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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

Assigned for All Purposes to:
Honorable Craig Riemer
Department 1

CLASS ACTION

**PLAINTIFF'S RENEWED NOTICE
OF MOTION AND 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 Renewed
Memorandum of Points and Authorities;
Declarations of Douglas Han, Jodey
Lawrence, Anita York, and Dawn Andrei;
Renewed [Proposed] Order; and
Compliance Chart]*

[Reservation ID: 064948056538]

Hearing Date: August 2, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: November 24, 2020
FAC Filed: March 9, 2022
Trial Date: None Set

1 **TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on August 2, 2022 at 8:30 a.m., or as soon thereafter
3 as this matter may be heard, at Department 1, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiff Ramon Cordova (“Plaintiff”), on behalf of himself and all persons
5 similarly situated, will and hereby does move this Court pursuant to Code of Civil Procedure
6 section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Defendant Ramko Injection, Inc. (“Defendant Ramko”) and Real Time
9 Staffing Services, LLC dba ResourceMFG and/or Select Staffing (“Select
10 Staffing”) (collectively, “Defendants”), including granting preliminary
11 approval of the following Class: “all current and former non-exempt
12 employees who are or were employed by Defendant Ramko in California
13 and/or all current and former nonexempt employees who are or were
14 employed by Select Staffing and placed on assignment at Defendant Ramko
15 in California at any time during the at any time during the period from
16 November 24, 2016, to January 21, 2022” (“Class,” “Class Members,” and
17 “Class Period”);
- 18 (2) Approving the form of notice of class action settlement and procedure for
19 notice to the Class; and
- 20 (3) Setting the Final Approval Hearing.

21 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
22 proposed settlement’s allocation of funds to claims made under the Labor Code sections
23 2698, *et seq.*, Private Attorneys General Act of 2004 (“PAGA”).

24 Pursuant to the proposed Amended Stipulation and Settlement of Class Action
25 Claims (“Settlement Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1**
26 to the declaration of Douglas Han, Defendants do not oppose the preliminary approval of the
27 class action settlement.

28 ///

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1 Under the terms of the Agreement, the Parties have agreed that all claims brought on
2 behalf of the Class shall be fully and finally resolved for the total sum of \$1,000,000 (“Gross
3 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
4 Gross Settlement Amount after the following deductions have been made (“Net Settlement
5 Amount”) shall be available for distribution to Class Members who do not opt out of the
6 Agreement:

- 7 • up to \$350,000 to Class Counsel as the attorneys’ fees;
- 8 • up to \$20,000 to Class Counsel as the attorneys’ costs for reimbursement of
9 attorneys’ costs and expenses incurred;
- 10 • up to \$10,000 to the Class Representative as his Enhancement Payment;
- 11 • currently estimated at \$21,000, but not to exceed \$23,000, to the Settlement
12 Administrator as the Settlement Administration Costs; and
- 13 • \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
14 (\$37,500) will be payable to the California Labor and Workforce
15 Development Agency (“LWDA”) and twenty-five percent (25%) of which
16 (\$12,500) will be distributed to all current and former non-exempt employees
17 who are or were employed by Defendant Ramko in California and/or all
18 current and former non-exempt employees who are or were employed by
19 Select Staffing and placed on assignment at Defendant Ramko in California
20 at any time during the period from August 31, 2019, through January 21,
21 2022 (“Aggrieved Employees,” “PAGA Period,” or “PAGA Payment”), on a
22 pro rata basis, in the form of Individual Settlement Payments, in accordance
23 with the Settlement Agreement.

24 This Notice of Motion and Motion is based on the fact this is a fair and reasonable
25 settlement that benefits the Class and was the product of informed, non-collusive
26 negotiations by the Parties who were represented by experienced and able counsel. *See Dunk*
27 *v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation
28 (Second) (1985) § 30.44. The proposed Settlement Agreement meets the legal standard for
preliminary approval and is in the best interests of the Class. The proposed form of notice

1 explains the Settlement Agreement terms in a clear and straightforward manner. The
2 proposed procedures for notice provide the best practical notice to the Class. Class Members
3 will have an opportunity to participate in and/or object to the Settlement Agreement and/or
4 opt-out of the Settlement Agreement.

5 This Renewed Notice of Motion and Motion is based on this Notice, and the exhibits
6 thereto (including the Notice of Class Action and PAGA Settlement, the Request for
7 Exclusion Form, and the Notice of Objection Form), the Renewed Memorandum of Points
8 and Authorities, the Declaration of Douglas Han, the Declaration of Anita York, the
9 Declaration of Dawn Andrei, the Declaration of Jodey Lawrence, the pleadings, records and
10 files in the case, and such other oral and documentary evidence which may be submitted at or
11 before the hearing on this Motion.

12
13 Dated: July 6, 2022

JUSTICE LAW CORPORATION

14
15 By 
16 Douglas Han
17 *Attorneys for Plaintiff*
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AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S RENEWED MOTION FOR
AN ORDER (1) PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING NOTICE
OF CLASS ACTION SETTLEMENT; AND
(3) SETTING HEARING FOR FINAL
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*[filed concurrently with Plaintiff's Renewed
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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 Defendant Ramko Injection, Inc.
5 (“Defendant Ramko”) and Real Time Staffing Services, LLC dba ResourceMFG and/or Select
6 Staffing (“Select Staffing”) (collectively, “Defendants”) (collectively, referred to herein as the
7 “Parties”) in the Superior Court of California, County of Riverside, Case Number
8 CVSW2001409 (the “Action”).

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

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

21 **II. STATUS OF THE LITIGATION**

22 **A. Procedural History**

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

27 On November 24, 2020, Plaintiff filed a representative Private Attorneys General Act of
28 2004 (“PAGA”) action in the Riverside County Superior Court. (Han Decl., *supra*, at ¶ 12.)

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 seven
5 (7) wage-and-hour class action causes of action, violation of Labor Code sections 2698, *et seq.*
6 (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., *supra*,
10 at ¶ 15.) This required thorough discussions and interviews between Class Counsel and Plaintiff,
11 as well as preliminary research into the various legal issues involved in the Action. (*Ibid.*) After
12 conducting an initial investigation, Class Counsel determined that Plaintiff’s claims were well-
13 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 personnel
23 records;
 - 24 ○ Lengthy .pdf documents comprising of a sampling of putative class members’
25 time and payroll records. The .pdf documents were broken down into redacted
26 timecards and earning pay stubs;

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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.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

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

- up to thirty-five percent (35%) of the Gross Settlement Amount to Class Counsel as the attorneys' fees (\$350,000);
- up to \$20,000 to Class Counsel as the attorneys' costs for the reimbursement of actual costs and expenses incurred;
- up to \$10,000 to the Class Representative as the Enhancement Payment;
- Settlement Administration Costs to the Settlement Administrator currently estimated at \$21,000, but not to exceed \$23,000¹; and
- up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of such penalties (\$37,500) will be payable to the LWDA and twenty-five percent (25%) of which (\$12,500) will be distributed to all current and former non-exempt employees who are or were employed by Defendant Ramko in California and/or all current and former non-exempt employees who are or were employed by Select Staffing and placed on assignment at Defendant

¹ The Settlement Administrator bid is a "Will Not Exceed" quote for \$21,000. The 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 Ramko in California at any time during the period from August 31, 2019, through January 21,
2 2022 (“Aggrieved Employees,” “PAGA Period,” and “PAGA Payment”)², on a pro rata basis,
3 as Individual Settlement Payments even if they request exclusion. (Han Decl., *supra*, at ¶ 21.)

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

7 The Agreement amount was a compromise figure, factoring in the inherent risks related
8 to certification, liability, and damages. (Han Decl., *supra*, at ¶ 25.) But considering all the
9 circumstances of the action and the defenses raised by Defendants against certification, liability
10 and damages, Class Counsel believe the Agreement is fair and reasonable. (*Id.* at ¶¶ 25, 74.)

11 **A. Number of Class Members**

12 There are two thousand two hundred twenty-six (2,226) persons in the Class, and nine
13 hundred thirty-five (935) Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 17, 87.a.)

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

16 If the Agreement is approved, Plaintiff estimates that the gross average Class Member
17 will receive approximately \$245.73 as his or her Individual Settlement Payment³. (Han Decl.,
18 *supra*, at ¶¶ 22, 63.) To calculate the amount of each Participating Class Member’s Individual
19 Settlement Payment, the Net Settlement Amount will be divided by the total number of
20 Qualifying Workweeks worked by all Participating Class Members during the Class Period to
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23
24 ² The estimated recovery of the individual Aggrieved Employee for his or her portion of the
25 PAGA Payment is \$13.37 ($\$12,500 \div 935$).

26 ³ Class Counsel cannot (at this time) provide the expected high and low Individual
27 Settlement Payment. This is because, pursuant to the Settlement Agreement, Defendants will
28 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
information needed to calculate the expected high and low Individual Settlement Payments until
after entry of the Preliminary Approval Order.

determine the base dollar amount per Qualifying Workweek. (Han Decl., *supra*, at ¶ 23.) The Settlement Administrator shall then multiply the number of Qualifying Workweeks for each Participating Class Member by the base dollar amount. (*Ibid.*)

C. Discovery Exchanged

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

D. Other Pending Litigation

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

E. Defense Counsel's Declaration

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

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

Participating Class Members and Aggrieved Employees have one hundred eighty (180) days from the date their Individual Settlement Payment checks are dated to cash their settlement checks. (Han Decl., *supra*, at ¶ 85.) If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and pay the value of the Individual Settlement Payment(s) to the California State Controller's Office Unclaimed Property Division in the name of the Class Member(s). (*Ibid.*)

G. Settlement Administrator

The Agreement provides up to \$23,000 will be paid to the Settlement Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 83.) The bid is comprised of hourly, flat fee, per unit, and per line-item rates. (*Ibid.*) The fee was calculated through a projected estimate from the following categories: (1) Case & Database Setup / Toll Free Setup & Call

Center / NCOA / Translation / Website; (2) Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage; (3) Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables; (4) Database Programming / Processing Opt-Outs, Deficiencies or Disputes; (5) Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks; and (6) Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations. (Han Decl., *supra*, at ¶ 83.)

Class Counsel obtained bids from CPT Group, Inc. (“CPT Group”) and Phoenix Class Action Administration Solutions (“Phoenix”) for the administration of this Action. (Han Decl., *supra*, at ¶ 84.) Phoenix had the most competitive (lowest) bid at \$21,000 when compared to the bid from CPT Group that was \$22,500. (*Ibid.*)

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

H. Release by Class Members is Limited

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

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

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

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

[A]ll claims and/or causes of action for statutory penalties under PAGA 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 ¶ 72.)

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 ¶ 70.)

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 ¶ 71.) 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 wages
8 and seventy-five percent (75%) will be allocated to penalties and interest. (Han Decl., *supra*, at
9 ¶ 24.) Each Aggrieved Employee's Individual Settlement Payment will represent one hundred
10 percent (100%) penalties. (*Ibid.*) Defendants' Employers' Share of Payroll Taxes will be paid
11 by 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 Renewed Proposed Order, filed
16 concurrently 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. *Prince*
19 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
20 (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved
21 in favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at
22 473-75. The decision to certify a class is a procedural one, and should be based on the allegations
23 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
24 *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 well-
27 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 size
4 of the class, and the means available for identifying class members. *See Vasquez, supra*, 4 Cal.
5 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
6 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 ¶ 87.a.) The Class Members have already been identified by
12 reference to Defendants’ payroll and personnel records. (*Id.* at ¶ 87.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 each
18 member of the class must prove his separate claim to a portion of
19 any recovery by the class is only one factor to be considered ... The
20 mere fact that separate transactions are involved does not of itself
21 preclude a finding of the requisite community of interest so long as
22 every member of the alleged class would not be required to litigate
23 numerous and substantial questions to determine his individual right
24 to recover subsequent to the rendering of any class judgment which
25 determined in plaintiffs’ favor whatever questions were common to
26 the class.

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

24 Plaintiff contends, and Defendants do not dispute, that common issues of fact and law
25 predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof.
26 Because Plaintiff has alleged a single scheme, “the relevant proof [does] not vary among class
27 members” and “clearly presents a common question fundamental to all class members.” *See In*
28 *Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In*

1 *Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).
2 California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and
3 class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*,
4 191 Cal. App. 3d at 1350. This inference ““eliminates the need for each class member to prove
5 individually the consequences of the defendants’ actions to him or her.”” *Id.* at 1351 (quoting
6 *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

7 This Action involves, *inter alia*, a determination about Defendants’ alleged: (1) failure
8 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
9 business expenses; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5) the
10 resulting failure to pay final wages when required; (6) the failure to provide accurate wage
11 statements; and (7) largely derivative claims under the Business & Professions Code and PAGA.
12 (Han Decl., *supra*, at ¶ 87.e.) Plaintiff contends these practices, including an alleged practice of
13 failing to provide complete meal and rest breaks, the alleged failure to provide corresponding
14 premium wages, and alleged systemic policies and practices of pressuring employees to work
15 off-the-clock, affected Class Members in the same way. (*Ibid.*) Thus, the outcome of litigation
16 on this matter depends upon questions that are common to Class Members. While Defendants
17 maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class
18 Member but on the basis of facts common to them all. Finally, these issues of liability can be
19 determined on a class wide basis.

20 Thus, the commonality requirement has been satisfied as well.

21 **C. The Plaintiff’s Claims Are Typical**

22 A class representative’s claims are typical when they arise from the same event, practice,
23 or course of conduct that gives rise to the claims of other putative class members, and if their
24 claims rest on the same legal theories. The class representative’s claims must be “typical” but
25 not necessarily identical to the claims of other class members. It is sufficient that the
26 representative is similarly situated so that he or she will have the motive to litigate on behalf of
27 all class members. *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v.*
28 *Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in

California that the class representative must have identical interests with the class members.”). Thus, it is not necessary that the class representative should have personally incurred all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 87.c.) Plaintiff was employed by Defendants during the Class Period and subject to the allegedly unlawful meal and rest break policies and pay practices at issue in this litigation, which makes Plaintiff a Class Member. (*Ibid.*) The central issues of this litigation (whether Defendants failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages for noncompliant meal and rest breaks, etc.), which would arise if this were an individual action brought by Plaintiff, apply to the other Class Members. (*Ibid.*) The answer to these questions would determine Defendants’ liability to the Class. (*Ibid.*)

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

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-10, 87.d.) Moreover, the Class Representative’s interests are aligned with those of the Class Members, he has suffered the same injuries as the Class Members, and he has no conflicts of interest. (*Id.* at ¶ 87.d.)

Therefore, the adequacy requirement has been satisfied as well.

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. (Han Decl., *supra*, at ¶ 87.f.) Furthermore, the class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 87.g.)

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

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

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

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

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

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

25 When the parties to an action reach a monetary settlement, they will usually
26 prepare and execute a joint stipulation of settlement, which is submitted to
27 the court for preliminary approval. The stipulation should set forth the
28 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.

26 ///

27 ///

28 ///

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 device
3 and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal.
4 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to
5 prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955
6 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex
7 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*, 2007
14 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 out
16 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 status
19 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
20 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, including
24 a detailed analysis of Defendants’ policies and a considerable sample of Defendants’ time and
25 pay records. (Han Decl., *supra*, at ¶ 16.) This discovery permitted Class Counsel to evaluate the
26 strengths and weaknesses of the case and the risks associated with ongoing litigation. (*Id.* at ¶
27 19.) In addition, Class Counsel are experienced in the handling of wage-and-hour class actions
28 and support the Settlement. (*Id.* at ¶¶ 3-9; Exhibit 2.)

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 related
5 claims for violations of the Business & Professions Code and for penalties under PAGA. (Han
6 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 ¶¶ 28-63.)

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

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

24 As the consideration concerning meal and rest breaks would likely depress the damages
25 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
26 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 31, 35.) If Defendants’ contentions are
27 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks, would
28 be no recovery for the Class Members.

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

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

16 To establish liability for wage statement violations and waiting time penalties, Plaintiff
17 would first have to establish liability for the underlying claims. But Defendants argued meal and
18 rest break violations could not be the predicate for a Labor Code section 226 wage statement or
19 section 203 waiting time claim. (Han Decl., *supra*, at ¶¶ 41, 45-46.) For example, the California
20 Supreme Court has recently held that claims for meal and rest break penalties do not constitute
21 “action[s] brought for the nonpayment of wages” for the purpose of determining statutory fees.
22 *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In *Ling v. P.F. Chang’s China*
23 *Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an action for unlawful meal and
24 rest periods under “cannot support a section 203 penalty because section 203, subdivision (b)
25 tethers the waiting time penalty to a separate action for wages.”). Authority is divided on this
26 point. Moreover, although authority is divided, many district court rulings support the conclusion
27 that any unpaid meal and rest break premium pay cannot give rise to derivative wage statement
28 liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v.*

1 *Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting a wage statement need only
2 document compensation *actually received* and the hours used to calculate that compensation). It
3 is unclear if the Court would have permitted untimely wage penalties or wage statement
4 violations for Defendants’ failure to provide meal and rest break penalties.

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

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

20 Labor Code section 2699.3 gives aggrieved employees the right to recover civil penalties
21 for specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount
22 of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
23 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
24 violation. (Lab. Code § 2699, subd. (e)(2).) However, if a civil penalty is provided in a specified
25 amount by the Labor Code section relating to the underlying alleged Labor Code violation, that
26 amount shall apply. (Lab. § Code 2699, subd. (e)(2).) The PAGA also gives the Court discretion
27 to award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may award a lesser
28 amount than the maximum civil penalty amount specified by this part if, based on the facts and

1 circumstances of the particular case, to do otherwise would result in an award that is unjust,
2 arbitrary and oppressive, or confiscatory.”)]; *Thurman v. Bayshore Transit Management, Inc.*
3 (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

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

16 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
17 (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory
18 claims, such as violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a),
19 1194, 1197, 1198, 2800 and 2802. (*Ibid.*) In other words, the maximum penalties for each pay
20 period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the
21 maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was
22 reasonable based on a rate of **\$1.97** per pay period [$\$50,000 \div 25,391$ Pay Periods in PAGA Date
23 Range = **\$1.97**], given the fact that Defendants are paying an additional \$950,000 in the class
24 settlement.⁴ (Han Decl., *supra*, at ¶ 57.) Where PAGA penalties are negotiated in good faith and

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26
27 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
28 \$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).)

1 “there is no indication that [the] amount was the result of self-interest at the expense of other
2 Class Members,” such amounts are considered reasonable.⁵ (Han Decl., *supra*, at ¶ 57.)

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

4 Given the risks outlined above, the issues in this case were complex and the risk for
5 Plaintiff and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
6 64-68.) A class trial would have required the retention of expensive expert witnesses, the accrual
7 of extensive litigation costs, and the Parties would have had to spend a substantial amount of
8 time. (*Id.* at ¶ 68.) Given the complexity and unsettled nature of the issues, it is likely that any
9 outcome at trial would have resulted in a lengthy and costly appeal. (*Id.* at ¶¶ 65-66, 68.) Finally,
10 an appeal would result in further delay for the Class Members who have already waited years
11 for resolution in this matter. (*Id.* at ¶¶ 65, 68.)

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

13 In class actions, decertification is always a possibility. There is always a risk that a trial
14 of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*
15 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class actions,
16 decertification is a real risk that Class Counsel must consider.

17 **G. The Amount Offered in Settlement.**

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

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27 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
28 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.”).)

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 ¶ 60.)

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 ¶ 61.) 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 and rest penalties (\$225,065.23 + \$152,413.37 = \$377,478.60). The Parties then added the \$377,478.60 representing the realistic exposure for meal and rest penalties to the low end of the realistic exposure for unpaid wages due to off-the-clock work (\$377,478.60 + \$96,401.12 = \$473,879.72). This realistic exposure of \$473,879.72 (representing wages) that Plaintiff can expect to receive for meal penalties, rest penalties, and unpaid wages due to off-the-clock work equates to about twenty-seven percent (27.18%) of the low end of the realistic exposure for the

1 maximum total exposure (\$1,743,729.95). Consequently, because this wage portion represents
2 almost twenty-five percent (25%) of wages, the Parties determined that allocating twenty-five
3 percent (25%) as wages and seventy-five percent (75%) penalties and interest pursuant to the
4 Settlement Agreement was appropriate.

5 Once Class Counsel were able to determine the maximum potential damages, they were
6 able to determine a fair and reasonable settlement for the Class after analyzing the likelihood of
7 success on the merits. (Han Decl., *supra*, at ¶ 26.) Class Counsel concluded that the Class had a
8 reasonable likelihood of success on the core claims. (*Id.* at ¶¶ 60-68.) However, Defendants
9 disputes this contention, deny all wrongdoing in this matter, and are confident they have strong
10 legal and factual defenses to Plaintiff's claims. (*Id.* at ¶¶ 65, 67.) Class Counsel determined that
11 the likelihood of success on the claims for meal breaks, rest breaks, unpaid wages, waiting time
12 penalties, and unreimbursed necessary business expenses was not as strong because
13 of various defenses, including Defendants' arguments that the issues were not suitable for class
14 treatment due to their individualized nature. (*Ibid.*) After considering the likelihood of success
15 on each claim and the challenges faced with certifying these claims, Class Counsel determined
16 that the Settlement Agreement amount of \$1,000,000 was fair and reasonable.

17 As detailed at length in the accompanying declaration of Douglas Han, the Agreement is
18 the result of extensive settlement negotiations between the Parties, conducted at arm's length,
19 and informed by substantial factual and legal investigations. (Han Decl., *supra*, *passim*.)
20 Throughout this case, Class Members have been represented by experienced counsel with many
21 years of experience in employment class action litigation. (*Id.* at ¶¶ 3-9; Exhibit 2.) Specifically,
22 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
23 including but not limited to: (1) interviewing Plaintiff at length on repeated occasions; (2)
24 drafting pleadings, conducting discovery, and meeting and conferring with counsel for
25 Defendants; (3) reviewing and analyzing time and pay records, employee handbooks, and
26 applicable policies, Plaintiff's personnel files; (4) researching California law; (5) interviewing
27 Class Members regarding their experiences; (6) preparing for and attending mediation; and (7)
28 negotiating and finalizing the Agreement. (*Id.* at ¶¶ 15-19.)

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

8 These factors indicated the interests of Class Members are best served by a settlement of
9 this Action in the manner set forth in the Agreement. Furthermore, the Individual Settlement
10 Payment for each Class Member will be tailored to their Qualifying Workweeks during the Class
11 Period. Furthermore, Class Counsel secured prospective relief for the Class where Defendants
12 will ensure their policies comply with California law.

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

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

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

22 Plaintiff is entitled to reasonable service payments for his efforts and initiative in bringing
23 and helping to prosecute this class action. (Han Decl., *supra*, at ¶ 78.) Plaintiff spent significant
24 time better apprising himself of his rights, deciding whether remedial action should be taken,
25 and contacting Class Counsel who spent many hours with Plaintiff discussing the cases and the
26 law. (*Ibid.*) In the end, Plaintiff ultimately decided to vindicate not only his own rights but also
27 those of his co-workers by filing a representative PAGA action and wage-and-hour class action
28 lawsuit. (*Ibid.*)

1 In addition, by suing Defendants, Plaintiff increased the risk of retaliation by prospective
2 employers. (Han Decl., *supra*, at ¶ 79.) Plaintiff's lawsuit has cost Defendants considerable
3 resources and such conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing
4 employment opportunities is particularly real in the information age, where employers can
5 perform background checks of prospective employees. (*Ibid.*)

6 Plaintiff did not allow his fears of the potential repercussions of being class representative
7 deter him from acting for the benefit of Class Members. (Han Decl., *supra*, at ¶ 80.) Instead,
8 Plaintiff has been intimately involved in this case since its inception. (*Ibid.*) Specifically,
9 Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop
10 and prosecute this action at every stage of the litigation. (*Ibid.*)

11 Plaintiff has spent a significant amount of time with Class Counsel detailing his
12 knowledge of Defendants' practices. (Han Decl., *supra*, at ¶ 81.) Plaintiff has diligently,
13 adequately, and fairly represented Class Members and has not placed his own interests above
14 any Class Members. (*Ibid.*) The Enhancement Payment to Plaintiff is intended to recognize his
15 time and effort on behalf of the Class, and the amount requested is fair and appropriate based on
16 their contribution and involvement. (*Ibid.*)

17 Thus, Class Counsel believe the combined Enhancement Payment in the amount of
18 \$10,000 to the Class Representative is fair and reasonable. (Han Decl., *supra*, at ¶ 82.)

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

21 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
22 seek an award of up to \$350,000 as the attorneys' fees (35% of the Gross Settlement Amount)
23 and reimbursement of actual litigation costs and expenses of up to \$20,000 as the attorneys'
24 costs. (Han Decl., *supra*, at ¶ 75.) The requested fees are fair compensation for a law firm
25 involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a
26 contingent basis. (*Id.* at ¶¶ 75-76.) Class Counsel's request for Attorneys' Fees and Costs will
27 not be opposed by Defendants throughout the settlement process.

28 ///

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

9 Several courts have, however, expressed frustration with the "lodestar" approach for
10 deciding fee awards, which usually involves wading through voluminous time records. In other
11 words, the percentage approach can be preferable to the lodestar in certain situations because:
12 (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient
13 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
14 (3) it reduces the demands on judicial resources. *In re Activision Securities Litigation*, 723 F.
15 Supp. at 1378-79. The Ninth Circuit has used the percentage of the common fund approach to
16 determine the award of attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir.
17 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).

18 When considering the facts and circumstances of this case, the request for attorneys' fees
19 is within the range of reasonableness. Historically, courts have awarded percentage fees in the
20 range of twenty percent (20%) to fifty percent (50%) of the common fund, depending on the
21 circumstances of the case. *Newberg*, at § 14.03; *see also In re Activision Securities Litigation*,
22 723 F. Supp. at 1378. *Newberg* further notes: "[A]chievement of a substantial recovery with
23 modest hours expended should not be penalized but should be rewarded for considerations of
24 time saved by superior services performed." *Id.* at §§ 14-10:14-11.

25 The attorneys' fees request provided for in the Settlement Agreement is commensurate
26 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
27 greater than the percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities*
28 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common

1 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
2 plaintiffs' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
3 *Antitrust Litigation* (D. D.C. 1981) 526 F. Supp. 494 (awarding 45% of \$7.3 million settlement
4 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award
5 to counsel of one-third (1/3) of recovery achieved).

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

15 Class Counsel have borne the entire risk and costs of litigation and will not receive any
16 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 75-76.) The Court should also
17 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
18 attorneys' fees award for Class Counsel is reasonable.

19 **A. Fee Splitting Agreement**

20 Class Counsel is not splitting the costs associated with the settlement with any other
21 individuals or firms. (Han Decl., *supra*, at ¶ 86.)

22 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 23 **APPROVAL**

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

26 1. Review and approve the Settlement Agreement attached to Douglas Han's
27 declaration as **Exhibit 1**;

28 ///

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 Renewed 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;

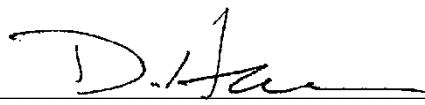
8. Order Defendants to disclose the Class List to Phoenix in accordance with the manner set forth in the Settlement Agreement;

9. Order Phoenix to mail the Notice Packet to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: July 6, 2022

JUSTICE LAW CORPORATION

By 
Douglas Han
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 manderson@justicelawcorp.com

On July 7, 2022, I served the foregoing document described as

PLAINTIFF'S RENEWED NOTICE OF MOTION AND 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; RENEWED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S RENEWED 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

for the following case: **Cordova v. Ramko Injection, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-804634-20**
Court Case No.: CVSW2001409
Riverside County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on July 7, 2022, at Pasadena, California.



Mariah Anderson