

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
ARSINÉ GRIGORYAN (SBN 319517)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MICHANE GREENE, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

INFORMATION RESOURCES, INC. d/b/a
SCANSCAPE, a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: CIVSB2024620

Honorable David Cohn
Department S26

CLASS ACTION

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

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

Hearing Date: November 30, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department S26

Complaint Filed: November 18, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 30, 2021 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable David Cohn in Department S26 of the San
3 Bernardino County Superior Court, located at 247 West 3rd Street, San Bernardino, California
4 92415, Plaintiff Michane Greene (“Plaintiff”) will and hereby moves for an order:

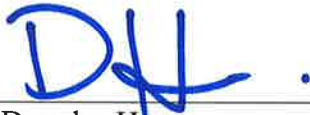
- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement” or “Settlement Agreement”), attached as **“EXHIBIT 2”** to the
8 Declaration of Douglas Han, including, and not limited to, the means of allocation
9 and distribution of funds, and the allocations for penalties under the California
10 Labor Code Private Attorneys General Act of 2004 (“PAGA”), Attorneys’ Fee
11 Award, Cost Award, the Class Representative Enhancement Payment, and the
12 Administration Costs;
- 13 • Conditionally certifying the proposed Settlement Class for settlement purposes
14 only;
- 15 • Appointing Plaintiff as the Class Representative;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
18 attached as **“Exhibit A”** to the Settlement Agreement;
- 19 • Directing the mailing of the proposed Class Notice with a postage-paid return
20 envelope to the proposed Settlement Class;
- 21 • Approving the proposed deadlines for the notice and Settlement Administration
22 process;
- 23 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and
- 24 • Scheduling a hearing to consider whether to grant Final Approval of the
25 Settlement Agreement, at which time the Court will also consider whether to
26 grant Final Approval of the requests for Attorney Fee Award, Cost Award, the
27 Class Representative Enhancement Payment, the Administration Costs, and the
28 PAGA Payment.

1 This motion is based upon the following memorandum of points and authorities; the
2 Declaration of [Proposed] Class Counsel (Douglas Han); the [Proposed] Order filed concurrently
3 with this motion; the pleadings and other records on file with the Court in this matter; and such
4 documentary evidence and oral argument as may be presented at the hearing on this motion.
5

6 Dated: November 3, 2021

JUSTICE LAW CORPORATION

7
8
9 By:



Douglas Han
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	BACKGROUND	9
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action.....	11
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	11
ii.	The Settlement Was Reached Because of Arm's-Length Negotiations.....	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery..	12
c.	Terms of the Proposed Settlement.....	12
i.	The Proposed Settlement is for \$1,350,000.....	12
ii.	Calculation of the Settlement Payments to Class Members	13
iii.	Notice to the Class	14
iv.	Distribution of Funds.....	14
v.	Release of Claims	15
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review.....	16
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	16
i.	The Settlement Amount of \$1,350,000 Is Fair and Reasonable	17
ii.	The PAGA Payment of \$100,000 is Reasonable.....	18
c.	Discount Analysis Justifies the Settlement.....	19
d.	Conditional Certification of the Class Is Appropriate	20
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous	21
ii.	The Class Members Share a Well-Defined Community of Interest.....	21
1.	Common Issues Predominate	22

1	2.	Plaintiffs’ Claims Are Typical of the Class Claims	22
2	3.	Plaintiffs are Adequate to Represent the Class.....	23
3	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
4		this Controversy	23
5	e.	The Settlement Is Fair, Reasonable, and Adequate	23
6	f.	Notice to Class Members Complies with California Rule of Court 3.769(f)	24
7	V.	CONCLUSION	24

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	18
<i>Bartold v. Glendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	21
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	16
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979).....	12
<i>Brinker Restaurant Corporation v. Superior Court,</i>	
53 Cal. 4 th 1024 (2012)	22
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	21, 22
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	18
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2d Cir. 1974)	20
<i>Classen v. Weller,</i>	
145 Cal. App. 3d 27 (1983)	22
<i>Dunbar v. Albertson’s Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	18
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	15, 23
<i>Espinoza v. Galardi South Enterprises Inc.,</i>	
Case No. 1:14-cv-21244 (S.D. Fla. 2016)	22
<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
169 Cal. App. 4 th 1524 (2008)	21

1	<i>Green v. Obledo,</i>	
2	29 Cal. 3d 126 (1981).....	16
3	<i>Harris v. Superior Court,</i>	
4	154 Cal. App. 4 th 164 (2007)	18
5	<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
6	89 Cal. App. 4 th 908 (2001)	21
7	<i>Hopson v. Hanesbrands Inc.,</i>	
8	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009).....	19
9	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
10	452 U.S. 905 (1981)	16
11	<i>Jones v. JGC Dallas LLC,</i>	
12	Case No. 3:11-cv-02743 (N.D. Tex. 2014)	22
13	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
14	168 Cal. App. 4 th 116 (2008).....	16, 17
15	<i>Linder v. Thrifty Oil Co.,</i>	
16	23 Cal. 4 th 429 (2000).....	21
17	<i>Linney v. Cellular Alaska Partnership,</i>	
18	151 F. 3d 1234 (9 th Cir. 1998)	20
19	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
20	186 Cal. App. 4 th 399 (2010).....	16, 17
21	<i>Nordstrom Com. Cases,</i>	
22	186 Cal. App. 4 th 576 (2010)	19
23	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
24	34 Cal. 4 th 319 (2004).....	17, 20, 21
25	<i>In re Tableware Antitrust Litig.,</i>	
26	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	20
27	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
28	38 Cal. 3d 488 (1985).....	17

1	<i>Thurman v. Bayshore Transit Mgmt.,</i>	
2	203 Cal.App. 4 th 1112 (2012)	18
3	<i>Vasquez v. Superior Court,</i>	
4	4 Cal. 3d 800 (1971).....	16
5	<i>Walsh v. IKON Solutions, Inc.,</i>	
6	148 Cal. App. 4 th 1440 (2007)	18
7	<u>Statutes</u>	
8	Business and Professions Code §§ 17200	17
9	Code of Civil Procedure § 382	20, 23
10	Code of Civil Procedure § 877.6	17
11	Federal Rule 23.....	16
12	Labor Code § 201	18
13	Labor Code § 202	18
14	Labor Code § 203	18
15	Labor Code § 204	18
16	Labor Code § 221	18
17	Labor Code § 226	18
18	Labor Code § 246	18
19	Labor Code § 510	18
20	Labor Code § 512	18
21	Labor Code § 558	18
22	Labor Code § 1174	18
23	Labor Code § 1194	18
24	Labor Code § 1197	18
25	Labor Code § 1198	18
26	Labor Code § 2800	18
27	Labor Code § 2802	18
28	Rule 3.769	16, 24

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,350,000 proposed
3 wage-and-hour class action settlement by Plaintiff on behalf of herself all hourly-paid or non-
4 exempt employees employed by Defendants Information Resources, Inc. and Field Audit
5 Services Team, LLC (“Defendants”) within the State of California during the Class Period
6 (“Class Member(s)” or “Settlement Class”). The Settlement Class does not include any person
7 who submits a timely and valid Request for Exclusion. The Class Period means the period from
8 November 18, 2016, to the date the Court issues an order granting preliminary approval of the
9 Settlement. At the time of mediation on August 4, 2021, the number of Class Members
10 confirmed by Defendants is eight hundred and twenty-six (826). (Declaration of Douglas Han
11 (“Han Dec.”) at ¶ 8.)

12 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
13 and vulnerabilities of the class claims alongside Defendants’ potential liability exposure, this
14 proposed settlement of \$1,350,000 is well within the ballpark of reasonableness. Class Counsel is
15 convinced that the proposed Settlement is in the best interests of the Class Members based on the
16 negotiations and a detailed knowledge of the issues present in this action.

17 **II. BACKGROUND**

18 Defendants operate as an in-store data collection and retail audit services company with
19 employees who work as field service representatives across the country. (Han Dec., *supra*, at ¶
20 9.)

21 On November 18, 2020, Plaintiff filed a wage-and-hour class action complaint in the
22 County of San Bernardino (Case No. CIVSB2024620) alleging eight causes of action for: (1)
23 violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of
24 California Labor Code §§ 226.7 and 512 (a) (unpaid meal period premiums); (3) violation of
25 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor
26 Code §§ 1194 and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201
27 and 202 (final wages not timely paid); (6) violation of California Labor Code §§ 226(a) (non-
28 complaint wage statements); (7) violation of California Labor Code § 2800 and 2802

(unreimbursed business expenses); and (8) violation of Business & Professions Code §§ 17200, et seq. (Han Dec., *supra*, ¶ 10.)

On August 31, 2020, Plaintiff provided written notice to the Labor & Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the Labor Code she contends were violated, and the theories supporting her contentions. (Han Dec., *supra*, ¶ 11.)

Following written notice to the LWDA, on November 18, 2020, after the sixty-five days’ notice period expired, Plaintiff filed a lawsuit on behalf of herself and all aggrieved employees pursuant to Labor Code §§ 2698, et seq. (“PAGA Action”) in the County of San Bernardino (Case No. CIVSB2024618). (Han Dec., *supra*, ¶ 12.)

On August 4, 2021, the Parties attended mediation with esteemed wage-and-hour mediator, Jeffrey Ross, Esq. and a few days later ultimately reached a global settlement in both the instant action and the PAGA Action. (Han Dec., *supra*, ¶ 13.)

Pursuant to the Settlement Agreement, Plaintiff and Defendants have agreed that Plaintiff will file a First Amended Class Action Complaint that adds a Defendant, Field Audit Services Team, LLC d/b/a Scanscape (a subsidiary of Defendant Information Resources, Inc.), and adds a cause of action for violation of Labor Code §§ 2698, et seq. (Han Dec., *supra*, ¶ 14.)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed his wage-and-hour class action complaint, both Parties engaged in discovery. Thereafter, the Parties proceeded to meet and conferred regarding this discovery. (Han Dec., *supra*, at ¶ 16.)

Prior to the mediation with Jeffrey Ross on August 4, 2021, and both before and after the Action was filed, the Parties conducted significant investigation and discovery of the facts and law. Specifically, Defendants produced time and wage data for the years 2018 through 2021, a Class Data, and personnel records for Plaintiff and another employee. Defendants’ data production allowed Plaintiff to determine the size and scope of the Settlement Class as well as the number of workweeks and pay periods in the Class Period. (Han Dec., *supra*, at ¶ 17.)

///

1 Based upon the above mentioned discovery, Plaintiff contends – and Defendants deny –
2 that Defendants: (1) failed to provide employees with legally mandated meal and rest breaks; (2)
3 did not pay employees for all hours worked; (3) failed to include non-discretionary bonus pay
4 and incentive pay in employees’ regular rates of pay for overtime compensation; (4) did not
5 reimburse employees for all business expenses; and (5) is liable for issuing noncompliant wage
6 statements and for waiting time penalties. (Han Dec., *supra*, at ¶¶ 19-24.)

7 Defendants have denied all Plaintiff’s contentions in their entirety. Specifically,
8 Defendants have argued that they: (1) they provided employees with compliant meal and rest
9 breaks; (2) they paid employees for all hours worked; (3) they properly calculated and paid
10 overtime; (4) they reimbursed all reasonable business expenses; and (5) they have not
11 intentionally failed to comply with California labor laws. (Han Dec., *supra*, at ¶ 25.)

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

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

15 The Parties agreed to go to mediation with experienced wage-and-hour mediator, Jeffrey
16 Ross that took place on August 4, 2021. During the mediation, the Parties discussed the risks of
17 continued litigation, risks of certification, and risks on the merits of the claims versus the
18 benefits of settlement. Under the auspices of the mediator, the Parties were able to reach an
19 agreement on a settlement of the Action, the terms of which were memorialized in the Settlement
20 Agreement that the Parties now seek Preliminary Approval. (Han Dec., *supra*, at ¶ 26.)

21 **ii. The Settlement Was Reached Because of Arm’s-Length Negotiations**

22 The Settlement Agreement was reached because of arm’s-length negotiations. Though
23 cordial and professional, the settlement negotiations have been adversarial and non-collusive in
24 nature. At the mediation, counsel for the Parties conducted extensive arm’s-length settlement
25 negotiations until an agreement was ultimately reached by all Parties. (Han Dec., *supra*, at ¶ 29.)

26 ///

27 ///

28 ///

1 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
2 expense, length, and uncertainty of continued proceedings necessary to continue the litigation
3 against Defendants through class certification, trial, and any possible appeals. Plaintiff and Class
4 Counsel have conducted extensive settlement negotiations, including formal mediation on
5 August 4 2021. (Han Dec., *supra*, at ¶ 30.)

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

7 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
8 before reaching the proposed settlement and engaged in sufficient investigation, research, and
9 discovery. The proposed settlement was only possible following significant discovery and
10 evaluation of Defendants’ relevant policies and procedures, as well as the data they produced for
11 the putative class. Furthermore, this case has reached the stage where “the Parties certainly have
12 a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement.
13 (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617; Han Dec., *supra*, at ¶ 31.)

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

15 **i. The Proposed Settlement is for \$1,350,000**

16 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
17 action be settled and compromised for the non-reversionary total sum of \$1,350,000 (“Gross
18 Settlement Amount”) which includes, subject to Court approval: (a) attorneys’ fees to Class
19 Counsel in an amount not to exceed \$472,500 (35% of the Gross Settlement Amount) to
20 compensate Class Counsel; (b) payment to Class Counsel for actual litigation costs in an amount
21 not to exceed \$20,000; (c) Class Representative Enhancement Payment in the amount of \$10,000
22 to Plaintiff; (d) Settlement Administration Costs to Simpluris, the Settlement Administrator, in
23 an amount not to exceed \$25,000; and (e) PAGA Payment of \$100,000, seventy-five percent
24 (75%) of which (\$75,000) will be paid to the LWDA and twenty-five percent (25%) of which
25 (\$25,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as described
26 in the Agreement.. (Settlement Agreement, § I; attached as Exhibit 2 to Han Dec.)

27 ///

28 ///

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

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 that \$727,500 (“Net Settlement Amount”) will be distributed to Class Members – with an
4 average Individual Settlement Share estimated at \$880.75¹. (Han Dec., *supra*, at ¶ 27.)

5 All Individual Settlement Shares will be allocated as: one-third (33 1/3%) wages, one-
6 third (33 1/3%) interest, and one-third (33 1/3%) penalties and reimbursements. (Settlement
7 Agreement, § III(G)(2).)

8 Individual Settlement Shares will be calculated and apportioned from the Net Settlement
9 Amount based on the number of Workweeks a Class Member worked during the Class Period as
10 a non-exempt employee in California. To determine Class Member’s estimated “Individual
11 Settlement Share,” the Settlement Administrator will use the following formula:

12 (i) the number of workweeks he or she worked as an hourly-paid or non-exempt
13 employee during the Class Period, divided by (ii) the total number of workweeks
14 worked by and all Class Members collectively during the Class Period, which is
15 then multiplied by the Net Settlement Amount. The Settlement Administrator
16 will use the Class Data to calculate the number of workweeks worked by each
17 Class Member based on their dates of employment for purposes of this
18 calculation. Therefore the value of each Participating Class Member’s Individual
19 Settlement Share ties directly to the amount of days that he or she worked.
(Settlement Agreement, § III(G)(1)(a).)

20 Individual Settlement Shares will be calculated and apportioned from the PAGA Payment
21 amount based on the number of Pay Periods an Eligible Aggrieved Employee worked during the
22 PAGA Period as a non-exempt employee in California. To determine Eligible Aggrieved
23 Employees’ estimated “Individual PAGA Payment,” the Settlement Administrator will use the
24 following formula:

25 (i) determining the total number of pay periods the Eligible Aggrieved Employees were
26 employed during the PAGA Period (i.e., the sum of all pay periods of employment for
27 each eligible aggrieved employee), and (ii) dividing that number into the \$25,000 amount
28 allocated to Eligible Aggrieved Employees to determine the monetary value assigned to
each pay period. That number will then be multiplied by the individual eligible
aggrieved employee’s total number of pay periods employed during the PAGA Period to
determine that individual’s proportional share. Each Eligible Aggrieved Employee’s
Individual PAGA Payments will be apportioned as 100% penalties and shall be subject to
all authorized and required withholdings other than the tax withholdings customarily
made from employees’ wages and shall be reported by IRS 1099 forms. (Settlement
Agreement, § III(H)(6).)

¹ \$727,500 (Net Settlement Amount) / 826 (Class Members) = \$880.75.

1 **iii. Notice to the Class**

2 Within thirty (30) calendar days of entry of the Court's Order Granting Preliminary
3 Approval, Defendants will provide the Class Data to the Settlement Administrator. Within
4 fourteen (14) business days after the deadline for Defendants to provide the Settlement
5 Administrator with the Class Data, the Settlement Administrator will mail a Notice of Class
6 Action Settlement to all Class Members via regular First-Class U.S. Mail. The submission of
7 claim forms is not required. (Settlement Agreement, § III(K)(2)(c).)

8 **iv. Distribution of Funds**

9 No later than within twenty-one (21) business days after the Effective Final Settlement
10 Date, Defendants shall deposit the Gross Settlement Amount of One Million, Three Hundred and
11 Fifty Thousand Dollars and Zero Cents (\$1,350,000.00) needed to pay the entire GSA by wiring
12 the funds to the Settlement Administrator.

13 Also, within twenty (20) business days after the funding of the Settlement, the Settlement
14 Administrator shall calculate and pay all payments due under the Settlement Agreement,
15 including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class
16 Representative Enhancement, the PAGA Payment, and the Administration Costs. The
17 Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for
18 settlement of the PAGA claim. After such payment, Defendants shall have no liability for
19 PAGA claims by or on behalf of Participating Class Members during the Class Period, which are
20 released under this Agreement. (Settlement Agreement, § III(K)(9)(b).)

21 Participating Class Members must cash or deposit their Individual Settlement Share
22 checks within one hundred twenty (120) calendar days after the checks are mailed to them. If
23 any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
24 Settlement Administrator will send a reminder postcard indicating that unless the check is
25 redeemed or deposited in the next thirty (30) calendar days, it will expire and become non-
26 negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
27 uncashed or not deposited by the expiration of the thirty (30)-day period after mailing the
28 reminder notice, the Settlement Administrator will, within one hundred fifty (150) calendar days

1 after the checks are mailed, pay the amount of the Individual Settlement Share or Individual
2 PAGA Payment (as applicable) to the UC Hastings College of the Law for the Workers' Rights
3 Clinic. (Settlement Agreement, § III(K)(10).)

4 **v. Release of Claims**

5 In exchange for the Settlement and as of the Effective Final Settlement Date, Class
6 Members, who do not submit a timely and valid request for exclusion, hereby release, remise,
7 and forever discharge the Released Parties from the Released Claims for the Class Period.
8 Moreover, as of the Effective Final Settlement Date, this Settlement forever bars Plaintiff, the
9 LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any
10 and all Eligible Aggrieved Employees during the PAGA Period, from pursuing any action under
11 PAGA against the Released Parties based on or arising out of the alleged violations of Labor
12 Code sections alleged in the Case. The release is limited to the "claims . . . that were asserted or
13 could have been asserted based on the factual allegations made in the Action. . ." This is an
14 acceptable scope of the release in a class action. *See Amaro v. Anaheim Arena Mgmt.* (Sep. 28,
15 2021, G058371). Finally, Plaintiff, for herself, her heirs, successors and assigns, provides a
16 general release of claims. (Settlement Agreement, §§ I(GG), I(HH), III(L)-(N).)

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

18 Counsel for both Parties are particularly experienced in wage-and-hour employment law
19 and class actions. Class Counsel has significant experience in litigating unpaid wages,
20 noncompliant meal period, and noncompliant rest period class actions. Class Counsel has
21 prosecuted numerous cases on behalf of employees for California Labor Code violations and
22 thus are experienced and qualified to evaluate the class claims, to evaluate settlement versus trial
23 on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed
24 Class Counsel on the risks and uncertainties of further litigation and guided their determination
25 to endorse the proposed Settlement.² (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

26 ///

27 _____
28 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
Action Settlement has been provided to the Class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **IV. ARGUMENT**

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

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

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

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

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

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

20 An understanding of the amount in controversy is an important factor in whether the
21 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
22 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
24 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
25 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

26 ///

27 ///

28 ///

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

1 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
2 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
3 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require an
4 explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all
5 his claims, provided there is a record that allows “an understanding of the amount that is in
6 controversy and the realistic range of outcomes of the litigation.” (*Munoz, supra*, 186
7 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a settlement as in
8 good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the
9 class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at
10 p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500).)

11 **i. The Settlement Amount of \$1,350,000 Is Fair and Reasonable**

12 The proposed Settlement was possible following significant discovery and evaluation of
13 Defendants’ relevant policies and procedures and the data Defendants produced for the putative
14 class as referenced in the Declaration of Douglas Han, which permitted Class Counsel to engage
15 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 31.)

16 This discovery informed Plaintiff’s central theories of liability, which are predicated on
17 Plaintiff’s claims that Defendants failed to pay overtime and minimum wages, failed to provide
18 meal and rest breaks and pay applicable premiums, failed to timely pay final wages, failed to
19 issue compliant wage statements, failed to reimburse business expenses, violated PAGA, and
20 violated the Business & Professions Code sections 17200, *et seq.* Defendants have vehemently
21 denied Plaintiff’s theories of liability and asserted defenses (Han Dec., *supra*, at ¶¶ 32-33.)

22 Although Plaintiff believes the case is suitable for certification on the basis that there are
23 company-wide policies that Plaintiff contends violate California law and uniformly affect the
24 putative class members, uncertainties with respect to certification are always present. As the
25 California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class
26 certification is always a matter of the trial court’s sound discretion. Decisions following *Sav-On*
27
28

1 have reached different conclusions concerning certification of wage-and-hour claims.⁴ While
2 remaining confident in the strengths of his claims, all these factors led Plaintiff to discount the
3 following calculations of potential damage claims. (Han Dec., *supra*, at ¶ 34.)

4 **ii. The PAGA Payment of \$100,000 is Reasonable**

5 The provisions of the Labor Code potentially triggering PAGA penalties in this case
6 include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
7 226.7, 246(1), 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Defendants
8 asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not
9 mandatory but permissive and discretionary. Defendants also maintained that, in addition to its
10 strong arguments against the underlying claims, it had a strong argument that it would be unjust
11 to award maximum PAGA penalties given the law's unsettled state. (*Thurman v. Bayshore*
12 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).)
13 Plaintiff argued that without stacking and limited to the initial violation, PAGA penalties would
14 be limited to \$64,900 (649 employees x \$100 initial violation) on the low end and \$389,400 on
15 the high end based on six (6) major theories of recovery. (Han Dec., *supra*, at ¶¶ 42-45.)

16 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
17 Many of the causes of action brought were duplicative of the statutory claims such as violations
18 of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802.
19 Thus, the maximum penalties for each pay period are not justified. It was indeed arguable
20 whether the Court would award the maximum penalties under the law. Thus, allocating \$100,000
21 to PAGA civil penalties was reasonable based on a rate of \$12.37 per pay period [$\$100,000 /$
22 $8087 \text{ Pay Periods in PAGA Date Range} = \12.37], given the fact that Defendants are also paying
23 an additional \$1,250,000 in the class settlement.⁵ Where PAGA penalties are negotiated in good

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

28 ⁵ (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).)

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 generally considered reasonable.⁶ (Han Dec., *supra*, at ¶ 47.)

Considering Defendants’ defenses, supporting evidence, and position that the Action is not suitable for class treatment, the settlement amount of \$1,350,000 is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$4,625,022.54 on the low end and \$4,740,961.35 on the high end. (Han Dec., *supra*, at ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$463,475.75	50%	40%	\$139,042.73
Meal Break Premiums	\$463,475.75	40%	50%	\$139,042.73
Overtime/Minimum Wage: Off-the-Clock	\$231,877.62 to \$347,816.43	60%	60%	\$37,078.06 to \$55,617.09
Overtime/Minimum Wage: Non-Discretionary Bonus Pay and Incentive Pay	minimal	N/A	N/A	minimal
Unreimbursed Business Expenses	\$182,552.59	30%	70%	\$38,724.67
Wage Statement Penalty	\$746,350	25%	50%	\$279,852.62
Waiting Time Penalty	\$2,537,290.83	25%	50%	\$951,484.06
MAXIMUM TOTAL EXPOSURE	\$4,625,022.54 to \$4,740,961.35⁷			\$1,585,224.86 to \$1,603,763.88⁸

///

///

///

⁶ (*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.”).)

⁷ Han Dec., *supra*, at ¶¶ 37-42.

⁸ *Id.*, at ¶¶ 50-56.

Moreover, the realistic recovery for this case is approximately \$1,585,224.86 on the low end and \$1,603,763.88 on the high end. The Gross Settlement Amount of \$1,350,000 is approximately twenty-eight percent (28.48%) of the maximum potential exposure and about eighty-four percent (84.18%) of the maximum realistic exposure at trial, which is a good settlement. (Han Dec., *supra*, at ¶ 55.)

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

d. Conditional Certification of the Class Is Appropriate

Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Plaintiff contends that as an hourly-paid non-exempt employee of Defendants, her claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Settlement Class. Also,

Plaintiff asserts the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (Han Dec., *supra*, at ¶ 56.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

The Action involves nine hundred nineteen (919) Class Members. Thus, this Class is sufficiently numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous).) (Han Dec., *supra*, at ¶ 57.)

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

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

///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged by him. Plaintiff contends all hourly-paid non-exempt employees who worked for Defendants during the Class Period were subject to the same or similar employment practices, policies, and procedures, which are described in greater detail above. (Han Dec., *supra*, at ¶ 58.)

Typical claims rely on legal theories and facts that are substantially like other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff was an hourly-paid non-exempt employee of Defendants and alleges that she and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to the issues described above. Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories applicable to the other Class Members. (Han Dec., *supra*, at ¶ 59.)

/ / /

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiff has proven to be an adequate Class Representative. She has conducted herself diligently and responsibly in representing the Class Members in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. Plaintiff has spent time meeting with counsel to provide counsel with a complete understanding of her work environment and requirements. (Han Dec., *supra*, at ¶¶ 2-7, 60, Exhibit 1.)

4. Class Action is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends the joinder of all Class Members is impractical and that class treatment will permit many similarly-situation persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Because several Class Members are current employees, Plaintiff believes the fear of retaliation further supports the superiority of class-wide relief as this fear discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

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

/ / /

/ / /

/ / /

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

The proposed Class Notice advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing. (See Han Dec., *supra*; Exhibit A to Exhibit 2.)

Plaintiff submits the proposed Settlement is in the best interests of the Class Members, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved.

JUSTICE LAW CORPORATION

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 aokada@justicelawcorp.com

On November 5, 2021, I served the foregoing document described as

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

for the following case: **Greene v. Information Resources, Inc. d/b/a ScanScape**
LWDA/Court Case No.: **LWDA Case No.: CM- 804633-20**
Court Case No.: CIVSB2024620
San Bernardino County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on November 5, 2021, at Pasadena, California.



Anna Okada