller's Unclaimed Property Division in accordance with
26 California Unclaimed Property Law so that the Participating Class Member and/or Eligible
27 Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA
28 Payment available to him or her per the applicable claim procedure to request that money from

1 the State of California. (Han Dec., *supra*, at ¶ 34.)

2 **v. Release of Claims**

3 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
4 the Settlement, Plaintiff and the Participating Class Members release the Released Parties from
5 the Released Claims for the Class Period (“Released Claims”). *See* Exhibit 2 §§ (I)(JJ), (III)(J).
6 (Han Dec., *supra*, at ¶ 35.)

7 As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved
8 Employee, including Plaintiff, individually and on behalf of their heirs, executors,
9 administrators, representatives, attorneys, successors and assigns hereby voluntarily and
10 knowingly is barred from bringing for the PAGA Released Claims during the PAGA Period
11 (“PAGA Released Claims”). *See* Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 36.)

12 The Released Parties include Defendants and their past or present officers, directors,
13 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
14 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
15 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
16 employers. (“Released Parties”). *See* Exhibit 2 § (I)(KK). (Han Dec., *supra*, at ¶ 37.)

17 As of the Effective Final Settlement Date, and in exchange for the Class Representative
18 Enhancement Payment to the Plaintiff in an amount not to exceed \$10,000, in recognition of her
19 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
20 of costs in the event this matter had not successfully resolved, Plaintiff provides a general release
21 of claims. *See* Exhibit 2, § (III)(L). (Han Dec., *supra*, at ¶ 38.)

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

23 Both Plaintiff’s counsel and Defendants’ counsel are particularly experienced in wage
24 and hour employment law and class actions. Plaintiff’s counsel has significant experience in
25 litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions.
26 (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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

7 **IV. ARGUMENT**

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

9 California Rule of Court 3.769 requires court approval for class action settlements.⁴
10 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
11 settlement." (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
12 motion for preliminary approval of class settlements:

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

16 . . .

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

21 Courts act within their discretion in approving settlements that are fair, not collusive, and take
22 into account "all the normal perils of litigation as well as the additional uncertainties inherent in
23 complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
24 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452
25 U.S. 905.)

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

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

1 **b. 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 the 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 the class could recover if the plaintiff
12 prevailed on all his claims, provided there is a record that allows “an understanding of the
13 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
14 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
15 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
16 itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
17 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
18 499-500.).)

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

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

22 The proposed Settlement was only possible following significant discovery and
23 evaluation of Defendants’ relevant policies and procedures, as well as the data Defendants
24 produced for the putative Class as referenced in Section III above, which permitted Class
25 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Han Dec.,*
26 *supra*, at ¶ 41.)

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1 This discovery resulted in Plaintiff's central theories of liability, which are predicated on
2 Plaintiff's claims that Defendants failed to pay overtime wages, failed to provide meal breaks
3 and pay applicable premiums, failed to provide rest periods and pay applicable premiums, failed
4 to pay minimum wages, failed to pay final wages in a timely manner, failed to issue compliant
5 wage statements, failed to reimburse business expenses, violated PAGA, and violated the
6 Business & Professions Code sections 17200, et seq. (Han Dec., *supra*, at ¶ 42.)

7 Defendants vehemently deny Plaintiff's theories of liability and contend, as stated above,
8 that all meal and rest periods were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that they provided final wages in a timely manner, that
10 they provided wage statements in compliance with Labor Code section 226, and that they
11 reimbursed all business expenses. (Han Dec., *supra*, at ¶ 43.) Defendants further contend that
12 any mistakes made were honest rather than willful. (*Ibid.*) Finally, Defendants argue that if
13 litigation were to continue, they feel confident that they would prevail. (*Ibid.*)

14 Although Plaintiff believes the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiff contends violate California law and uniformly affect the
16 putative Class Members; uncertainties with respect to certification are always present. (Han
17 Dec., *supra*, at ¶ 44.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
18 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
20 and hour claims.⁵ (*Ibid.*)

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

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

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

4 In addition to being able to discover the strengths and vulnerabilities associated with
5 Plaintiff's claims, in preparing for mediation, Defendants provided Plaintiff with a sampling of
6 time and pay records and information regarding the estimated number of workweeks worked by
7 putative Class Members and the average hourly rate for class members. (Han Dec., *supra*, at ¶
8 45.) Defendants also confirmed that there were approximately 17,243 workweeks worked by
9 Class Members. there were approximately 17,243 workweeks worked by Class Members. (*Ibid.*)
10 Plaintiff was also able to determine that the average hourly rate for Class Members was \$18.10.
11 (*Ibid.*)

12 Specifically, Plaintiff contends that Defendants failed to compensate employees for all
13 hours worked. (Han Dec., *supra*, at ¶ 17.) Based on a reasonable estimate that Class Members
14 were able to prove that they worked approximately one (1) hour off-the-clock per week, a
15 reasonable estimate of damages at trial would be \$312,098.30 (17,243workweeks x 1 hour x
16 \$18.10 average hourly rate). If using the overtime rate as certain shifts exceeded eight (8) hours
17 per day or forty (40) hours per week, estimated damages at trial would be \$468,147.45 (17,243
18 workweeks x 1 hour x rate of \$27.15).

19 Moreover, Plaintiff asserts that Defendants failed to provide employees legally mandated
20 meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Plaintiff also asserts that Defendants failed to
21 pay meal and rest break premiums throughout the Class Period. (*Ibid.*) Analysis of Defendants'
22 time records revealed that there were 23,980 shifts that were eligible for rest breaks. Due to
23 Defendants' improper practices and procedures described above, Defendants' exposure for rest
24 break premiums would likely be approximately \$86,807.60 ((23,980 shifts x 20% violation rate)
25 x \$18.10). Furthermore, Plaintiff's expert analyzed that there were 16,805 shifts that had either
26 late or short meal breaks. There were also 2,908 shifts worked more than six (6) hours without a
27 recorded meal break. It is likely that 1/2 of these shifts did not receive meal breaks (1,454). If
28 proven, Defendants' exposure for meal break premiums would likely be \$330,487.90 (18,259

shifts x \$18.10).

Moreover, Plaintiff contends that Defendants failed to include non-discretionary bonuses and commissions in employees' regular rate of pay for purposes of overtime compensation. (Han Dec., *supra*, at ¶ 19.) According to Plaintiff's expert's analysis, Defendants owe Class Members \$451,751 in unpaid overtime wages with regards to non-discretionary bonuses and commissions.

Plaintiff also asserts that Defendants failed to reimburse employees for necessary business expenses. (Han Dec., *supra*, at ¶ 20.) Specifically, employees were not reimbursed for using their personal cell phones for business-related purposes or for purchasing office supplies. (*Ibid.*) Arguably, at least thirty percent (30%) of the personal cell phone charges are attributed to work. Using an average monthly charge of \$80.00, each monthly cost would be approximately \$24.00 per month. As a result, the total amount that must be reimbursed for personal cell phone use is likely \$95,496 (3,979 months x \$24.00). Moreover, with regards to employees not being reimbursed for office supplies, the total amount that must be reimbursed is likely \$27,450 (183 employees x \$150 expenses).

Furthermore, Plaintiff contends that Defendants' wage statement liability and their exposure to statutory penalties is substantial. (Han Dec., *supra*, at ¶ 21.) Plaintiff calculates Defendants' maximum potential exposure as to this claim to be approximately \$381,250 (([1 x \$50] + [30 x \$100]) x 125 employees) (based on 31 average pay periods).

Finally, Plaintiff asserts that Defendants is liable for waiting time penalties. (Han Dec., *supra*, at ¶ 22.) Plaintiff calculates Defendants' maximum potential exposure as to this claim to be approximately \$134,664 (8 hours x \$18.10 average hourly rate x approximately 31 former non-exempt employees x 30 days).

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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, 202, 226(a), 226.7, 510, 512(a), 1194,
3 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 46.) Defendants asserted that, regardless of
4 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
5 and discretionary. (*Ibid.*) Defendants also maintained that, in addition to their strong arguments
6 against the underlying claims, they had a strong argument that it would be unjust to award
7 maximum 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 Dec., *supra*, at ¶ 47.) Class Counsel then
12 applied discounts in light of the countervailing arguments with regard to the other causes of
13 action, as well as the Court’s power to award “a lesser amount than the maximum civil liability.”
14 (*Id.* (citing Lab. Code § 2699(e)(2).).) (*Ibid.*)

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 Dec., *supra*, at ¶ 48.) However, if PAGA penalties are granted on
18 any one of the violations alleged in Plaintiff’s operative complaint, the total penalties exposure
19 for the eligible pay periods could be approximately \$762,500 (([1 x \$100] + [30 x \$200]) x 125
20 employees). (*Ibid.*) Plaintiff calculated Defendants’ PAGA exposure using one hundred percent
21 (100%) violation rate based on the average number of pay periods (30) during the one-year
22 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
23 under the PAGA theories of recovery (6) gives potential civil penalties of \$4,575,000. (*Ibid.*)

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1 Although Plaintiff argued she could obtain over \$4 million for PAGA penalties, it seems
2 highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 49.)
3 PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty for
4 each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each
5 subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral*
6 *v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has
7 been notified that it is violating a Labor Code provision (whether or not the commissioner or
8 court chooses to impose penalties), the employer cannot be presumed to be aware that its
9 continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed
10 only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could
11 be interpreted as indicating that until the Labor Commissioner or a court informs an employer
12 that it 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 \$12,500 (125 employees x 100 (initial violation)), and for all possible Labor Code violations is
15 \$75,000.

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 Defendants 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 \$12,500 on the low end and \$75,000 on the high end based on six (6) major

1 theories of recovery.

2 To the extent Defendants' exposure remains in the hundreds of thousands of dollars, the
3 civil penalties would certainly be "unjust, arbitrary and oppressive, or confiscatory." In fact,
4 many courts have taken liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v.*
5 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving
6 class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims'
7 full potential value, where "Plaintiffs face[d] a substantial risk of recovering nothing on either
8 class 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].).

13 Under a more conservative approach, Plaintiff's counsel considered the possibility that
14 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$75,000
15 [125 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 49.)

16 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
17 (Han Dec., *supra*, at ¶ 50.) Many of the causes of action brought were duplicative of the
18 statutory claims such as violations of California Labor Code §§ 226(a), 226.7, 510, 512(a), 1194,
19 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
20 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
21 under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based
22 on a rate of \$12.83 per pay period [$\$50,000 \div 3,896$ Pay Periods in PAGA Date Range =
23 \$12.83], given the fact that Defendants are also paying an additional \$950,000 in the class
24 settlement. (*Id.* (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
25 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff
26 requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where
27 PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the
28 result of self-interest at the expense of other Class Members," such amounts are generally

considered reasonable. (Han Dec., *supra*, at ¶ 50.) (citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

Accordingly, taking into consideration Defendants’ defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$1,000,000— with an average settlement share estimated at \$3,133.88—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$1,820,004.80 on the low end and \$1,976,053.95 on the high end. (Han Dec., *supra*, at ¶ 51.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$86,807.60	70%	60%	\$10,416.91
Meal Break Premiums	\$330,487.90	60%	50%	\$66,097.58
Overtime/Minimum Wage: Off-the-Clock	\$312,098.30 to \$468,147.45	60%	50%	\$62,419.66 to \$93,629.49
Overtime/Minimum Wage: Non-Discretionary Bonus and Commission	\$451,751	15%	25%	\$287,991.26
Waiting Time Penalty	\$134,664	50%	50%	\$33,666
Wage Statement Penalty	\$381,250	50%	50%	\$95,312.50
Unreimbursed Business Expenses	\$122,946	30%	80%	\$17,212.44
MAXIMUM TOTAL EXPOSURE	\$1,820,004.80 to \$1,976,053.95			\$573,116.35 to \$604,326.18

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1 Based on the rest period theories described above, Class Counsel believes a seventy
2 percent (70%) certification risk and sixty percent (60%) merits risk are justified. (Han Dec.,
3 *supra*, at ¶ 52.) Plaintiffs contend that employees were frequently pressured into forgo, cut short,
4 or take late rest breaks due to the volume of time-sensitive work Defendants expected them to
5 complete. (*Ibid.*) These pressured were exasperated by Defendants being understaffed. (*Ibid.*)
6 However, Class Counsel also understand that obtaining certification for non-compliant rest
7 breaks due to improper practices can be difficult and problematic. (*Ibid.*) Defendants may also
8 product evidence and testimony that did it not pressures any of its employees to skip, interrupt,
9 or take late rest breaks nor did it assign employees heavy workloads with tight deadlines. (*Ibid.*)
10 Instead, employees simply chose to skip, cut short, or take late rest breaks by their own volition.
11 (*Ibid.*) Defendants could also product evidence that many employees actually waived their rest
12 breaks. (*Ibid.*) Finally, since rest breaks are not recorded like meal breaks, it will be difficult for
13 Plaintiff to prove employees were actually deprived of their rest breaks. (*Ibid.*) Thus, Class
14 Counsel believes a seventy percent (70%) certification risk and additional sixty percent (60%)
15 merits risk are warranted. (*Ibid.*)

16 Class Counsel also applies a sixty percent (60%) certification risk and fifty percent (50%)
17 risk on the merits based on the meal period theories. (Han Dec., *supra*, at ¶ 53.) Similar to rest
18 breaks, Plaintiff asserts that the amount of time-sensitive work Defendants expected employees
19 to complete forced them to skip, cut short, and take late meal breaks. (*Ibid.*) Specifically,
20 employees would be forced to eat at their desks while attempting to complete their assignments
21 before upcoming deadlines. (*Ibid.*) Even when employees were afforded opportunities to take
22 their meal breaks, management would chastise them for not working, meaning that meal breaks
23 were generally discouraged. (*Ibid.*) Moreover, not all employees were provided second meal
24 breaks in spite of working shifts that exceeded ten (10) hours. (*Ibid.*) Finally, non-compliant
25 meals are easier to prove compared to rest breaks because they are recorded. (*Ibid.*) Class
26 Counsel, however, understands that there are still risks associated with certification with regards
27 to meal breaks. (*Ibid.*) Defendants can also produce evidence and testimony that employees who
28 skipped, interrupted, or took late meal breaks did so at their volition and without Defendants'

1 knowledge. (Han Dec., *supra*, at ¶ 53.) In other words, Defendants may produce evidence that
2 management never chastised employees for taking their meal breaks nor were meal breaks
3 discouraged in the work environment. (*Ibid.*) Therefore, Class Counsel believes that even if
4 certified, an additional fifty percent (50%) risk on the merits along with a sixty percent (60%)
5 certification risk are warranted by the facts. (*Ibid.*)

6 For unpaid wages involving off-the-clock work, including overtime, Class Counsel
7 believes a sixty percent (60%) certification risk and a fifty percent (50%) merits risk are justified.
8 (Han Dec., *supra*, at ¶ 54.) Plaintiffs contend that employees were frequently pressured to work
9 off-the-clock in order to complete the high volume of time-sensitive assignments Defendants
10 assigned to them. (*Ibid.*) These pressures were also exasperated by the fact that Defendants were
11 understaffed. (*Ibid.*) Thus, employees were left with little to no choice but to work off-the-clock
12 in order to meet Defendants' expectations. (*Ibid.*) However, Defendants may produce evidence
13 and testimony at trial that the number of employees who did work off-the-clock was minimal and
14 that it did not pressure any of their employees to work off-the-clock. (*Ibid.*) Instead, employees
15 who worked off-the-clock did so at their own volition and without Defendants' knowledge.
16 (*Ibid.*) Moreover, Defendants could even produce evidence that the small number of employees
17 who did work off-the-clock were compensated. (*Ibid.*) Finally, Defendants can produce
18 evidence that any discrepancies or inconsistencies involving their timekeeping procedures were
19 minimal and not the result of employees being undercompensated. (*Ibid.*) Thus, Class Counsel
20 believes a sixty percent (60%) certification risk and an additional fifty percent (50%) merits risk
21 are justified. (*Ibid.*)

22 Furthermore, Class Counsel believes a fifteen percent (15%) certification risk and a
23 twenty-five percent (25%) risk on the merits regarding non-discretionary bonuses and
24 commissions not being factored into employees' regular rates of pay for overtime compensation
25 are reasonable. (Han Dec., *supra*, at ¶ 55.) Plaintiff asserts that Defendants had a practice of
26 paying employees non-discretionary bonuses and commissions on a quarterly and monthly basis.
27 (*Ibid.*) But Defendants did not factor these bonuses and commissions into employees' regular
28 rates. (*Ibid.*) These regular rate claims are readily certified, hence Class Counsel provided very

1 little risk discount. (Han Dec., *supra*, at ¶ 55.) However, Defendants could provide testimony
2 that not all of their employees were eligible for or may have received such bonuses and
3 commissions, and due to the nature of these payments, not every pay period was affected. (*Ibid.*)
4 In other words, Defendants’ bonuses and commissions were not meant to affect their employees’
5 regular rate of pay because not every employee who received them worked overtime. (*Ibid.*)
6 Thus, Class Counsel believes the risk discounts are justified. (*Ibid.*)

7 Plaintiff’s section 203 claim for waiting time penalties is based on Plaintiff’s claims for
8 unpaid overtime, time worked off-the-clock, and missed rest and meal breaks. (Han Dec., *supra*,
9 at ¶ 56.) If Plaintiff prevails on these underlying claims, it will lead to waiting time penalties.
10 (*Ibid.*) However, Defendants may argue that any failure to pay wages due and owing to
11 employees in a timely manner was not “willful” under section 203 and was instead an honest
12 mistake made in good faith. (*Ibid.*) For these reasons and the reasons explained in the previous
13 sections, Class Counsel believes a fifty percent (50%) certification risk and fifty percent (50%)
14 discount on the merits risk are justified. (*Ibid.*)

15 Plaintiff’s section 226(a) claim for wage statement penalties is based on Defendants’
16 failure to maintain accurate records. (Han Dec., *supra*, at ¶ 57.) In other words, Defendants
17 failed to accurately all record hours worked by putative Class Members. (*Ibid.*) This
18 subsequently resulted in Defendants issuing wage statements that failed to accurately state the
19 numbers of hours worked in violation of the California Labor Code. (*Ibid.*) However,
20 Defendants’ error most likely did not affect all employees. (*Ibid.*) In addition, Defendants may
21 argue that their failure to provide accurate wage statements was not “knowing and intentional”
22 under section 226(a). (*Ibid.*) Thus, Class Counsel believes a fifty percent (50%) certification risk
23 and fifty percent (50%) merits risk discount are justified. (*Ibid.*)

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1 Finally, Class Counsel believes that a thirty percent (30%) certification risk and an eighty
2 percent (80%) merits risk for unreimbursed business expenses are warranted. (Han Dec., *supra*,
3 at ¶ 58.) Plaintiff asserts that employees like loan processors were required by Defendants to use
4 their personal cell phones for business-related purposes for which they were not reimbursed.
5 (*Ibid.*) Furthermore, Defendants did not reimburse employees for purchasing office supplies.
6 (*Ibid.*) However, Defendants can produce evidence that only a small percentage of employees
7 actually used their personal cell phones for business-related purposes. (*Ibid.*) Defendants could
8 also present evidence and testimony that the small number of employees who opted to use their
9 personal cell phones for such purposes were reimbursed. (*Ibid.*) Finally, Defendants can present
10 evidence that employees who purchased office supplies were not reimbursed because their
11 purchases were not reasonable business expenses. (*Ibid.*) Therefore, Class Counsel believes that
12 this justifies a thirty percent (30%) certification risk and an additional eighty percent (80%)
13 merits risk. (*Ibid.*)

14 Based on this analysis, the realistic recovery for this case is \$573,116.35 on the low end
15 and \$604,326.18 on the high end. (Han Dec., *supra*, at ¶ 59.) The Gross Settlement Amount of
16 \$1,00,000 is approximately fifty percent (50.6%) of the maximum potential exposure and is
17 approximately one hundred sixty-five percent (165.5%) of the maximum realistic exposure at
18 trial, which is an excellent settlement. (*Ibid.*)

19 The only question at preliminary approval is whether the settlement is within the range of
20 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
21 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
22 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
23 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
24 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
25 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
26 that induce consensual settlements. The proposed settlement is not to be judged against a
27 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)
28 Nevertheless, this settlement exceeds the realistic exposure Plaintiff could have prevailed at trial

1 and provide a significant recovery for the Class Members. Thus, there can be no doubt that this
2 settlement is fair and reasonable.

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

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

11 The proposed Class is ascertainable and numerous as to make it impracticable to join all
12 Class Members, and there are common questions of law and fact that predominate over any
13 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 60.) Plaintiff’s claims
14 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
15 protect the interests of the Class. (*Ibid.*) Further, prosecution of separate actions by individual
16 Class Members would create the risk of inconsistent or varying adjudications, and a class action
17 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
18 discussed below, this case is amenable to class certification. (*Ibid.*)

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.)

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1 The Class Action involves one hundred eighty-three (183) Class Members. (Han Dec.,
2 *supra*, at ¶ 61.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
3 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
4 many as 190 current and former employees” is sufficiently numerous).) Further, all Class
5 Members can and will be identified by Defendants to the Settlement Administrator through a
6 review of Defendants’ employment records concerning hourly-paid and non-exempt employees
7 employed by Defendants within the State of California during the Class Period. (Han Dec.,
8 *supra*, at ¶ 61.)

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

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

20 **1. Common Issues Predominate**

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

190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class of dancers on state law claims).)

Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged by Plaintiff. (Han Dec., *supra*, at ¶ 62.) All hourly-paid and non-exempt employees who worked for Defendants during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All of Plaintiff's claims surround Defendants' common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement and waiting time penalties. (*Ibid.*)

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

Typical claims rely on legal theories and facts that are substantially similar to other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Here, Plaintiff was a non-exempt employee and alleges she and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 63.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

3. Plaintiff is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 64.) She has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with counsel to provide counsel with a complete understanding of her work environment and requirements. (*Ibid.*) Furthermore, Plaintiff does not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to represent the Class. (Han

Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

4. Class Action is Superior for the Fair and Efficient

Adjudication of this Controversy

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

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

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

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

JUSTICE LAW CORPORATION


Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff



Court Reservation Receipt

Reservation

Reservation ID: 370219678289	Status: RESERVED
Reservation Type: Motion re: (Preliminary Approval of Class Action Settlement)	Number of Motions: 1
Case Number: 20CHCV00420	Case Title: GINA DAVIDSON vs AUGUSTA FINANCIAL, INC., et al.
Filing Party: Gina Davidson (Plaintiff)	Location: Chatsworth Courthouse - Department F47
Date/Time: April 5th 2021, 8:30AM	Confirmation Code: CR-UPL8EWDPCCHZTYNBAX

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX7323	Authorization: 05012G

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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 March 9, 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: **Davidson v. Augusta Financial, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-785566-20**
Court Case No.: 20CHCV00420
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

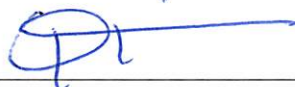
[X] BY ELECTRONIC SUBMISSION

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 March 9, 2021, at Pasadena, California.



Allana Rivera