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

RAMON CORDOVA, individually, on
behalf of other members of the general
public similarly situated, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

RAMKO INJECTION, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CVSW2001409

Honorable Sunshine Sykes
Department 6

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
SETTING HEARING FOR FINAL
APPROVAL**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declarations of Douglas
Han, Jodey Lawrence, Anita York, and Dawn
Andrei; [Proposed] Order; and Compliance
Chart]*

[Reservation ID: 444613890503]

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ramon Cordova (“Plaintiff” or “Class Representative”) filed a wage-and-hour
4 class action lawsuit and representative action against Ramko Injection, Inc. and Real Time
5 Staffing Services, LLC dba ResourceMFG and/or Select Staffing (“Defendants”)
6 (“Defendant”) (collectively, referred to herein as the “Parties”) in the Superior Court of
7 California, County of Riverside, Case Number CVSW2001409 (the “Action”).

8 After engaging in substantial investigation and extensive negotiations with the
9 assistance of a respected third-party neutral, Jeffrey A. Ross, Esq., the Parties have agreed to
10 settle all claims alleged in the lawsuit on a class wide non-reversionary basis for \$1,000,000,
11 which is inclusive of all fees and costs.

12 The proposed settlement reflected in the Stipulation and Settlement of Class Action
13 Claims (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the
14 best interests of the Class. Consequently, Plaintiff, with the consent of Defendants, moves this
15 Court for an order: (1) granting preliminary approval of the proposed class action settlement, as
16 embodied in the Agreement; (2) approving the Notice of Class Action and PAGA Settlement,
17 Request for Exclusion Form, and Notice of Objection Form (collectively, the “Notice Packet”)
18 to be sent to Class Members, and the notification schedule as set forth in the Agreement and
19 the Proposed Order; and (3) setting a hearing for final approval of the class action settlement.

20 **II. STATUS OF THE LITIGATION**

21 **A. Procedural History**

22 On August 31, 2020, Plaintiff provided written notice to the California Labor and
23 Workforce Development Agency (“LWDA”) and Defendants. (Declaration of Douglas Han In
24 Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement (“Han
25 Decl.”), filed concurrently herewith, ¶ 11.)

26 On November 24, 2020, Plaintiff filed a representative Private Attorneys General Act
27 of 2004 (“PAGA”) action in the Riverside County Superior Court. (Han Decl., *supra*, at ¶ 12.)

28 ///

1 On November 18, 2021, the Parties attended mediation with Jeffrey A. Ross, Esq. that
2 resulted in a settlement pursuant to a mediator’s proposal. (Han Decl., *supra*, at ¶ 13.)

3 Pursuant to the Parties’ decision to settle this case, on or about March 9, 2022, Plaintiff
4 filed a First Amended Complaint (“FAC”). (Han Decl., *supra*, at ¶ 14.) The FAC asserted
5 seven (7) wage-and-hour class action causes of action, violation of Labor Code sections 2698,
6 *et seq.* (PAGA), and violation of Business and Professions Code sections 17200, *et seq.* (*Ibid.*)

7 **B. Investigation and Discovery**

8 Before filing the lawsuit, Class Counsel investigated and researched the facts and
9 circumstances underlying the pertinent issues and the law applicable thereto. (Han Decl.,
10 *supra*, at ¶ 15.) This required thorough discussions and interviews between Class Counsel and
11 Plaintiff, as well as preliminary research into the various legal issues involved in the Action.
12 (*Ibid.*) After conducting an initial investigation, Class Counsel determined that Plaintiff’s
13 claims were well-suited for class and representative action adjudication. (*Ibid.*)

14 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
15 and claims giving rise to the action. (Han Decl., *supra*, at ¶ 16.) This included:

- 16 • conducting formal and informal discovery and meeting and conferring with
17 Defense Counsel several times throughout this litigation, which produced the following:
- 18 ○ Defendants’ applicable employee handbook since October 2017;
 - 19 ○ Defendants’ applicable associate policy handbook since July, 9 2021;
 - 20 ○ Defendants’ applicable associate policy handbook since December 3, 2020;
 - 21 ○ Defendants’ attendance and tardiness policies;
 - 22 ○ Plaintiff’s and several putative class members’ payroll records and
 - 23 personnel records;
 - 24 ○ Lengthy .pdf documents comprising of a sampling of putative class
 - 25 members’ time and payroll records. The .pdf documents were broken down
 - 26 into redacted timecards and earning pay stubs;

27 ///

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- reviewing and analyzing the sampling of time and payroll records as well as Defendants' employment handbook, associate policy handbooks, Plaintiff's and putative class members' personnel records, relevant policies, and other documentation;
- researching the applicable law and potential defenses;
- constructing damage models based on interpretations of California law; and
- reviewing information provided by Defendants at the mediation. (Han Decl., *supra*, at ¶ 16.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendants' records. (Han Decl., *supra*, at ¶ 17.) Class Counsel's investigation revealed that there are approximately two thousand two hundred twenty-six (2,226) Class Members, which was confirmed by Defendants. (*Ibid.*) Class Counsel's investigation also revealed there are nine about nine hundred thirty-five (935) Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendants vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Han Decl., *supra*, at ¶ 18.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Ibid.*)

On November 18, 2021, the Parties participated in full day mediation with Jeffrey A. Ross, Esq. (Han Decl., *supra*, at ¶ 19.) During mediation, the Parties discussed all aspects of the case, including the risks of litigation, the risks to both Parties of proceeding with a motion for class certification, and the law relating to off-the-clock work, meal breaks, and rest breaks. (*Ibid.*) Consequently, the Parties agreed to settle the Action. (*Ibid.*) From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel believe that the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Settlement Agreement was the product of a non-collusive settlement process where the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

1 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

2 The Parties have executed an Agreement attached to Douglas Han's declaration and
3 incorporated herein as **Exhibit 1**. Defendants have agreed to pay \$1,000,000 ("Gross
4 Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by
5 Plaintiff in the operative complaints on behalf of the proposed Class. (Han Decl., *supra*, at ¶
6 21.) The Agreement defines the "Class" as "all current and former non-exempt employees who
7 are or were employed by Defendants in California at any time during the period from
8 November 24, 2016, to January 21, 2022" ("Class," "Class Members," and "Class Period").
9 (*Ibid.*) The amount remaining in the Gross Settlement Amount after the following deductions
10 have been made ("Net Settlement Amount") shall be available for distribution to Class
11 Members who do not opt out:

- 12 • up to thirty-five percent (35%) of the Gross Settlement Amount to Class
13 Counsel as the attorneys' fees (\$350,000);
- 14 • up to \$20,000 to Class Counsel as the attorneys' costs for the reimbursement of
15 actual costs and expenses incurred;
- 16 • up to \$10,000 to the Class Representative as the Enhancement Payment;
- 17 • Settlement Administration Costs to the Settlement Administrator currently
18 estimated at \$21,000, but not to exceed \$23,000¹; and
- 19 • up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of such
20 penalties (\$37,500) will be payable to the LWDA and twenty-five percent (25%) of which
21 (\$12,500) will be distributed to all current and former non-exempt employees of Defendants in
22 California at any time during the period from August 31, 2019, through January 21, 2022

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27 ¹ The Settlement Administrator bid is a "Will Not Exceed" quote for \$21,000. The
28 Settlement Administration Costs is listed as \$23,000 in case there are unforeseen circumstances
that cause the Settlement Administrator to incur more expenses than originally anticipated.

1 (“Aggrieved Employees,” “PAGA Period,” and “PAGA Payment”)², on a pro rata basis, as
2 Individual Settlement Payments even if they request exclusion. (Han Decl., *supra*, at ¶ 21.)

3 The balance (approximately \$547,000) will be distributed to the Class Members who do
4 not timely request to be excluded from the Settlement (“Participating Class Members”). (Han
5 Decl., *supra*, at ¶ 22.)

6 The Agreement amount was a compromise figure, factoring in the inherent risks related
7 to certification, liability, and damages. (Han Decl., *supra*, at ¶ 25.) But considering all the
8 circumstances of the action and the defenses raised by Defendants against certification, liability
9 and damages, Class Counsel believe the Agreement is fair and reasonable. (*Id.* at ¶¶ 25, 73.)

10 **A. Number of Class Members**

11 There are two thousand two hundred twenty-six (2,226) persons in the Class, and nine
12 hundred thirty-five (935) Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 17, 86.a.)

13 **B. Attorney’s Estimate of the Recovery by the Average Class Member if the**
14 **Settlement Agreement Were Approved**

15 If the Agreement is approved, Plaintiff estimates that the gross average Class Member
16 will receive approximately \$245.73 as his or her Individual Settlement Payment³. (Han Decl.,
17 *supra*, at ¶¶ 22, 62.) To calculate the amount of each Participating Class Member’s Individual
18 Settlement Payment, the Net Settlement Amount will be divided by the total number of
19 Qualifying Workweeks worked by all Participating Class Members during the Class Period to
20 determine the base dollar amount per Qualifying Workweek. (*Id.* at ¶ 23.) The Settlement
21

22
23
24 ² The estimated recovery of the individual Aggrieved Employee for his or her portion of
the PAGA Payment is \$13.37 (\$12,500 ÷ 935).

25
26 ³ Class Counsel cannot (at this time) provide the expected high and low Individual
Settlement Payment. This is because, pursuant to the Settlement Agreement, Defendants will
27 provide the Settlement Administrator the Class List no later than twenty-one (21) calendar days
after the Preliminary Approval Date. Thus, the Settlement Administrator will not have the
28 information needed to calculate the expected high and low Individual Settlement Payments until
after entry of the Preliminary Approval Order.

1 Administrator shall then multiply the number of Qualifying Workweeks for each Participating
2 Class Member by the base dollar amount. (Han Decl., *supra*, at ¶ 23.)

3 **C. Discovery Exchanged**

4 Section II.B. The description of Class Counsel's investigation above provides a detailed
5 description regarding the discovery that was exchanged.

6 **D. Other Pending Litigation**

7 After making reasonable inquiries, Class Counsel is not aware of any class,
8 representative, or other collective action in any other court in this or any other jurisdiction that
9 asserts claims like those asserted in this case on behalf of a class or group of persons some or
10 all of whom would also be Class Members defined in this Action. (Han Decl., *supra*, at ¶ 20.)

11 **E. Defense Counsel's Declaration**

12 Defense Counsel's declaration is being submitted concurrently with this Motion.

13 **F. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

14 Participating Class Members and Aggrieved Employees have one hundred eighty (180)
15 days from the date their Individual Settlement Payment checks are dated to cash their
16 settlement checks. (Han Decl., *supra*, at ¶ 84.) If any checks are not redeemed or deposited
17 within ninety (90) calendar days after mailing, the Settlement Administrator will send a
18 reminder postcard. (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of
19 the 90-day period after mailing the reminder notice, the Settlement Administrator will, within
20 two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and
21 pay the value of the Individual Settlement Payment(s) to the California State Controller's
22 Office Unclaimed Property Division in the name of the Class Member(s). (*Ibid.*)

23 **G. Settlement Administrator**

24 The Agreement provides up to \$23,000 will be paid to the Settlement Administrator as
25 the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 82.) The bid is comprised of
26 hourly, flat fee, per unit, and per line-item rates. (*Ibid.*) The fee was calculated through a
27 projected estimate from the following categories: (a) Case & Database Setup / Toll Free Setup
28 & Call Center / NCOA / Translation / Website; (b) Data Merger & Scrub / Notice Packet, Opt-

1 Out Form & Postage; (c) Skip Tracing & Remailing Notice Packets / Tracking & Programing
2 Undeliverables; (d) Database Programming / Processing Opt-Outs, Deficiencies or Disputes;
3 (e) Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks; and (f)
4 Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and
5 Declarations. (Han Decl., *supra*, at ¶ 82.)

6 Class Counsel obtained bids from CPT Group, Inc. (“CPT Group”) and Phoenix Class
7 Action Administration Solutions (“Phoenix”) for the administration of this Action. (Han Decl.,
8 *supra*, at ¶ 83.) Phoenix had the most competitive (lowest) bid at \$21,000 when compared to
9 the bid from CPT Group that was \$22,500. (*Ibid.*)

10 Phoenix also has extensive experience in administering employment class action
11 settlements. (Declaration of Jodey Lawrence In Support of Phoenix Class Action Settlement
12 Administration Solutions’ Adequacy As The Settlement Administrator (“Lawrence Decl.”), ¶¶
13 5-13; Exhibit A.)

14 **H. Release by Class Members is Limited**

15 Pursuant to the terms set forth in the Settlement Agreement, Class Members’ Released
16 Claims include the following:

17 [A]ll claims, causes of action and legal theories alleged, or which could
18 have been alleged, or otherwise raised based on the facts in Plaintiff’s
19 Operative Complaint, including claims under California Labor Code
20 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174, 1194, 1197,
21 1197.1, 1198, 2800, and 2802 and California Business and Professions
22 Code sections 17200, *et seq.*, that arose at any time during the Class
23 Period (collectively, the “Released Claims”).

24 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 4.01.)

25 Pursuant to the terms set forth in the Settlement Agreement, the PAGA Released
26 Claims (that will only bind the State of California and Plaintiff) include the following:

27 [A]ll claims and/or causes of action for statutory penalties under PAGA
28 against the Released Parties that could have been sought by the Labor
Commissioner for the violations described in Plaintiff’s letter to the
LWDA dated August 31, 2020 to the extent they are alleged in the Action
and that arose at any time during the PAGA Period (collectively, the
“PAGA Released Claims”).

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 4.02.)

Pursuant to the terms set forth in the Settlement Agreement, Released Parties include Defendants together with their officers, directors, current and former employees, and agents (“Released Parties”). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 4.01.)

I. The Proposed Notice Packet Provides Adequate Notice to the Class Members

The Notice Packet fully apprises Class Members of the nature of the lawsuit, the claims involved, the material terms of the Agreement, Class Members’ options thereunder, and how Class Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 71.)

Specifically, pursuant to the Settlement Agreement, no later than twenty-one (21) calendar days after the Preliminary Approval Date, Defendants will provide the Settlement Administrator the Class List. (Han Decl., *supra*, at ¶ 69.)

Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. (Han Decl., *supra*, at ¶ 70.) Within ten (10) business days of receiving the Class List from Defendants and checking all Class Member addresses, the Settlement Administrator will send Class Members, by first-class mail, at their last known addresses, the Court approved Notice Packet. (*Ibid.*) If a Notice Packet is returned with a forwarding address, the Settlement Administrator shall remail the Notice Packet to the forwarding address. (*Ibid.*) If a Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis databases based on set criteria and, if another address is identified, shall mail the Notice Packet to the newly identified address. (*Ibid.*)

J. Settlement Does Not Require Any Class Members to Submit Claims

Any Class Member who timely and validly submits a Request for Exclusion Form will not be entitled to any Individual Settlement Payment from the Net Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 3.05.c.) Class Members shall not be required to submit claim forms to receive an Individual Settlement Payment. (*Id.* at § 3.04.)

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1 **K. Settlement Does Not Provide Any Reversion to Defendants**

2 This is a non-reversionary Settlement Agreement. (Han Decl., *supra*, at ¶ 2; Exhibit 1,
3 *supra*, at § 3.07.a.) Consequently, no portion of the Gross Settlement Amount will revert to
4 Defendant for any reason. (*Id.* at § I.r.)

5 **L. Employer's Share of Payroll Taxes and the Allocation of Individual Settlement**
6 **Payments**

7 Twenty-five percent (25%) of Individual Settlement Payments will be allocated to
8 wages and seventy-five percent (75%) will be allocated to penalties and interest. (Han Decl.,
9 *supra*, at ¶ 24.) Each Aggrieved Employee's Individual Settlement Payment will represent
10 100% penalties. (*Ibid.*) Defendants' Employers' Share of Payroll Taxes will be paid by
11 Defendants separate from and in addition to the Gross Settlement Amount. (*Ibid.*)

12 **M. Notice of Class Action and PAGA Settlement, Request for Exclusion Form, and**
13 **Notice of Objection Form**

14 The Class Notice, Request for Exclusion, and Objection Form are attached as **Exhibits**
15 **A-C** respectively in the Settlement Agreement and the Proposed Order, filed concurrently
16 herewith, and were drafted to be reasonably understood by the Class Members.

17 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

18 Express judicial policy favors maintaining wage-and-hour actions as class actions.
19 *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries,*
20 *Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be
21 resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29
22 Cal. 3d at 473-75. The decision to certify a class is a procedural one, and should be based on
23 the allegations in the operative complaint, and not in the perceived factual or legal merit of the
24 class claims. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

25 To certify a settlement class, the Court must find the two (2) primary requirements for
26 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a
27 well-defined community of interest in the questions of law and fact involving the parties to be
28 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*

1 *Company* (1967) 67 Cal. 2d 695, 704. The criteria are met here for the reasons set forth below.

2 **A. There Is A Numerous and Ascertainable Class**

3 Whether a class is ascertainable is determined by examining the class definition, the
4 size of the class, and the means available for identifying class members. *See Vasquez, supra*, 4
5 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d
6 1263, 1271. Class members are “ascertainable” where they may be readily identified without
7 unreasonable expense or time.

8 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that the
9 requirement of numerosity is met. The documents and information exchanged between the
10 Parties reflect a Class of approximately two thousand two hundred twenty-six (2,226) Class
11 Members. (Han Decl., *supra*, at ¶ 86.a.) The Class Members have already been identified by
12 reference to Defendants’ payroll and personnel records. (*Id.* at ¶ 86.b.)

13 Therefore, the numerosity and ascertainability requirements have been met.

14 **B. There Is A Well-Defined Community of Interest**

15 A community of interest is established by the predominance of common issues of law
16 and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

17 [D]oes not depend upon an identical recovery, and the fact that
18 each member of the class must prove his separate claim to a
19 portion of any recovery by the class is only one factor to be
20 considered ... The mere fact that separate transactions are involved
21 does not of itself preclude a finding of the requisite community of
22 interest so long as every member of the alleged class would not be
23 required to litigate numerous and substantial questions to
24 determine his individual right to recover subsequent to the
25 rendering of any class judgment which determined in plaintiffs’
26 favor whatever questions were common to the class.

23 *Vasquez*, 4 Cal. 3d. at p. 809.

24 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
25 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and
26 the Class is united in its proof. Because Plaintiff has alleged a single scheme, “the relevant
27 proof [does] not vary among class members” and “clearly presents a common question
28 fundamental to all class members.” *See In Re NASDAQ Market-Makers Antitrust Litigation*

(SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference “‘eliminates the need for each class member to prove individually the consequences of the defendants’ actions to him or her.’” *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This Action involves, *inter alia*, a determination about Defendants’ alleged: (1) failure to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse business expenses; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5) the resulting failure to pay final wages when required; (6) the failure to provide accurate wage statements; and (7) largely derivative claims under the Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶ 86.e.) Plaintiff contends these practices, including an alleged practice of failing to provide complete meal and rest breaks, the alleged failure to provide corresponding premium wages, and alleged systemic policies and practices of pressuring employees to work off-the-clock, affected Class Members in the same way. (*Ibid.*) Thus, the outcome of litigation on this matter depends upon questions that are common to Class Members. While Defendants maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member but on the basis of facts common to them all. Finally, these issues of liability can be determined on a class wide basis.

Thus, the commonality requirement has been satisfied as well.

C. The Plaintiff’s Claims Are Typical

A class representative’s claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative’s claims must be “typical” but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom*

1 *Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the
2 law in California that the class representative must have identical interests with the class
3 members.”). Thus, it is not necessary that the class representative should have personally
4 incurred all of the damages suffered by each of the other class members. *Wershba v. Apple*
5 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

6 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
7 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same
8 factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 86.c.) Plaintiff
9 was employed by Defendants during the Class Period and subject to the allegedly unlawful
10 meal and rest break policies and pay practices at issue in this litigation, which makes Plaintiff a
11 Class Member. (*Ibid.*) The central issues of this litigation (whether Defendants failed to pay all
12 wages, failed to provide meal and breaks, failed to pay premium wages for noncompliant meal
13 and rest breaks, etc.), which would arise if this were an individual action brought by Plaintiff,
14 apply to the other Class Members. (*Ibid.*) The answer to these questions would determine
15 Defendants’ liability to the Class. (*Ibid.*)

16 Consequently, Plaintiff’s claims are typical of the claims of the Class, meaning the
17 typicality requirement has also been met.

18 **D. Adequacy of Class Counsel and Class Representative**

19 Class Counsel are experienced in class actions, have represented their clients zealously,
20 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-10, 86.d.) Moreover, the Class
21 Representative’s interests are aligned with those of the Class Members, he has suffered the
22 same injuries as the Class Members, and he has no conflicts of interest. (*Id.* at ¶ 86.d.)

23 Therefore, the adequacy requirement has been satisfied as well.

24 **E. Predominance and Superiority**

25 Individual issues do not predominate over those common to the Class. (Han Decl.,
26 *supra*, at ¶ 86.f.) Furthermore, the class action mechanism is superior to individualized actions
27 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 86.g.)

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1 Thus, there are no individual issues predominating this case, and class action litigation
2 is the superior method of resolving the issues set forth herein.

3 **V. THE TWO-STEP APPROVAL PROCESS**

4 Any settlement of class litigation must be reviewed and approved by the Court. This is
5 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review
6 after notice has been distributed to the class members for their comment or objections. The
7 Manual for Complex Litigation (Third) states:

8 “Approval of class action settlements involves a two-step process. First,
9 counsel submits the proposed terms of settlement and the court makes a
10 preliminary fairness evaluation. If the preliminary evaluation of the
11 proposed settlement does not disclose grounds to doubt its fairness or
12 other obvious deficiencies, such as unduly preferential treatment of class
13 representatives or of segments of the class, or excessive compensation for
14 attorneys, and appears to fall within the range of possible approval, the
15 court should direct that notice ... be given to the class members of a
16 formal fairness hearing, at which arguments and evidence may be
17 presented in support of and in opposition to the settlement.” § 30.41.

18 Preliminary approval by the trial court is a conditional finding the settlement appears to
19 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
20 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
21 settlement proposal may vary. The court may find the settlement proposal contains some merit,
22 is within the range of reasonableness required for a settlement offer, or is presumptively valid
23 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert
24 B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

25 The procedures for the Parties’ submission of a proposed settlement for preliminary
26 approval by the court also are discussed in 4 Newberg on Class Actions:

27 When the parties to an action reach a monetary settlement, they will
28 usually prepare and execute a joint stipulation of settlement, which is
submitted to the court for preliminary approval. The stipulation should
set forth the central terms of the agreement, including but not limited to,
the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause. *Id.* at § 11.24.

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1 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

2 As a matter of public policy, the courts both encourage the use of the class action
3 device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000)
4 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a
5 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
6 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
7 where complex class action litigation is concerned.”)

8 The courts presume the absence of fraud or collusion in the negotiation of a settlement
9 unless evidence to the contrary is offered. There is a presumption that the negotiations were
10 conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
11 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
12 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when
13 settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
14 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

15 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid
16 out several factors that should be analyzed in determining if a class action settlement should be
17 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
18 complexity, and likely duration of further litigation; (3) the risk of maintaining class action
19 status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed
20 and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
21 governmental participant; and (8) Class Members’ reaction to the proposed settlement.

22 The Settlement Agreement satisfies each of these factors. Class Counsel conducted
23 extensive discovery before entering meaningful settlement negotiations in this matter,
24 including a detailed analysis of Defendants’ policies and a considerable sample of Defendants’
25 time and pay records. (Han Decl., *supra*, at ¶ 16.) This discovery permitted Class Counsel to
26 evaluate the strengths and weaknesses of the case and the risks associated with ongoing
27 litigation. (*Id.* at ¶ 19.) In addition, Class Counsel are experienced in the handling of wage-
28 and-hour class actions and support the Settlement. (*Id.* at ¶¶ 3-9.)

1 **A. The Strength of Plaintiff’s Case.**

2 The claims in this action include failure to provide meal and rest breaks, failure to pay
3 minimum wages, failure to pay overtime wages, failure to pay final wages when due, failure to
4 provide accurate wage statements, failure to reimburse necessary business expenses, and
5 related claims for violations of the Business & Professions Code and for penalties under
6 PAGA. (Han Decl., *supra*, at ¶ 27.)

7 Class Counsel felt confident the claims here would be certified given that Defendants’
8 policies and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 28-62.)

9 **B. The Risks Associated with the Merits.**

10 As with all litigation, there are risks that a party will not prevail on the merits. In this
11 case, Plaintiff contends that he and other Class Members were not provided compliant meal
12 and rest breaks due to Defendants failing to have code-compliant policies, regularly assigning
13 heavy, time-sensitive workloads, and the nature of employees’ work. (Han Decl., *supra*, at ¶¶
14 29, 32-33.) Defendants countered that they never assigned heavy workloads to the point where
15 employees were forced to work through, cut short, or take late meal and rest breaks. (*Id.* at ¶¶
16 30, 34.) In other words, employees were choosing to forgo receiving proper meal and rest
17 breaks as opposed to being pressured to do so to avoid falling behind on orders. (*Ibid.*) By
18 extension, this also meant that employees were choosing to remain on the work premises
19 during their meal and rest breaks rather than being prohibited from leaving. (*Ibid.*) In addition,
20 Defendants assert that if employees were not paid premium wages, it is because Defendants
21 were never made aware of employees not receiving compliant meal and rest breaks. (*Ibid.*)
22 Finally, Defendants contend that Class Counsel will have to gather declarations from putative
23 class members to prove the existence of improper, uniform meal and rest break policies and
24 practices, especially for rest breaks. (*Ibid.*)

25 As the consideration concerning meal and rest breaks would likely depress the damages
26 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
27 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 31, 35.) If Defendants’ contentions are
28 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,

1 would be no recovery for the Class Members.

2 Plaintiff also alleged that he was not paid for all hours worked, including minimum
3 wages and overtime wages as applicable due to Defendants' improper, uniform policies and
4 practices. (Han Decl., *supra*, at ¶ 36.) Specifically, Defendants' policies discouraged overtime
5 work and even threatened employees with termination for working unauthorized overtime
6 hours. (*Ibid.*) When coupled with Defendants expecting employees to complete heavy, time-
7 sensitive assignments, employees were left no choice but to work additional hours off-the-
8 clock both pre-shift and post-shift. (*Ibid.*) Defendants countered this claim was not suitable for
9 class treatment. (*Id.* at ¶ 37.) Instead, Defendants argued that they expressly prohibited off-the-
10 clock work, generally approved overtime requests, and were never made aware of employees
11 working additional hours off-the-clock. (*Ibid.*) Finally, Defendants asserted any unrecorded
12 hours would likely be subject to individual inquiries and unlikely to be certified. (*Ibid.*) Given
13 the difficulty in certifying this claim, Class Counsel also applied a significant discount to
14 damages based on this theory. (Han Decl., *supra*, at ¶ 38.) If Defendants' contentions held
15 true, the likely outcome of this claim would be little to no recovery for employees.

16 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties**

17 To establish liability for wage statement violations and waiting time penalties, Plaintiff
18 would first have to establish liability for the underlying claims. But Defendants argued that
19 meal and rest break violations, even if established, could not be the predicate for a Labor Code
20 section 226 wage statement or section 203 waiting time claim. (Han Decl., *supra*, at ¶¶ 41, 45-
21 46.) For example, the California Supreme Court has recently held that claims for meal and rest
22 break penalties do not constitute "action[s] brought for the nonpayment of wages" for the
23 purpose of determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244,
24 1259. In *Ling v. P.F. Chang's China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal
25 noted an action for unlawful meal and rest periods under "cannot support a section 203 penalty
26 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
27 wages."). Authority is divided on this point. Moreover, although authority is divided, many
28 district court rulings support the conclusion that any unpaid meal and rest break premium pay

1 cannot give rise to derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D.
2 Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4
3 Cal.App.5th 385, 392-393 (noting a wage statement need only document compensation
4 *actually received* and the hours used to calculate that compensation). It is unclear if the Court
5 would have permitted untimely wage penalties or wage statement violations for Defendants’
6 failure to provide meal and rest break penalties.

7 In addition, Plaintiff would have to establish that Defendants’ conduct was willful to
8 recover waiting time penalties. (Lab. Code, § 203.) With these penalties, there is always the
9 risk that the trier of fact would not have held that Defendants’ actions were done “willfully.” A
10 good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v.*
11 *Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above,
12 Plaintiff alleges Defendants failed to pay for all hours worked and premiums for noncompliant
13 meal and rest breaks. (Han Decl., *supra*, at ¶¶ 29, 32-33, 36.) By extension, Plaintiff contends
14 the Class Members are entitled to minimum wages, overtime wages, and premium wages,
15 which Plaintiff alleges were not paid at the time of their termination or resignation. (*Id.* at ¶¶
16 43-44.) If Plaintiff is successful on his claims, the penalties pursuant to Labor Code section 203
17 shall attach. (*Id.* at ¶ 47.) However, Defendants counter that they provided employees with
18 reasonable opportunities to take meal and rest breaks, asked employees to confirm the accuracy
19 of their time records, and, therefore, had good-faith defenses under *Brinker* and its progeny.
20 (*Id.* at ¶¶ 45-46.) As such, there was some risk associated with waiting time penalties that Class
21 Counsel had to consider. (*Id.* at ¶ 47.)

22 **D. The Risks Associated with the PAGA Penalties.**

23 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
24 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a
25 penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
26 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
27 period for each subsequent violation. (Lab. Code § 2699, subd. (e)(2).) However, if a civil
28 penalty is provided in a specified amount by the Labor Code section relating to the underlying

1 alleged Labor Code violation, that amount shall apply. (Lab. § Code 2699, subd. (e)(2).) The
2 PAGA also gives the Court discretion to award any lesser amount than the maximum civil
3 penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil penalty amount
4 specified by this part if, based on the facts and circumstances of the particular case, to do
5 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”]);
6 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing
7 PAGA award on this basis].)

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a),
10 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Han
11 Decl., *supra*, at ¶ 52.) Defendants asserted that, regardless of the results of the underlying
12 causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*)
13 Defendants maintained that, in addition to their strong arguments against the underlying
14 claims, they had a strong argument that it would be unjust to award maximum PAGA penalties
15 given the law’s unsettled state. (*Ibid.*; *See Thurman v. Bayshore Transit Mgmt.* (2012) 203
16 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Thus, without stacking
17 and limited to the initial violation, PAGA penalties would be limited to **\$93,500** (935
18 employees x \$100 initial violation) on the low end and **\$561,000** (935 employees x \$100 initial
19 violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 53-56.)

20 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
21 (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the
22 statutory claims, such as violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510,
23 512(a), 1194, 1197, 1198, 2800 and 2802. (*Ibid.*) In other words, the maximum penalties for
24 each pay period are not justified. (*Ibid.*) It was indeed arguable whether the Court would
25 award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil
26 penalties was reasonable based on a rate of **\$1.97** per pay period [$\$50,000 \div 25,391$ Pay
27
28

Periods in PAGA Date Range = **\$1.97**], given the fact that Defendants are paying an additional \$950,000 in the class settlement.⁴ (Han Decl., *supra*, at ¶ 57.) Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are considered reasonable.⁵ (*Ibid.*)

E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶ 63-67.) A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the Parties would have had to spend a substantial amount of time. (*Id.* at ¶ 67.) Given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id.* at ¶¶ 64-65, 67.) Finally, an appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id.* at ¶¶ 64, 67.)

F. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class actions, decertification is a real risk that Class Counsel must consider.

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⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

⁵ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

G. The Amount Offered in Settlement.

There can be no doubt that the Agreement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations. To determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the time records for Plaintiff and a sampling of the Class Members. By analyzing this information, Class Counsel were able to estimate the full value of the case if Plaintiff were to prevail at trial.

Excluding the civil penalties, which could be discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be **\$13,596,875** on the low end and **\$13,838,028** on the high end. (Han Decl., *supra*, at ¶ 59.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,875,543.62	70%	60%	\$225,065.23
Meal Break Premiums	\$952,583.55	60%	60%	\$152,413.37
Overtime/Minimum Wage: Off-the-Clock	\$482,005.58 to \$723,158.52	60%	50%	\$96,401.12 to \$144,631.70
Unreimbursed Business Expenses	\$555,676	30%	80%	\$77,794.64
Wage Statement Penalty	\$2,477,750	65%	65%	\$303,524.38
Waiting Time Penalty	\$7,253,316	65%	65%	\$888,531.21
MAXIMUM TOTAL EXPOSURE	\$13,596,875 to \$13,838,028			\$1,743,729.95 to \$1,791,960.53

Based on this analysis, the realistic recovery for this case is approximately **\$1,743,729.95** on the low end and **\$1,791,960.53** on the high end. (Han Decl., *supra*, at ¶ 60.) The Gross Settlement Amount of \$1,000,000 is approximately seven percent (7.23%) of the high end maximum potential exposure and about fifty-six percent (55.80%) of the high end maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

As stated above, settlement payout to the Class will be computed as twenty-five percent (25%) wages and seventy-five percent (75%) penalties and interest. This allocation of wages, penalties, and interest was reached based on the realistic exposure Plaintiff could expect to receive for meal penalties, rest penalties, and unpaid wages (due to off-the-clock work) if this case went to trial. Specifically, the Parties first added the realistic exposure for meal penalties

1 and rest penalties (\$225,065.23 + \$152,413.37 = \$377,478.60). The Parties then added the
2 \$377,478.60 representing the realistic exposure for meal and rest penalties to the low end of the
3 realistic exposure for unpaid wages due to off-the-clock work (\$377,478.60 + \$96,401.12 =
4 \$473,879.72). This realistic exposure of \$473,879.72 (representing wages) that Plaintiff can
5 expect to receive for meal penalties, rest penalties, and unpaid wages due to off-the-clock work
6 equates to about twenty-seven percent (27.18%) of the low end of the realistic exposure for the
7 maximum total exposure (\$1,743,729.95). Consequently, because this wage portion represents
8 almost twenty-five percent (25%) of wages, the Parties determined that allocating twenty-five
9 percent (25%) as wages and seventy-five percent (75%) penalties and interest pursuant to the
10 Settlement Agreement was appropriate.

11 Once Class Counsel were able to determine the maximum potential damages, they were
12 able to determine a fair and reasonable settlement for the Class after analyzing the likelihood of
13 success on the merits. (Han Decl., *supra*, at ¶ 26.) Class Counsel concluded that the Class had
14 a reasonable likelihood of success on the core claims. (*Id.* at ¶¶ 59-67.) However, Defendants
15 disputes this contention, deny all wrongdoing in this matter, and are confident they have strong
16 legal and factual defenses to Plaintiff's claims. (*Id.* at ¶¶ 64, 66.) Class Counsel determined
17 that the likelihood of success on the claims for meal breaks, rest breaks, unpaid wages, waiting
18 time penalties, and unreimbursed reimburse necessary business expenses was not as strong
19 because of various defenses, including Defendants' arguments that the issues were not suitable
20 for class treatment due to their individualized nature. (*Ibid.*) After considering the likelihood
21 of success on each claim and the challenges faced with certifying these claims, Class Counsel
22 determined that the Settlement Agreement amount of \$1,000,000 was fair and reasonable.

23 As detailed at length in the accompanying declaration of Douglas Han, the Agreement
24 is the result of extensive settlement negotiations between the Parties, conducted at arm's
25 length, and informed by substantial factual and legal investigations. (Han Decl., *supra*,
26 *passim*.) Throughout this case, Class Members have been represented by experienced counsel
27 with many years of experience in employment class action litigation. (*Id.* at ¶¶ 3-9.)
28 Specifically, Class Counsel has devoted a considerable amount of time to the prosecution of

1 this case, including but not limited to: (1) interviewing Plaintiff at length on repeated
2 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with
3 counsel for Defendants; (3) reviewing and analyzing time and pay records, employee
4 handbooks, and applicable policies, Plaintiff's personnel files; (4) researching California law;
5 (5) interviewing Class Members regarding their experiences; (6) preparing for and attending
6 mediation; and (7) negotiating and finalizing the Agreement. (Han Decl., *supra*, at ¶¶ 15-19.)

7 Among those matters considered were: (1) the strength of Plaintiff's case versus the
8 amounts offered in settlement; (2) the risks, expenses, and length of further litigation, including
9 class certification and the appeals process; (3) the present state of the law as it applies to wage-
10 and-hour class actions, particularly in light of *Brinker*; (4) the present value of a settlement
11 versus the long wait necessitated by any potential judgment in Class Members' favor; (5) the
12 burdens of proof necessary to establish liability against Defendants; and (6) Defendants'
13 defenses to the action. (Han Decl., *supra*, *passim*.)

14 These factors indicated the interests of Class Members are best served by a settlement
15 of this Action in the manner set forth in the Agreement, which confers a substantial benefit to
16 the Class. Furthermore, the Individual Settlement Payment for each Class Member will be
17 tailored to their Qualifying Workweeks during the Class Period. Furthermore, Class Counsel
18 secured prospective relief for the Class where Defendants will ensure their policies comply
19 with California law.

20 Finally, Class Counsel believe the Agreement serves the best interests of the Class.
21 While the recommendations of counsel proposing the class settlement are not conclusive, the
22 Court can properly take the recommendations into account if counsel have been involved in
23 litigation for some period of time, appear to be competent, and have experience with this type
24 of litigation, and significant discovery has been completed. *See Newberg*, § 11.47.

25 **VII. THE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE**

26 It is appropriate to provide a relatively modest additional incentive payment to the class
27 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
28 901 F.Supp. 294.

1 Plaintiff is entitled to reasonable service payments for his efforts and initiative in
2 bringing and helping to prosecute this class action. (Han Decl., *supra*, at ¶ 77.) Plaintiff spent
3 significant time better apprising himself of his rights, deciding whether remedial action should
4 be taken, and contacting Class Counsel who spent many hours with Plaintiff discussing the
5 cases and the law. (*Ibid.*) In the end, Plaintiff ultimately decided to vindicate not only his own
6 rights but also those of his co-workers by filing a representative PAGA action and wage-and-
7 hour class action lawsuit. (*Ibid.*)

8 In addition, by suing Defendants, Plaintiff increased the risk of retaliation by
9 prospective employers. (Han Decl., *supra*, at ¶ 78.) Plaintiff's lawsuit has cost Defendants
10 considerable resources and such conduct will not be lost on prospective employers. (*Ibid.*)
11 This risk of losing employment opportunities is particularly real in the information age, where
12 employers can perform background checks of prospective employees. (*Ibid.*)

13 Plaintiff did not allow his fears of the potential repercussions of being class
14 representative deter him from acting for the benefit of Class Members. (Han Decl., *supra*, at ¶
15 79.) Instead, Plaintiff has been intimately involved in this case since its inception. (*Ibid.*)
16 Specifically, Plaintiff has devoted a substantial amount of time to helping Class Counsel
17 effectively develop and prosecute this action at every stage of the litigation. (*Ibid.*)

18 Plaintiff has spent a significant amount of time with Class Counsel detailing his
19 knowledge of Defendants' practices. (Han Decl., *supra*, at ¶ 80.) Plaintiff has diligently,
20 adequately, and fairly represented Class Members and has not placed his own interests above
21 any Class Members. (*Ibid.*) The Enhancement Payment to Plaintiff is intended to recognize his
22 time and effort on behalf of the Class, and the amount requested is fair and appropriate based
23 on their contribution and involvement. (*Ibid.*)

24 Thus, Class Counsel believe the combined Enhancement Payment in the amount of
25 \$10,000 to the Class Representative is fair and reasonable. (Han Decl., *supra*, at ¶ 81.)

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1 **VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
4 seek an award of up to \$350,000 as the attorneys' fees (35% of the Gross Settlement Amount)
5 and reimbursement of actual litigation costs and expenses of up to \$20,000 as the attorneys'
6 costs. (Han Decl., *supra*, at ¶ 74.) The requested fees are fair compensation for a law firm
7 involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a
8 contingent basis. (*Id.* at ¶¶ 74-75.) Class Counsel's request for Attorneys' Fees and Costs will
9 not be opposed by Defendants throughout the settlement process.

10 California courts routinely look to the federal courts on class action approvals. The
11 Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class
12 actions is to award a percentage of the "common fund" created as a result of the settlement.
13 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the
14 common fund/percentage approach is to "spread litigation costs proportionally among all the
15 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id.* Courts
16 have discretion to choose either the percentage-of-the-fund method or the lodestar method. *In*
17 *re Wash. Pub. Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

18 Several courts have, however, expressed frustration with the "lodestar" approach for
19 deciding fee awards, which usually involves wading through voluminous time records. In other
20 words, the percentage approach can be preferable to the lodestar in certain situations because:
21 (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient
22 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
23 (3) it reduces the demands on judicial resources. *In re Activision Securities Litigation*, 723 F.
24 Supp. at 1378-79. The Ninth Circuit has used the percentage of the common fund approach to
25 determine the award of attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir.
26 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).

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1 When considering the facts and circumstances of this case, the request for attorneys’
2 fees is within the range of reasonableness. Historically, courts have awarded percentage fees in
3 the range of twenty percent (20%) to fifty percent (50%) of the common fund, depending on
4 the circumstances of the case. *Newberg*, at § 14.03; *see also In re Activision Securities*
5 *Litigation*, 723 F. Supp. at 1378. *Newberg* further notes: “[A]chievement of a substantial
6 recovery with modest hours expended should not be penalized but should be rewarded for
7 considerations of time saved by superior services performed.” *Id.* at §§ 14-10:14-11.

8 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
9 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
10 greater than the percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities*
11 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
12 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375
13 (awarding plaintiffs’ counsel 32.8% of the common fund created to settle the litigation); *In re*
14 *Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F. Supp. 494 (awarding 45% of \$7.3 million
15 settlement fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming
16 fee award to counsel of one-third (1/3) of recovery achieved).

17 In wage-and-hour class actions in particular, California trial courts have customarily
18 approved attorney’s fees consistent with or greater than the percentage of the common fund
19 requested in this case. *See Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct.
20 Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
21 Angeles County Super.Ct. Case No. BC 278170 (April 2004) (Hon. Douglas M. Minning);
22 *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No.
23 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los
24 Angeles County Super.Ct. Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman);
25 *Daum v. Claim Jumper Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006)
26 (Hon. Ronald L. Bauer).

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Class Counsel have borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 74-75.) The Court should also consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested attorneys' fees award for Class Counsel is reasonable.

A. Fee Splitting Agreement

Class Counsel is not splitting the costs associated with the settlement with any other individuals or firms. (Han Decl., *supra*, at ¶ 85.)

IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement attached to Douglas Han's declaration as **Exhibit 1**;
2. Review and approve the Notice of Class Action and PAGA Settlement, the Request for Exclusion Form, and the Notice of Objection Form attached to the Proposed Order as **Exhibit A**, **Exhibit B**, and **Exhibit C** respectively;
3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;
4. Conditionally certify the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and Settlement Agreement;
5. Approve and appoint Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation to serve as Class Counsel for settlement purposes;
6. Approve and appoint Phoenix as the Settlement Administrator to handle the notice procedures as set forth in the Settlement Agreement;
7. Approve the proposed allocation of funds to the claims made under PAGA;
8. Order Defendants to disclose the Class List to Phoenix in accordance with the manner set forth in the Settlement Agreement;
9. Order Phoenix to mail the Notice Packet to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: March 22, 2022

JUSTICE LAW CORPORATION

By

D. Jan

Douglas Han

Attorneys for Plaintiff

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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 jkislow@justicelawcorp.com

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND
(3) SETTING HEARING FOR FINAL APPROVAL**

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

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.

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

Executed on March 22, 2022, at Pasadena, California.


Jillian Kislow