

DOUGLAS HAN (SBN 232858)  
SHUNT TATAVOS-GHARAJEH (SBN 272164)  
HAIG HOGDANIAN (SBN 334699)  
**JUSTICE LAW CORPORATION**  
751 North Fair Oaks Avenue, Suite 101  
Pasadena, California 91103  
Tel: (818) 230-7502  
Fax: (818) 230-7259

*Attorneys for Plaintiffs*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA**

FRANCESCA BURKE and ASHLEY  
THOMPSON, individually, and on behalf of  
other members of the general public similarly  
situated and aggrieved employees pursuant to  
the Private Attorneys General Act (“PAGA”);

Plaintiffs,

v.

OLD REPUBLIC HOME PROTECTION  
COMPANY, INC., a California corporation;  
OLD REPUBLIC HOME PROTECTION  
SERVICES, INC., a California corporation;  
and DOES 1 through 100, inclusive;

Defendants.

Case No.: MSC20-02203

Honorable Edward G. Weil  
Department 39

**CLASS ACTION**

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

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

Complaint Filed: October 23, 2020  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that as soon as the matter may be heard, before the  
2 Honorable Edward G. Weil in Department 39 of the Contra Costa County Superior Court  
3 (Wakefield Taylor Courthouse), located at 725 Court Street, Martinez, California 94553,  
4 Plaintiffs Francesca Burke and Ashley Thompson (“Plaintiffs,” “Plaintiff Burke,” and “Plaintiff  
5 Thompson) will and hereby moves for an order:

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

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

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

Dated: October 11, 2021

**JUSTICE LAW CORPORATION**

By:   
\_\_\_\_\_  
Douglas Han  
Shunt Tatavos-Gharajeh  
Haig Hogdanian  
*Attorneys for Plaintiffs*

## **TABLE OF CONTENTS**

|      |                                                                                                                |    |
|------|----------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION .....                                                                                             | 10 |
| II.  | BACKGROUND .....                                                                                               | 10 |
| III. | INVESTIGATION/ LITIGATION HISTORY .....                                                                        | 12 |
| a.   | Discovery, Investigation, and the Parties' Staunchly Conflicting Positions .....                               | 12 |
| b.   | The Parties Were Able to Reach an Agreement on Settlement of the Action .....                                  | 14 |
| i.   | The Parties Attended Mediation Which Ultimately Led to the Joint<br>Stipulation and Settlement Agreement ..... | 14 |
| ii.  | The Settlement Was Reached as a Result of Arm's-Length<br>Negotiations .....                                   | 15 |
| iii. | The Settlement Is the Result of Thorough Investigation and Discovery .                                         | 15 |
| c.   | Terms of the Proposed Settlement .....                                                                         | 16 |
| i.   | Deductions from the Settlement.....                                                                            | 16 |
| ii.  | Calculation of the Settlement Payments to Class Members .....                                                  | 16 |
| iii. | Notice to the Class .....                                                                                      | 18 |
| iv.  | Distribution of Funds .....                                                                                    | 19 |
| v.   | The <i>Cy Pres</i> Recipient is Appropriate .....                                                              | 20 |
| vi.  | Release of Claims .....                                                                                        | 21 |
| d.   | Counsel for Both Parties Are Experienced in Similar Litigation .....                                           | 22 |
| IV.  | ARGUMENT .....                                                                                                 | 22 |
| a.   | Class Action Settlements Are Subject to Court Review .....                                                     | 22 |
| b.   | The Proposed Settlement Is a Reasonable Compromise of Claims.....                                              | 23 |
| i.   | The Settlement Is Fair and Reasonable.....                                                                     | 24 |
| ii.  | The Settlement Amount of \$750,000 Is Reasonable .....                                                         | 25 |
| c.   | Discount Analysis Justifies the Settlement .....                                                               | 28 |
| d.   | Conditional Certification of the Class Is Appropriate .....                                                    | 30 |
| i.   | The Proposed Class Is Ascertainable and Sufficiently Numerous.....                                             | 30 |
| ii.  | The Class Members Share a Well-Defined Community of Interest .....                                             | 31 |

|   |    |                                                                               |    |
|---|----|-------------------------------------------------------------------------------|----|
| 1 | 1. | Common Issues Predominate.....                                                | 31 |
| 2 | 2. | Plaintiffs’ Claims Are Typical of the Class Claims.....                       | 32 |
| 3 | 3. | Plaintiffs are Adequate to Represent the Class .....                          | 32 |
| 4 | 4. | Class Action is Superior for the Fair and Efficient Adjudication of           |    |
| 5 |    | this Controversy .....                                                        | 33 |
| 6 | e. | The Settlement Is Fair, Reasonable, and Adequate .....                        | 33 |
| 7 | f. | Notice to Class Members Complies with California Rule of Court 3.769(f) ..... | 33 |
| 8 | V. | CONCLUSION.....                                                               | 34 |

## **TABLE OF AUTHORITIES**

### **Cases**

|                                                                      |        |
|----------------------------------------------------------------------|--------|
| <i>Aguilar v. Cintas Corp. No. 2,</i>                                |        |
| 144 Cal. App. 4 <sup>th</sup> 121 (2006) .....                       | 25     |
| <i>Bartold v. Glendale Federal Bank,</i>                             |        |
| 81 Cal. App. 4 <sup>th</sup> 816 (2000) .....                        | 30     |
| <i>In re Beef Industry Antitrust Litigation,</i>                     |        |
| 607 F. 2d 167 (5 <sup>th</sup> Cir. 1979) .....                      | 23     |
| <i>Boyd v. Bechtel Corp.,</i>                                        |        |
| 485 F. Supp. 610 (N.D. Cal. 1979) .....                              | 15     |
| <i>Brinker Restaurant Corporation v. Superior Court,</i>             |        |
| 53 Cal. 4 <sup>th</sup> 1024 (2012) .....                            | 31     |
| <i>Capitol People First v. Department of Developmental Services,</i> |        |
| 155 Cal. App. 4 <sup>th</sup> 676 (2007) .....                       | 31     |
| <i>Carrington v. Starbucks Corp.,</i>                                |        |
| 30 Cal. App. 5 <sup>th</sup> 504 (2018) .....                        | 26, 28 |
| <i>City of Detroit v. Grinnell Corporation,</i>                      |        |
| 495 F. 2d 448 (2d Cir. 1974).....                                    | 29     |
| <i>Classen v. Weller,</i>                                            |        |
| 145 Cal. App. 3d 27 (1983) .....                                     | 32     |
| <i>Costter v. Lyft, Inc.,</i>                                        |        |
| 193 F. Supp. 3d 1030 (N.D. Cal. 2016) .....                          | 27     |
| <i>Dunbar v. Albertson's Inc.,</i>                                   |        |
| 141 Cal. App. 4 <sup>th</sup> 1422 (2006) .....                      | 25     |
| <i>Dunk v. Ford Motor Co.,</i>                                       |        |
| 48 Cal. App. 4 <sup>th</sup> 1794 (1996) .....                       | 22, 33 |
| <i>Espinoza v. Galardi South Enterprises Inc.,</i>                   |        |
| Case No. 1:14-cv-21244 (S.D. Fla. 2016) .....                        | 32     |

|    |                                                                      |                |
|----|----------------------------------------------------------------------|----------------|
| 1  | <i>Ghazaryan v. Diva Limousine, Ltd.,</i>                            |                |
| 2  | 169 Cal. App. 4 <sup>th</sup> 1524 (2008) .....                      | 31             |
| 3  | <i>Green v. Obledo,</i>                                              |                |
| 4  | 29 Cal. 3d 126 (1981) .....                                          | 22             |
| 5  | <i>Harris v. Superior Court,</i>                                     |                |
| 6  | 154 Cal. App. 4 <sup>th</sup> 164 (2007) .....                       | 25             |
| 7  | <i>Hicks v. Kaufman &amp; Broad Home Corp.,</i>                      |                |
| 8  | 89 Cal. App. 4 <sup>th</sup> 908 (2001) .....                        | 30             |
| 9  | <i>Hopson v. Hanesbrands Inc.,</i>                                   |                |
| 10 | 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009) .....           | 28             |
| 11 | <i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i> |                |
| 12 | 452 U.S. 905 (1981).....                                             | 23             |
| 13 | <i>Jones v. JGC Dallas LLC,</i>                                      |                |
| 14 | Case No. 3:11-cv-02743 (N.D. Tex. 2014).....                         | 31             |
| 15 | <i>Kullar v. Foot Locker Retail, Inc.,</i>                           |                |
| 16 | 168 Cal. App. 4 <sup>th</sup> 116 (2008) .....                       | 23             |
| 17 | <i>Linder v. Thrifty Oil Co.,</i>                                    |                |
| 18 | 23 Cal. 4 <sup>th</sup> 429 (2000) .....                             | 30             |
| 19 | <i>Linney v. Cellular Alaska Partnership,</i>                        |                |
| 20 | 151 F. 3d 1234 (9 <sup>th</sup> Cir. 1998) .....                     | 29             |
| 21 | <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>           |                |
| 22 | 186 Cal. App. 4 <sup>th</sup> 399 (2010) .....                       | 23             |
| 23 | <i>Nordstrom Com. Cases,</i>                                         |                |
| 24 | 186 Cal. App. 4 <sup>th</sup> 576 (2010) .....                       | 28             |
| 25 | <i>Sav-On Drug Stores, Inc. v. Superior Court,</i>                   |                |
| 26 | 34 Cal. 4 <sup>th</sup> 319 (2004) .....                             | 24, 25, 30, 31 |
| 27 | <i>In re Tableware Antitrust Litig.,</i>                             |                |
| 28 | 484 F. Supp. 2d 1078 (N.D. Cal. 2007) .....                          | 29             |

|    |                                                      |            |
|----|------------------------------------------------------|------------|
| 1  | <i>Tech-Bilt v. Woodward-Clyde &amp; Associates,</i> |            |
| 2  | 38 Cal. 3d 488 (1985) .....                          | 24         |
| 3  | <i>Thurman v. Bayshore Transit Mgmt.,</i>            |            |
| 4  | 203 Cal. 4 <sup>th</sup> 1112 (2012) .....           | 25         |
| 5  | <i>Ubrino v. Orkin Svcs. Of Calif., Inc.,</i>        |            |
| 6  | 726 F. 3d 118 (9 <sup>th</sup> Cir. 2013) .....      | 27         |
| 7  | <i>Vasquez v. Superior Court,</i>                    |            |
| 8  | 4 Cal. 3d 800 (1971) .....                           | 22         |
| 9  | <i>Viceral v. Mistras Grp., Inc.,</i>                |            |
| 10 | 2016 WL 5907869 (N.D. Cal. Oct. 11, 2016).....       | 27         |
| 11 | <i>Walsh v. IKON Solutions, Inc.,</i>                |            |
| 12 | 148 Cal. App. 4 <sup>th</sup> 1440 (2007) .....      | 25         |
| 13 | <i>Yocupicio v. PAE Grp., LLC,</i>                   |            |
| 14 | 795 F. 3d 1057 (9 <sup>th</sup> Cir. 2015) .....     | 27         |
| 15 | <b><u>Statutes</u></b>                               |            |
| 16 | Business and Professions Code §§ 17200.....          | 24         |
| 17 | Code of Civil Procedure § 382.....                   | 30, 33     |
| 18 | Code of Civil Procedure § 384.....                   | 20, 21     |
| 19 | Code of Civil Procedure § 877.6.....                 | 23         |
| 20 | Federal Rule 23 .....                                | 22         |
| 21 | Labor Code § 201.....                                | 25         |
| 22 | Labor Code § 202.....                                | 25         |
| 23 | Labor Code § 203.....                                | 14         |
| 24 | Labor Code § 226.....                                | 24, 25, 28 |
| 25 | Labor Code § 226.7.....                              | 25, 28     |
| 26 | Labor Code § 510.....                                | 25, 28     |
| 27 | Labor Code § 512.....                                | 25, 28     |
| 28 | Labor Code § 1194.....                               | 25, 28     |

|   |                          |        |
|---|--------------------------|--------|
| 1 | Labor Code § 1197.....   | 25, 28 |
| 2 | Labor Code § 1197.1..... | 25     |
| 3 | Labor Code § 1198.....   | 25, 28 |
| 4 | Labor Code § 2802.....   | 25, 28 |
| 5 | Labor Code § 2699.....   | 26, 27 |
| 6 | Labor Code § 2699.5..... | 26     |
| 7 | Rule 3.769 .....         | 22, 33 |

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1     **I.     INTRODUCTION**

2             This motion seeks preliminary approval of a non-reversionary \$750,000 proposed wage  
3 and hour class action settlement by Plaintiffs on behalf of themselves and all current and former  
4 non-exempt employees of Defendant Old Republic Home Protection Company, Inc.  
5 (“Defendant”) employed in California any time between April 27, 2016, to September 14, 2021  
6 (“Class” and “Class Period”). At the time of this filing, the number of Class Members confirmed  
7 by Defendant during Class Period is eight hundred ninety-two (892).

8             It is requested this Court grant Preliminary Approval, as, when analyzing the strengths  
9 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this  
10 proposed settlement of \$750,000 – with an average Individual Settlement Share estimated at  
11 479.82<sup>1</sup> – is well within the “ballpark” of reasonableness.

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

19     **II.     BACKGROUND**

20             Defendant was founded in California in 1974 and offers service contracts that protect  
21 resale home buyers from costs of unexpected repairs or replacement of home systems and  
22 appliances that break down because of normal wear and tear. (Declaration of Douglas Han  
23 (“Han Dec.”) at ¶ 8.) This case involves all current and former non-exempt employees of  
24 Defendant employed in California any time between April 27, 2016, to September 14, 2021.  
25 (*Ibid.*) Plaintiffs allege that during the Class Period, Defendant’s non-exempt employees work  
26 and/or worked on an hourly basis. (*Ibid.*)

27     ///

28     

---

  
<sup>1</sup> \$428,000 (Net Settlement Amount) / 892 (Class Members) = \$479.82.

1 On July 22, 2020, Plaintiffs provided written notice to the Labor and Workforce  
2 Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code  
3 they contend were violated and the theories supporting his contention. (Han Dec., *supra*, at ¶ 9.)

4 After waiting the requisite sixty-five (65) days for the PAGA notice period to expire,  
5 Plaintiffs filed their wage-and-hour class action complaint that included a PAGA cause of action  
6 on October 23, 2020 in the Superior Court of California, County of Contra Costa. (Han Dec.,  
7 *supra*, at ¶ 10.) Plaintiffs’ wage-and-hour class action complaint alleged violation of: (1) Labor  
8 Code sections 510 and 1198 (unpaid overtime); (2) Labor Code sections 226.7 and 512(a)  
9 (unpaid meal period premiums); (3) Labor Code section 226.7 (unpaid rest period premiums); (4)  
10 Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) Labor Code sections 201 and  
11 202 (final wages not timely paid); (6) Labor Code section 226(a) (non-compliant wage  
12 statements); (7) Labor Code sections 2800 and 2802 (unreimbursed business expenses); (8)  
13 Labor Code sections 2698, *et seq.* (PAGA); and (9) Business & Professions Code sections  
14 17200, *et seq.* (*Ibid.*)

15 The Parties attended mediation on Plaintiffs’ claims on March 29, 2021. (Han Dec.,  
16 *supra*, at ¶ 11.) While the case did not settle at mediation, the Parties continued to explore  
17 settlement while simultaneously litigating the matter. (*Ibid.*) After a full day of mediation and  
18 under the auspices of the mediator Deborah Saxe, the Parties were eventually able to reach a  
19 class action settlement. (*Ibid.*)

20 Defendant generally and specifically denies any and all liability or wrongdoing of any  
21 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of  
22 any sort, and contends that for any purpose other than settlement, the claims made in the Action  
23 are not appropriate for class or representative treatment. (Han Dec., *supra*, at ¶ 12.) Defendant  
24 also asserts several defenses to the claims, and has denied any wrongdoing or liability arising out  
25 of any of the alleged facts or conduct in the Action. (*Ibid.*)

26 ///

27 ///

28 ///

1 **III. INVESTIGATION/ LITIGATION HISTORY**

2 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

3 After Plaintiffs filed their wage-and-hour class action complaint, both Parties engaged in  
4 formal and informal discovery. (Han Dec., *supra*, at ¶ 13.) Specifically, Plaintiffs propounded  
5 one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests  
6 for admissions; and one (1) set of requests for production of documents. (*Ibid.*) Defendant  
7 responded to Plaintiffs’ discovery. (*Ibid.*) Afterwards, the Parties met and conferred regarding  
8 this discovery. (*Ibid.*)

9 Prior to the mediation and both before and after the Action was filed, the Parties  
10 conducted significant investigation and discovery of the facts and law. (Han Dec., *supra*, at ¶  
11 14.) Prior to the mediation, Defendant produced hundreds of documents relating to its policies,  
12 practices, and procedures regarding reimbursement of business expenses, paying non-exempt  
13 employees for all hours worked, meal and rest breaks, and its payroll and operational policies.  
14 (*Ibid.*) Plaintiffs also reviewed time records, pay records, and information relating to the size and  
15 scope of the Class produced by Defendant, as well as data permitting Plaintiffs to understand the  
16 number of workweeks in the Class Period. (*Ibid.*) Finally, Plaintiffs interviewed several Class  
17 Members who worked for Defendant during the Class Period. (*Ibid.*)

18 The Parties agree that the above-described investigation and evaluation, as well as the  
19 information exchanged during the settlement negotiations, are more than sufficient to assess the  
20 merits of the respective Parties’ positions and to compromise the issues on a fair and equitable  
21 basis. (Han Dec., *supra*, at ¶ 15.)

22 Based upon Defendant’s document production and interviews Class Counsel had with  
23 non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to  
24 provide employees with legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶¶ 16-17.)  
25 Specifically, policies that were supposedly not code-compliant coupled with heavy, time-  
26 sensitive workloads forced employees forgo receiving compliant breaks. (*Ibid.*)

27 ///

28 ///

1 Plaintiffs also assert – and Defendant denies – that Defendant failed to pay employees for  
2 all hours worked. (Han Dec., *supra*, at ¶ 18.) Defendant purportedly maintained stringent  
3 policies that discouraged overtime work and pressured employees work additional hours off-the-  
4 clock without reporting their hours of work. (*Ibid.*)

5 Plaintiffs also allege – and Defendant denies – that Defendant failed to incorporate non-  
6 discretionary bonuses and incentives into employees’ regular rates of pay for overtime  
7 calculation purposes. (Han Dec., *supra*, at ¶¶ 19.) Specifically, Defendant would pay employees  
8 various bonuses and incentives but supposedly failed to calculate such payments into their  
9 regular rates of pay, thereby underpaying overtime wages owed. (*Ibid.*)

10 Additionally, Plaintiffs assert – and Defendant – that Defendant failed to reimburse  
11 employees for necessary business expenses incurred. (Han Dec., *supra*, at ¶ 20.) These business  
12 expenses ranged from purchasing office supplies to using their personal cell phones and vehicles  
13 for business-related purposes. (*Ibid.*)

14 Finally, Plaintiffs allege – and Defendant denies – that Defendant is liable for waiting  
15 time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 21-22.)

16 Defendant denies Plaintiffs’ contentions in their entirety. (Han Dec., *supra*, at ¶ 23.)  
17 Among other things, Defendant denies Plaintiffs’ meal and rest break contentions on the grounds  
18 that it provided breaks within compliant times and that non-exempt employees were given  
19 discretion as to when to take their breaks. (*Ibid.*) Defendant also contends that non-exempt  
20 employees were allowed to use their meal and rest break time for their own purposes. (*Ibid.*)  
21 Moreover, Defendant counters that it rarely, if ever, assigned employees heavy-time-sensitive  
22 workloads and provided employees reasonable opportunities to take breaks more than the  
23 required time periods. (*Ibid.*) By extension, Defendant also argues that its meal and rest break  
24 policies complied with the Labor Code and were never intended to discourage or prevent duty-  
25 free breaks. (*Ibid.*) Defendant further contends that whether non-exempt employees took meal  
26 and rest breaks during compliant time frames and were relieved of all duties are questions that  
27 could only be resolved by resorting to individualized inquiries to each non-exempt employee  
28 and, therefore, class certification would not be appropriate. (*Ibid.*) Defendant also asserts that it

1 paid its employees for all times and all hours worked, including overtime, minimum, and  
2 premium wages. (Han Dec., *supra*, at ¶ 23.) Furthermore, Defendant counters that it did not  
3 maintain stringent policies or improper practices that pressured employees to work additional  
4 hours off-the-clock nor was it made aware employees were opting to work off-the-clock. (*Ibid.*)  
5 Moreover, Defendant contends it did factor non-discretionary bonuses and incentives into  
6 eligible employees' regular rates for overtime purposes and that only a small fraction of  
7 employees qualified for such bonuses and incentives. (*Ibid.*) Defendant also asserts it  
8 reimbursed employees for all business expenses, including making business purchases and using  
9 their personal cell phones and vehicles for business-related purposes. (*Ibid.*) Finally, Defendant  
10 argues that any failure to comply with California labor laws (which it denies) was an honest  
11 mistake made in good faith. (*Ibid.*) Thus, Defendant contends any alleged conduct could not be  
12 deemed "willful" under Labor Code section 203. (*Ibid.*)

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

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

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

18 The Parties agreed to go to mediation with experienced wage-and-hour mediator,  
19 Deborah Saxe. (Han Dec., *supra*, at ¶ 24.) The mediation took place on March 29, 2021. (*Ibid.*)  
20 During the mediation, the Parties discussed the risks of continued litigation, risks of certification,  
21 and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices  
22 of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action,  
23 the terms of which were memorialized in a Settlement Agreement, that the Parties now seek  
24 Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

25 ///

26 ///

27 ///

1                   **ii. The Settlement Was Reached as a Result of Arm’s-Length**  
2                   **Negotiations**

3           The Settlement Agreement was reached because of arm’s-length negotiations. (Han  
4 Dec., *supra*, at ¶ 44.) Though cordial and professional, the settlement negotiations have been,  
5 always, adversarial, and non-collusive in nature. (*Ibid.*) At the mediation, counsel for the Parties  
6 conducted extensive arm’s-length settlement negotiations until an agreement was ultimately  
7 reached by all Parties. (*Ibid.*)

8           Plaintiffs and Class Counsel believe in the merits of the case but also recognize the  
9 expense and length of continued proceedings necessary to continue the litigation against  
10 Defendant through class certification and trial and through any possible appeals. (Han Dec.,  
11 *supra*, at ¶ 45.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of  
12 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.  
13 (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including  
14 formal mediation on March 29, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class  
15 Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and  
16 reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

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

27 ///

28 ///

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

2                   **i. Deductions from the Settlement**

3           The Parties have agreed (subject to and contingent upon the Court’s approval) that this  
4 action be settled and compromised for the non-reversionary total sum of \$750,000 (“Gross  
5 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an  
6 amount not to exceed \$250,000 (one-third of the Gross Settlement Amount) to compensate Class  
7 Counsel for work already performed and all work remaining to be performed in documenting the  
8 settlement, administrating the settlement and securing Court approval; (b) Cost Award for actual  
9 litigation costs not to exceed \$25,000;<sup>2</sup> (c) Class Representative Enhancement Payments in the  
10 amount of \$7,500 to each Class Representative in recognition of their work and efforts in  
11 obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event  
12 this matter had not successfully resolved; (d) Administration Costs to Simpliciter, the Settlement  
13 Administrator, in the amount not to exceed \$12,000; and (e) PAGA Payment in the sum of  
14 \$20,000, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA and twenty-  
15 five percent (25%) of which (\$5,000) shall be distributed to the employees eligible to recover the  
16 PAGA Payment that consist of all hourly-paid or non-exempt employees of Defendant employed  
17 in California at any time during the period between July 22, 2019, to September 14, 2021  
18 (“Eligible Aggrieved Employees,” “PAGA Payment,” PAGA Period,” and “Individual PAGA  
19 Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 25.)

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

21           After all Court-approved deductions from the Gross Settlement Amount, it is estimated  
22 that \$428,000 (“Net Settlement Amount”) will be distributed to Class Members – with an  
23 average Individual Settlement Share estimated at \$479.82. (Han Dec., *supra*, at ¶ 27.)

24       ///

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

1 Each Participating Class Member's Individual Settlement Share will be apportioned as  
2 follows: one-third (1/3) wages and two-thirds (2/3) interests and penalties. (Han Dec., *supra*, at  
3 ¶ 28.) The Settlement Administrator will withhold the amount of the Participating Class  
4 Members' portion of normal payroll withholding taxes out of the wage portion of each person's  
5 Individual Settlement Share. (*Ibid.*) The Settlement Administrator will also calculate the  
6 amounts of Employer Taxes for the wage portions of the Individual Settlement Shares. (*Ibid.*)  
7 Finally, the Settlement Administrator will submit the amount of Employer Taxes it calculates to  
8 Defendant for additional funding and forward those amounts along with each person's Individual  
9 Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*)

10 The Settlement Administrator will pay each Participating Class Member an Individual  
11 Settlement Share from the Net Settlement Amount. (Han Dec., *supra*, at ¶ 29.) The Individual  
12 Settlement Share is calculated based on each Participating Class Member's pro rata share of the  
13 Net Settlement Amount based on workweeks during the Class Period as follows:

14 (i) the number of weeks he or she worked as an hourly-paid or non-exempt  
15 employee during the Class Period, divided by (ii) the total number of weeks  
16 worked by all Participating Class Members collectively during the Class Period,  
17 which is then multiplied by the Net Settlement Amount. The Settlement  
18 Administrator will use the Class Data to calculate the Individual Settlement Share  
19 for each Class Member based on the number of workweeks worked by the Class  
20 Member during the Class Period (excluding weeks when the Class Member  
21 performed no work for Defendant). (*Ibid.*)

22 Furthermore, the Settlement Administrator shall also pay each Eligible Aggrieved  
23 Employee according to his or her proportional share, which will be based upon the total number  
24 of workweeks he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 30.) The  
25 Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata  
26 share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on workweeks  
27 during the PAGA Period as follows:

28 ///

///

///

(i) the number of workweeks he or she worked as an hourly-paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of workweeks worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the Individual PAGA Payment for each Eligible Aggrieved Employee. (Han Dec., *supra*, at ¶ 30..)

Each Eligible Aggrieved Employee's Individual PAGA Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. (Han Dec., *supra*, at ¶ 31.) Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 32.) No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

### **iii. Notice to the Class**

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 33.) The Class Data shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member's full name; (ii) each Class Member's last known address; (iii) each Class Member's Social Security and Employee ID number, if any; (iv) each Class Member's relevant dates of employment; (v) number of workweeks worked by each Class Member during the Class Period (excluding weeks where the Class Member performed no work for Defendant); and (vi) number of workweeks worked by the Eligible Aggrieved Employee during the PAGA Period (excluding weeks when the Eligible Aggrieved Employee performed no work for Defendant) ("Class Data"). (*Ibid.*)

///

///

1           Within fourteen (14) calendar days after Defendant’s deadline to provide the Class Data  
2 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all  
3 identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 34.) Class  
4 Members are not required to submit a claim form to receive their Individual Settlement Shares  
5 pursuant to the Agreement. (*Ibid.*) Similarly, Eligible Aggrieved Employees are also not  
6 required to submit a claim form to receive their Individual PAGA Payment. (*Ibid.*) Eligible  
7 Aggrieved Employees who opt-out of the Settlement will nonetheless receive their Individual  
8 PAGA Payment. (*Ibid.*) The proposed Class Notice and Exclusion Form are attached as Exhibits  
9 A and B to the Settlement Agreement respectively, which is Exhibit 2 to the Declaration of  
10 Douglas Han. (*Ibid.*)

11                           **iv. Distribution of Funds**

12           Within seven (7) calendar days after the Final Approval Order, the Settlement  
13 Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement  
14 Shares, and Individual PAGA Payments, the amount of Employer Taxes, the Attorney Fee  
15 Award, the Cost Award, the Class Representative Enhancement Payments, and the  
16 Administration Costs, and report the results of these calculations to Class Counsel and  
17 Defendant’s Counsel. (Han Dec., *supra*, at ¶ 35.) Defendant shall also at this time provide any  
18 tax information that the Settlement Administrator may need to calculate each Participating Class  
19 Member’s Individual Settlement Share. Defendant shall wire the Gross Settlement Amount and  
20 Employer Taxes necessary to fund the Settlement to the Settlement Administrator on the later of  
21 the following two (2) dates: (a) the 60th calendar day after a signed order granting final approval  
22 of the Agreement has been filed, provided no motion to vacate the judgment, appeal, writ or  
23 other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any  
24 motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the  
25 Agreement has been finally dismissed with no material change to the terms of the Agreement  
26 and there is no right to pursue further remedies. (*Ibid.*)

27 ///

28 ///

1 Within fourteen (14) calendar days after the deadline to fund the Settlement, the  
2 Settlement Administrator shall disburse all payments due under the Settlement Agreement,  
3 including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award,  
4 the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the  
5 Administration Costs. (Han Dec., *supra*, at ¶ 36.) The Settlement Administrator will also  
6 forward a check for seventy-five percent (75%) of the PAGA Payment to the LWDA for  
7 settlement of the PAGA claim. (*Ibid.*)

8 Participating Class Members and Eligible Aggrieved Employees must cash or deposit  
9 their Individual Settlement Share and Individual PAGA Payment checks within one hundred  
10 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 37.) Any  
11 portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class  
12 Members and/or Eligible Aggrieved Employees that were not claimed by cashing their respective  
13 settlement checks before the deadline to do so shall be donated to Legal Aid at Work  
14 (“LAAW”). (*Ibid.*)

15 **v. The *Cy Pres* Recipient is Appropriate**

16 The Parties have agreed to designate the nonprofit organization LAAW as the *cy pres*  
17 recipient. LAAW satisfies the policy of the State of California under California Code Civil  
18 Procedure section 384(a) “to ensure that the unpaid cash residue and unclaimed or abandoned  
19 funds in class action litigation are distributed, to the fullest extent possible, in a manner designed  
20 to further the purposes of the underlying class action or causes of action, or to promote justice for  
21 all Californians.” (Cal. Code Civ. Proc. § 384(a).) (Han Dec., *supra*, at ¶ 38.) The Code further  
22 states, “the court shall amend the judgment to direct the defendant to pay the sum of the unpaid  
23 residue or unclaimed or abandoned class member funds, plus any interest that has accrued  
24 thereon, to nonprofit organizations or foundations to support projects that will benefit the class or  
25 similarly situated persons, or that promote the law consistent with the objectives and purposes of  
26 the underlying cause of action, to child advocacy programs, or to nonprofit organizations  
27 providing civil legal services to the indigent.” (Cal. Code Civ. Proc. § 384(b).) (Han Dec.,  
28 *supra*, at ¶ 38.)

1 LAAW directly satisfies the legislature’s purpose and goal under California Code Civil  
2 Procedure section 384. (Han Dec., *supra*, at ¶ 39.) The core of LAAW’s work is providing free  
3 legal services to low-wage workers with employment claims. (*Ibid.*) LAAW litigates cases that  
4 address an array of issues important to low-wage workers, including (a) violations of wage-and-  
5 hour laws; (b) workplace retaliation; (c) discrimination on account of race, national origin,  
6 disability, sex, gender identity, sexual orientation, immigration status and language proficiency;  
7 (d) harassment; and (e) failure to comply with equal pay laws and family medical leave laws.  
8 (*Ibid.*) Additionally, LAAW’s Community Legal Services Program provides advice and  
9 counseling to low-wage workers on the full range of employment law issues they face through  
10 twelve statewide Workers’ Rights Clinic locations throughout California. (*Ibid.*) There can be  
11 no doubt LAAW is the type of non-profit organization the legislature had in mind when drafting  
12 and amending California Code Civil Procedure section 384. (*Ibid.*) The Parties are not affiliated  
13 with and do not have any financial interest in LAAW. (*Ibid.*) Specifically, neither Class Counsel  
14 nor Plaintiffs have no affiliation with or have any interest pertaining to LAAW. (*Ibid.*)

15 **vi. Release of Claims**

16 Upon Defendant’s fulfillment of its payment obligations under section III (I)(8)(a) of the  
17 Agreement, in exchange for the consideration set forth in the Agreement, Plaintiffs and the  
18 Participating Class Members release the Released Parties from the Class Action Released Claims  
19 arising during the Class Period (“Class Action Released Claims”). *See* Exhibit 2 §§ I(F), III(J).  
20 (Han Dec., *supra*, at ¶ 40.)

21 Upon Defendant’s fulfillment of its payment obligations under section III (I)(8)(a) of the  
22 Agreement, the LWDA and each Eligible Aggrieved Employee, including Plaintiffs, individually  
23 and on behalf of their spouses, heirs, registered domestic partners, executors, administrators,  
24 representatives, attorneys, successors and assigns hereby voluntarily and knowingly release the  
25 Released Parties from the PAGA Released Claims. In addition, on the Effective Date, all Eligible  
26 Aggrieved Employees and their successors in interest will be permanently enjoined and forever  
27 barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.  
28 The release of the PAGA Released Claims is effective regardless of whether the Eligible

Aggrieved Employee submits a timely and valid request for exclusion (“PAGA Released Claims”). *See* Exhibits 2 §§ I(GG), III(K). (Han Dec., *supra*, at ¶ 41.)

The Released Parties 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, attorneys, and any entities that may be considered joint employers (“Released Parties”). *See* Exhibit 2 § I(LL). (Han Dec., *supra*, at ¶ 42.)

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

Both Class Counsel and Counsel for Defendant are particularly experienced in wage and hour employment law and class actions. Class Counsel has significant experience in litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions. (Han Dec., *supra*, at ¶¶ 2-6, Exhibit 1.)

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

**IV. ARGUMENT**

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

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

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

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

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

4 ...

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

9 Courts act within their discretion in approving settlements that are fair, not collusive, and take  
10 into account “all the normal perils of litigation as well as the additional uncertainties inherent in  
11 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,  
12 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452  
13 U.S. 905.)

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

15 An understanding of the amount in controversy is an important factor in whether the  
16 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses  
17 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)  
18 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)  
19 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case  
20 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

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

Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.).)

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

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

The proposed Settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data Defendant produced for the putative class as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 46.)

This discovery informed Plaintiffs' central theories of liability, which are predicated on Plaintiffs' claims that Defendant failed to pay overtime wages, failed to pay minimum wages, failed to provide meal and rest breaks and pay applicable premiums, failed to pay wages in a timely manner, failed to issue compliant wage statements, failed to reimburse business expenses, violated Labor Code section 2698, *et seq.* (PAGA), and violated the Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 47.)

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

Although Plaintiffs believe the case is suitable for certification on the basis that there are company-wide policies that Plaintiffs contend violate California law and uniformly affect the putative class members, uncertainties with respect to certification are always present. (Han Dec., *supra*, at ¶ 49.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)

1 Decisions following *Sav-On* have reached different conclusions concerning certification of  
2 wage-and-hour claims.<sup>5</sup> (Han Dec., *supra*, at ¶ 49.)

3 Although remaining confident in the strengths of his claims, all these factors led Plaintiffs  
4 to discount the following calculations of potential damage claims.

5 **ii. The Settlement Amount of \$750,000 Is Reasonable**

6 In addition to being able to discover the strengths and vulnerabilities associated with  
7 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of  
8 time and pay records and information regarding the estimated number of pay periods and  
9 workweeks worked by putative class members and the average hourly rate for Class Members.  
10 (Han Dec., *supra*, at ¶ 50.) Defendant also confirmed that there were approximately 90,141  
11 workweeks worked by Class Members. (*Ibid.*) Plaintiffs were also able to determine that the  
12 average hourly rate for Class Members was \$21.41. (*Ibid.*)

13 Moreover, provisions of the Labor Code potentially triggering PAGA penalties in this  
14 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),  
15 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 57.) Defendant asserted that,  
16 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory  
17 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong  
18 arguments against the underlying claims, it had a strong argument that it would be unjust to  
19 award maximum PAGA penalties given the law's unsettled state. (*Thurman v. Bayshore Transit*  
20 *Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) (Han  
21 Dec., *supra*, at ¶ 57.)

22 ///

23 ///

24 ///

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

1 Class Counsel calculated penalties under this cause of action by multiplying the number  
2 of active Class Members (because of the shortened statutory period for this claim) by the civil  
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code  
4 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 58.) Class Counsel then  
5 applied discounts in light of the countervailing arguments with regard to the other causes of  
6 action, as well as the Court’s power to award “a lesser amount than the maximum civil liability.”  
7 (Lab. Code § 2699(e)(2).) (Han Dec., *supra*, at ¶ 58.)

8 Given the state of the law and the range of PAGA penalties requested and actually  
9 awarded in California courts, it is difficult to determine a reasonable value and actual exposure  
10 for PAGA penalties. (Han Dec., *supra*, at ¶ 59.) However, if PAGA penalties are granted on any  
11 one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure for  
12 the eligible pay periods could be approximately \$1,913,600 ([32 x \$100] x 598 employees).<sup>6</sup>  
13 (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent (100%)  
14 violation rate based on the average number of pay periods (32) during the one-year statutory  
15 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the  
16 PAGA theories of recovery (6) gives potential civil penalties of \$11,481,600. (*Ibid.*)

17 Although Plaintiffs argued they could obtain over \$11 million for PAGA penalties, it  
18 seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶  
19 60.) As noted above, courts have reduced PAGA penalties by about ninety percent (90%) where  
20 there are mitigating circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504,  
21 528-529 (affirming trial court’s award of less than 10% of maximum PAGA penalty for meal  
22 break violations where company sought to comply with the law).) Furthermore, PAGA’s  
23 statutory language is unclear as to whether PAGA penalties may be “stacked” – that is, whether  
24 multiple civil penalties can be recovered in the same pay period for different Labor Code  
25 violations. On one hand, Labor Code section 2699, subdivision (f) establishes “a civil penalty for  
26

27 <sup>6</sup> A recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a violation  
28 by a Labor Commissioner or court. (*Bernstein v. Virgin America, Inc.* (9th Cir. Feb. 23, 2021) 2021 WL 867583, at  
\*11-12.) Thus, Plaintiffs estimated the amount of PAGA penalties using the “initial” penalty amount of \$100 under  
PAGA.

a violation” (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the civil penalty described in subdivision (f)...on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed” (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$59,800 (598 employees x \$100 initial violation) on the low end and \$358,800 on the high end based on six (6) major theories of recovery.

To the extent Defendant’s exposure remains in the millions of dollars, the civil penalties could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9\* [preliminarily approving class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the defendant acted deliberately or negligently failed to learn about its obligations].) Thus, under a more conservative approach, Class Counsel considered the possibility that the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$358,800 [598 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 60.)

///

///

///

1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.  
2 (Han Dec., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the  
3 statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a),  
4 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not  
5 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties  
6 under the law. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties was reasonable based  
7 on a rate of \$1.04 per pay period [ $\$20,000 \div 19,248 \text{ Pay Periods in PAGA Date Range} = \$1.04$ ],  
8 given the fact that Defendant are also paying an additional \$730,000 in the class settlement.  
9 (Citing *Carrington*, *supra*, 30 Cal.App.5th at 529 (affirming a rate of \$5 per violation and a total  
10 PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a  
11 total PAGA penalty of \$70,000,000).) (Han Dec., *supra*, at ¶ 61.) Where PAGA penalties are  
12 negotiated in good faith and “there is no indication that [the] amount was the result of self-  
13 interest at the expense of other Class Members,” such amounts are generally considered  
14 reasonable. (Citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844,  
15 2009 U.S. Dist. LEXIS 33900, at \*24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th  
16 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not  
17 allocate any damages to the PAGA claims.”).) (Han Dec., *supra*, at ¶ 61.)

18 Accordingly, taking into consideration Defendant’s defenses, their supporting evidence,  
19 and their position that the Class Action is not suitable for class treatment, the settlement amount  
20 of \$750,000— with an average Individual Settlement Share estimated at \$479.82—is reasonable  
21 and fair.

### 22 **c. Discount Analysis Justifies the Settlement**

23 Excluding the civil penalties, which could be completely discretionary, for the reasons  
24 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would  
25 be approximately \$7,738,796.22 on the low end and \$8,704,206.33 on the high end. (Han Dec.,  
26 *supra*, at ¶ 62.)

27 ///

28 ///

| Category                                                              | Potential Exposure                                               | Certification Risk | Merits Risk | Realistic Exposure                                               |
|-----------------------------------------------------------------------|------------------------------------------------------------------|--------------------|-------------|------------------------------------------------------------------|
| Rest Break Premiums                                                   | \$853,826.52                                                     | 70%                | 60%         | \$102,459.18                                                     |
| Meal Break Premiums                                                   | \$339,755.29                                                     | 60%                | 50%         | \$67,951.06                                                      |
| Overtime/Minimum Wage:<br>Off-the-Clock                               | \$1,929,918.81<br>to<br>\$2,895,328.92                           | 50%                | 60%         | \$385,983.76<br>to<br>\$579,065.78                               |
| Overtime/Minimum Wage:<br>Non-Discretionary<br>Bonuses and Incentives | \$92,718                                                         | 40%                | 60%         | \$22,252.32                                                      |
| Unreimbursed Business Expenses                                        | \$665,732                                                        | 30%                | 80%         | \$93,202.48                                                      |
| Wage Statement Penalty                                                | \$1,883,700                                                      | 50%                | 50%         | \$470,925                                                        |
| Waiting Time Penalty                                                  | \$1,973,145.60                                                   | 50%                | 50%         | \$493,286.40                                                     |
| <b>MAXIMUM TOTAL EXPOSURE</b>                                         | <b>\$7,738,796.22</b><br>to<br><b>\$8,704,206.33<sup>7</sup></b> |                    |             | <b>\$1,636,060.20</b><br>to<br><b>\$1,829,142.22<sup>8</sup></b> |

Based on this analysis, the realistic recovery for this case is \$1,636,060.20 on the low end and \$1,829,142.22 on the high end. (Han Dec., *supra*, at ¶ 70.) Thus, the Gross Settlement Amount of \$750,000 is approximately eight percent (8.62%) of the maximum potential exposure and is about forty-one percent (41%) of the maximum realistic exposure at trial, which is a good settlement. (*Ibid.*)

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

<sup>7</sup> Han Dec., *supra*, at ¶¶ 51-56

<sup>8</sup> *Id.*, at ¶¶ 63-69.

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

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

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

11 The proposed Class is ascertainable and numerous as to make it impracticable to join all  
12 Class Members, and there are common questions of law and fact that predominate over any  
13 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 71.) Plaintiffs contend  
14 that as former hourly-paid employees of Defendant, their claims are typical of the claims of the  
15 Class Members, and Class Counsel will fairly and adequately protect the interests of the Class.  
16 (*Ibid.*) Also, Plaintiffs assert the prosecution of separate actions by individual Class Members  
17 would create the risk of inconsistent or varying adjudications, and a class action is superior to  
18 other available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed  
19 below, this case is amenable to class certification. (*Ibid.*)

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

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

28 ///

1 The Class Action involves eight hundred ninety-two (892) Class Members during the  
2 Class Period, which was confirmed by Defendant. (Han Dec., *supra*, at ¶ 72.) This Class is  
3 sufficiently numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th  
4 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees”  
5 is sufficiently numerous).) (Han Dec., *supra*, at ¶ 72.) Further, all Class Members can and will  
6 be identified by Defendant to the Settlement Administrator through a review of Defendant’s  
7 employment records concerning hourly-paid and/or non-exempt employees employed by  
8 Defendant within the State of California during the Class Period. (Han Dec., *supra*, at ¶ 72.)

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

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

20 **1. Common Issues Predominate**

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

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

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 73.) Specifically, Plaintiffs contend all hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All Plaintiffs' claims surround Defendant's alleged common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for noncompliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

## 2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially similar to other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt employees and allege they and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 74.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims as alleged arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

## 3. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶ 75.) They have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) The proposed Class Counsel is also adequate to

1 represent the Class. (Han Dec., *supra*, at ¶¶ 2-6, Exhibit 1.)

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

##### 3 **Adjudication of this Controversy**

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

##### 12 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

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

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

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

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

5 **V. CONCLUSION**

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

11  
12 Dated: October 11, 2021

**JUSTICE LAW CORPORATION**

13  
14 

15 Douglas Han  
16 Shunt Tatavos-Gharajeh  
17 Haig Hogdanian  
18 *Attorneys for Plaintiffs*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

On November 17, 2021, I served the foregoing document described as

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

for the following case: **Burke, et al. v. Old Republic Home Protection Company, Inc.,  
et al.**  
LWDA/Court Case No.: **LWDA Case No.: CM- 799494-20**  
**Court Case No.: MSC20-02203**  
**Contra Costa 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

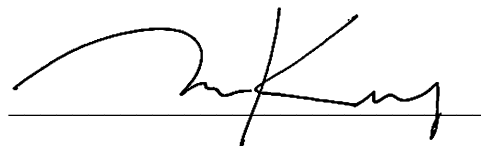
**[X] BY ELECTRONIC SUBMISSION**

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 November 17, 2021, at Pasadena, California.



Madeline King