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similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JING DONG ZHANG, an individual California resident on behalf of herself and all others similarly situated, Plaintiff, vs. CA FAN TUAN INC., a California corporation; and DOES 1-10, inclusive, Defendant.	Case No. CIVSB2026778 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS; APPOINTMENT OF CLASS REPRESENTATIVE, CLASS COUNSEL AND SETTLEMENT ADMINISTRATOR; APPROVAL OF CLASS NOTICE PACKET; AND SETTING OF FINAL APPROVAL HEARING** Date: May 3, 2022 Time: 10:00 a.m. Judge: Hon. David Cohn Dept.: S-26 Action Filed: December 14, 2020 Trial Date: None

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I. INTRODUCTION AND SUMMARY OF SETTLEMENT.

Plaintiff Jun Dong[1] ("Plaintiff") seeks preliminary approval of her proposed class action and PAGA settlement (the "Settlement") against CA Fan Tuan, Inc. ("Fan Tuan" or "Defendant").[2] Subject to Court approval, Plaintiff and the putative Class have settled their class and PAGA claims against Fan Tuan for $725,000.00. The Settlement resolves all of the claims of Plaintiff and the approximately 1,351 proposed Class Members, PAGA representative action members, the state of California for the alleged PAGA violations, and Putative Class Counsel against Fan Tuan based upon the factual allegations in the wage and hour class and PAGA representative action complaint filed on December 14, 2020, in this Court.

The Settlement satisfies all of the criteria for preliminary settlement approval and falls well within the range of possible approval. Accordingly, Plaintiff requests that the Court provisionally certify the proposed class for settlement purposes only, grant preliminary approval of the Settlement, direct the distribution to the Class the notice of the Settlement and the opportunity to object to the Settlement or elect not to participate in the Settlement, and schedule a final approval hearing.

As an overview, Plaintiff alleges that Fan Tuan is a delivery service company similar to Uber Eats and Doordash, but specifically tailored to the Chinese community. In its business endeavor, Fan Tuan engaged Plaintiff and the putative class of approximately 1,351 "Drivers" or "Couriers" to make food deliveries to Fan Tuan's customers from restaurants and grocery stores via Defendant's mobile application. Fan Tuan classified the Drivers as independent contractors, and the gravamen of the lawsuit is that such drivers were misclassified and should have been

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[1] Plaintiff Jun Dong replaced former representative plaintiff Jing Dong Zhang ("Zhang") as lead plaintiff on March 14, 2022 after Mr. Zhang declined to move forward with the case.

[2] A copy of the fully executed Settlement Agreement, including its exhibit, is attached as **Exhibit "1"** to the Declaration of Torey Joseph Favarote in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement; Conditional Certification of Settlement Class; Appointment of Class Representative, Class Counsel, and Settlement Administrator; Approval of Class Notice; and Setting of Final Approval Hearing ("Favarote Decl."), ¶ 8, **Exh. "1"**. The exhibit to the Settlement Agreement is the Form of Notice to the Class (Settlement Agreement, Exhibit A). The proposed class notice document is referred to as the "Class Notice Packet." All references to "Exhibits" in this Motion are to the exhibits attached to the Favarote Declaration unless otherwise noted.

classified as employees and subject to the protections and benefits of the wage and hour provisions of the California Labor Code and IWC Wage Orders. The Settlement amount is based and calculated on the number of deliveries made by each Class Member during the Class Period. Each Class Member's Settlement share will be based proportionally on the number of deliveries made during the Class Period.

This Settlement was reached after extensive formal and informal discovery, and litigation including: (1) the filing of a motion for class certification on September 23, 2021; (2) Plaintiff's prosecution of a PMQ deposition of Defendant for two days; (3) Defendant's prosecution of two days of plaintiff Zhang's deposition; (4) Defendant's production of approximately 11,000 pages of records, including a random sample of delivery driver records for approximately 20% of the Class Members during the Class Period; (5) Defendant's verified responses and supplemental responses to three sets of special interrogatories, two sets of requests for production of documents, and one set of requests for admissions; (6) verified responses to Defendant's requests for production of documents, and verified responses to special interrogatories; and (6) Defendant's production, pursuant to confidential protective order, of various documents related to its current financial condition. (Favarote Decl. ¶¶ 21-24.)

For the Court's convenience in analyzing this Settlement, these are the pertinent facts, figures, and terms of the Settlement:

- **Class and PAGA Period**: July 1, 2019 to December 31, 2021[3];
- **Putative Class Members and Aggrieved Employees**: Approximately 1,351[4];

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[3] Although the Class Period would cover four years prior to the filing of the Complaint, December 14, 2016, Fan Tuan has represented that it began operating in California in July of 2019. (Favarote Decl. ¶¶ 28.)

[4] According to Defendant's representations to Putative Class Counsel, verified discovery responses and the testimony of Defendant's PMQ, there are approximately 1,351 putative Class Members who performed deliveries during the Class Period for Fan Tuan. **However, as set forth below, in October of 2021, Fan Tuan entered into individual settlement agreements with general releases (i.e. "<u>Pick-up Stix</u>" settlements) with <u>458 putative Class Members</u> who made approximately <u>485,000 deliveries</u> in aggregate during the Class Period.** To the extent that any of these 458 settling putative Class Members made deliveries during the Class Period (i.e. through December 31, 2021) *after* executing their general release with Defendant they would be eligible to participate in the Settlement for those deliveries, and their share of the PAGA Penalties for the entire PAGA Period. (Favarote Decl. ¶¶ 30, 39.)

- **Principal Settlement Terms**:
  - Total Settlement: $725,000.00;
  - Total Delivery Trips Settled: Appx. 853,714[5];
  - PAGA Apportionment: $25,000.00, 75% ($18,750.00) to the LWDA and 25% ($6,250.00) to the aggrieved employees;
  - Class Counsel Costs: $12,000.00;
  - Settlement Administration Costs: Estimated $20,000.00;
  - Class Counsel Fees: 35% ($253,750.00)[6];
  - Class Representative Enhancement: $10,000.00[7];
  - Non Reversionary;
- **Total Deliveries Made by Putative Class Members during Class and PAGA Period**: Approximately 1.3 million[8];
- **Defendant's Pick-Up Stix Individual Settlements**: $111,899.40 for approximately 485,000 deliveries by approximately 458 putative Class Members ($.23 per delivery made)[9];

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[5] Pursuant to the Settlement Agreement, if the final number of "Covered Deliveries" as defined in the Settlement Agreement", exceeds 855,742 (*i.e.*, more than 5% of the 814,992 covered deliveries that Defendant estimated at the time the Settlement was negotiated and reached), the Gross Settlement Amount shall increase proportionally per additional Covered Delivery. (Favarote Decl., Exh. "1" at ¶ 4.1.1. [Escalation Clause].)

[6] As set forth in more detail below, Class Counsel believes a 35% fee is appropriate since in addition to the $725,000.00 Settlement requesting approval, Defendant paid out an additional $111,899.40 in "Pick-Up Stix" settlement monies to individual Drivers after this case was filed by Zhang. As such the "true" Settlement amount and benefit conferred upon the putative Class is $836,899.40. 33.3%, the benchmark for attorneys' fees in wage/hour class actions, on the true Settlement ($278,938.57) is less than the requested 35% in this case ($253,750.00). (Favarote Decl. ¶ 36.)

[7] Plaintiff Zhang, was deposed by Defendants for two days, responded to dozens of interrogatories and document requests. (Favarote Decl. ¶ 21-22.) Plaintiff Jun Dong met in person and spoke extensively with Putative Class Counsel to educate herself on the case and to understand the Settlement Agreement and evaluate whether it was a good deal. (Becerra Decl. ¶ 3.) Plaintiff Dong also produced documents related to her employment. (Becerra Decl. ¶ 3.)

[8] Favarote Decl. ¶ 30; **Exhibit 2** [Declaration of Yifan Liao, in Support of Defendant's Opposition to Plaintiff's Motion for Class Certification, dated October 26, 2021, at ¶ 16]

[9] During this litigation and prior to class certification, Defendant negotiated and entered into individual settlement agreements with approximately 458 putative Class Members. As part of those individual settlements, Defendant paid a total of $111,899.40 to approximately 458 putative Class Members covering approximately 485,000 (of the total 1.3 Million) delivery trips made by putative Class Members (approximately $.23 per delivery) during the Class Period. Defendant's

- **NET SETTLEMENT TO CLASS**: $404,250.00 for 853,714 deliveries (Approximately $.48 per delivery made by each Class Member during the Class Period with an average payment of $299.22, plus average PAGA penalties of approximately $4.62 to each aggrieved employee for a total projected average payment of $303.58 per putative Class Member).[10]

II. BACKGROUND

On December 14, 2020, plaintiff Zhang filed this wage and hour class action and PAGA representative action against Defendant asserting 12 derivative causes of action rooted in the Labor Code that stemmed from Defendant's uniform misclassification of all the putative Class Members as independent contractors instead of employees.

The class in the Complaint is defined as:

All current and former non-exempt employees of Defendant who performed deliveries for Defendant in California at any time from December 14, 2016, through Class Certification and were classified as independent contractors ("Class Members")[11].

III. FACTUAL BACKGROUND.

A. Procedural History and Plaintiff's Contentions.

Plaintiff Jun Dong worked as a "Driver" or "Courier" for Defendant in October of 2020. (Becerra Decl. ¶ 4.) As a Driver, Plaintiff alleged that she, and all of the other putative Class Members, were required to sign a standardized "Service Contract" before they could begin working for Defendant. (Becerra Decl. ¶ 4.) Every Service Contract had identical terms where the name of the person was entered and a sequential employee number on the first page was updated to reflect

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proposed individual settlements with putative Class Members included a *general release* of all claims, including those for sexual harassment, discrimination, or personal injury. (Favarote Decl. ¶ 27.) As part of this Settlement, those approximately 485,000 deliveries made by putative Class Members are not subject to additional settlement amounts and are excluded from the computation of settlement amounts for each participating Class Member. If a putative Class Member executed an individual settlement agreement releasing all claims and made additional deliveries after executing such agreement, those "non-settled" deliveries are part of the Settlement calculation. (Favarote Decl. ¶ 30.)

[10] This amount, per delivery, is more than double what Defendant negotiated and paid to putative Class Members, *in exchange for a general release of all claims*, as part of its Pick-up Stix settlements. (Favarote Decl. ¶ 30.)

[11] The Class Period for the proposed Settlement is July 1, 2019 to December 31, 2021.

the number of people that signed the standardized agreement. (Becerra Decl. ¶ 4.) Plaintiff was employee 1483, the 1483rd Driver to sign Defendant's standardized form Service Contract. (Becerra Decl. ¶ 4.)

The Service Contract states that Plaintiff and the putative Class Members: (1) "**agree to accept and work such shifts as are reasonably assigned**," (2) **may have money deducted from their pay for "failing to report for shift on time: $10 fine;" "[l]eaving before shift is over: $10 fine;" "[f]ail to report for shift: $20 fine**;" (3) were to bear all costs including but not limited to those related to their vehicle and cellphones, (4) must follow all "rules and restrictions" set by Defendant, (5) must use Defendant's branded materials as "mandatory equipment," (6) must indemnify Defendant for any and all "costs and expenses of any kind whatsoever," (7) could be terminated for being absent "from work without permission," and (8) required Plaintiff and the putative Class Members to deposit $200.00 with the Defendant as a "Performance Deposit" that could be returned to him/her as long as they were not in default of the Service Contract, did not owe any money to the Defendant and returned to the Defendant all of its "promotional materials" in "good condition." (Becerra Decl. ¶ 3, Exh. 1.) The Service Contract signed by Plaintiff and the putative Class Members also provides that if a customer did not pay for their delivery for any reason, the Defendant "at its sole discretion" could require Plaintiff or any of the putative Class Members to pay for the delivery out of their own pockets. (Becerra Decl. ¶ 3, Exh. 1, pg. 3.) Additionally, the Service Contracts required that the Drivers "[p]ersonally, provide the services." (Becerra Decl. ¶ 3, Exh. 1, pg. 2.)

Plaintiff alleges that while Plaintiff and the putative Class worked for Defendant, they were not paid for all of the time they spent working for Defendant, including from the time they signed in on Defendant's App at the start of their "shift" until they got their first delivery assignment, as well as all the time spent waiting between delivery assignments during their shift. (Favarote Decl. ¶16-17.) Plaintiff's and the putative Classes' delivery records, which are all maintained by the Defendant, show that Plaintiff and the putative class were not paid based on the time that they were under the Defendant's control while logged onto its delivery system. Plaintiff and the putative Class Members were instead paid based on a formula or algorithm that the Defendant developed which only paid the Drivers a flat fee and the mileage between the pickup location and designated delivery location. (Favarote Decl. ¶¶ 16-20.) Plaintiff and the putative Class Members were also never provided with itemized wage statements, as they could only check their earnings in Defendant's mobile application, which did not provide all of the statutorily required information (*e.g.*, rate of pay, hours worked, etc.). (Id.). Plaintiff also alleged that Defendant did not provide any of the putative Class Members with statutory meal periods or rest breaks. (Id.). Finally, Plaintiff alleged that she and the putative Class were not reimbursed for necessary business expenses, including use of their personal cellular phones which were mandatory equipment to perform delivery services for Defendant. (Id.)

Fan Tuan denies all of Plaintiff's material allegations in the Complaint. Specifically, Fan Tuan contends, among other things, that it is a technology company (and not a delivery company) that develops various online platforms, applications, and websites for different types of services in different areas, such as food delivery, restaurant reviews, online payment processing, advertisement, research marketing, errand services, and pickup services. (Favarote Decl. ¶¶ 16-20.) Most importantly, Fan Tuan contends that it properly classified Plaintiff and the putative Class as independent contractors, that Plaintiff signed an independent contractor agreement with Defendant, and that following the passage of California Proposition 22, codified under the Business & Professions Code §§ 7448, on December 16, 2020, which permitted app-based drivers to work as independent contractors, Defendant complied with all requirements of Prop. 22 in classifying its drivers as independent contractors precluding liability. (Id.)

B. Defendant Settles Directly with Some Class Members Following the Filing of This Lawsuit.

After plaintiff Zhang initiated this action, in early 2021, Defendant began a campaign to try to directly settle with the putative Class Members -- a process that was theoretically approved of in *Chindarah v. Pick Up Stix*, 171 Cal. App. 4th 796 (2009) ("Pick-up Stix"). In Defendant's campaign, it not only sought to settle all of the claims at issue in this matter but also any and all claims that the putative Class Members had against the Defendant. Defendant's proposed settlement included a general release of all claims, including those for sexual harassment, discrimination, or personal injury. According to Defendant, it obtained signed settlement agreements and releases from approximately 458 putative Class Members covering approximately 485,000 deliveries. The total amount paid by Defendant in these individual settlements was approximately $111,899.40 (approximately $.23 per delivery made). (Favarote Decl. ¶¶ 30, 31; **Exhibit 2** and **Exhibit 3** [Declaration of Leo Q. Li in Support of Defendant's Opposition to Plaintiff's Motion for Class Certification].)

C. Discovery and Investigation of Facts

Putative Class Counsel has conducted significant investigation since the inception of the action as detailed in the concurrently filed declarations of Torey Joseph Favarote and Joseph R. Becerra (collectively referred to as "Putative Class Counsel"). Putative Class Counsel's investigation as to the class claims included the exchange of substantial information and data pursuant to formal and informal discovery methods, including multiple days of deposition of plaintiff Zhang, deposition of Defendant's person most knowledgeable ("PMK") over two days, 25 special interrogatories, 58 requests for production of documents, and 18 requests for admissions. Defendant provided a random sampling of delivery records and pay data for putative Class Members, totaling nearly 11,000 pages of documents and representing approximately 20% of the class and consisting of millions of data points. The records were furnished in electronic format, so they could be examined to determine Defendant's level of compliance with the provisions of the California Labor Code that are subject to the claims in the action. Defendant also provided templates of various versions of its services agreement with the putative Class Members that pertain to the claims in the action. Defendant also provided, its confidential financial records to support that the Settlement is fair, reasonable, and in the best interests of the putative Class Members. (Favarote Decl. ¶¶ 21-23.)

In addition, putative Class Counsel spent more than 100 hours interviewing putative Class Members as part of their investigation. In fact, after interviewing dozens of putative Class Members as part of their investigation of this case, putative Class Counsel obtained written authorizations from 26 putative Class Members to obtain their confidential payroll and time records from Defendant, pursuant to Labor Code §§ 226(f), 1198.5(b)(1) and 432 and provided those written authorizations and document requests to Defendant. (Favarote Decl. ¶¶ 21-23;

Becerra Decl. ¶ 5.)

Putative Class Counsel represents that they have thoroughly reviewed all of the produced data, records, testimony of putative Class Members, and information provided by Defendant and the putative Class and thoroughly investigated Plaintiff's class and representative claims against Defendant. (Favarote Decl. ¶¶ 21-23.)

D. The Parties Extensive Litigation and Motion Practice

The parties conducted significant litigation in the action before coming to the present Settlement. In addition to the discovery exchanged, the parties engaged in substantial meet and confer efforts, IDCs with this Court, and Defendant filed a motion to compel further discovery from Plaintiff. (Favarote Decl. ¶ 24-25.)

Additionally, on September 22, 2021, Plaintiff filed a motion for class certification and noticed the motion for a hearing on November 9, 2021, which was later continued to December 17, 2021 by the Court. Plaintiff's motion for class certification was supported by a compendium of evidence of nearly 300 pages of, *inter alia*, cited deposition testimony, declarations and Defendant's policy documents in addition to a Class Action Trial Plan. On October 26, 2021, Defendant filed its opposition to Plaintiff's motion for class certification, which was also supported by a compendium of evidence of nearly 300 pages of evidence, declarations and cited deposition testimony. (Favarote Decl. ¶ 25.)

On December 10, 2021, the parties reached a settlement and executed a Memorandum of Agreement. As a result of the Settlement, Plaintiff vacated the motion for class certification without prejudice. (Favarote Decl. ¶ 26.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

The following is a summary of the material terms of the Settlement.

A. Principal Terms

Fan Tuan will pay $725,000.00 (the "Gross Settlement Amount") to settle the Action on a class-wide basis for the approximately 1,351 putative Class Members. (Settlement, § 1.16; Favarote Decl. ¶¶ 8-15.) The total number of putative Class Member deliveries settled under the Settlement Agreement totals approximately 853,714 (Settlement is calculated per delivery made during the Class Period). (Settlement, § 4.11; Favarote Decl. ¶ 36.) The Class to be conditionally certified is defined as:

> **All individuals who used Defendant's online platform to perform delivery services as a courier or a contractor in California at any time from July 1, 2019 through December 31, 2021. (the "Class")**

(Settlement, § 1.6; Favarote Decl. ¶ 8.)

From the Gross Settlement Amount will be paid (i) a payment of $25,000.00 for PAGA penalties with 75% ($18,750.00) going to the LWDA for its share of the civil penalties; (ii) all Individual Net Settlement Payments to be paid to all Class Members except those who elect not to participate in the Settlement (no claim form will be required for Class Members to receive their Individual Net Settlement Payment); (iii) Class Representative Payment to Plaintiff in the amount of $10,000.00 (as approved by the Court) to compensate her for her services to the Class in pursing in the Action and the risk she assumed on behalf of the absent Class Members; (iv) Class Counsel Attorneys' Fees of $253,750.00 (35% of the Gross Settlement Amount as approved by the Court[12]) to compensate them for their services to the Class in prosecuting the Action and securing the Settlement, and Class Counsels' litigation expenses of up to $12,000.00 (as approved by the Court); (v) a payment to the Settlement Administrator for its reasonable fees and expenses incurred in administering the Settlement, which are estimated at approximately $20,000.00; (vi) any other fees or expenses (other than attorneys' fees and expenses) incurred in implementing the terms and conditions of Settlement and securing the judgment from the Court pursuant to the Settlement. None of the Gross Settlement Amount will revert to Fan Tuan. (Favarote Decl., ¶¶ 8-15; Settlement, §§ 1.16, 4.7.)

The Individual Net Settlement Payments will be distributed to all Class Members who do not opt out of the Settlement as follows:

- Each putative Class Member's potential share of the Net Settlement Amount will be calculated using his or her total number of Covered Deliveries performed during the

[12] Defendant paid out an additional $111,899.40 in "Pick-Up Stix" settlement monies to individual Drivers after this case was filed by Zhang. The "true" Settlement amount and benefit conferred upon the driver class is actually $836,899.40. 33.3%, the benchmark for attorneys' fees in wage/hour class actions, on the true Settlement value is $278,938.57, which is less than the requested 35% ($253,750.00) in this case. (Favarote Decl. ¶ 36, 39.)

Class Period, July 1, 2019 through December 31, 2021 (excluding any deliveries subject to the Individual Settlement Agreements) divided by the Covered Deliveries performed by all Participating Class Members during the Class Period, then multiplied by the Net Settlement Amount — i.e. (individual Covered Deliveries ÷ Covered Deliveries by all Participating Class Member × Net Settlement Amount). (Favarote Decl. ¶ 36; Settlement, § 4.71.)

- Each PAGA group member's potential share of the PAGA Apportionment will be calculated using his or her total number of deliveries performed during the PAGA Period, July 1, 2019 through December 31, 2021 divided by the deliveries performed by all PAGA group members during the PAGA Period, then multiplied by 25% of the PAGA Apportionment — i.e. (Individual Deliveries ÷ Deliveries by all PAGA group members × 25% of the PAGA Apportionment). (Favarote Decl. ¶ 36; Settlement, § 4.8.)

In the event of a dispute over a Class Member's Individual Net Settlement Payment, the Settlement Administrator will resolve the dispute based on information provided by Fan Tuan and the Class Member. (Settlement, § 6.5.) Before individual payroll taxes, and before PAGA penalties, the average Individual Net Settlement Payment to Class Members is expected to be approximately $299.22,[13] plus the average PAGA group member payment of approximately $4.62, for a total of approximately $303.85 per putative Class Member on average.[14] (Favarote Decl. ¶ 37.)

Once the judgment becomes final, Class Members who do not opt out of the Settlement will release their respective claims against Fan Tuan and its related entities, under California law that were raised or that could have been raised in the Action based on the facts alleged in the Action

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[13] There are approximately 1,351 putative Class Members who made approximately 1.3 Million Covered Deliveries during the Class Period. Defendant entered into individual settlement agreements (i.e. Pick-up Stix settlements) with 458 putative Class Members who made and settled approximately 485,000 Covered Deliveries during the Class Period, however this did not settle deliveries performed after the individual settlement agreements were signed. (Favarote Decl. ¶ 38.) $404,250.00 ÷ 1,351 = $299.22.

[14] 25% of $25,000.00 PAGA Allocation = $6,250.00; $6,250.00 ÷ 1,351 PAGA group members = $4.62.

during the Class Period, but will have released fewer claims than those who signed a general release. (Favarote Decl. ¶ 11; Settlement, § 1.34.)

B. Additional Terms

Within 21 days after preliminary approval of the Settlement is granted by the Court, Fan Tuan will provide the Settlement Administrator with the putative Class Members' data, which includes the names and last known addresses of the putative Class Members, their Social Security numbers, and the number of Covered Deliveries they made during the Class Period. (Settlement § 5.1.) Within 15 days of receiving the putative Class Members' data, the Settlement Administrator will send to all putative Class Members (in English and Simplified Chinese) the Class Notice, which will show each putative Class Member his or her reported number of Covered Deliveries made during the Class Period and an estimate of his or her Individual Net Settlement Payment. (Settlement, §§ 5.2-5.5.)

The Class Notice will be sent to the putative Class Members by First-Class U.S. Mail based upon the last know addresses provided by Fan Tuan, unless modified by any updated address information that the Settlement Administrator obtains in the course of the administration of the Settlement. (Settlement, § 5.3.) For any notices returned, the Settlement Administrator will make reasonable efforts to find corrected addresses. (Settlement, § 5.4.)

Putative Class Members will have 45 days after the Class Notice documents are mailed to object to the Settlement. (Settlement § 6.1.) If they do not wish to participate in the Settlement, Class Members will have 45 days after the Class Notice is mailed to submit a Request for Exclusion; those who do not timely submit Requests for Exclusion will be bound by the Settlement (and be paid their Settlement Shares). (Settlement, § 6.3, 6.8.) If by the deadline 10% or more of all putative Class Members elect not to participate in the Settlement, then Fan Tuan will have the right, but not the obligation, to rescind the Settlement, which it must do within 7 business days after the Settlement Administrator notifies the parties of the final number of valid Requests for Exclusion in Settlement. (Settlement, § 6.6.)

Assuming that the Settlement is not rescinded, Plaintiff will move this Court for final approval of the Settlement, payment to the LWDA, and payment of the Settlement Administrator's reasonable fees and expenses. (Settlement, § 8.3.)

V. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL

A. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court.

California Rule of Court 3.769 requires court approval for class action settlements.[15] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." Cal. R. Ct. 3.769(g). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

> (a) A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing. …
>
> (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. Cal. R. Ct. 3.769(a), (c).

Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 179-80 (5th Cir. 1979), *cert. denied sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n*, 452 U.S. 905 (1981) (citation omitted). Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement "only with considerable circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

B. The Settlement Is Fair, Adequate and Reasonable.

In deciding whether to approve a proposed class action settlement under California Code of Civil Procedure section 382, a court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for*

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[15] The California Supreme Court has authorized California's trial courts to use Federal Rule of Civil Procedure 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971); *Green v. Obledo*, 29 Cal. 3d 126, 145-46 (1981). Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983)). The court must consider all relevant factors, such as the following:

> the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Id.*

The court's primary function is to determine that the settlement is not the product of fraud, overreach, or collusion, and taken as a whole, is fair, reasonable and adequate to all concerned. *Id.*

A proposed class action settlement is *presumed* fair under the following circumstances: (i) the parties reached settlement after arm's-length negotiations; (ii) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (iii) counsel is experienced in similar litigation; and (iv) the percentage of objectors is small. *Dunk,* 48 Cal. App. 4th at 1802. The Becerra and Favarote declarations filed with this motion demonstrates that: (i) the Settlement was the product of serious, informed, and non-collusive negotiations conducted at arm's-length and facilitated by experienced counsel; (ii) the parties have engaged in both extensive formal discovery and extensive motion practice such that the parties and their counsel are able to make an informed recommendation about the Settlement; and (iii) the putative Class is represented by counsel experienced in wage-and-hour class actions.[16]

Thus, the Settlement, at this time, is entitled to the presumption that it is fair and in all other respects proper and should be preliminarily approved.

C. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations.

The Settlement was reached as a result of the extensive arm's-length negotiations between experienced wage/hour class action counsel. (Favarote Decl., ¶ 44; Becerra Decl., ¶ 10.) Though

[16] The fourth factor—the number of objectors—cannot be known until after the notice of the Settlement has been disseminated to the putative Class Members and they have had an opportunity to react to it and respond.

cordial and professional, the settlement negotiations have been adversarial and non-collusive in nature. (Favarote Decl., ¶ 44, Becerra Decl., ¶ 10.) The Settlement reached is the product of substantial effort by the parties and their counsel after more than a year of very hard-fought litigation. (Favarote Decl., ¶ 44, Becerra Decl., ¶ 10.) While Plaintiff believes that she has a high probability of success of certifying the claims based upon the motion for class certification that was fully briefed in this case, she also recognizes the inherent risks of litigation and understands the benefit of the Class receiving Settlement funds immediately rather than risking potential unfavorable decisions on class certification, at trial, on the damages awarded, and/or on an appeal that could take several more years to litigate. (Favarote Decl., ¶ 44, Becerra Decl., ¶ 10.) Further, litigating Plaintiff's claims, which involve over 1,300 Class Members during the relevant periods, would have required substantial additional preparation and discovery, as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, each side would have incurred significant expense. Finally, Plaintiff and her counsel understand that the financial condition of Defendant, an unprofitable start-up company that only began operating in California in 2019, was a relevant concern given the scope and size of the class and Defendant's likely inability to pay any large judgment. (Favarote Decl., ¶ 46, Becerra Decl., ¶ 12.)

D. The Extent of Discovery and the Stage of the Proceedings Support Settlement.

Plaintiff thoroughly investigated and evaluated the factual strengths and weaknesses of the Action before reaching the Settlement and engaged in sufficient investigation and formal discovery along with extensive motion practice, as described above, to support the Settlement. (Favarote Decl., ¶¶ 21-25, 40.) Putative Class Counsels' investigation as to the proposed class representative's claims, included prosecuting the depositions of Fan Tuan's corporate representative PMK witness; reviewing all of Fan Tuan's relevant policies, procedures and practices in place during the entirety of the Class Period, in regards to the claims alleged in the Action; reviewing nearly 11,000 pages of documents produced by Fan Tuan in response to 58 document-production requests; and reviewing Fan Tuan's responses and supplemental responses to

25 special interrogatories. (Favarote Decl., ¶¶ 21-25; Becerra Decl., ¶ 5.) The Settlement amount is, of course, a compromise figure. It took into account risks related to liability, damages, and all of the defenses asserted by Fan Tuan. (Favarote Decl., ¶ 40.)

Thus, the Settlement came only after counsel investigated the case and the parties engaged in extensive motion practice on the merits, as set forth above. This litigation, therefore, has reached the stage where the parties "certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986).

E. Plaintiff's Counsel Are Experienced in Similar Litigation.

Putative Class Counsel have significant experience litigating wage-and-hour class actions. (Favarote Decl., ¶¶ 48-51; Becerra Decl., ¶¶ 13-16.) Having prosecuted dozens of cases on behalf of tens of thousands of employees for California Labor Code violations, Putative Class Counsel represent that they are qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis. (Favarote Decl., ¶¶ 48-51; Becerra Decl., ¶¶ 13-16.)

Putative Class Counsel have the view that this is a fair and reasonable settlement in light of the complexities of the Action, the state of the law, and uncertainties of class certification. (Favarote Decl., ¶¶ 44-46; Becerra Decl., ¶¶ 9-12.) Given the risks inherent in litigation and the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the Class and should be preliminarily approved. (Favarote Decl., ¶ 35; Becerra Decl., ¶ 9.)

Experienced counsel, operating at arm's length, have weighed the strengths and weaknesses of the case, examined all of the issues and risks of litigation, and endorse the proposed Settlement. (Favarote Decl., ¶¶ 35, 40, 44; Becerra Decl., ¶ 9.) The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd,* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.,* 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

Accordingly, Plaintiff submits the Settlement, having satisfied the three requirements of *Dunk* at this stage, sufficient for the Court to grant preliminary approval. (Favarote Decl., ¶ 35;

Becerra Decl., ¶ 9.)

F. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation.

Plaintiff and her counsel have concluded it was reasonable to enter into the Settlement at this stage of the litigation in the Action. (Favarote Decl., ¶¶ 44-46; Becerra Decl., ¶¶ 8-9.) Fan Tuan has vigorously contested and continues to contest any liability for the claims asserted in the Action.

There are significant legal uncertainties associated with cases such as this, as they can require protracted litigation to resolve. On the one hand, Plaintiff believes her claims are very well suited for certification and that her own motion for summary adjudication on the merits following certification would have been successful because Fan Tuan's relevant policies, courier agreements and classification of couriers/drivers as independent contractors are uniform and applicable to all putative Class Members. Plaintiff further contends that her claims involve common questions of law and fact, and common proof. (Favarote Decl., ¶¶ 16-17.)

On the other hand, Fan Tuan maintains that resolution of each claim would require highly individualized analysis of the facts and circumstances of each Class Member's individual agreement, what each Class Member was told regarding their job duties, and the application of Proposition 22 to each Class Member's independent contractor classification and status. (Favarote Decl., ¶¶ 18-19.) Fan Tuan argued, in opposition to Plaintiff's Motion for Class Certification, that "individual issues predominate the Proposition 22 inquiries" and that Plaintiff has "no evidence to support any common theory of proof to show couriers are not independent contractors under Proposition 22." (Favarote Decl. ¶ 18.) Accordingly, while Plaintiff believes this is a strong case for certification and on the merits, there is always risk and significant expenses associated with class certification proceedings and appeals, especially where, as here, the law in question, Proposition 22, was just recently enacted and has not been fully litigated through the California appellate courts and Supreme Court. (Favarote Decl., ¶¶ 19, 31-33 .) Decertification motions and reversals following trial are also a legitimate risk in light of the U.S. Supreme Court decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011).

These uncertainties, along with the financial viability of a new start-up company such as Defendant, bore heavily on the negotiations leading to the Settlement. In the face of these legal and financial uncertainties, the parties agreed to a compromise Settlement of $725,000.00. A settlement is not judged *solely* against what might have been recovered had a plaintiff prevailed at trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246, 250 (2001) ("Compromise is inherent and necessary in the settlement process ... [E]ven if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.") (internal quotation marks and citation omitted); *Officers for Justice*, 688 F.2d at 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not . . . render the settlement inadequate or unfair.").

G. The Settlement Is a Reasonable Compromise of Claims.[17]

1. Plaintiff's' Misclassification and Failure to Pay All Minimum and Overtime Wages Claims.

Plaintiff contended that Class Members who worked for Defendant were misclassified as independent contractors and should have been classified as "employees" and been subject to the protections and applications of the California Labor Code. (Favarote Decl., ¶¶ 16-17, 27-39.) Specifically, Plaintiff's theory of the case is that Class Members, as employees of Defendant, were entitled to compensation for all time worked and engaged and ready to work for Defendant and not paid on a delivery basis as independent contractors. Plaintiff's theory of recovery is that Defendant did not comply with any of the prongs of the "ABC" test codified in Labor Code § 2775 ("Determination of status as employee or independent contractor") and as set forth in the legal test provided by the California Supreme Court in *Dynamex*. Moreover, as classification of a worker as

[17] Putative Class Counsel believes that the realistic value of this case is $1,176,524.61 making the $725,000.00 Settlement a good result. $725,000.00 is 61.6% of the realistic value of this case. *See* Favarote Decl., ¶¶ 27-39, for a full *Kullar* analysis by Plaintiff of the claims alleged in the Action.

exempt from the protections of the Labor Code is an affirmative defense, Defendant bore the burden of establishing, by a preponderance of the evidence, that it had properly classified the Class, a feat Plaintiff argued Defendant could not establish. Fan Tuan contends that it did comply with Labor Code § 2775 and that the enactment of Proposition 22 limited its liability significantly. Additionally, Fan Tuan argued that Couriers were never required to take delivery calls, were allowed to engage in whatever outside work they desired, and that Defendant never required Plaintiff or the putative Class to work any specified "shift" and therefore did not exert the requisite control over the putative Class Members to support a misclassification claim. (Id.)

2. Plaintiff's Expense Reimbursement Claim and Unlawful Deduction Claim.

Plaintiff contends that as a further consequence of Fan Tuan's treatment of the Class as independent contractors and not employees, it failed to reimburse the Class for necessary business expenses, including use of their vehicles/mileage to make deliveries and their mobile phones, among other business expenses incurred in making deliveries for Defendant (e.g., mileage, etc.). Further, Plaintiff alleges that Fan Tuan charged Plaintiff for necessary and required business expenses including food heating bags with the Fan Tuan company logo used for food deliveries and corporate Fan Tuan signage for her automobile. Further, Plaintiff argued that she and the Class were "fined" by Fan Tuan if a delivery was not made to the satisfaction of the customer. (Favarote Decl. ¶¶ 16-17.)

Fan Tuan disputes Plaintiff's allegations and asserted that Plaintiff and putative Class Members were not required to use Fan Tuan's marketing materials and that the "fines" imposed on couriers were infrequent, for repeated violations of the independent contractor agreements and akin to contractual liquidated damages and therefore lawful. (Favarote Decl. ¶¶ 18-19.)

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3. Plaintiff's Derivative Claims for Failure to Provide Meal and Rest Breaks, Failure to Pay All Wages Due at Termination of Employment, Failure to Provide Accurate Itemized Wage Statements, Violation of the Investigative Consumer Reporting Agencies Act, Unfair Business Practices, and Claims Under PAGA

Plaintiff's claims for failure to provide lawful meal and rest breaks pursuant to Labor Code §§ 226.7, 512, and 1198; claim for failure to pay all wages due at termination of employment pursuant to Labor Code § 203; claim for failure to provide accurate itemized wage statements pursuant to Labor Code section 226; claim for violation of the investigative consumer reporting agencies act (collecting job applicant/employee credit and criminal/arrest history without proper disclosures) pursuant to Labor Code §§ 432.5, 432.7; claim for unfair business practices in violation of Business & Professions Code section 17200; and claim for civil penalties pursuant to PAGA are derivative of their other claims. (Favarote Decl., ¶¶ 4, 16, 32-33.) Since these claims are derivative, they entail the same risks as the claims outlined above. Furthermore, Fan Tuan contends that even if one of those claims were to survive or be certified as a class, the wage statement and waiting-time claims would fail if Fan Tuan prevailed on its defenses that, even if some wages were owed, it did not "knowingly and intentionally" issue inaccurate wage statements or "willfully" fail to pay all wages due upon termination or fail to maintain required records. *See* Cal. Lab. Code §§ 226(e); 203(a); 1174.5. (Id.) Furthermore, Fan Tuan contends that it never actually required the putative Class Members to obtain their own background checks, and therefore did not fail to provide the proper disclosures. (Favarote Decl., ¶ 33.) Furthermore, Fan Tuan asserts that, in addition to the 458 Couriers/ putative Class Members who have settled and released all claims against Fan Tuan, as of October 22, 2021, 468 couriers in the proposed class have also signed arbitration agreements with Defendant that contain class action waivers precluding them from participating in any certified class -- further increasing the risk of proceeding in this action on a class basis. (Favarote Decl. ¶31.)

In light of the risks involved in the Actions, the $725,000.00 Gross Settlement Amount is a reasonable compromise. (Favarote Decl., ¶ 34.)

Putative Class Counsel are convinced that the Settlement is in the best interest of the Class based on the negotiations and a detailed knowledge of the issues present in the Actions. (Favarote

Decl., ¶ 35; Becerra Decl., ¶ 8.) The length and risks of trial and other normal perils of litigation were all weighed in reaching the Settlement. (Favarote Decl., ¶ 35; Becerra Decl., ¶ 8.) In addition, the (1) financial condition of Defendant, a new start-up company, and its ability to pay a large judgment to the Class, (2) the number of putative Class Members who have executed individual settlement agreements and general releases and/or executed arbitration agreements with class action waivers, (3) the application of the newly enacted Proposition 22 and the likelihood of extensive appellate review of any judgment in favor of the Class, (4) the uncertainty of class certification, (5) the difficulties of complex litigation, and (6) the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Putative Class Counsel in agreeing to the Settlement. (Favarote Decl., ¶¶ 34-35.) In light of the above, the Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

VI. <u>CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES</u>

In California, there are two certification prerequisites: (i) the existence of an "ascertainable class," and (ii) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967) (citations omitted).

A lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, and courts should take settlement into account in evaluating class certification. Because the Court is certifying this action for settlement purposes only, it need not determine whether the Class would be manageable. *Amchen Prods., Inc. v. Windsor,* 521 U.S. 591, 620 (1977).

Plaintiff asserts that the Class here would meet the requirements of numerosity (Favarote Decl., ¶ 3), commonality (*id.*, ¶¶ 16-17), typicality (*id.*, ¶¶ 16-17), adequacy of representation (*id.*, ¶¶ 42-43,48-51), and superiority of the class action device over individual litigation. Fan Tuan maintains that the Class cannot properly be certified but does not oppose conditional certification of the Class for settlement purposes only, acknowledging the low threshold required under such circumstances.

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VII. PROPOSED SETTLEMENT TIMELINE

Should the Court grant preliminary approval of the Settlement at the May 3, 2022, hearing, Plaintiff proposes the following Settlement timeline:

Date	Event
May 3, 2022	Court grants preliminary approval
May 24, 2022	Last day for Fan Tuan to provide Settlement Administrator with class data
June 8, 2022	Last day for Settlement Administrator to mail out to Class Members Class Notice packets (15 days after Fan Tuan provides class data to Settlement Administrator)
July 23, 2022	Last day for Class Members to dispute information provided by Fan Tuan regarding number of Covered Deliveries (45 days after Class Notice is mailed) Last day for Class Members to file objections to Settlement (45 days after Class Notice is mailed) Last day for Class Members to mail Requests for Exclusion to Settlement Administrator (45 days after Class Notice is mailed)
August 8, 2022	Last day for Settlement Administrator to provide the parties with a complete and accurate list of all Class Members who submitted timely and valid Requests for Exclusion and Objections to the Settlement (60 days after the date of initial mailing of Notice and Elections Not to Participate in Settlement)
August 12, 2022	Last day for Fan Tuan to exercise right to rescind Settlement (if applicable) (5 calendar days after being notified by Settlement Administrator that 10% or more of the Class submitted timely Requests from Exclusion from the Settlement)
September 5, 2022	Last day for Settlement Administrator to provide the parties with a declaration of due diligence setting forth its compliance with its obligations under the Agreement and information regarding claims submissions (5 calendar days before Plaintiff files the Motion for Final Approval)
September 8, 2022	Last day for Plaintiff to file with the Court a motion for a final approval of the Settlement, the LWDA payment, and payment of the Settlement Administrator's fees and expenses (16 court days before the Final Approval Hearing) Last day for Plaintiff and Putative Class Counsel to serve on Defendant and file with the Court a motion for award of the Class Representative Payment and the Class Counsel Fees and Expenses Payment (16 court days before the Final Approval Hearing)
September 30, 2022	Final Approval Hearing
(All dates that follow assume final approval granted and noticed on September 30, 2022)	
10 business days after the Judgment becoming Final.	Last day for Fan Tuan to pay to the Settlement Administrator the Gross Settlement Amount

Date	Event
10 days after the Settlement Administrator receives the Gross Settlement Amount	Settlement Administrator to pay to Class Members the Settlement Shares; to Plaintiff, the Class Representative Payment; to Putative Class Counsel, the Class Counsel Fees and Expenses Payment; to the LWDA, the LWDA Payment; and to the Settlement Administrator, its reasonable fees and expenses

VIII. CONCLUSION

Plaintiff respectfully submits that the Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable, and one that could ultimately be granted final approval. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, the class notice and related papers should be approved, the Settlement Administrator should be appointed, and the final approval hearing should be set for September 30, 2022 or the next date available to the Court.

Dated: April 11, 2022

BECERRA LAW FIRM
JOSEPH R. BECERRA

By: ______________________
Joseph R. Becerra

Attorneys for Plaintiff Jun Dong, on behalf of herself and all others similarly situated

Dated: April 11, 2022

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

By: ______________________
Torey Joseph Favarote

Attorneys for Plaintiff Jun Dong, on behalf of herself and all others similarly situated

PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On April 11, 2022, I served a copy(ies) of the following document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS; APPOINTMENT OF CLASS REPRESENTATIVE, CLASS COUNSEL AND SETTLEMENT ADMINISTRATOR; APPROVAL OF CLASS NOTICE PACKET; AND SETTING OF FINAL APPROVAL HEARING

on the parties to this action as follows:

Attorney	Party(ies) Served	Method of Service
Eric M. Steinert Claire Y. Chang SEYFARTH SHAW LLP 560 Mission Street, 31st Floor San Francisco, California 94105 Telephone: (415) 397-2823 Facsimile: (415) 397-8549 esteinert@seyfarth.com cchang@seyfarth.com	Attorneys for Defendant CA FAN TUAN INC.	By Email
Leo Q. Li SEYFARTH SHAW LLP 2029 Century Park East, Suite 3500 Los Angeles, California 90067-3021 Telephone: (310) 277-7200 Facsimile: (310) 201-5219 lli@seyfarth.com	Attorneys for Defendant CA FAN TUAN INC.	By Email
Natalie Palugyai Acting Secretary California Labor & Workforce Development Agency 800 Capital Mall, MIC-55 Sacramento, CA 95814	California Labor & Workforce Development Agency	By Electronic Submission

☒ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

☒ [BY ELECTRONIC SUBMISSION] I hereby certify that the above-referenced document(s) were electronically submitted to the California Labor & Workforce Development Agency through the LWDA Online Filing Site located at: https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on April 11, 2022, at Long Beach, California.

Thomas Steinhart