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Attorneys for Plaintiffs

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

ELIZABETH STACY, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiffs,

v.

BRANDED GROUP, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: BCV-21-100443

Honorable Stephen C. Schuett
Department 18

CLASS ACTION

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

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

Hearing Date: May 20, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Department 18

Complaint Filed: March 1, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 20, 2021, and at 8:30 a.m., or as soon as the
2 matter may be heard before the Honorable Stephen C. Schuett in Department 18 of the Kern
3 County Superior Court, located at 1415 Truxtun Avenue, Bakersfield, CA 93301, Plaintiff
4 Elizabeth Stacy (“Plaintiff”) will and hereby move for an order:

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

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

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

Dated: April 22, 2021

JUSTICE LAW CORPORATION

By: _____



Douglas Han
Shunt Tatavos-Gharajeh
Phillip D. Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$450,000 proposed wage
3 and hour class action settlement by Plaintiff Elizabeth Stacy (“Plaintiff”) on behalf of herself and
4 all current and former hourly-paid Branded Group, Inc. (“Defendant”) employees who have
5 worked in California at any time between July 16, 2016 and May 17, 2021 (“Class Period”). At
6 the time of this filing, Defendant estimates that there are approximately seventy-two (72)
7 individuals that would be included in this Settlement.

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 \$450,000 – with an average settlement share amount estimated at
11 \$2,868.05¹ – 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 detailed knowledge of the issues
14 present in this action. The length and risks of trial and perils of litigation that affect the value of
15 the claims were all carefully weighed. Also, the defenses asserted by Defendant, particularly, the
16 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
17 establishing specific damages and various possible delays and appeals, were carefully considered
18 by Class Counsel in arriving at the proposed Settlement.

19 **II. BACKGROUND**

20 Defendant is a facilities maintenance company that provides maintenance, construction
21 management, special project implementation, painting, carpentry, and other handyman services
22 for retail stores and restaurants. Plaintiff alleges that at all times during the Class Period,
23 Defendant’s non-exempt employees work and/or worked on an hourly basis. (Declaration of
24 Douglas Han “Han Dec.” ¶ 8).

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28 ¹ \$206,500 (Net Settlement Amount) / 72 (Class Members) = \$2,868.05

1 Plaintiff provided notice to the Labor & Workforce Development Agency (“LWDA”) on
2 July 15, 2020 of her allegations against Defendant – failure to fully compensate for minimum
3 and overtime wages, failure to provide legally mandated meal and rest breaks and meal and rest
4 period premiums, failure to pay timely wages, failing to provide accurate and itemized wage
5 statements, and failure to reimburse necessary business expenses. Prior to Plaintiff filing a
6 representative Private Attorneys General Act (“PAGA”) complaint, and prior to the sixty-five
7 (65) day notice period expired, Defendant’s counsel reached out to Plaintiff to ask if she would
8 be interested in pre-litigation mediation. Based on the parties’ agreement to mediate the instant
9 case, Plaintiff agreed to hold off on filing any PAGA or class action lawsuit. (Han Dec. ¶ 9).

10 The Parties agreed to attend mediation on February 4, 2021. At the conclusion of the
11 mediation, the Parties were able to agree to major terms that became the basis for the Settlement
12 Agreement. Following mediation, Plaintiff filed a Class Action Complaint, alleging multiple
13 Labor Code violations, a PAGA violation, and a violation of Business and Professions Code §§
14 17200, *et seq.* (Han Dec. ¶ 10).

15 Defendant denies the allegations of the class action in their entirety, denies any liability
16 or wrongdoing of any kind associated with the claims alleged in this action, and further denies
17 that, for any purpose other than settling this action, this matter is appropriate for class treatment.
18 Defendant further contends that it has complied at all times with all applicable California laws,
19 the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition
20 Law. Defendant finally contends that, if this matter were to be litigated further, it would have
21 strong defenses to class certification and on the merits. (Han Dec. ¶ 11).

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Since the parties agreed to mediate prior to the filing of any complaint, the parties
4 engaged in informal discovery and investigation. Prior to mediation, Defendant produced
5 documents relating to its policies, practices, and procedures regarding paying non-exempt
6 employees for all hours worked, meal and rest period policies, and payroll and operational
7 policies. As part of Defendant’s production, Plaintiff also reviewed time records, pay records,
8 and information relating to the size and scope of the Class, as well as data permitting Plaintiff to
9 understand the number of workweeks in the Class Period. (Han Dec. ¶ 12).

10 Based upon Defendant’s informal discovery responses and document production,
11 Plaintiff contends – and Defendant denies – that Defendant did not provide lawful meal and rest
12 periods. Plaintiff asserts that Defendant failed to maintain a code-compliant meal and rest policy
13 until January 2020. Putative Class Members claim that they were never afforded second meal
14 periods or third rest breaks for longer shifts, and they were rarely afforded timely, uninterrupted
15 meal and rest breaks while working, resulting in Defendant’s exposure for Labor Code § 226.7
16 premiums. (Han Dec. ¶ 13).

17 Also, Plaintiff contends – and Defendant denies – that Defendant required its employees
18 to remain on-call on the weekends to determine whether they needed to report to work. This
19 resulted in hours when Plaintiff and Class Members were under Defendant’s control and not
20 compensated. (Han Dec. ¶ 14).

21 Further, Plaintiff contends – and Defendant denies – that Defendant’s wage statements do
22 not itemize all hours worked, as the wage statements’ total hours worked was underreported;
23 Defendant did not factor in overtime compensation, meal and rest premium wages, or the off-the-
24 clock work stemming from the on-call policy. Plaintiff contends – and Defendant denies – based
25 on these contentions served as the basis for an independent and derivative violation of the wage
26 statement claim. (Han Dec. ¶ 15).

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Moreover, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse necessary business-related expenses incurred by employees. Specifically, employees were required to use their personal cell phones for work related purposes and were not reimbursed for a reasonable percentage of the use. (Han Dec. ¶ 16).

Additionally, Plaintiff contends – and Defendant denies – that Defendant failed to provide employees with timely wages within 72 hours of their resignation or immediately after their termination. (Han Dec. ¶ 17).

Finally, Plaintiff contends – and Defendant denies – that Defendant failed to properly calculate the overtime by including incentive pay such as safety bonuses into the regular rate of pay. (Han Dec. ¶ 18).

Defendant denies Plaintiff's allegations in their entirety. First, Defendant argues that it has ample evidence to show that Plaintiff and the settlement class were afforded ample opportunity and discretion to take legally-compliant meal and rest breaks. Defendant argues it maintained policies pertaining to meal and rest break premiums. Second, Defendant argues that it did not pressure or force its employees to work off-the-clock for which they were not compensated, nor did it discourage overtime pay. Defendant also argues that it provided its employees wage statements in compliance with Section 226(a). Lastly, Defendant asserts that it reimbursed its employees for all reasonable business-related expenses. Defendant thus denies that Plaintiff and the settlement class can recover on any of the derivative claims asserted including waiting time penalties, wage statements, and PAGA. (Han Dec. ¶ 19).

Per the above, the Parties took staunchly conflicting positions concerning Defendant's policies and procedures and their effect on the putative class members.

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1 **b. The Parties Attended Mediation Which Resulted in the Settlement**
2 **Agreement**

3 The Parties agreed to go to mediation with experienced wage and hour mediator, Deborah
4 Saxe. The mediation took place on February 4, 2021 and the parties were able to reach an
5 agreement on settlement, the terms of which were memorialized in a “Settlement Agreement”
6 (referred to herein as the “Settlement Agreement” or “Settlement”) that the Parties seek
7 preliminary approval of in the instant motion. (Han Dec. ¶ 20; Ex. 2).

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

9 **i. Deductions from the Settlement**

10 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
11 action be settled and compromised for the non-reversionary total sum of \$450,000 (“Gross
12 Settlement Amount” or “GSA”) which includes, subject to Court approval: (a) Class Counsel
13 Fees of up to \$171,000 (38% of the GSA) to compensate Class Counsel for work already
14 performed and all work remaining to be performed in documenting the settlement, administering
15 the settlement and securing Court approval; (b) Costs Payment for actual litigation costs not to
16 exceed \$15,000;² (c) Class Representative Payment to the named Class Representative in a sum
17 not to exceed \$10,000 in consideration for a general release of claims, for initiating and
18 prosecuting the class action complaint, serving as the Class Representative, work performed, and
19 risks undertaken for the payment of attorneys’ fees and costs in the event they had been
20 unsuccessful in her matter; (d) Settlement Administration Payment to CPT Group, Inc. (“CPT
21 Group”), not to exceed \$10,000; and (e) LWDA payment of \$37,500 (which is 75% of the
22 \$50,000 allocated to the PAGA Payment). (Han Dec. ¶ 21).

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² The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for final approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. (Han Dec. ¶ 23).

1 **ii. Calculation of the Settlement Shares to Class Members**

2 After all Court-approved deductions from the GSA, it is estimated that \$206,500 (“Net
3 Settlement Amount” or “NSA”), less all applicable employee taxes, will be distributed to Class
4 Members – with an average settlement share estimated at \$2,868.05. Subject to the terms and
5 conditions of the Settlement, the Settlement Administrator will calculate, and issue Individual
6 Settlement Shares based on the following formula:

7 Each Participating Class Member will receive a proportionate share of the Net
8 Settlement Amount that is equal to (i) the number of Individual Work Days he or
9 she worked based on the Class data provided by Defendant, divided by (ii) the
10 Total Work Days worked by all Participating Class Members based on the same
Class data, which is then multiplied by the Net Settlement Amount.

11 The precise number of Individual Work Days worked per Class Member will not be known until
12 the Defendant has tabulated them, following preliminary approval. Under no circumstances will
13 any portion of the \$450,000 settlement revert to Defendant. (Han Dec. ¶ 22).

14 **iii. Notice to the Class**

15 Within seven (7) calendar days after entry of the preliminary approval order, Defendant
16 shall deliver to the Settlement Administrator the Class Data necessary to calculate each Class
17 Member’s individual Settlement Share. Within fourteen (14) days after receiving the Class Data,
18 CPT Group shall mail copies of the Class Notice to all Class Members via regular First-Class
19 U.S. Mail. The Notice advises the Class of their rights to participate in the settlement and how
20 and when to object or request exclusion from the settlement. Class Members are not required to
21 submit a claim form to receive payment. (Han Dec. ¶ 24). The proposed Notice is attached as
22 Exhibit A to the Settlement Agreement, which is Exhibit 2 to the Declaration of Douglas Han.

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1 **iv. Distribution of Funds**

2 Within fifteen (15) calendar days after the Court order granting Final Approval,
3 Defendant shall transfer the Gross Settlement Amount by wiring the funds into a Qualified
4 Settlement Fund (“QSF”) set up and controlled by CPT Group. (Han Dec. ¶ 25).

5 CPT Group shall pay the Individual Settlement Shares, Class Representative Payment,
6 Class Counsel Fees, Costs Payment, PAGA Payment, and Settlement Administration Payment
7 within seven (7) business days after the funding of the Settlement. (Han Dec. ¶ 26).

8 Any checks issued to Participating Class Members shall remain valid and negotiable for
9 one hundred and eighty (180) days from the date of their issuance. If any checks remain
10 uncashed or not deposited within one hundred and fifty (150) calendar days after its last mailing
11 to the Participating Class Member, a postcard informing him or her that unless the check is
12 cashed within the next 30 days, it will expire and become non-negotiable, and offer to replace the
13 check if it was lost or misplaced but not cashed. If the checks are not cashed within one hundred
14 and eighty (180) calendar days after the checks are mailed, CPT Group will pay the amount of
15 the uncashed Individual Settlement Share to the California State Controller’s Office. (Han Dec. ¶
16 27).

17 **v. Release of Claims**

18 Upon final approval of the Settlement by the Court, and except as to such rights as may
19 be created by the Settlement Agreement, each Participating Class Member fully release and
20 discharge Defendant, and its past or present officers, directors, shareholders, employees, agents,
21 principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and
22 their respective successors and predecessors in interest, subsidiaries, affiliates, parents and
23 attorneys from all claims that were pled in the Action, together with all claims demands, rights,
24 liabilities, statutory and/or civil penalties, and causes of action that were asserted in the Action or
25 that could have been asserted based on the factual allegations in the Action and during the Class
26 Period. (Han Dec. ¶ 28). In addition to the foregoing, Plaintiff will provide Defendant with a full
27 release.

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1 **IV. ARGUMENT**

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

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

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

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

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

19 **b. The Settlement Is Fair, Reasonable, and Adequate**

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

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

approval is therefore requested.

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

The Settlement was reached as a result of arms-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive. At the mediation, Counsel for the Parties conducted extensive arm's length settlement negotiations until an agreement was ultimately reached by the Parties. The terms of the Settlement are memorialized in the Settlement Agreement. (Han Dec. ¶ 29, Ex. 2).

Plaintiff believes in the merits of her case, but also recognizes the inherent risks of litigation and understand the benefit of the Class receiving settlement funds immediately as opposed to risking continued litigation in achieving class certification, the merits of the case before and after trial, the damages awarded, and/or an appeal that can take years to litigate. (Han Dec. ¶ 30).

d. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and performed sufficient investigation, research and discovery to support the settlement. The settlement was only possible following discovery and evaluation of Defendant's policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation 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. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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1 **i. Counsel for Both Parties Are Experienced in Similar Litigation**

2 Both Plaintiff’s counsel and Defendant’s counsel are particularly experienced in wage
3 and hour employment law and class actions. Plaintiff’s counsel has significant experience in
4 litigating unpaid wages, unprovided meal period, and unprovided rest period class actions. (Han
5 Dec. ¶¶ 4-7).

6 Plaintiff’s counsel has prosecuted numerous cases on behalf of employees for California
7 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to
8 evaluate settlement versus trial on a fully informed basis and to evaluate the viability of the
9 defenses. This experience instructed Plaintiff’s counsel on the risks and uncertainties of further
10 litigation and guided their determination to endorse the proposed Settlement.⁴ (Han Dec. ¶ 4-7).

11 **ii. The Proposed Settlement is a Reasonable Compromise of Claims**

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

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

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28 ⁴ 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.

1 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

2 As the following subsections show, the Parties' investigation and discovery revealed
3 plenty of reasons to discount claims and agree to this settlement.

4 **1. The Settlement Is Fair and Reasonable**

5 The proposed settlement was only possible following significant discovery and
6 evaluation of Defendants' relevant policies and procedures, as well as the data they produced for
7 the putative Class as referenced in Section II above, which permitted Class Counsel to engage in
8 a comprehensive analysis of liability and potential damages. (Han Dec. ¶ 31).

9 This discovery and investigation resulted in Plaintiff's central theories of liability, which
10 are predicated on Plaintiff's claims that Defendant failed to pay all wages owed, including
11 minimum and overtime wages, failed to provide meal and rest periods, including meal and rest
12 premiums, failed to pay all wages at termination, failed to reimburse expenses, failed to maintain
13 records, and failed to provide accurate wage statements. (Han Dec. ¶ 32).

14 Defendant vehemently denies Plaintiff's theories of liability and contends, as stated
15 above, that all meal and rest periods were provided in compliance with California law, that all
16 wages were properly paid to class members, and that it provided wage statements in compliance
17 with Labor Code § 226, and complied with all other legal obligations. Defendant argues that if
18 litigation were to continue, it feels confident that it would prevail. (Han Dec. ¶ 33).

19 Although Plaintiff believes the case is suitable for certification on the claimed basis that
20 there are company-wide policies that Plaintiff contends violate California law and uniformly
21 affect the putative class members, uncertainties with respect to certification are always present.
22 As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class
23 certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On*
24 have reached different conclusions with respect to certification of wage and hour claims.⁵ (Han
25 Dec. ¶ 34).

26 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class and ordering
27 summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but
28 rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal. App. 4th 1440 (affirming
decertification of class); *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 Although remaining confident in the strengths of her claims, all these factors led Plaintiff
2 to discount the following calculations of potential damage claims.

3 **2. The Settlement Amount of \$450,000 is Reasonable**

4 In addition to being able to discover the strengths and vulnerabilities associated with
5 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
6 time and pay records and information regarding the estimated number of workweeks worked by
7 putative class members and the average hourly rate for class members. (Han Dec. ¶ 35). Based
8 on this information, Plaintiff calculated that there were approximately 3,944 workweeks worked
9 by putative class members. Plaintiff was also able to determine that the average hourly rate for
10 class members was \$18.65. (*Id.*)

11 Specifically, Plaintiff claims – and Defendant denies – that Defendant's employees
12 regularly performed off-the-clock work without compensation for pre-shift and post-shift work.
13 Off-the-clock time regularly caused Plaintiff and putative class members to work more than eight
14 hours per day and forty hours per week. While a reasonable estimate of an individual's potential
15 damages would vary depending on the amount of time actually worked off-the-clock, based on
16 interviews with class members, Plaintiff estimates that approximately 10 minutes of work was
17 conducted off-the-clock. Defendant's potential exposure for this claim is \$48,429.43 (15,643
18 shifts x .166 x \$18.65). (Han Dec. ¶ 36).

19 Plaintiff claims – and Defendant denies – that Defendant's employees regularly were on-
20 call to determine when they needed to report to work. Plaintiff claims that this time was so
21 restricted that she could not engage in personal activities. Based on interviews with other class
22 members, Plaintiff estimates that on average they would be on call two days per week and the
23 average length of the on-call time would be four hours. Assuming that the entire time was
24 compensable time, Defendant's potential exposure is \$588,444.80 (3,944 weeks x 2 days x 4
25 hours x \$18.65). (Han Dec. ¶ 37).

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1 Additionally, Plaintiff claims – and Defendant denies – that Defendant’s employees were
2 not authorized and permitted compliant meal and rest periods because it did not have a code-
3 compliant written policy until January 2020. Plaintiff’s expert also analyzed that based on the
4 theory of liability that Defendant failed to authorize and permit meal period until January of
5 2020, Defendant’s potential exposure is \$283,293.50 (15,190 instances of rest period violation x
6 \$18.65). (Han Dec. ¶ 38). Similarly, Plaintiff’s estimated that for meal break violations,
7 Defendant’s potential exposure is \$148,976.20 (2 violations per week x 3,994 workweeks x
8 \$18.65). (*Id.*)

9 Further, Plaintiff claims – and Defendant denies – that Defendant failed to accurately
10 record hours worked by putative class members while working off-the-clock making it likely that
11 Defendant issued wage statements in violation of *California Labor Code* section 226(a) in that
12 the wage statements would also fail to state the accurate number of hours worked. Plaintiff
13 calculates Defendant’s potential exposure as to this claim to be approximately \$131,400 (36
14 employees (1 pay period x \$50 initial violation) + (36 pay periods x \$100 subsequent
15 violations)). (Han Dec. ¶ 39).

16 Plaintiff also claims – and Defendant denies – that Plaintiff and the Class Members were
17 not fully reimbursed for business expenses. Specifically, Plaintiff contends that employees were
18 required to use their personal cell phones for work purposes, justifying damages pursuant to
19 Labor Code § 2802. Potential exposure is difficult to assess due to the variable nature of phone
20 usage and costs. However, assuming that Plaintiffs’ claims are representative of the entire class,
21 the exposure would be \$14,562.46 [(\$192 (average per person cost of yearly cell phone usage) x
22 3,944 (number of workweeks) / (52 weeks)]. (Han Decl., ¶ 40).

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1 If Plaintiff can prove the failure to pay all wages owed, as well as the underpaid overtime
2 due to the regular rate issue, she is then entitled to waiting time penalties in the amount of 30
3 day's worth of wages. Plaintiff calculates Defendant's maximum potential exposure as to this
4 claim to be approximately \$241,704 (30 days x 8 hours x \$18.65 x 54). (Han Dec. ¶ 41).

5 Defendant argues that if litigation continues, it will show that non-exempt employees
6 were provided with compliant meal and rest periods. Defendant argues that meal periods were
7 provided in lawful timeframes and that employees were specifically instructed that they were
8 prohibited from performing any work during meal periods. Defendant argues that to determine
9 when meal periods were taken each shift and whether work was being conducted during meal
10 periods, an individual inquiry of each employee regarding how long their shift was and when
11 they took a meal period which would show that individualized issues predominate. Defendant
12 also argues that if employees performed any off-the-clock work during their meal periods, it
13 violated company policy and unknown to Defendant. Defendant argues it pays for all time
14 worked as recorded by employees. Likewise, Defendant argues that its rest period practices
15 conform to California law, and those class members are provided with rest periods in compliant
16 time frames. As no records of rest periods exist prior to January 2020, Plaintiff would have to
17 ask each class member when they took a rest period during any given shift, and individual issues
18 would also predominate as to this claim. Defendant contends that under *Brinker*, it is not
19 required to police its employees to ensure they take meal and rest breaks. If these breaks were
20 not taken, Defendant argues this was due to the employees' decisions not to take the breaks.
21 (Han Dec. ¶ 42).

22 Accordingly, taking into consideration Defendant's defenses, its supporting evidence, and
23 its position that the action is not suitable for class treatment, the settlement amount of \$450,000 –
24 with an average settlement share amount estimated at \$2,868.05 – is a great settlement.

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

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

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

9 The proposed Notice meets all of these requirements. The proposed Notice advises the
10 Class of their rights to participate in the Settlement, how and when to object to or request
11 exclusion from the Settlement, and the date, time, and location of the final approval hearing. *See*
12 Han Dec. Ex. A to Ex 2.

13 **V. CONCLUSION**

14 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
15 class, as it is fair, adequate, and reasonable, and one that should ultimately be granted final
16 approval. Under the applicable class action criteria and guidelines, the proposed settlement
17 should be preliminarily approved by the Court, the class should be conditionally certified for
18 purposes of settlement only, and the Notice of Class Action Settlement should be approved.

19 Dated: April 22, 2021

20 **JUSTICE LAW CORPORATION**

21 

22 Douglas Han
23 Attorneys for Plaintiff

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 22, 2021, I served the foregoing document described as

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

for the following case: **Stacy v. Branded Group, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-797075-20**
Court Case No.: BCV-21-100443
Kern 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

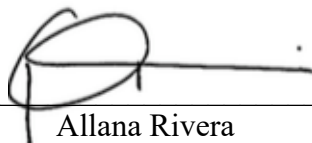
[X] BY ELECTRONIC SUBMISSION

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 April 22, 2021, at Pasadena, California.


Allana Rivera