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

MARION SCHWARZ, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

TRIWEST HEALTHCARE ALLIANCE
CORP., a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2019-00272292-CU-OE-GDS
[Lead]
Consolidated with Case No. 34-2020-00283283

Honorable Christopher E. Krueger
Department 54

CLASS ACTION

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

[Reservation ID: 2631245]

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

Hearing Date: May 4, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 54

Complaint Filed: December 31, 2019
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on May 4, 2022 at 9:00 a.m., or as soon as the matter may
2 be heard before the Honorable Christopher E. Krueger in Department 54 of the Sacramento
3 County Superior Court – Law and Motion Department 54, located at 813 6th Street, Sacramento,
4 California 95814, Plaintiffs Marion Schwarz and Kurt Leach (“Plaintiffs,” “Plaintiff Schwarz,”
5 and “Plaintiff Leach”) will and hereby move for an order:

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

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This motion seeks preliminary approval of a non-reversionary \$3,150,000 proposed wage and hour class action settlement by Plaintiffs on behalf of themselves and all persons who have been employed by TriWest Healthcare Alliance Corp. (“Defendant”) as a non-exempt employee in California during the Class Period (“Class”). The Class Period is the time period from December 31, 2015 to August 31, 2021 (“Class Period”). At the time of this filing, the number of Class Members provided by Defendant is currently estimated to be one thousand two hundred and thirty-seven (1,237). (Declaration of Douglas Han (“Han Dec.”) at ¶ 8.)

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

Defendant is a privately owned company that provides supportive healthcare functions to our nation's Veterans through working closely with the Department of Consumer Affairs. (Han Dec. at ¶ 9.) This case involves all persons who have been employed by TriWest Healthcare Alliance Corp. (“Defendant”) as a non-exempt employee in California during the Class Period (“Class”). (*Ibid.*) Plaintiffs allege that during the Class Period, Defendant’s non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

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1 Plaintiff Schwarz, a former employee of Defendant, filed a wage-and-hour class action
2 complaint against Defendant on December 31, 2019 in the Superior Court of California, County
3 of Sacramento (“Schwarz Action”). (Han Dec., *supra*, at ¶ 10.) The Leach Action was brought on
4 behalf of all current and former California-based (*i.e.*, currently “residing” in California with the
5 intent to remain in California indefinitely) hourly-paid or non-exempt employees of Defendant
6 within the State of California at any time during the relevant period. The Leach Action alleged the
7 following eight (8) causes of action: (1) violation of California Labor Code sections 510 and 1198
8 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal break
9 premiums); (3) violation of Labor Code section 226.7 (unpaid rest break premiums); (4) violation
10 of Labor Code section 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code
11 sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a)
12 (noncompliant wage statements); (7) violation of Labor Code sections 2800 and 2802
13 (unreimbursed business expenses); and (8) violation of California Business & Professions Code
14 section 17200, *et seq.* (*Ibid.*)

15 On February 10, 2020, Defendant removed the Schwarz Action to the United States District
16 Court, Eastern District of California. (Han Dec., *supra*, at ¶ 11.) Plaintiff Schwarz filed a Motion
17 to Remand on March 11, 2020. (*Ibid.*) On or around July 21, 2020, the Court granted Plaintiff
18 Schwarz’s Motion to Remand. (*Ibid.*)

19 On June 8, 2020, Plaintiff Leach, also a former employee of Defendant, provided written
20 notice 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 his
22 contention. (Han Dec., *supra*, at ¶ 12.) The sixty-five (65) day notice period expired on or about
23 August 12, 2020, and the LWDA did not take any action to investigate or prosecute this matter.
24 (*Ibid.*)

25 On August 14, 2020, Plaintiff Leach filed his Private Attorneys General Act of 2004
26 (“PAGA”) representative action against Defendant in the Superior Court of California, County of
27 Sacramento (“Leach Action” or “Class Action”). (Han Dec., *supra*, at ¶ 13.) The matter was
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brought on behalf of all current or former hourly-paid or non-exempt employees of Defendant who worked for Defendant at any time during the period from June 8, 2019 to the present. (Han Dec., *supra*, at ¶ 13.) Plaintiff Leach alleged that Defendant: (1) failed to pay all meal period wages and rest break wages, (2) failed to properly calculate and pay minimum and overtime wages, (3) failed to provide accurate wage statements, (4) failed to pay all wages due and owing during employment and upon termination of employment, and (5) failed to provide complete and accurate wage statements. (*Ibid.*)

On January 22, 2021, pursuant to the Parties' stipulated motion, the Court consolidated the Schwarz Action and the Leach Action for all purposes and designated the Schwarz Action as the lead case. (Han Dec., *supra*, at ¶ 14.)

The Parties attended mediation on Plaintiffs' claims on February 10, 2022. (Han Dec., *supra*, at ¶ 15.) Under the auspices of the mediator Lynn Frank, the Parties were eventually able to reach an agreement on the settlement of the action via a mediator's proposal. (*Ibid.*)

Defendant generally and specifically denies all liability or wrongdoing of any sort regarding any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class treatment. (Han Dec., *supra*, at ¶ 16.) Furthermore, Defendant asserts several defenses to the claims and has 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

Prior to the Parties' mediation held on February 10, 2022, the Parties conducted significant investigation and discovery of the facts and law both before and after the initial Class Action was filed. (Han Dec., *supra*, at ¶ 17.) Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying Class Members for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time

1 records, pay records, and information relating to the size and scope of the Class, as well as data
2 permitting Plaintiffs to understand the number of workweeks in the Class Period. (Han Dec., *supra*,
3 at ¶ 17.) Plaintiffs obtained the class contact information through the *Belaire-West* process. (*Ibid.*)
4 Plaintiffs also interviewed numerous Class Members and obtained statements and declarations.
5 (*Ibid.*)

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

10 Based upon the Parties' discovery and interviews Plaintiffs' counsel had with non-exempt
11 employees, Plaintiffs contend – and Defendant denies – that Defendant failed to provide
12 employees legally mandated rest breaks. (Han Dec., *supra*, at ¶ 20.) Specifically, Plaintiffs contend
13 Defendant's rest break policy during the relevant time period was improper as it failed to provide
14 third rest breaks. (*Ibid.*) Additionally, Plaintiffs also allege that employees were forced to skip
15 most of their rest breaks because of the workload and pressures from Defendant to timely complete
16 their assignments. (*Ibid.*) This meant employees could not take rest breaks if they were in the
17 middle of a customer service call. (*Ibid.*) These pressures to forgo their rest breaks to complete
18 their tasks promptly were exacerbated by the high volume of work employees were regularly
19 assigned. (*Ibid.*) Finally, Plaintiffs assert Defendant did not have a policy or practice of
20 consistently paying employees premium wages for non-compliant rest breaks.

21 Moreover, Plaintiffs assert – and Defendant denies – that Defendant failed to provide
22 employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 20.) Plaintiffs contend
23 Defendant maintained uniform, improper practices that prevented employees from receiving
24 compliant meal breaks. (*Ibid.*) Specifically, Defendant regularly heavy volume customer service
25 calls and were frequently forced employees to take short or late meal breaks. (*Ibid.*) Many of these
26 violations were disguised due to Defendant's rounding policy which showed perfect 30-minute
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punches. (Han Dec., *supra*, at ¶ 20.) Finally, Plaintiffs allege that Defendant failed to have a policy or practice of properly paying employees premium wages for non-compliant meal breaks. (*Ibid.*)

Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate employees for all hours worked. (Han Dec., *supra*, at ¶ 21.) Specifically, Plaintiffs contend Defendant had a policy of rounding Plaintiffs and the other employees’ time, which resulted in an underpayment of wages. (*Ibid.*) Thus, Plaintiffs and other employees were unpaid for the time spent for pre-shift computer boot-up time each shift. (*Ibid.*) Moreover, interviews with employees revealed that this boot-up time took an average of five (5) minutes per shift due to the number of programs that needed to be loaded. (*Ibid.*)

Plaintiffs also contend that Defendant failed to incorporate non-discretionary bonuses and incentives into employees’ regular rates for overtime compensation purposes and sick pay. (Han Dec., *supra*, at ¶ 22.)

Next, Plaintiffs allege – and Defendant denies – that Defendant failed to reimburse employees for necessary business-related expenses incurred. (Han Dec., *supra*, at ¶ 23.) Specifically, Plaintiffs also contend employees were expected to use their personal cell phones daily for business-related purposes (*i.e.*, communicating with supervisors and co-workers, retrieving work assignments). Despite this, Defendant did not reimburse employees for this usage. (*Ibid.*)

Additionally, Plaintiffs contend – and Defendant denies – that Defendant is liable for waiting time penalties. (Han Dec., *supra*, at ¶ 24.) Specifically, Defendant’s hourly-paid or non-exempt employees are entitled to back underpaid overtime and compensation for time worked off-the-clock and missed meal and rest breaks discussed in greater detail above, thereby triggering waiting time penalties under Labor Code section 203. (*Ibid.*) Thus, Defendant owes compensation for underpaid work and missed meal and rest breaks as a matter of fact and law. (*Ibid.*) But Defendant intentionally failed or refused to perform an act that was required to be done, constituting “willful” conduct and justifying “waiting-time” penalties under section 203 to former employees. (*Ibid.*)

1 Finally, Plaintiffs assert – and Defendant denies – that Defendant is liable for issuing non-
2 compliant wage statements. (Han Dec., *supra*, at ¶ 25.) Specifically, Defendant issued wage
3 statements in violation of Labor Code section 226(a) because of the underlying violations
4 discussed above (*i.e.*, missed meal and rest breaks, no premium wages, off-the-clock work). (*Ibid.*)
5 Consequently, Defendant’s wage statements would necessarily be inaccurate. (*Ibid.*) Even if
6 Defendant asserts that its violation of section 226(a) is trivial, the California courts have held that
7 strict compliance of section 226(a) is exactly what is intended. (*Ibid.*)

8 Defendant denies Plaintiffs’ contentions in their entirety. (Han Dec., *supra*, at ¶ 26.)
9 Among other things, Defendant denies Plaintiffs’ meal and rest break contentions because it
10 provided breaks within compliant times and that non-exempt employees were given discretion as
11 to when to take their breaks. (*Ibid.*) Defendant also contends that both its meal and rest break
12 policies complied with California law and those non-exempt employees were allowed to use their
13 breaks for their own purposes. (*Ibid.*) Defendant further contends that whether non-exempt
14 employees took meal and rest breaks during compliant time frames and were relieved of all duties
15 are questions that could only be resolved by resorting to individualized inquiries to each non-
16 exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*) Defendant
17 also asserts that it paid its employees for all times worked, including overtime, minimum, and
18 premium wages. (*Ibid.*) Defendant counters that its policies did not force employees to work
19 additional hours off-the-clock without asking for compensation. (*Ibid.*) Further, Defendant
20 contends that Plaintiffs’ claims regarding off-the-clock work and unpaid overtime are incorrect.
21 (*Ibid.*) Moreover, Defendant contends it did factor non-discretionary bonuses and incentives into
22 eligible employees’ regular rates for overtime, sick pay, and premium wage purposes. (*Ibid.*)
23 Defendant also asserts that it reimbursed employees for all business expenses, including their
24 personal cell phone usage. (*Ibid.*) Finally, Defendant argues that to the extent it failed to comply
25 with California labor laws, it was due to honest mistakes made in good faith. (*Ibid.*) Thus,
26 Defendant’s conduct could not be deemed “willful” under Labor Code section 203. (*Ibid.*)

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

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

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

The Parties agreed to go to mediation with experienced wage and hour mediator Lynn Frank. (Han Dec., *supra*, at ¶ 27.) The mediation took place on February 10, 2022. (*Ibid.*) During the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action pursuant to a mediator's proposal, the terms of which were memorialized in a "Joint Stipulation and Settlement Agreement" ("Settlement Agreement," "Settlement," or "Agreement"), that the Parties now seek Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 27.; Exhibit 2.)

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

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

Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification and trial and through any possible appeals. (Han Dec., *supra*, at ¶ 47.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including formal mediation on February 10, 2022. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the settlement outlined in the Settlement Agreement is a fair, adequate, and reasonable settlement and

1 is in the best interests of the Class. (Han Dec., *supra*, at ¶ 47.)

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

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

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

13 **i. Class Definition**

14 For purposes of settlement only, the Parties have agreed that the Class shall be defined as
15 “any and all persons who have been employed by Defendant as non-exempt employees in
16 California at any time from December 31, 2015, to August 31, 2021.” For purposes of PAGA,
17 “eligible aggrieved employees” consist of all individuals employed as non-exempt employees by
18 Defendant within California from June 8, 2019, through August 31, 2021. The proposed Class
19 consists of approximately 1,237 Class Members.

20 **ii. Deductions from the Settlement**

21 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
22 action be settled and compromised for the non-reversionary total sum of \$3,150,000 (“Gross
23 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
24 amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount or \$1,197,000 to
25 compensate Class Counsel for work already performed and all work remaining to be performed in
26 documenting the settlement, administrating the settlement and securing Court approval; (b) Cost
27 Award for actual litigation costs not to exceed \$25,000; (c) Class Representative Enhancement
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1 Payment in the amount of \$10,000 to each Class Representative in recognition of Plaintiffs’ work
2 and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs
3 in the event this matter had not successfully resolved; (d) Administration Costs to Phoenix Class
4 Action Administration Solutions (“Phoenix”), the Settlement Administrator that is currently
5 estimated to be \$12,995, but not to exceed \$15,000; and (e) PAGA Payment of \$100,000, seventy-
6 five percent (75%) of which (\$75,000) shall be paid to the LWDA and twenty-five percent (25%)
7 of which (\$25,000) shall be distributed to the aggrieved employees eligible to recover the PAGA
8 Payment that consist of all current and former non-exempt employees who worked for Defendant
9 within the State of California between June 8, 2019 through August 31, 2021 (“Eligible Aggrieved
10 Employees,” “PAGA Timeframe,” and “PAGA Payment”), on a pro rata basis (Han Dec., *supra*,
11 at ¶ 28.)

12 **iii. Calculation of the Settlement Payments to Class Members**

13 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
14 that \$1,793,000 (“Net Settlement Amount”) will be distributed to Class Members – with an
15 average Individual Settlement Share estimated at \$1,449.47. (Han Dec., *supra*, at ¶ 30.)

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

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

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(i) the number of weeks he or she worked during the Class Period based on the Class List provided by Defendant, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class List, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked. (Han Dec., *supra*, at ¶ 32.)

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

determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the \$25,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. (Han Dec., *supra*, at ¶ 33.)

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

iv. Notice to the Class

Within Twenty-One (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (i) first and last name, (ii) last known addresses, (iii) social security numbers, (iv) hire and termination dates, and (v) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class (collectively, "Class List"). (Han Dec., *supra*, at ¶ 35.)

Within fourteen (14) calendar days after the Settlement Administrator's receipt of the Class List, the Settlement Administrator will mail the Notice of Class Action Settlement ("Class

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

7 **v. Distribution of Funds**

8 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
9 Defendant shall deposit the Gross Settlement Amount of \$3,150,000 needed to pay the entire Gross
10 Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶
11 37.) Defendant shall also at this time provide any tax information that the Settlement
12 Administrator may need to calculate each Participating Class Members’ Individual Settlement
13 Share. (*Ibid.*)

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

20 Participating Class Members must cash or deposit their Individual Settlement Share checks
21 within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec.,
22 *supra*, at ¶ 39.) If any checks are not redeemed or deposited within ninety (90) calendar days after
23 mailing, the Settlement Administrator will send a reminder postcard indicating that unless the
24 check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become
25 non-negotiable, and offer to replace the check if it was lost or misplaced. (*Ibid.*) If any checks
26 remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder
27

28 ² The **Class Notice** is attached to the Settlement Agreement (Exhibit 2 attached hereto) as **Exhibit A**.

notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks, and pay the amount of the Individual Settlement Share to the California Veterans Assistance Foundation. (Han Dec., *supra*, at ¶ 39.)

vi. Release of Claims

Upon Defendant's fulfillment of its payment obligations pursuant to the Parties' Joint Stipulation and Settlement Agreement, the claims that Plaintiffs and the other Participating Class Members are releasing in exchange for the consideration provided for by the agreed-upon Settlement are all claims, rights, demands, damages, liabilities and causes of action (along with related claims and all associated penalties), in law or in equity, arising at any time during the Class Period and that were alleged or that reasonably could have been alleged based on the facts alleged in the Complaint and in Plaintiff Kurt Leach's letter to the LWDA. Participating Class Members further covenant not to sue concerning the Released Class Claims. It is the intent of the Parties that the Final Approval entered by the Court shall have full *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims as provided for herein. *See* Exhibit 2 §§ (I)(GG), (III)(K). (Han Dec., *supra*, at ¶ 40.)

Upon Defendant's fulfillment of its payment obligations pursuant to Parties' Joint Stipulation and Settlement Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are forever barred from pursuing any action against the Released Parties for the Released PAGA Claims. *See* Exhibit 2 § (III)(L). (Han Dec., *supra*, at ¶ 41.)

The Released Parties include Defendant and any and all of its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties"). *See* Exhibit 2 § (I)(HH). (Han Dec., *supra*, at ¶ 42.)

As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payments to the Plaintiffs in their respective amounts, in recognition of their work

1 and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs
2 in the event this matter had not successfully resolved, Plaintiffs provide a general release of claims
3 for themselves and their spouse, heirs, successors and assigns. *See* Exhibit 2 § (III)(M). (Han Dec.,
4 *supra*, at ¶ 43.)

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

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

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

16 **IV. ARGUMENT**

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

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

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

25 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action
26 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.

27 ⁴ The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying
28 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 ...
2 (c) Any party to a settlement agreement may serve and file a written notice of
3 motion for preliminary approval of the settlement. The settlement
4 agreement and proposed notice to class members must be filed with the
5 motion, and the proposed order must be lodged with the motion.

6 Courts act within their discretion in approving settlements that are fair, not collusive, and
7 take into account “all the normal perils of litigation as well as the additional uncertainties inherent
8 in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
9 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
10 U.S. 905.)

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

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

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

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

1 **i. The Settlement Was a Compromise of Disputed Claims**

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

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

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

22 Although remaining confident in the strengths of their claims, all of these factors led
23 Plaintiffs to discount the following calculations of potential damage claims.

24 **ii. The Settlement Amount of \$3,150,000 Is Reasonable**

25 ⁵(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
26 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
27 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*
28 (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 In addition to discovering the strengths and vulnerabilities associated with Plaintiffs’
2 claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of time and pay
3 records and information regarding the estimated number of workweeks worked by the average
4 hourly rate for Class Members. (Han Dec., *supra*, at ¶ 50.) Defendant confirmed that Class
5 Members worked approximately 108,503 workweeks. (*Ibid.*) Plaintiffs were also able to determine
6 that the average hourly rate for Class Members was \$17.90. (*Ibid.*) During the one-year statute of
7 limitations period, seven hundred and nineteen (719) PAGA eligible employees consisted of
8 approximately 22,457 pay periods. (*Ibid.*)

9 **1. The PAGA Penalties Allocation is Fair and Reasonable.**

10 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
11 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
12 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 58.) Defendant asserted that, regardless of
13 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
14 and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments
15 against the underlying claims, it had a strong argument that it would be unjust to award maximum
16 PAGA penalties given the current unsettled state of law. (*Ibid.*)

17 Class Counsel calculated penalties under this cause of action by multiplying the number of
18 active Class Members (because of the shortened statutory period for this claim), by the civil
19 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
20 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 59.) Class Counsel then
21 applied discounts in light of the countervailing arguments with regard to the other causes of action,
22 as well as the Court’s power to award “a lesser amount than the maximum civil liability.” (Lab.
23 Code § 2699(e)(2).) (*Ibid.*)

24 Given the state of the law and the range of PAGA penalties requested and actually awarded
25 in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA
26 penalties. (Han Dec., *supra*, at ¶ 60.) However, if PAGA penalties are granted on any one of the
27 violations alleged in Plaintiffs’ operative complaint, the total penalties exposure for the eligible
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1 pay periods could be approximately \$4,529,700 (([1 x \$100] + [31 x \$200]) x 719 employees).
2 (Han Dec., *supra*, at ¶ 60.) Plaintiffs calculated Defendant’s PAGA exposure using a one hundred
3 percent (100%) violation rate based on the average number of pay periods (32) during the one-
4 year statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
5 under the PAGA theories of recovery (6) gives potential civil penalties of \$27,178,200. (*Ibid.*)

6 Although Plaintiffs argued they could obtain over \$27 million for PAGA penalties, it seems
7 unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 61.) PAGA’s
8 plain language indicates that an employer will be assessed a lower, “initial” penalty for each initial
9 pay period in which a violation occurs, and a higher, “subsequent” penalty for each subsequent
10 pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) (*Ibid.*) In *Amaral v.*
11 *Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has been
12 notified that it is violating a Labor Code provision (whether or not the commissioner or court
13 chooses to impose penalties), the employer cannot be presumed to be aware that its continuing
14 underpayment of employees is a ‘violation’ subject to penalties [and will be assessed only the
15 ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could be
16 interpreted as indicating that until the Labor Commissioner or a court informs an employer that it
17 has violated the Labor Code, the employer can only be assessed the “initial” violation rate. Under
18 this interpretation, the maximum individual civil penalty for one statutory violation is \$71,900
19 (719 employees x 100 (initial violation)). (Han Dec., *supra*, at ¶ 61.)

20 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be
21 “stacked” –whether multiple civil penalties can be recovered in the same pay period for different
22 Labor Code violations. On the one hand, Labor Code section 2699, subdivision (f) establishes “a
23 civil penalty for a violation” (emphasis added), implying a separate civil penalty for each violation.
24 On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that
25 “an aggrieved employee may recover the civil penalty described in subdivision (f)...on behalf of
26 himself or herself and other current or former employees against whom one or more of the alleged
27 violations was committed” (emphasis added). However, Defendants contended that the Ninth
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1 Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and
2 *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, preclude the aggregation of PAGA
3 penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and
4 limited to the initial violation, the PAGA penalties would be limited to \$71,900 on the low end
5 and \$431,400 on the high end based on six (6) major theories of recovery. (Han Dec., *supra*, at ¶
6 62.)

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

17 Under a more conservative approach, Class Counsel considered the possibility that the
18 Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$431,400
19 [719 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 63.)

20 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
21 (Han Dec., *supra*, at ¶ 64.) Many of the causes of action brought were duplicative of the statutory
22 claims, such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194,
23 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified.
24 (*Ibid.*) It was arguable whether the Court would award the maximum penalties under the law.
25 (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable based on a \$4.45 per
26 pay period [$\$100,000 / 22,457 \text{ Pay Periods in PAGA Date Range} = \4.45], given that Defendant
27 are also paying an additional \$3,050,000 in the class settlement. (*Id.* (citing *Carrington v.*

Starbucks Corp. (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. (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, considering Defendants’ defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$3,150,000— with an average Individual Settlement Share estimated at \$1,449.47—is reasonable and fair.

2. The Discount Analysis Justifies the Class Action Settlement.

Excluding the civil penalties, which could be entirely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$17,695,346.83 on the low end and \$18,666,448.68 on the high end. (Han Dec., *supra*, at ¶ 65.)

Category	Potential ⁶ Exposure	Certification Risk	Merits Risk	Realistic ⁷ Exposure
Rest Break Premiums	\$2,636,933.13	70%	50%	\$395,539.95
Meal Break Premiums	\$5,600,552.00	50%	40%	\$1,680,165.60
Overtime/Minimum Wage: Off-the-Clock (Rounding)	\$1,942,203.70 to \$2,913,305.55	25%	50%	\$728,326.12 to \$1,092,489.37
Unreimbursed Business Expenses	\$400,624.00	25%	70%	\$90,140.40
Wage Statement Penalty	\$2,264,850.00	50%	50%	\$566,212.50
Waiting Time Penalty	\$4,850,184.00	50%	50%	\$1,212,546.00

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⁶ The discussion involving the claims and potential exposure analysis is at Han Decl. ¶¶ 50-57.

⁷ The discussion involving the class certification and merits risk discount is at Han Decl. ¶¶ 66-71

1 Based on this analysis, the realistic recovery for this case is \$4,672,930.57 on the low end
2 and \$5,037,093.82 on the high end. (Han Dec., *supra*, at ¶ 72.) The Gross Settlement Amount of
3 \$3,150,000 is approximately seventeen percent (17%) of the maximum potential exposure and is
4 approximately sixty-two percent (62%) of the maximum realistic exposure at trial, which is an
5 excellent settlement. (*Ibid.*)

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

18 **c. Conditional Certification of the Class Is Appropriate**

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

26 The proposed Class is ascertainable and numerous as to make it impracticable to join all
27 Class Members, and there are common questions of law and fact that predominate over any
28

1 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 73.) Plaintiffs' claims are
2 typical of the Class Members' claims, and Class Counsel will fairly and adequately protect the
3 interests of the Class. (Han Dec., *supra*, at ¶ 73.) Also, the prosecution of separate actions by
4 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*) A
5 class action is superior to other available means for the fair and efficient adjudication of the case.
6 (*Ibid.*) As discussed below, this case is amenable to class certification. (*Ibid.*)

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

8 “Ascertainability is required in order to give notice to putative class members as to whom
9 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
10 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
11 by describing a set of common characteristics sufficient to allow a member of that group to identify
12 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
13 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
14 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

15 The Class Action involves one thousand two hundred and thirty-seven (1,237) Class
16 Members. (Han Dec., *supra*, at ¶ 74.) This Class is sufficiently numerous. (*Id.* (citing see
17 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a
18 proposed class of “as many as 190 current and former employees” is sufficiently numerous.)
19 Further, all Class Members can and will be identified by Defendant to the Settlement Administrator
20 through a review of Defendant’s employment records concerning hourly-paid and non-exempt
21 employees employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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

23 The community of interest requirement “embodies three factors: (1) predominant common
24 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
25 (3) class representatives who can adequately represent the class.” (*Sav-On Drugs, supra*, 34
26 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not mandate*
27 *that class members have uniform or identical claims.*” (*Capitol People First v. Department of*

1 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts
2 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether
3 that common behavior toward similarly situated plaintiffs renders class certification appropriate.”
4 (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The application of each of these factors is
5 discussed below.

6 **1. Common Issues Predominate**

7 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
8 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*, 155
9 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In other
10 words, courts determine whether the elements necessary to establish liability are susceptible to
11 common proof, even if the class members must individually prove their damages. (*Brinker, supra*,
12 53 Cal.4th at p. 1024). These types of claims are regularly granted class certification when the
13 plaintiff can present evidence of common policies. (*See, e.g., Jones v. JGC Dallas LLC* (N.D. Tex.
14 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza v.*
15 *Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class of
16 dancers on state law claims).)

17 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
18 alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 75.) They assert that all hourly-paid and non-exempt
19 employees who worked for Defendant in California during the Class Period were subject to the
20 same or similar employment practices, policies, and procedures. (*Ibid.*) All Plaintiffs’ claims
21 surround Defendant’s common practice and scheme of failing to maintain compliant meal and rest
22 break policies and practices, failing to reimburse business expenses, and failing to fully and
23 properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock
24 work, overtime work, sick leave pay, 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.) Plaintiffs were non-exempt employees and alleged the same company employed them and the Class Members. (Han Dec., *supra*, at ¶ 76.) Plaintiffs further alleged they were injured by Defendant's common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, improperly calculated overtime wages and sick leave pay, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (*Ibid.*) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' 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. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 77.) They have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have also spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do 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

1 Class Members are current employees, the fear of retaliation further support superiority of class-
2 wide relief because that fear of retaliation often discourages victims from seeking legal redress
3 while currently employed by the same employer.

4 **d. The Settlement Is Fair, Reasonable, and Adequate**

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

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

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

15 If the court has certified the action as a class action, notice of the final approval
16 hearing must be given to class members in the manner specified by the court. The
17 notice must contain an explanation of the proposed settlement and procedures for
18 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.

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

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1 **V. CONCLUSION**

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

7
8 Dated: March 29, 2022

JUSTICE LAW CORPORATION

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Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiffs

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On March 30, 2022, I served the foregoing document described as

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

for the following case: **Schwarz v. TriWest Healthcare Alliance Corp.**
LWDA/Court Case No.: **LWDA-CM-792749-20**
34-2019-00272292-CU-OE-GDS
Sacramento County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on March 30, 2022, at Pasadena, California.



Mariah Anderson