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

GINA MASSENZO, individually, on behalf
of other members of the general public
similarly situated, and on behalf of other
members of the general public similarly
situated;

Plaintiff,

v.

BACHEM AMERICAS, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20TRCV00591

Honorable Gary Y. Tanaka
Department B

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND UNOPPOSED 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: 631720117416]

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

Hearing Date: September 15, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department B

Complaint Filed: August 20, 2020
FAC Filed: June 29, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 15, 2021, and at 8:30 a.m., or as soon as
2 the matter may be heard before the Honorable Gary Y. Tanaka in Department B of the Los
3 Angeles County Superior Court, located at 825 Maple Avenue, Torrance, California 90503,
4 Plaintiff Gina Massenzo (“Plaintiff”) will and hereby move 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 **“Exhibit**
8 **2”** to the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, and the allocations for penalties under the
10 California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
11 Attorney Fee Award, Cost Award, Class Representative Enhancement Payments,
12 and 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 • Directing the mailing of the proposed Class Notice and proposed Exclusion Form
19 with a postage-paid return envelope (hereinafter collectively referred to as the
20 “Notice Packet”) to the proposed Class;
- 21 • Approving the proposed deadlines for the notice and Settlement Administration
22 process;
- 23 • Approving Simpluris, Inc. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement, at which time the Court will also consider whether to grant Final Approval of the requests for Attorney Fee Award, Cost Award, Class Representative Enhancement 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); 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: June 30, 2021

JUSTICE LAW CORPORATION

By:



Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Talía Lux
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$800,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of herself and all persons who worked for
4 Defendant Bachem Americas, Inc. (“Defendant”) in California as an hourly-paid or non-exempt
5 employee during the Class Period (“Class”). The Class Period is the time period from June 9,
6 2017, to the date the Court issues an order granting preliminary approval of the Settlement, or
7 September 6, 2021, whichever occurs earlier (“Class Period”). At the time of this filing, the
8 number of Class Members provided by Defendants is currently estimated to be three hundred
9 twenty-nine (329).

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
11 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
12 proposed settlement of \$800,000 – with an average settlement share amount estimated at
13 \$1,313.07¹ – is well within the “ballpark” of reasonableness.

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

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¹ \$432,000 (Net Settlement Amount) / 329 (Class Members) = \$1,313.07.

1 **II. BACKGROUND**

2 Founded in 1971 in Switzerland, Defendant was initially a small company, with only two
3 employees, focusing primarily on peptide synthesis. Since its inception, Defendant has acquired
4 many companies and has entered into a couple partnerships, allowing it to grow into a global
5 company with over 1,000 employees. Defendant prides itself as an independent, technology-
6 based company, which manufactures high quality biochemical and pharmaceutical drug products
7 at competitive prices, with an emphasis in environmental protection. (Declaration of Douglas
8 Han (“Han Dec.”) at ¶ 9.) This case involves all persons who worked for Defendant in California
9 as a non-exempt employee during the Class Period (“Class”). (*Ibid.*) The Class Period is the time
10 period from June 9, 2017, to the date the Court issues an order granting preliminary approval of
11 the Settlement, or September 6, 2021, whichever occurs earlier (“Class Period”). (*Ibid.*) Plaintiff
12 alleges that at all times during the Class Period, Defendant’s non-exempt employees work and/or
13 worked on an hourly basis. (*Ibid.*)

14 Plaintiff Massenzo is a former employee of Defendant who filed a Private Attorneys
15 General Act of 2004 (“PAGA”) action on behalf of all current and former California-based (i.e.,
16 currently “residing” in California with the intent to remain in California indefinitely) hourly-paid
17 or non-exempt employees (either directly or through a staffing agency or labor contractor) of
18 Defendant within the State of California at any time during the period from June 9, 2019 to the
19 present. (Han Dec., *supra*, at ¶ 10.) On June 9, 2020, Plaintiff Massenzo provided written notice
20 to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
21 provisions of the Labor Code she contends were violated and the theories supporting her
22 contention. (*Ibid.*)

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1 After waiting the requisite sixty-five (65) days for the Private Attorneys General Act of
2 2004 (“PAGA”) notice period to expire, Plaintiff Massenzo filed her representative PAGA action
3 on August 20, 2020 in the Superior Court of Los Angeles on behalf of all current and former
4 hourly-paid or non-exempt employees (whether hired directly or through a labor contractor or
5 staffing agency) of Defendant who worked for Defendant at any time during the period from
6 June 9, 2019 to the present. (Han Dec., *supra*, at ¶ 11.) Plaintiff Massenzo’s allegations were
7 that, since June 9, 2019, Defendant violated the Labor Code by failing to pay minimum and
8 overtime wages, failing to provide meal periods and rest breaks, failing to timely pay wages
9 during employment and upon termination, failing to provide complete and accurate wage
10 statements, and failing to reimburse business expenses. (*Ibid.*)

11 The Parties attended mediation on Plaintiff’s claims on June 8, 2021. (Han Dec., *supra*,
12 at ¶ 12.) Under the auspices of the mediator Jeffrey Krivis, the Parties were eventually able to
13 reach an agreement on the settlement of the action. (*Ibid.*)

14 In June 2021, in line with the settlement reached between the Parties at mediation,
15 Plaintiff filed her First Amended Class Action Complaint in the Superior Court of Los Angeles
16 on behalf of herself and the putative class, which consists of all persons who worked for
17 Defendant in California as an hourly-paid or non-exempt employee during the period from June
18 9, 2017 to the present. (Han Dec., *supra*, at ¶ 13.) Plaintiff’s First Amended Class Action
19 Complaint alleges causes of action for (1) violation of California Labor Code §§ 510 and 1198
20 (unpaid overtime); (2) violation of Labor Code §§ 226.7 and 512(a) (unpaid meal period
21 premiums); (3) violation of Labor Code § 226.7 (unpaid rest period premiums); (4) violation of
22 California Labor Code §1194 and 1197 (unpaid minimum wages); (5) violation of California
23 Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California Labor Code
24 § 226(a) (non-compliant wage statements); (7) violation of Labor Code § 2800 and 2802
25 (unreimbursed business expenses); (8) violation of PAGA; and (9) violation of Business &
26 Professions Code §§ 17200, et seq. (*Ibid.*)

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1 Defendant generally and specifically denies any and all liability or wrongdoing of any
2 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
3 any sort, and contends that for any purpose other than settlement, the Class Action is not
4 appropriate for class or representative treatment. (Han Dec., *supra*, at ¶ 14.) Furthermore,
5 Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability
6 arising out of any of the alleged facts or conduct in the Class Action (*Ibid.*)

7 **III. INVESTIGATION/ LITIGATION HISTORY**

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

9 After Plaintiff Massenzo filed her representative PAGA action, both Parties conducted
10 significant investigation and discovery of the facts and law. (Han Dec., *supra*, at ¶ 15.) Prior to
11 the mediation with Jeffrey Krivis on June 8, 2021, Defendant produced hundreds of documents
12 relating to its policies, practices, and procedures regarding reimbursement of business expenses,
13 paying non-exempt employees for all hours worked, meal and rest period policies, and payroll
14 and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiff also reviewed time
15 records, pay records, and information relating to the size and scope of the Class, as well as data
16 permitting Plaintiff to understand the number of workweeks in the Class Period. (*Ibid.*)

17 Furthermore, Plaintiff also interviewed several Class Members who worked for
18 Defendant throughout the Class Period. (Han Dec., *supra*, at ¶ 16.) The Parties agree that the
19 above-described investigation and evaluation, as well as the information exchanged during the
20 settlement negotiations, are more than sufficient to assess the merits of the respective Parties'
21 positions and to compromise the issues on a fair and equitable basis. (Han Dec., *supra*, at ¶ 15.)

22 Based upon Defendant's discovery responses and document production, as well as
23 interviews Plaintiff's Counsel had with non-exempt employees, Plaintiff contends – and
24 Defendant denies – that Defendant failed to provide employees legally mandated rest breaks.
25 (Han Dec., *supra*, at ¶ 16.) Interviews with putative class members confirm that Defendant's
26 arguably compliant policies were not enforced as part of Defendant's actual practice. (*Ibid.*)
27 Since Defendant's general policy discouraged overtime hours by disciplining or terminating
28 workers for unauthorized overtime, employees were often unable to take their rest breaks

1 because their supervisors would constantly pressure employees to finish their tasks and avoid
2 falling behind on their schedules. (Han Dec., *supra*, at ¶ 16.) For example, facilities technicians
3 and calibration technicians missed nearly all of their work breaks due to the heavy workload and
4 understaffing. (*Ibid.*) When there was an urgent task, the employee was expected to tend to this
5 urgent task and take their rest break late to resolve the issue immediately. (*Ibid.*) Finally, Plaintiff
6 also asserts that Defendant failed to pay employees premium wages in spite of several instances
7 of failing to provide compliant rest breaks. (*Ibid.*)

8 Moreover, Plaintiff asserts – and Defendant denies – that Defendant failed to provide
9 employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 17.) Firstly, Plaintiff
10 asserts that despite Defendant’s arguably *Brinker*-compliant meal break policy, Defendant
11 maintained uniform, improper practices that prevented employees from receiving compliant meal
12 breaks. (*Ibid.*) Specifically, employees often had late, missed, short, or interrupted meal breaks
13 because of their workload, understaffing, and pressure to complete time-sensitive tasks. (*Ibid.*)
14 For example, facilities technicians were often forced to miss their meal breaks due to their heavy
15 workload and to ensure that the protein peptides they worked with remained frozen. (*Ibid.*)
16 Similarly, materials coordinators, if they took breaks, communicated being required to take late
17 meal breaks or having their meal breaks cut short due to trucks and tankers arriving and having
18 to continue working. (*Ibid.*) Finally, Plaintiff contends that Defendant did not pay employees all
19 of the premium wages they were entitled to in spite of these many instances of non-compliant
20 meal breaks. (*Ibid.*)

21 Plaintiff also asserts – and Defendant denies – that Defendant failed to compensate
22 employees for all hours worked. (Han Dec., *supra*, at ¶ 18.) Specifically, Defendant’s uniform,
23 improper practices frequently pressured employees into working off-the-clock for which they
24 were not compensated. (*Ibid.*) Employees would wait in line for about three to five (3-5) minutes
25 before the start of their shift in order to clock in. (*Ibid.*) Predictably, there were often technical
26 issues with clocking in because the timeclocks did not always function properly. (*Ibid.*)
27 Employees were also directed by their supervisors to handle any minor technical issues with
28 equipment off-the-clock at the end of their shift. (*Ibid.*) Similarly, many employees were on-call

1 about half of the week, and they were only paid upon clocking-in. (Han Dec., *supra*, at ¶ 18.)
2 Since Defendant prohibited working unauthorized overtime, employees were regularly required
3 and instructed to clock out for the workday and complete their remaining tasks off-the-clock.
4 (*Ibid.*)

5 Furthermore, Plaintiff contends – and Defendant denies – that employees were not
6 compensated at their regular rate of pay for non-discretionary bonus payments. (Han Dec.,
7 *supra*, at ¶ 19.) Specifically, Defendant would periodically pay employees non-discretionary
8 bonus payments that were not factored into employees’ regular rates of pay for purposes of
9 overtime compensation. (*Ibid.*) Employees would receive a percentage of their gross income as a
10 periodic bonus. (*Ibid.*) Despite paying its employees these bonuses, Defendant failed to include
11 them into employees’ regular rates to change their overtime rates. (*Ibid.*)

12 Additionally, Plaintiff asserts – and Defendant denies – that Defendant failed to
13 reimburse employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 20). For
14 example, employees were required to use their personal cell phones to communicate with other
15 employees, or because they were frequently on-call. (*Ibid.*) They were not reimbursed for such
16 usage. (*Ibid.*) Moreover, many employees were required to purchase boots for which a voucher
17 was given, but the voucher did not cover the entirety of the cost. (*Ibid.*) Further, many employees
18 had to use their personal vehicles to pick-up necessary items and orders, but they were not
19 reimbursed for gas or mileage. (*Ibid.*)

20 Furthermore, Plaintiff contends – and Defendant denies – that Defendant is liable for
21 issuing non-compliant wage statements. (Han Dec., *supra*, at ¶ 21). Specifically, Defendant
22 issued wage statements in violation of Labor Code section 226(a) because of the underlying
23 violations that are discussed above. (*Ibid.*) Consequently, Defendant’s wage statements would
24 necessarily be inaccurate. (*Ibid.*) Even if Defendant asserts that its violation of section 226(a) is
25 trivial, California courts have held that strict compliance of section 226(a) is exactly what is
26 intended. (*Ibid.*)

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1 Finally, Plaintiff contends – and Defendant denies – that Defendant is liable for waiting
2 time penalties. (Han Dec., *supra*, at ¶ 22). Specifically, Defendant’s 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, Defendant owes compensation for underpaid work and
6 missed meal and rest breaks as a matter of fact and law but intentionally failed or refused to
7 perform an act, which was required to be done, constituting “willful” conduct and justifying
8 “waiting-time” penalties under section 203 to former employees. (*Ibid.*)

9 Defendant denies Plaintiff’s contentions in their entirety. (Han Dec., *supra*, at ¶ 23.)
10 Among other things, Defendant denies Plaintiff’s rest and meal break contentions, on the
11 grounds that it provided rest and meal periods within compliant times and that non-exempt
12 employees were given discretion as to when to take their rest and meal periods. (*Ibid.*) Defendant
13 also contends that both its meal and rest break policies complied with California law and that
14 non-exempt employees were allowed to use their rest period and meal period time for their own
15 purposes. (*Ibid.*) Defendant further contends that whether non-exempt employees took meal and
16 rest breaks 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.*) Defendant also asserts that it paid
19 its employees for all times worked, including overtime, minimum, and premium wages. (*Ibid.*)
20 Moreover, Defendant contends that it did factor non-discretionary bonus payments into eligible
21 employees’ regular rates for overtime purposes. (*Ibid.*) Further, Defendant contends that
22 Plaintiff’s claims regarding off-the-clock work and unpaid overtime are trivial as only a small
23 number of employees actually worked off-the-clock. (*Ibid.*) Defendant also asserts that it
24 reimbursed employees for all business expenses, including the use of personal cell phones for
25 business-related purposes. (*Ibid.*) Finally, Defendant argues that its failure to comply with
26 California labor laws was an honest mistake made in good faith. (*Ibid.*) Thus, Defendant’s
27 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 Defendant's 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, Jeffrey
7 Krivis. The mediation took place on June 8, 2021. (Han Dec., *supra*, at ¶ 24.) During the
8 mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
9 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the
10 mediator, the Parties were able to reach an agreement on a settlement of the Class Action, the
11 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 ¶ 40.) 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 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
23 *supra*, at ¶ 41.) 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 June 8, 2021. (*Ibid.*) Based on the foregoing, Plaintiff and Class
27 Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and
28 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 ¶ 42.) The proposed settlement was
5 only possible following significant discovery and evaluation of Defendant’s relevant policies and
6 procedures, as well as the data they produced for the putative Class, which permitted Class
7 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
8 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
9 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
10 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*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 \$800,000 (“Gross
15 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
16 amount not to exceed \$280,000 (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 in the amount of \$10,000 to the Class Representative in recognition of
21 Plaintiff’s work and efforts in obtaining the benefits for the Class and undertaking the risk for the
22 payment of costs in the event this matter had not successfully resolved; (d) Administration Costs
23 to Simpluris, Inc. (“Simpluris”), the Settlement Administrator, not to exceed \$8,000; and (e)
24 PAGA Payment of \$50,000, seventy-five percent (75%) of which (\$37,500) be paid to the

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26 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for
27 final approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. (Han Dec., *supra*, at ¶
28 26.) If Plaintiff’s actual litigation costs exceed \$20,000, Plaintiff will only seek reimbursement in the amount of
\$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.*)

1 LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to the aggrieved
2 employees eligible to recover the PAGA Payment that consist of all hourly-paid or non-exempt
3 employees of Defendant in California during the period from June 9, 2019 through the date the
4 Court signs an order granting preliminary approval of this Settlement, or September 6, 2021,
5 whichever occurs earlier (“Eligible Aggrieved Employees,” “PAGA Period,” and “Individual
6 PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 25.)

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

8 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
9 that \$432,000 (“Net Settlement Amount”) will be distributed to Class Members – with an
10 average settlement share estimated at \$1,313.07. (Han Dec., *supra*, at ¶ 27.) The Settlement
11 Administrator will withhold the amount of the Participating Class Members’ portion of normal
12 payroll withholding taxes out of each person’s Individual Settlement Share. (*Ibid.*) The
13 Settlement Administrator will calculate the amounts of the Participating Class Members’ and
14 Defendant’s portions of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator
15 will submit Defendant’s portion of payroll withholding tax calculation to Defendant for
16 additional funding and forward those amounts along with each person’s Individual Settlement
17 Share withholdings to the appropriate taxing authorities. (*Ibid.*) The Individual Settlement Share
18 is calculated based on each Participating Class Member’s pro rata share of the Net Settlement
19 Amount based on workweeks during the Class Period as follows:

20 (i) the number of weeks he or she worked as a hourly-paid or non-exempt
21 employee during the Class Period, divided by (ii) the total number of weeks
22 worked by all Participating Class Members collectively during the Class Period,
23 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. (Han Dec., *supra*, at ¶ 28.)

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1 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
2 according to his or her proportional share, which will be based upon the total number of work
3 weeks he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 29.) The
4 Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata
5 share of the PAGA Payment allocated to Eligible Aggrieved Employees based on work weeks
6 during the PAGA Period as follows:

7 (i) the number of work weeks he or she worked as a hourly-paid or non-exempt employee
8 during the PAGA Period, divided by (ii) the total number of work weeks worked by all
9 Eligible Aggrieved Employees collectively during the PAGA Period, which is then
10 multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The
11 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 Defendant have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 30.)
14 No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

15 **iii. Notice to the Class**

16 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
17 Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
18 31.) 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; (iv) the Class Member's relevant
21 dates of employment; (v) number of workweeks worked by the Class Member during the Class
22 Period (excluding weeks where the Class Member performed no work for Defendant) ("Class
23 Data"). (*Ibid.*)

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1 Within fourteen (14) calendar days after Defendant’s deadline to provide the Class Data
2 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
3 identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 32.) Class
4 Members are not required to submit a claim form to receive their Individual Settlement Payments
5 pursuant to the Settlement. (*Ibid.*) Eligible Aggrieved Employees are not required to submit a
6 claim form to receive their Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and
7 Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively,
8 which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

9 **iv. Distribution of Funds**

10 No later than ten (10) calendar days after the date the Final Approval of the Settlement
11 can no longer be appealed or, if there are no objectors and no plaintiffs in intervention at the time
12 the Court grants Final Approval of the Settlement, the date the Court enters judgment granting
13 Final Approval of the Settlement, Defendant shall deposit the Gross Settlement Amount of
14 \$800,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
15 Settlement Administrator. (Han Dec., *supra*, at ¶ 33.)

16 After sixty-one (61) calendar days after the deadline to fund the Settlement, the
17 Settlement Administrator shall calculate and disburse all payments due under the Settlement
18 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
19 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the
20 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 34.) The Settlement
21 Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the
22 LWDA for settlement of the PAGA claim. (*Ibid.*)

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1 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
2 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
3 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 35.) If any
4 checks are returned as undeliverable and without a forwarding address, the Settlement
5 Administrator will conduct a skip trace search to find the most up-to-date mailing addresses and
6 re-mail the checks promptly. (*Ibid.*) If any checks are not redeemed or deposited within ninety
7 (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard.
8 (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period
9 after mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
10 calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or
11 Individual PAGA Payment (as applicable) to the California State Controller's Office in
12 accordance with California Unclaimed Property Law so that the Participating Class Member
13 and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or
14 Individual PAGA Payment available to him or her per the applicable claim procedure to request
15 that money from the State of California. (*Ibid.*)

16 **v. Release of Claims**

17 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
18 the Settlement, Plaintiff and the Participating Class Members release the Released Parties from
19 the Released Claims for the Class Period ("Released Claims"). See Exhibit 2 §§ (I)(JJ), (III)(J).
20 (Han Dec., *supra*, at ¶ 36.)

21 As of the Effective Final Settlement Date and upon Defendant's fully funding of the
22 Settlement, all Eligible Aggrieved Employees and the State of California shall be deemed to
23 have fully, finally, and forever released, relinquished and will release all claims for civil
24 penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period ("PAGA
25 Released Claims"). See Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 37.)

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1 The Released Parties include Defendant and its past or present officers, directors,
2 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
3 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
4 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
5 employers (“Released Parties”). See Exhibit 2 § (I)(KK). (Han Dec., *supra*, at ¶ 38.)

6 As of the Effective Final Settlement Date, and in exchange for the Class Representative
7 Enhancement Payment to Plaintiff in an amount not to exceed \$10,000, in recognition of her
8 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
9 of costs in the event this matter had not successfully resolved, Plaintiff provides a general release
10 of claims for herself and her spouses, heirs, successors and assigns. See Exhibit 2 §§ (III)(L).
11 (Han Dec., *supra*, at ¶ 39.)

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

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

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

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

1 **IV. ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
17 discovery to support the settlement. (Han Dec., *supra*, at ¶ 42.) The proposed settlement was
18 only possible following significant discovery and evaluation of Defendant's relevant policies and
19 procedures, as well as the data they produced for the putative Class, which permitted Class
20 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
21 Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the
22 strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*
23 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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1 This discovery resulted in Plaintiff's central theories of liability, which are predicated on
2 Plaintiff's claims that Defendant failed to pay overtime wages, failed to provide meal breaks and
3 pay applicable premiums, failed to provide rest periods and pay applicable premiums, failed to
4 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 ¶ 43.)

7 Defendant vehemently denies Plaintiff's theories of liability and contends, as stated
8 above, that all meal and rest periods were provided in compliance with California law, that all
9 wages were properly paid to Class Members, that it provided final wages in a timely manner, that
10 it provided wage statements in compliance with Labor Code section 226, and that it reimbursed
11 all business expenses. (Han Dec., *supra*, at ¶ 44.) Defendant further contends that any mistakes
12 made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to
13 continue, it feels confident that it would prevail. (*Ibid.*)

14 Although 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 ¶ 45.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
18 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
20 and hour claims.⁵ (*Ibid.*)

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

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

1 **ii. The Settlement Amount of \$800,000 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 Dec., *supra*, at ¶
6 46.) Defendant also confirmed that there were approximately 34,539 workweeks worked by
7 Class Members. (*Ibid.*) Plaintiff was also able to determine that the average hourly rate for Class
8 Members was \$28.53. (*Ibid.*)

9 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
10 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
11 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 54.) Defendant asserted that,
12 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
13 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong
14 arguments against the underlying claims, it had a strong argument that it would be unjust to
15 award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

16 Class Counsel calculated penalties under this cause of action by multiplying the number
17 of active Class Members (because of the shortened statutory period for this claim), by the civil
18 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
19 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 55.) Class Counsel then
20 applied discounts in light of the countervailing arguments with regard to the other causes of
21 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
22 Lab. Code § 2699(e)(2). (*Ibid.*)

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1 Given the state of the law and the range of PAGA penalties requested and actually
2 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
3 for PAGA penalties. (Han Dec., *supra*, at ¶ 56.) However, if PAGA penalties are granted on
4 any one of the violations alleged in Plaintiff’s operative complaint, the total penalties exposure
5 for the eligible pay periods could be approximately \$1,883,700 $(([1 \times \$100] + [31 \times \$200]) \times 299$
6 employees). (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using one hundred percent
7 (100%) violation rate based on the average number of pay periods (32) during the one-year
8 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
9 under the PAGA theories of recovery (6) gives potential civil penalties of \$11,302,200. (*Ibid.*)

10 Although Plaintiff argued she could obtain over \$11 million for PAGA penalties, it seems
11 highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 57.)
12 PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty for
13 each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each
14 subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral*
15 *v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has
16 been notified that it is violating a Labor Code provision (whether or not the commissioner or
17 court chooses to impose penalties), the employer cannot be presumed to be aware that its
18 continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed
19 only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could
20 be interpreted as indicating that until the Labor Commissioner or a court informs an employer
21 that it has violated the Labor Code, the employer can only be assessed the “initial” violation rate.
22 Under this interpretation, the maximum individual civil penalty for one statutory violation is
23 \$22,900 (229 employees x 100 (initial violation)), and for all possible Labor Code violations is
24 \$179,400. (Han Dec., *supra*, at ¶ 57.)

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1 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may
2 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period
3 for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
4 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
5 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
6 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in
7 subdivision (f)...on behalf of himself or herself and other current or former employees against
8 whom one or more of the alleged violations was committed” (emphasis added). However,
9 Defendant contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th
10 Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which
11 preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of
12 PAGA penalties.

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

24 Under a more conservative approach, Plaintiff’s Counsel considered the possibility that
25 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to
26 \$179,400 [229 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 57.)

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1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Dec., *supra*, at ¶ 58.) Many of the causes of action brought were duplicative of the
3 statutory claims such as violations of California Labor Code §§ 226(a), 226.7, 510, 512(a), 1194,
4 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
5 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
6 under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based
7 on a rate of \$2.31 per pay period [$\$50,000 \div 21,674$ Pay Periods in PAGA Date Range = \$2.31],
8 given the fact that Defendant are also paying an additional \$750,000 in the class settlement. (*Id.*
9 (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5
10 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
11 \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where PAGA penalties are
12 negotiated in good faith and “there is no indication that [the] amount was the result of self-
13 interest at the expense of other Class Members,” such amounts are generally considered
14 reasonable. (Han Dec., *supra*, at ¶ 58.) (citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3,
15 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com.*
16 *Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a
17 settlement which does not allocate any damages to the PAGA claims.”).)

18 Accordingly, taking into consideration Defendant’s defenses, its supporting evidence, and
19 its position that the Class Action is not suitable for class treatment, the settlement amount of
20 \$800,000— with an average settlement share estimated at \$1,313.07—is reasonable and fair.

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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 \$6,754,996.54 on the low end and \$7,247,868.07 on the high end. (Han Dec., *supra*, at ¶ 59.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,357,294.78	70%	60%	\$162,875.37
Meal Break Premiums	\$1,901,309.49	70%	60%	\$228,157.14
Overtime/Minimum Wage: Off-the-Clock	\$985,397.67 to \$1,478,269.20	60%	50%	\$197,079.53 to \$295,653.84
Overtime/Minimum Wage: Non-Discretionary Bonuses	\$483,840	30%	60%	\$135,475.20
Waiting Time Penalty	\$1,150,329.60	50%	50%	\$287,582.40
Wage Statement Penalty	\$852,150	50%	50%	\$213,037.50
Unreimbursed Business Expenses	\$24,675	30%	70%	\$5,181.75
MAXIMUM TOTAL EXPOSURE	\$6,754,996.54 to \$7,247,868.07⁶	11.2%	60.24%	\$1,229,388.89 to \$1,327,963.20⁷

Based on this analysis, the realistic recovery for this case is \$1,229,388.89 on the low end and \$1,327,963.20 on the high end. (Han Dec., *supra*, at ¶ 67.) The Gross Settlement Amount of \$800,000 is approximately eleven percent (11.04%) of the maximum potential exposure and is approximately sixty percent (60.24%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

⁶ Han Dec., *supra*, at ¶¶ 47-53.

⁷ Han Dec., *supra*, at ¶¶ 60-67.

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. Cellular 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 Nevertheless, this settlement exceeds the realistic exposure Plaintiff could have prevailed at trial
11 and provides a significant recovery for the Class Members. Thus, there can be no doubt that this
12 settlement is fair and reasonable.

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

14 For settlement purposes only, the requisites for establishing conditional class certification
15 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
16 of a common or general interest, of many persons, or when the parties are numerous, and it is
17 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
18 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
19 “both [1] an ascertainable class and [2] a well-defined community of interest among class
20 members.” (*Ibid.*)

21 The proposed Class is ascertainable and numerous as to make it impracticable to join all
22 Class Members, and there are common questions of law and fact that predominate over any
23 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 68.) Plaintiff’s claims
24 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
25 protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
26 Class Members would create the risk of inconsistent or varying adjudications, and a class action
27 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
28 discussed below, this case is amenable to class certification. (*Ibid.*)

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

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

9 The Class Action involves three hundred twenty-nine (329) Class Members. (Han Dec.,
10 *supra*, at ¶ 69.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
11 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
12 many as 190 current and former employees” is sufficiently numerous.) Further, all Class
13 Members can and will be identified by Defendant to the Settlement Administrator through a
14 review of Defendant’s employment records concerning hourly-paid and non-exempt employees
15 employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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

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

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Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged by Plaintiff. (Han Dec., *supra*, at ¶ 70.) All hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All of Plaintiff's claims surround Defendant's 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.*)

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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.) Plaintiff was a non-exempt employee who alleges that she and the Class Members were employed by the same company and injured by Defendant's 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 ¶ 71.) 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

1 theories as those applicable to the other Class Members. (*Ibid.*)

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

3 Plaintiff has proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶ 72.)
4 She has conducted herself diligently and responsibly in representing the Class in this litigation,
5 understands her fiduciary obligations, and has actively participated in the prosecution of this
6 case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with counsel to provide
7 counsel with a complete understanding of her work environment and requirements. (*Ibid.*)
8 Furthermore, Plaintiff does not have any interest that is adverse to the interest of other Class
9 Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to represent the Class. (Han
10 Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

11 **4. Class Action is Superior for the Fair and Efficient**

12 **Adjudication of this Controversy**

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

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

22 In deciding whether to approve a proposed class action settlement under Code of Civil
23 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and
24 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class
25 action settlement is presumed fair under the following circumstances: (1) the parties reached
26 settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to
27 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
28 and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,

1 all of these elements are present here. Thus, Plaintiff requests that this Court grant her motion
2 for Preliminary Approval.

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

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

5
6 If the court has certified the action as a class action, notice of the final approval
7 hearing must be given to class members in the manner specified by the court. The
8 notice must contain an explanation of the proposed settlement and procedures for
9 class members to follow in filing written objections to it and in arranging to
10 appear at the settlement hearing and state any objections to the proposed
11 settlement.

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

16 **V. CONCLUSION**

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

22 Dated: June 30, 2021

23 **JUSTICE LAW CORPORATION**

24 

25 Douglas Han
26 Shunt Tatavos-Gharajeh
27 Talia Lux
28 *Attorneys for Plaintiff*



Make a Reservation

GINA MASSENZO vs BACHEM AMERICAS, LNC.

Case Number: 20TRCV00591 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2020-08-20 Location: Torrance Courthouse - Department B

Reservation

Case Name:
GINA MASSENZO vs BACHEM AMERICAS, LNC.

Case Number:
20TRCV00591

Type:
Motion re: (Preliminary Approval of Class Action Settlement)

Status:
RESERVED

Filing Party:
Gina Massenzo (Plaintiff)

Location:
Torrance Courthouse - Department B

Date/Time:
09/15/2021 8:30 AM

Number of Motions:
1

Reservation ID:
631720117416

Confirmation Code:
CR-WNF5RCKXQHUXUHQHZ

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:
05087G

Print Receipt

Reserve Another Hearing

View My Reservations

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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 June 30, 2021, I served the foregoing document described as

**PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED 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: **Massenzo v. Bachem Americas, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-792886-20**
Court Case No.: 20TRCV00591
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 June 30, 2021, at Pasadena, California.



Allana Rivera