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

JUSTIN TOURCHETTE, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

FINELITE, INC., a California Corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No. RG19022885

Honorable Frank Roesch
Department 17

CLASS ACTION

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

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

[Reservation ID: R-2192006]

Hearing Date: August 13, 2020
Hearing Time: 3:30 p.m.
Hearing Place: Dept. 17

Filed: June 13, 2019
FAC Filed: June 26, 2020
Trial: None Set

1 **PLEASE TAKE NOTICE** that on August 13, 2020, and at 3:30 p.m., or as soon as the
2 matter may be heard before the Honorable Frank Roesch in Department 17 of the Alameda
3 County Superior Court – Renee C. Davidson Courthouse, located at 1221 Oak Street, Oakland,
4 California 94612, Plaintiff Justin Tournette, (“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,” or “Settlement Agreement”), attached as
8 **“EXHIBIT 1”** to the Declaration of Douglas Han, including, and not limited to,
9 the means of allocation and distribution of funds, and the allocations for penalties
10 under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), Attorney Fee Award, Cost Award, Class Representative Enhancement
12 Payment, and the Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as “Exhibit A” to the Settlement Agreement;
- 18 • Approving the Election Not To Participate or Exclusion Form (“Exclusion
19 Form”) attached as “Exhibit B” to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Class Notice with a postage-paid return
21 envelope (hereinafter collectively referred to as the “Notice Packet”) to the
22 proposed Class;
- 23 • Approving the proposed deadlines for the notice and Settlement Administration
24 process;
- 25 • 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); and the [Proposed] Order filed concurrently with this motion, as well as the pleadings and other records on file with the Court in this matter, and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: July 17, 2020

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,850,000 proposed wage
3 and hour class action settlement by Plaintiff Justin Tournette (“Plaintiff”) on behalf of himself
4 and all persons who or have been employed by Defendant Finelite, Inc. (“Finelite” or
5 “Defendant”) as hourly non-exempt and salaried non-exempt employees in California at any time
6 during the period of June 13, 2015, to the date the Court issues an order granting preliminary
7 approval of the Settlement, or September 1, 2020, whichever date is earlier. At the time of this
8 filing, Defendant estimates that there are approximately six-hundred and sixty (660) individuals
9 that would be included in this Settlement.

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 \$1,850,000—**with an average settlement share amount estimated at**
13 **\$1,643.94¹**—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 detailed knowledge of the issues
16 present in this action. The length and risks of trial and perils of litigation that affect the value of
17 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 \$1,085,000 (Net Settlement Amount) / 660 (Class Members) = \$1,643.94

1 **II. BACKGROUND**

2 Defendant Finelite, Inc. (“Defendant” or “Finelite”) has designed and manufactured high-
3 performance lighting systems, which use energy-efficient light-emitting diodes and fluorescent
4 lights, for office, healthcare, and educational facilities for nearly 30 years. (Declaration of
5 Douglas Han (“Han Decl.”) ¶ 8.) This case involves all current and former California-based
6 hourly non-exempt and salaried non-exempt employees employed by Defendant in the State of
7 California at any time during the period from June 13, 2015 to the date the Court issues an order
8 granting preliminary approval of the Settlement or September 1, 2020, whichever date is earlier.
9 (*Ibid.*)

10 On June 13, 2019, Plaintiff filed a class action complaint in Alameda County Superior
11 Court against Finelite alleging wage and hour violations on behalf of all current and former
12 hourly-paid or non-exempt employees who worked for Finelite in the four years preceding the
13 complaint. (Han Decl. ¶ 9.) The complaint alleged causes of action under the California Labor
14 Code for unpaid overtime, unpaid meal period premiums, unpaid rest period premiums, unpaid
15 minimum wages, untimely payment of final wages, non-compliant wage statements,
16 unreimbursed business expenses, and violation of California Business and Professions Code §
17 17200. (*Ibid.*)

18 On June 26, 2020, Plaintiff filed a First Amended Complaint in the Superior Court for the
19 County of Alameda on behalf of himself and on behalf of other members of the general public
20 similarly situated and on behalf of aggrieved employees under the Private Attorneys General Act
21 of 2004. (Han Decl. ¶ 10.) The First Amended Complaint specifically includes separate causes of
22 action based on the facts and theories in the original complaint, including a PAGA cause of
23 action. (*Ibid.*)

24 The Parties agreed to attend a mediation of Plaintiff’s claims on March 12, 2020. (Han
25 Decl. ¶ 11.) At the conclusion of the mediation, the Parties were unable to reach an agreement.
26 However, the parties continued to negotiate and ultimately accepted a mediator’s proposal on
27 June 3, 2020. (*Ibid.*)

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

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed the original complaint, Plaintiff engaged in discovery. Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production on Defendant. Defendant responded to this discovery. (Han Decl. ¶ 13.) After which, the Parties met and conferred regarding this discovery. (*Ibid.*)

As the result of discovery conducted by Plaintiff, Defendant produced a large volume of documents including employee handbooks, meal and rest period policies, Plaintiff's personnel files, payroll records, and time records. (Han Decl. ¶ 14.) Plaintiff also engaged in a Belaire opt-out process and obtained the putative class contact information. (*Ibid.*)

Plaintiff also was in constant communication with numerous current and former non-exempt employees of Defendant. (Han Decl. ¶ 15.) These employees apprised Plaintiff of their experiences working for Defendant and provided Plaintiff with relevant documents, including their personnel files and documents they had obtained through their employment. (*Ibid.*)

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1 Based upon Defendant's discovery responses, informal exchange of information, and
2 document production, as well as interviews Plaintiff's counsel had with non-exempt employees,
3 Plaintiff contends—and Defendant denies—that Defendant did not maintain a code-compliant
4 meal break or rest break policy during the class period. (Han Decl. ¶ 16.) Moreover, Plaintiff
5 contends that he and the class members were rarely afforded timely, uninterrupted meal and rest
6 breaks while working. (*Ibid.*) Plaintiff contends that Defendant failed to pay premium wage
7 compensation owed to non-exempt employees for the non-compliant meal and rest periods.
8 (*Ibid.*)

9 In addition, Plaintiff contends—and Defendant denies—that Defendant automatically
10 deducted 30 minutes of pay regardless of whether employees took meal breaks, Defendant
11 rounded hours to consistently underpay employees, and Defendant did not include bonuses in
12 employees' regular rate of pay for purposes of overtime compensation. (Han Decl. ¶ 17.)
13 Moreover, Plaintiff contends—and Defendant denies—that Defendant failed to timely pay wages
14 and failed to provide employees with accurate wage statements. (*Ibid.*)

15 Defendant denies Plaintiff's contentions in their entirety. (Han Decl. ¶ 18.) Among other
16 things, Defendant denies Plaintiff's rest and meal break contentions because it provided rest and
17 meal periods within compliant times and that non-exempt employees were given discretion as to
18 when to take their rest and meal periods. (*Ibid.*) Defendant contends that whether non-exempt
19 employees took meal and rest periods during compliant time frames and were relieved of all
20 duties are questions that could only be resolved by resorting to individualized inquiries to each
21 non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*)
22 Additionally, Defendant contends that as of May 2018, Defendant ceased its automatic deduction
23 and rounding policies. (*Ibid.*) And Defendant contends that it timely paid wages and provided
24 accurate wage statements. (*Ibid.*)

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

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

2 19. The Parties agreed to go to mediation with experienced wage and hour mediator,
3 Lynn S. Frank. (Han Decl. ¶ 19.) The mediation took place on March 12, 2020. (*Ibid.*) During
4 the mediation, the parties discussed the risks of continued litigation, risks of certification and on
5 the merits of the claims versus the benefits of settlement. (*Ibid.*) While the parties were unable to
6 settle at mediation, under the auspices of the mediator, the parties were able to reach an
7 agreement on settlement, the terms of which were memorialized in a “Joint Stipulation and
8 Settlement Agreement” (referred to herein as the “Joint Stipulation” or “Settlement”) that the
9 Parties seek preliminary approval of in the instant motion. (*Id.*; Ex. 1.)

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

11 **i. Deductions from the Settlement**

12 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
13 action be settled and compromised for the non-reversionary total sum of \$1,850,000 (“Gross
14 Settlement Amount” or “GSA”) which includes, subject to Court approval: (a) Attorney Fee
15 Award of up to \$647,500 (35% of the GSA) to compensate Class Counsel for work already
16 performed and all work remaining to be performed in documenting the settlement, administering
17 the settlement and securing Court approval; (b) Cost Award for actual litigation costs not to
18 exceed \$25,000;² (c) Class Representative Enhancement Payment to the named Class
19 Representative in a sum not to exceed \$7,500 for Plaintiff in consideration for a general release
20 of claims, for initiating and prosecuting the class action complaint, serving as the Class
21 Representative, work performed, and risks undertaken for the payment of attorneys’ fees and
22 costs in the event he had been unsuccessful in the matter; (d) Administration Costs and expenses
23 to Simpluris, Inc. (“Simpluris”), estimated at approximately \$10,000; and (e) LWDA payment of

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26 ² The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for final
27 approval. (Han Dec. ¶ 21.) At that time, Plaintiff will ask the Court to approve the amount of these costs. (*Ibid.*) If
28 Plaintiff’s actual costs exceed \$25,000, Plaintiff will only seek reimbursement in the amount of \$25,000. (*Ibid.*) If
 Plaintiff’s actual costs are lower than \$25,000, Plaintiff will seek reimbursement of his actual litigation costs and the
 difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class
 Members. (*Ibid.*)

\$75,000 (which is 75% of \$100,000 allocated to Plaintiff’s claims under PAGA). (Han Decl. ¶ 20.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that \$1,085,000 (“Net Settlement Amount” or “NSA”), less all applicable employee taxes on the wage portion of the individual settlement share, will be distributed to Class Members—**with an average settlement share estimated at \$1,643.94.** (Han Decl. ¶ 22.) Subject to the terms and conditions of the Settlement, the Settlement Administrator will calculate and issue Individual Settlement Shares based on the following formula:

Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked as a non-exempt employee during the Class Period based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members, collectively, during the Class Period based on the same Class data, 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.

(*Ibid.*) The PAGA Payment will be distributed to the Eligible Aggrieved Employees pro-rata based on pay periods worked during the PAGA Timeframe. (*Ibid.*) The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (*Ibid.*) Under no circumstances will any portion of the \$1,850,000 settlement revert to Defendant. (*Ibid.*)

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1 **iii. Notice to the Class**

2 Within fifteen (15) calendar days after entry of the preliminary approval order, Defendant
3 shall deliver to the Settlement Administrator an electronic database for purposes of mailing Class
4 Notices to Participating Class members. (Han Decl. ¶ 23.) Within twenty-one (21) calendar days
5 after entry of the Preliminary Approval Order, Simpluris shall mail copies of the Class Notice
6 and Exclusion Form to all Class Members via regular First-Class U.S. Mail. (*Ibid.*) The Notice
7 advises the Class of their rights to participate in the settlement and how to and when to object or
8 request exclusion from the settlement. (*Ibid.*) Class Members are not required to submit a claim
9 form to receive payment. (*Ibid.*) The proposed Class Notice and Exclusion Form are attached as
10 Exhibits A and B to the Joint Stipulation (Exhibit 1 to the Declaration of Douglas Han). (*Ibid.*)

11 **iv. Distribution of Funds**

12 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
13 Defendant shall deposit the Gross Settlement Amount of One Million Eight Hundred and Fifty
14 Thousand dollars (\$1,850,000) needed to pay the entire GSA by wiring the funds to Simpluris.
15 (Han Decl. ¶ 24.)

16 Simpluris shall pay the Individual Settlement Shares, Class Representative Enhancement
17 Payment, Attorney Fee Award, Cost Award, PAGA Payment, and Administration Costs within
18 fourteen (14) calendar days after the GSA has been fully funded. (Han Decl. ¶ 25.)

19 Any checks issued to Participating Class Members shall remain valid and negotiable for
20 one hundred and eighty (180) days from the date of their issuance. (Han Decl. ¶ 26.) If any
21 checks remain uncashed or not deposited within two hundred (200) calendar days after the
22 checks are mailed, Simpluris will pay the amount of the to the California State Controller's
23 Unclaimed Property Division in accordance with California Unclaimed Property Law so that the
24 Participating Class Member will have his or her Individual Settlement Share available to him or
25 her per the applicable claim procedure to request that money from the State of California. (*Ibid.*)

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The release will be as to the Released Parties, which shall include Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys. (Han Decl. ¶ 28.)

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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.³
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 . . .

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

15 Courts act within their discretion in approving settlements that are fair, not collusive, and
16 take into account “all the normal perils of litigation as well as the additional uncertainties
17 inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607
18 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*
19 (1981) 452 U.S. 905.)

20 **b. Conditional Certification of the Class is Appropriate.**

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

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³The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; 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 Here, the proposed Class is ascertainable and numerous as to make it impracticable to
2 join all class members, and there are common questions of law and fact that predominate over
3 any questions affecting any individual Class Member. (Han Decl. ¶ 29.) Plaintiff's claims are
4 typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect
5 the interests of the Class. (*Ibid.*) Further, prosecution of separate actions by individual Class
6 Members would create the risk of inconsistent or varying adjudications, and a class action is
7 superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
8 discussed below, this case is amenable to class certification.

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

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

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

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

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1 This action involves six-hundred and sixty (660) Class Members. (Han Decl. ¶ 30.) This
2 Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
3 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees”
4 is sufficiently numerous).) Further, all Class Members can and will be identified by Defendant to
5 the Settlement Administrator through a review of Defendant’s employment records concerning
6 non-exempt or hourly employees who worked for Defendant in the State of California during the
7 Class Period.

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

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

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

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1 Here, Plaintiff asserts that common issues of fact and law predominate as to each of the
2 claims alleged by Plaintiff. All non-exempt employees who worked for Defendant during the
3 Class Period were subject to the same or similar employment practices, policies, and procedures.
4 (Han Decl. ¶¶ 16-17.) All of the claims surround Defendant's common practice and scheme of
5 failing to properly account for all hours worked by non-exempt employees (i.e. illegal rounding
6 and automatic 30-minute deduction policies) and failing to pay them, *inter alia*, for overtime
7 work, and non-compliant meal and rest periods, and associated inaccurate wage statements and
8 waiting time penalties. (*Ibid.*)

9 Specifically, 99.9% of shifts between 10 and 12 hours did not have a recorded second
10 meal break, evidencing a uniform practice to not provide and authorize proper meal breaks. (*Id.*
11 at ¶ 38.) Moreover, 54.7% of shifts greater than 5 hours had automatic, 30-minute deductions.
12 (*Ibid.*) Additionally, 27.0% of all shifts had at least one unique rest break violation, and 44.4% of
13 shifts went underpaid due to Defendant's illegal rounding policy. (*Id.* at ¶¶ 38-39.) As a result,
14 all of the Class Members, including Plaintiff, were uniformly not paid for all of the hours they
15 worked for Defendant during the Class Period. Based on these facts, Plaintiff concludes that the
16 proposed Class is readily certifiable in this case. Accordingly, the Court should provisionally
17 certify the Class for settlement purposes only.

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

19 The Settlement was reached as a result of arms-length negotiations. (Han Decl. ¶ 31.)
20 Though cordial and professional, the settlement negotiations have been, at all times, adversarial
21 and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties conducted extensive
22 arm's length settlement negotiations until the parties could not reach settlement. However, these
23 negotiations led to a mediator's proposal that was later acceptable by the Parties. (*Ibid.*) The
24 terms of the Settlement are memorialized in the Joint Stipulation. (*Ibid.*; Ex. 1).

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

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research and
4 discovery to support the settlement. (Han Decl. ¶¶ 13-15.) The settlement was only possible
5 following discovery and evaluation of Defendant’s policies and procedures, as well as the data
6 produced for the putative class, which permitted Class Counsel to engage in a comprehensive
7 analysis of liability and potential damages. (Han Decl. ¶ 33.) The case is at the stage where “the
8 Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to
9 support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

10 **f. Counsel for Both Parties Are Experienced in Similar Litigation**

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

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

20 **g. The Proposed Settlement is a Reasonable Compromise of Claims**

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

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⁴The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action
28 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 In weighing the strength of the 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 require
4 an explicit statement of the maximum amount the class could recover if Plaintiff prevailed on all
5 his claims, provided there is a record that allows “an understanding of the amount that is in
6 controversy and the realistic range of outcomes of the litigation.” (*Munoz*, 186 Cal.App.4th at
7 409.) Put differently, “as the court does when it approves a settlement as in good faith under
8 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
9 within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at p. 133, citing *Tech-*
10 *Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

11 As the following subsections show, the Parties’ investigation and discovery revealed
12 numerous reasons to discount claims and agree to this settlement.

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

14 The proposed settlement was only possible following significant discovery and
15 evaluation of Defendants’ relevant policies and procedures, as well as the data they produced for
16 the putative Class as referenced in Section IV(c)(ii) above, which permitted Class Counsel to
17 engage in a comprehensive analysis of liability and potential damages. (Han Decl. ¶ 33.)

18 This discovery and informal exchange of information resulted in Plaintiff’s central
19 theories of liability, which are predicated on Plaintiff’s claims that Defendant employed uniform
20 policies of not providing compliant meal and rest periods, automatically deducting 30 minutes of
21 pay regardless of whether employees took meal breaks, rounding hours to consistently underpay
22 employees, and not including bonuses in employees’ regular rate of pay for purposes of overtime
23 compensation. (Han Decl. ¶ 34.)

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1 Defendant vehemently denies Plaintiff's theories of liability and contends, as stated
2 above, that all meal and rest periods were provided in compliance with California law, it ceased
3 its automatic deduction and rounding policies in May 2018, the regular rate of pay complied with
4 California law, all wages were timely paid to class members, and that it provided wage
5 statements in compliance with Labor Code § 226. (Han Decl. ¶ 35.) Defendant argues that if
6 litigation were to continue, it feels confident that it would prevail. (*Ibid.*)

7 Although Plaintiff believes the case is suitable for certification on the claimed basis that
8 there are company-wide policies that Plaintiff contends violate California law and uniformly
9 affect the putative class members, uncertainties concerning certification are always present. (Han
10 Decl. ¶ 36.) As the California Supreme Court ruled in *Sav-On Drugs, supra*, 34 Cal.4th at p. 319,
11 class certification is always a matter of the trial court's sound discretion. Decisions following
12 *Sav-On* have reached different conclusions, concerning certification of wage and hour claims.⁵
13 Still remaining confident in the strengths of his claims, all of these factors led Plaintiff to
14 discount the following calculations of potential damage claims.

15 **ii. The Settlement Amount of \$1,850,000 is Reasonable**

16 In addition to being able to discover the strengths and vulnerabilities associated with
17 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
18 time and pay records and information regarding the estimated number of workweeks worked by
19 putative class members and the hourly rates for class members. (Han Decl. ¶ 37.) Defendant
20 represents that, as of June 30, 2020, the Class Period includes approximately 72,857 workweeks.
21 (*Ibid.*) Plaintiff determined the average hourly rate for class members was \$16.02. (*Ibid.*)

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26 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007)
28 (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).)

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

As to meal breaks, Defendant automatically deducted 30-minutes for meal breaks from employees’ time and pay for a significant portion of the Class Period, regardless of whether employees were provided with breaks. (*Ibid.*) And Defendant never provided second meal periods for putative class members who worked between 10 and 12 hours in a workday. (*Ibid.*)

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

Utilizing the sampling time and pay data records for 250 Class Members, Plaintiff was able to establish that 65.2% of all shifts had at least one unique meal break violation. (*Ibid.*) Importantly, 54.7% of shifts greater than 5 hours had violations due to Defendant’s automatic 30-minute deduction policy, 99.9% of shifts between 10 and 12 hours did not have a recorded second meal break, and 8.0% of shifts between 5 and 6 hours did not have a recorded first meal break. (*Ibid.*) Accordingly, extrapolated to the total number of workweeks (72,857), using Plaintiff’s calculated average of 4.7 shifts per workweek, Plaintiff calculates Defendant’s maximum potential exposure for the meal period claim to be approximately \$3,576,673.11.⁶ (*Ibid.*)

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⁶**Maximum Potential Exposure for Meal Period Claim** = 72,857 workweeks x 4.7 shifts/workweek x .652 violations/shift x \$16.02/violation = **\$3,576,673.11**

Moreover, 27.0% of all shifts had at least one unique rest break violation. (*Ibid.*) Thus, Plaintiff calculates Defendant's maximum potential exposure for the rest period claim to be approximately \$1,481,137.64.⁷ (*Ibid.*)

Furthermore, Plaintiff claims—and Defendant denies—that Defendant maintained an illegal rounding policy for a significant portion of the Class Period, which Defendant used to consistently underpay employees. (Han Decl. ¶ 39.) Sampling of time records from 250 employees indicates that, over the entire Class Period, 44.4% of shifts went underpaid due to Defendant's rounding policy. (*Ibid.*) However, 6.4% of shifts went overpaid due to Defendant's rounding policy. (*Ibid.*) Thus, there was a net underpayment of approximately 3.9 minutes per rounding violation. (*Ibid.*) Thus, Plaintiff calculates that Defendant's maximum potential exposure due to its illegal rounding policy is approximately \$158,317.16.⁸ (*Ibid.*)

Additionally, Plaintiff claims—and Defendant denies—that Defendant failed to factor non-discretionary bonuses in employees' regular rate of pay for purposes of overtime. (Han Decl. ¶ 40.) Specifically, Defendant failed to factor in the Quarterly Profit Sharing bonus, Referral bonus, and Wellness payment into the regular rate. (*Ibid.*) For the 250 employees and 19,986 workweeks analyzed, Plaintiff calculated that Defendant failed to pay \$624,082 to employees under this theory of liability. (*Ibid.*) Thus, extrapolated to a Class Period of 72,857 workweeks, Plaintiff calculates Defendant's maximum potential exposure for the unpaid overtime claim to be approximately \$2,275,029.63.⁹ (*Ibid.*)

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⁷**Maximum Potential Exposure for Rest Period Claim** = 72,857 workweeks x 4.7 shifts/workweek x .270 violations/shift x \$16.02/violation = **\$1,481,137.64**

⁸**Maximum Potential Exposure for Illegal Rounding Claim** = 72,857 workweeks x 4.7 shifts/workweek x .444 violations/shift x 3.9 net minutes underpaid/violation x \$16.02/hr x 1 hr/60min = **\$158,317.16**

⁹**Maximum Potential Exposure for Unpaid Overtime Claim** = (72,857 workweeks/19,986 workweeks) x \$624,082 = **\$2,275,029.63**

1 Further, Plaintiff claims—and Defendant denies—that Defendant’s automatic meal-break
2 deduction policy, illegal rounding policy, and failure to pay meal break and rest break premiums
3 resulted in Defendant issuing inaccurate wage statements in violation of *California Labor Code*
4 section 226(a). (Han Decl. ¶ 41.) Plaintiff calculates Defendant’s maximum potential exposure as
5 to this claim to be approximately \$965,250¹⁰ (based on 297 employees within the one year
6 statute of limitations). (*Ibid.*)

7 If Plaintiff can prove Defendant’s failure to pay all wages owed, Plaintiff is then entitled
8 to waiting time penalties in the amount of 30 days’ worth of wages. (Han Decl. ¶ 42.) Plaintiff
9 calculates Defendant’s maximum potential exposure as to this claim to be approximately
10 \$830,476.80¹¹ (based on 216 terminated employees within the three-year statute of limitations).
11 (*Ibid.*)

12 Plaintiff claims – and Defendant denies – that employees were required to use their own
13 cell phones to communicate and make business-related calls. Plaintiff alleges that Defendant was
14 required to reimburse employees for this expense, under Labor Code § 2802, but failed to do so.
15 (Han Decl., ¶ 43.) Defendant claimed that personal cellular phones were not necessary because
16 most of the Class Members were manufacturing office an only a small number of Class Members
17 worked away from the office. (*Ibid.*) Defendant attributed no value to this claim. (*Ibid.*)
18 However, Plaintiff argued that Defendant had to reimburse for a portion of the phone data
19 service. (*Ibid.*) Based upon investigation with class members, Plaintiff estimates that on average
20 each employee attributed approximately five percent or \$4.00 per month on average on their cell
21 phone plans for this data.¹² Plaintiff calculates Defendant’s maximum potential exposure as to
22 this claim to be approximately \$67,252 (16,813 months x \$4 per month). (*Ibid.*)

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26 ¹⁰ **Maximum Potential Exposure for Wage Statement Violations** = (297 eligible Class Members x \$3,250 (33
avg. pay periods) = **\$965,250**

27 ¹¹ **Maximum Potential Exposure for Waiting Time Penalties** = (8 hours x \$16.02/average hourly rate x
approximately 216 former non-exempt employees x 30 days) = **\$830,476.80**

28 ¹² Cell phone charges were based on the assumption of \$80 per month of cellular phone bill with 5% allocated to
business purposes including calls and time keeping.

1 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
2 include but are not limited to Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1174(d),
3 1194, 1197, 1197.1, and 1198. (Han Decl. ¶ 44.) Defendant asserted that, regardless of the results
4 of the underlying causes of action, PAGA penalties are not mandatory but permissive and
5 discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against the
6 underlying claims, it had a strong argument that it would be unjust to award maximum PAGA
7 penalties given the current unsettled state of law. (*Ibid.*)

8 Class Counsel calculated penalties under this cause of action by multiplying the number
9 of active Class Members (because of the shortened statutory period for this claim), by the civil
10 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
11 section 2699.5 that were applicable in this case. (Han Decl. ¶ 45.) Class Counsel then applied
12 discounts in light of the countervailing arguments concerning the other causes of action, as well
13 as the Court’s power to award “a lesser amount than the maximum civil liability.” (*Ibid.*) Lab.
14 Code § 2699(e)(2).

15 Given the state of the law and the range of PAGA penalties requested and actually
16 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
17 for PAGA penalties. (Han Decl. ¶ 46.) However, if PAGA penalties are granted on any one of
18 the violations alleged in Plaintiff’s operative complaint, the total penalties exposure could be
19 approximately \$0 to \$1,930,500 (297 employees x [(1 initial violation x \$100) + (32 subsequent
20 violations x \$200)]). (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using a 100%
21 violation rate based on the average number of pay periods (33) during the one-year statutory
22 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
23 PAGA theories of recovery (6) gives potential civil penalties of \$0 to \$13,513,500. (*Ibid.*)

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1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 Many of the causes of action brought were duplicative of the statutory claims such as violations
3 of California Labor Code §§ 226(e), 226.7, 510, 512(a), 1194, 1198 and 2802. (Han Decl. ¶ 47.)
4 Of these violations, section 226(e) is a derivative claim. (*Ibid.*) However, employees may have
5 waived meal breaks and rest breaks, and Defendant’s rounding and automatic deduction policies
6 (which ended in May 2018) do not overlap with the PAGA period (which began in June 2018).
7 (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed
8 arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus,
9 allocating \$100,000 to PAGA civil penalties, based on a rate of \$10.56 per violation, was
10 reasonable (9,467 Pay Periods in PAGA Date Range x \$10.56 = \$100,000). (*Ibid.*) (See
11 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and
12 a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation
13 and a total PAGA penalty of \$70,000,000).) (*Ibid.*) Where PAGA penalties are negotiated in
14 good faith and “there is no indication that [the] amount was the result of self-interest at the
15 expense of other Class Members,” such amounts are generally considered reasonable. (*Ibid.*)
16 (*Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D.
17 Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial
18 court did not abuse its discretion in approving a settlement which does not allocate any damages
19 to the PAGA claims.”).) Also, negotiations were under the auspices of a well-respected mediator,
20 Lynn Frank, Esq. who regularly mediates wage and hour litigation involving PAGA claims.
21 Plaintiff’s counsel gave deference to an experienced mediator’s proposal which provided
22 approximately \$10.00 per pay period for this claim.

23 Accordingly, taking into consideration Defendant’s defenses, its supporting evidence, and
24 its position that the action is not suitable for class treatment, the settlement amount of
25 \$1,850,000—**with an average settlement share amount estimated at \$1,643.94**—is reasonable
26 and fair. (Han Decl. ¶ 22.)

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h. 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 \$9,354,136.34. (Han Decl. ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Meal Premiums	\$3,576,673.11	25%	50%	\$1,341,252.42
Rest Premiums	\$1,481,137.64	50%	50%	\$370,284.41
Unpaid Overtime: Regular Hourly Rate	\$2,275,029.63	25%	50%	\$853,135.88
Rounding Policy:	\$158,317.16	50%	25%	\$59,368.94
Paystub Penalty	\$965,250.00	50%	50%	\$241,312.50
Reimbursement	\$ 67,252.00	0%	75%	\$16,813.00
Waiting Time Penalty	\$830,476.80	50%	25%	\$311,428.80
MAXIMUM TOTAL EXPOSURE	\$9,354,136.34			\$3,193,595.95

Plaintiff applies a 25% certification risk discount for meal period exposure. Because Defendant had an automatic 30-minute deduction policy and a policy to never provide second meal breaks for shifts between 10 and 12 hours, Class Counsel believes that the certification is likely. (Han Decl. ¶ 49.) However, the deduction policy lasted until only May of 2018. Thus, Class Counsel believes that a 25% discount is justified. (*Ibid.*) Also, there is a 50% risk on the merits because Defendant may submit evidence and testimony that meal breaks were provided, Class Members chose to take non-compliant breaks (late or short), and Class Members waived their meal breaks altogether. (*Ibid.*)

Plaintiff applies a 50% certification risk for rest period claims because only 27.0% of all shifts had a rest period violation. (Han Decl. ¶ 50.) Moreover, Plaintiff applies a 50% merits risk because Defendant may submit evidence that rest breaks were provided and that Class members waived their rest breaks. (*Ibid.*)

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1 For unpaid overtime claims, Plaintiff discounts the potential exposure by only 25% for
2 certification risk because Plaintiff calculates that 84.7% of sampled employees went underpaid.
3 (Han Decl. ¶ 51.) However, if and once certified, there is a 50% merits risk because Defendant
4 will certainly argue that the bonuses are discretionary and not related to the performance of
5 work. (*Ibid.*) Specifically, Defendant may argue that the Wellness payments are not work-related
6 because employees receive payments for merely wearing a seatbelt, not smoking, and getting
7 annual health checkups. (*Ibid.*) These conditions are not dependent on hours worked. Moreover,
8 Defendant may argue the Referral bonus is not related to work because employees need only
9 refer a candidate for employment, and that candidate (not the referring employee) must work for
10 Defendant for 90 days. (*Ibid.*) Thereafter, the referring employee receives a payment, which is
11 not dependent on the referring employee's hours or productivity. (*Ibid.*) Thus, a 50% merits risk
12 is justified.

13 As to claims for unpaid wages due to rounding, there is a 50% certification risk because
14 Defendant maintained an illegal rounding policy until only May of 2018. (Han Decl. ¶ 52.) Thus,
15 the policy was in effect for less than half of the class period. (*Ibid.*) And while only 44.4% of
16 shifts went underpaid due to rounding, 6.4% went overpaid and 49.2% of shifts were unaffected.
17 (*Ibid.*) Moreover, there is a 25% merits risk because Defendant may produce evidence that it
18 implemented grace periods during which employees were not under Defendant's control. (*Ibid.*)
19 And Defendant will certainly argue that its rounding policy was fair and neutral on its face.

20 Defendant's potential exposure for inaccurate wage statement claims has a 50%
21 certification risk because it is not certain that all 9,467 wage statements were inaccurate, and
22 many of the alleged inaccuracies in the wage statements are derivative of claims for missed meal
23 and rest breaks. (Han Decl. ¶ 53.) Moreover, there is a 50% merits risk because Defendant may
24 argue that its failure to provide accurate wage statements was not "knowing and intentional"
25 under Labor Code § 226. (*Ibid.*) Defendant may also argue that meal and rest premium payments
26 are not wages, so failure to make these payments to employees does not constitute a violation
27 under Labor Code § 226. (*Ibid.*) Additionally, Defendant may argue that, as to unpaid overtime
28 claims (failure to factor bonuses into regular rate), Defendant's wage statements were accurate

1 because the wage statements properly reflected the “applicable hourly rates during the pay
2 period” for overtime. Labor Code § 226(a). (*Ibid.*) Although the overtime rate may not have been
3 calculated using the regular rate including bonuses, the overtime rate listed on the wage
4 statements was identical to the overtime rate that Defendant used to compensate employees for
5 overtime work. (*Ibid.*) Thus, a 50% merits risk is justified. (*Ibid.*)

6 Finally, Plaintiff applies a 50% certification risk discount for waiting time penalty
7 exposure because it is not certain that Defendant paid all 297 terminated employees in an
8 untimely manner. (Han Decl. ¶ 54.) In fact, Defendant may bring evidence showing that it paid a
9 portion of employees in a timely manner. (*Ibid.*) And there is a 25% merits risk because
10 Defendant may argue that any failure to timely pay employees was not “willful” under Labor
11 Code § 203. (*Ibid.*) As for the reimbursement claim, the certification is fairly certain, justifying
12 no discount. (Han Decl., ¶ 55.) However, not all class members used their cell phones, and
13 Plaintiff may not be able to prove up the full extent of damages. Thus, a 75% discount was
14 justified. (*Ibid.*)

15 Based on this analysis, the realistic recovery for this case is \$3,193,595.95. (Han Decl. ¶
16 57.) The Gross Settlement Amount of \$1,850,000 is approximately 19.7% of the maximum
17 potential exposure and approximately 57.9% of the realistic exposure at trial, which is in the
18 ballpark of reasonableness. (*Ibid.*)

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

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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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On July 17, 20, I served the foregoing document described as

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

for the following case: **Tourchette v. Finelite, Inc.**
LWDA/Court Case No.: **LWDA-CM-792478-20**
RG19022885
Alameda County Superior Court

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

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

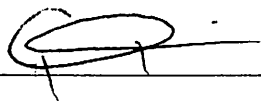
[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on July 17, 2020, at Pasadena, California.



Allana Rivera