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

ADRIAN ESCOBEDO, individually, on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: 30-2020-01170846-CU-OE-CXC

Assigned for All Purposes to:
Honorable Peter Wilson
Department CX-102

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); Declaration of Proposed
Settlement Administrator (Julie Green); and
[Proposed] Order filed concurrently herewith]

Hearing Date: May 19, 2022
Hearing Time: 2:00 p.m.
Hearing Place: Department CX-102

Complaint Filed: November 18, 2020
FAC Filed: April 14, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 19, 2022 at 2:00 p.m., or as soon as the matter
2 may be heard, before the Honorable Peter Wilson in Department CX-102 of the Orange County
3 Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, California
4 92701, Plaintiff Adrian Escobedo (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation of Settlement and Release
7 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 3**
8 to the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, the allocations for payments under the Labor
10 Code Private Attorneys General Act of 2004 (“PAGA”), the Attorney Fee Award,
11 the Cost Award, the Class Representative Enhancement Payment, and
12 Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action and PAGA Settlement (“Class
17 Notice”) attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving
18 Class Action Settlement and Setting Hearing for Final Approval of Settlement;
- 19 • Approving the Election Not to Participate In Class Action Settlement (“Exclusion
20 Form”) attached as **Exhibit B** to the [Proposed] Order Preliminarily Approving
21 Class Action Settlement and Setting Hearing for Final Approval of Settlement;
- 22 • Directing the mailing of the proposed Class Notice and Exclusion Form
23 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
24 to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and settlement administration
26 process;
- 27 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and

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

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

Dated: April 20, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$472,500 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and former non-
4 exempt employees (whether hired directly or through a staffing agency or labor contractor) of
5 Defendant Ameripec, Inc. (“Defendant”) who worked for Defendant within California for any
6 period of time between August 31, 2016, and March 1, 2022 (“Class,” “Class Members,” and
7 “Class Period”). At the time of this filing, the number of Class Members confirmed by Defendant
8 is estimated to be two hundred eighteen (218). (Declaration of Douglas Han In Support of
9 Plaintiff’s Motion For Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶¶ 8-9.)

10 It is requested that this Court grant Preliminary Approval because when analyzing the
11 strengths and vulnerabilities of the class claims alongside Defendant’s potential liability
12 exposure, this proposed Settlement is well within the range of reasonableness. Class Counsel and
13 Plaintiff are convinced that the proposed Settlement is in the best interests of the Class Members
14 based on the negotiations and a detailed knowledge of the issues present in this action.

15 **II. BACKGROUND**

16 On August 31, 2020, then-plaintiff Todd Martin, a former employee of Defendant,
17 provided written notice to the California Labor and Workforce Development Agency (“LWDA”)
18 and Defendant. (Han Dec., *supra*, at ¶ 10.) On November 18, 2020, Todd Martin filed the instant
19 representative PAGA action, pursuant to Labor Code section 2698, *et seq.* (*Id.* at ¶ 11.)

20 On December 2, 2021, the Parties participated in a private mediation with Mark Rudy, a
21 well-respected mediator with considerable experience mediating wage-and-hour class actions.
22 (Han Dec., *supra*, at ¶ 12.) While the Parties did not settle at mediation, the mediator assisted the
23 Parties in further negotiations that subsequently resulted in the settlement of this case. (*Ibid.*)

24 Afterwards, on January 6, 2022, an amended written notice to the LWDA was submitted
25 that added Plaintiff Escobedo as an additional PAGA representative. (Han Dec., *supra*, at ¶ 13.)
26 Following Todd Martin’s death, Plaintiff filed a First Amended Complaint on April 14, 2022 that
27 substituted Plaintiff with Todd Martin as the plaintiff of this case and add eight (8) class action
28 allegations on behalf of the proposed Class. (*Id.* at ¶ 14.)

III. INVESTIGATION/ LITIGATION HISTORY

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

After initially filing the representative PAGA action, both Parties engaged in discovery. (Han Dec., *supra*, at ¶ 16.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*) Afterwards, the Parties met and conferred and agreed to engage in an informal exchange of information and then to attend mediation. (*Ibid.*)

To that end, prior to mediation, the Parties conducted significant investigation and discovery of the relevant facts and law. (Han Dec., *supra*, at ¶ 17.) Defendant produced documents relating to its wage-and-hour policies, practices, and procedures (*i.e.*, employee handbooks). (*Ibid.*) As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Class Counsel also interviewed Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

Based upon the information provided by Defendant and interviews Class Counsel had with non-exempt employees of Defendant, Plaintiff contends – and Defendant denies – that Defendant: (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay employees for all hours worked; (c) had improper rounding policies; (d) failed to factor non-discretionary bonuses and shift differentials into employees' regular rates of pay; (e) failed to reimburse employees for necessary business expenses; (f) issued noncompliant wage statements; and (g) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 19-27.)

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

i. The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation of Settlement and Release

The Parties agreed to attend a mediation with experienced wage-and-hour mediator Mark Rudy that took place on December 2, 2021. (Han Dec., *supra*, at ¶ 28.) During the mediation, the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the Parties' claims and defenses versus the benefits of settlement. (*Ibid.*) While the Parties did not settle at mediation, continued negotiations along with the mediator's assistance eventually

1 resulted in a settlement, the terms of which were memorialized in the Settlement Agreement that
2 the Parties now seek Preliminary Approval of. (*Id.* at ¶ 28; Exhibit 3.)

3 **ii. The Settlement Was Reached as a Result of Arm’s-length Negotiations**

4 At the mediation on December 2, 2021, and after, through the assistance of the mediator,
5 the Parties’ counsel engaged in extensive arm’s-length settlement negotiations until an agreement
6 was reached by all Parties, the terms of which were memorialized in the Settlement Agreement.
7 (Han Dec., *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have
8 consistently been adversarial and non-collusive in nature. (*Ibid.*)

9 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
10 and length of additional proceedings necessary to continue the litigation. (Han Dec., *supra*, at ¶
11 43.) Plaintiff and Class Counsel have considered the uncertainty and risk of further litigation, the
12 potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and
13 Class Counsel also conducted extensive settlement negotiations, including formal mediation.
14 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
15 adequate, and reasonable settlement. (*Ibid.*)

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

17 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
18 of Plaintiff’s claims and Defendant’s defenses before reaching the proposed Settlement and
19 engaged in sufficient investigation, research, and discovery to support the Settlement. (Han Dec.,
20 *supra*, at ¶ 44.) The proposed Settlement was only possible following significant investigation
21 and evaluation of Defendant’s relevant policies and procedures and the data Defendant produced
22 for the putative class. (*Ibid.*) This information produced by Defendant permitted Class Counsel
23 to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Furthermore,
24 this case has reached the stage where “the Parties certainly have a clear view of the strengths and
25 weaknesses of their cases” sufficient to support the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.*
26 (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$472,500 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (1) the Attorney Fee Award to
6 Class Counsel of \$165,375; (2) the Cost Award to Class Counsel of up to \$20,000; (3) the Class
7 Representative Enhancement Payment \$7,500 to Plaintiff; (4) Administration Costs to CPT
8 Group, the Settlement Administrator, of \$9,500; and (5) the PAGA Payment of \$25,000 to the
9 LWDA and PAGA Members. (Han Dec., *supra*, at ¶ 29.)

10 **ii. Calculation of the Class Members’ Individual Settlement Shares**

11 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
12 that \$245,125 (“Net Settlement Amount”) will be distributed to the Participating Class Members,
13 resulting in an average Individual Settlement Share of \$1,124.43. (Han Dec., *supra*, at ¶ 31.)

14 Only Plaintiff and Participating Class Members will receive Individual Settlement Shares
15 under the Agreement that will be calculated in accordance with the formula set forth in the
16 Agreement. (Han Dec., *supra*, at ¶ 32.) Individual PAGA Payments will be calculated by the
17 Settlement Administrator using the formula set forth in the Agreement. (*Id.* at ¶ 33.)

18 **iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is**
19 **Justified Under the Claims of this Action**

20 Individual Settlement Shares will be apportioned as follows: twenty percent (20%) as
21 wages and eighty percent (80%) as penalties and interest. (Han Dec., *supra*, at ¶ 32.)

22 The allocation of wages, penalties, and interest was reached based on the realistic
23 exposure Plaintiff could expect to receive for meal and rest break premiums, unpaid wages due
24 to off-the-clock work, underpaid wages due to rounding, and underpaid overtime wages due to
25 Defendant’s regular rates issue if this case went to trial. (Han Dec., *supra*, at ¶ 73.) While unpaid
26 wages due to off-the-clock work, rounding, and failure to factor non-discretionary bonuses and
27 shift differentials into employees’ regular rates of pay qualify as wages, failure to pay premium
28 wages for noncompliant meal and rest breaks could be characterized as wages or penalties. (*Ibid.*)

As a result, the Parties added the realistic exposure for rest break premiums and meal break premiums ($\$41,078.26 + \$53,914.56 = \$94,992.82$) and divided the sum in half to represent one-half for wages and one-half for penalties ($\$47,496.41$). (Han Dec., *supra*, at ¶ 73.) The Parties added the $\$47,496.41$ representing wages to the high end realistic exposure for unpaid wages due to off-the-clock work, underpaid wages due to rounding, and underpaid overtime wages for failure to factor non-discretionary bonuses and shift differentials into employees' regular rates of pay ($\$47,496.41 + \$116,615.62 + \$43,548.35 + \$53,907.10 = \$261,567.48$). (*Ibid.*) The realistic exposure of $\$261,567.48$ that Plaintiff can expect to receive for the wage portion of meal and rest break premiums, high end unpaid wages due to off-the-clock work, and underpaid wages due to rounding and failure to factor non-discretionary bonuses and shift differentials into employees' regular rates of pay represents about twenty percent (20.39%) of the high end realistic exposure of the maximum total exposure plus the PAGA penalties ($\$714,859.25 + \$568,000 = \$1,282,859.25$). (*Ibid.*) Because this represents twenty percent (20%) of wages, the Parties determined allocating twenty percent (20%) as wages and eighty percent (80%) as non-wages (penalties and interest) pursuant to the Settlement Agreement was appropriate. (*Ibid.*)

iv. Notice to the Class

Within twenty-one (21) calendar days following notice by Plaintiff or the Court of the Court's Preliminary Approval Order, Defendant will provide the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 35.) Within twenty-one (21) calendar days of the Settlement Administrator's receipt of the Class Data, the Settlement Administrator shall run all addresses contained in the Class Data through the United States Postal Service's National Change of Address Database to obtain current address information and shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available. (*Id.* at ¶ 36.) The Settlement Administrator will mail the Class Members Notice Packets in both English and Spanish. (*Ibid.*) Class Members and PAGA Members are not required to submit a claim form to receive their settlement payments. (*Ibid.*)

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1 **v. Distribution of Funds**

2 Prior to the Effective Date, Defendant will not be required to fund the Settlement, in whole
3 or in part, through the Settlement Administrator or any third party. (Han Dec., *supra*, at ¶ 37.)
4 Within thirty (30) calendar days of the Effective Date, Defendant shall provide the Settlement
5 Administrator with sufficient funds to make all the payments required under the Settlement.
6 (*Ibid.*) Within thirty (30) calendar days after receipt of the Gross Settlement Amount from
7 Defendant, the Settlement Administrator shall make the following payments as approved by the
8 Court: (a) Individual Settlement Shares; (b) the Attorney Fee Award; (c) the Cost Award; (d) the
9 Class Representative Enhancement Payment; (e) the PAGA Payment, including the payment to
10 the LWDA and all Individual PAGA Payments; and (f) the Administration Costs. (*Ibid.*)

11 Participating Class Members and PAGA Members must cash or deposit their Individual
12 Settlement Share and Individual PAGA Payment checks, as applicable, within one hundred eighty
13 (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 38.) Uncashed
14 checks will be canceled and paid to the California State Controller's Office. (*Ibid.*)

15 **vi. Release of Claims**

16 Participating Class Members, and their successors, assigns, and/or agents, and each and
17 all of them, upon the Effective Date and by operation of the Final Approval Order, shall fully and
18 finally release and discharge the Released Parties, and each and all of them, from the Released
19 Claims ("Released Claims"). (Han Dec., *supra*, at ¶ 39; Exhibit 3, *supra*, at §§ I.EE., V.I.)

20 As of and subject to the occurrence of the Effective Date, and in consideration for the
21 Gross Settlement Amount, Plaintiff, the LWDA, and any Individual PAGA Member, and each
22 and all of them, fully release and forever discharge the Released Parties, and each of them, from
23 the PAGA Released Claims ("PAGA Released Claims"). (Han Dec., *supra*, at ¶ 40; Exhibit 3,
24 *supra*, at §§ I.AA., V.J.) An individual PAGA Member who submits a timely and valid Exclusion
25 Form as to the Class shall still be entitled to his or her Individual PAGA Payment and shall release
26 the PAGA Released Claims. (Han Dec., *supra*, at ¶ 40.)

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1 The Released Parties are Defendant and each and all of its past, present, and future parent
2 companies, subsidiaries, affiliates, and their respective shareholders, members, owners, partners,
3 representatives, fiduciaries, agents (including, without limitation, any investment bankers,
4 accountants, insurers, reinsurers, attorneys, trustees, equity sponsors, joint employers, alter-egos,
5 joint venturers, auditors, consultants, and any past, present, or future officers, directors, and
6 employees), and each and all of them, and each and all of their predecessors, successors, heirs,
7 and assigns, and any individual or entity which could be jointly liable with Defendant, or any of
8 them (“Released Parties”). (Han Dec., *supra*, at ¶ 41; Exhibit 3, *supra*, at § I.FF.)

9 With regard to class action releases, “[A] court may release not only those claims alleged
10 in the complaint and before the court, but also claims which ‘could have been alleged by reason
11 of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
12 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases
13 in this case are acceptable because they are limited to the scope of the allegations in the
14 Complaint. Moreover, the released claims are ““based on *the identical factual predicate* as that
15 underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do
16 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

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. (Han Dec., *supra*, at ¶¶ 2-7; Exhibits 1-2.) Class Counsel have prosecuted
20 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
21 qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial,
22 and the viability of the defenses. (*Ibid.*) Class Counsel’s experience guided their determination
23 to endorse the proposed Settlement.¹ (*Ibid.*)

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26 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
27 number of objectors – is not determinable until the Class Notice has been provided to the Class
28 Members, 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 Rules of Court, rule 3.769 requires court approval for class action settlements.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

- 7 (a) A settlement or compromise of an entire class action, or a cause of action in
8 a class action, or as to a party, requires the approval of the court after
9 hearing.
10 ...
11 (b) Any party to a settlement agreement may serve and file a written notice of
motion for preliminary approval of the settlement. The settlement
agreement and proposed notice to class members must be filed with the
motion, and the proposed order must be lodged with the motion.

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

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

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

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26 ² The California Supreme Court has also authorized California’s trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
28 *Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, Plaintiff cites 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 v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 133.)
4 Finally, *Kullar* does not require an explicit statement of the maximum amount the class could
5 recover if the plaintiff prevailed on all his claims, provided there is a record that allows “an
6 understanding of the amount that is in controversy and the realistic range of outcomes of the
7 litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p.
8 409.) Put differently, “as the court does when it approves a settlement as in good faith under Code
9 of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within
10 the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

11 **i. The Settlement Amount of \$472,500 Is Fair and Reasonable**

12 The proposed Settlement was only possible following significant investigation and
13 evaluation of Defendant’s relevant policies and procedures and the data Defendant produced for
14 the putative class, as referenced in Section III(b)(iii) above, permitting Class Counsel to engage
15 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 44.)

16 This investigation and evaluation informed Plaintiff’s central theories of liability that are
17 predicated on Defendant’s alleged: (1) failure to properly calculate and pay overtime wages; (2)
18 failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay minimum
19 wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure
20 to reimburse business expenses; (7) violation of Labor Code sections 2698, *et seq.* (PAGA); and
21 (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 45.)
22 Defendant denies Plaintiff’s theories of liability. (*Id.* at ¶ 46.)

23 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
24 to certification are always present. (Han Dec., *supra*, at ¶ 47.) As the California Supreme Court
25 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
26 a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores*,
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28

1 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
2 These factors led Plaintiff to discount the calculations of potential damages.

3 **ii. The PAGA Payment of \$25,000 Is Reasonable**

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 Dec., *supra*,
7 at ¶ 57.) Defendant asserted that, regardless of the results of the underlying causes of action,
8 PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant
9 maintained that, in addition to its strong arguments against the underlying claims, it had a strong
10 argument that it would be unjust to award maximum PAGA penalties given the law's unsettled
11 state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
12 penalties by 30% under this authority].) Defendant argued that without stacking and limited to
13 the initial violation, the PAGA penalties would be limited to **\$14,200** (142 employees x \$100
14 initial violations) on the low end and **\$85,200** (142 employees x \$100 x 6 theories of recovery)
15 on the high end. (*Id.* at ¶¶ 58-61.)

16 Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
17 at ¶ 62.) Many of the causes of action brought were duplicative of the statutory claims, such as
18 Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*)
19 The maximum penalties for each pay period are not justified. (*Ibid.*) It was arguable the Court
20 would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$25,000 to PAGA
21 civil penalties was reasonable based on a rate of **\$4.38** per pay period [\$25,000 ÷ 5,707 pay
22 periods in PAGA date range = **\$4.38**], given the fact that Defendant is paying an additional
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24
25 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

\$447,500 in the class settlement.⁴ (Han Decl., *supra*, at ¶ 62.) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁵ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$472,500 is reasonable, adequate, 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 **\$2,229,190.34** on the low end and **\$2,384,738.98** on the high end. (Han Dec., *supra*, at ¶ 63.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$342,318.81	70%	60%	\$41,078.26
Meal Break Premiums	\$269,572.80	60%	50%	\$53,914.56
Overtime/Minimum Wage: Off-the-Clock Work	\$310,913.85 to \$466,462.49	50%	50%	\$77,728.46 to \$116,615.62
Overtime/Minimum Wage: Rounding	\$103,686.54	30%	40%	\$43,548.35
Overtime/Minimum Wage: Regular Rate	\$179,690.34	40%	50%	\$53,907.10
Unreimbursed Business Expenses	\$132,600	20%	70%	\$31,824
Wage Statement Penalty	\$560,900	30%	40%	\$235,578
Waiting Time Penalty	\$329,508	30%	40%	\$138,393.36
MAXIMUM TOTAL EXPOSURE	\$2,229,190.34 to \$2,384,738.98⁶			\$675,972.09 to \$714,859.25⁷

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

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 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”).)

⁶ (Han Decl., *supra*, at ¶¶ 48-56.)

⁷ (*Id.* at ¶¶ 64-71.)

1 Based on this analysis, the realistic recovery for this case is **\$675,972.09** on the low end
2 and **\$714,859.25** on the high end. (Han Decl., *supra*, at ¶ 72.) The Gross Settlement Amount of
3 \$472,500 is approximately twenty percent (19.81%) of the maximum potential exposure and
4 about sixty-six percent (66.10%) of the maximum realistic exposure at trial, which is more than
5 fair and adequate settlement. (*Ibid.*)

6 The only question at preliminary approval is whether the settlement is within the range of
7 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
8 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
9 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
10 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also
11 *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
12 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
13 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
14 speculative measure of what might have been achieved by the negotiators”). Nevertheless, this
15 settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides
16 significant recovery for the Class Members.

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

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

24 The Class is ascertainable and numerous as to make it impracticable to join all Class
25 Members, and there are common questions of law and fact that predominate over any questions
26 affecting any individual Class Member. (Han Dec., *supra*, at ¶74.) Plaintiff contends that as a
27 former hourly-paid, non-exempt employee of Defendant, his claims are typical of the claims of
28 the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)

Also, Plaintiff asserts that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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.)

This case involves about two hundred eighteen (218) Class Members. (Han Dec., *supra*, at ¶ 75.) Thus, the Class is sufficiently numerous. (*Ibid.*) All Class Members can and will be identified by Defendant through a review of Defendant’s employment records concerning all non-exempt California employees of Defendant during the Class Period. (*Ibid.*)

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 Drug Stores, Inc. v. Superior Court*, *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.” (*Ibid.*)

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1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged. (Han Dec., *supra*, at ¶ 76.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiff’s Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of Defendant and alleges he and the Class Members were employed by the same company and injured by Defendant’s common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 77.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 78.) Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to

1 provide Class Counsel with a complete understanding of their work environment and
2 requirements. (Han Dec., *supra*, at ¶ 78.) Furthermore, Plaintiff has no interest that is averse to
3 the interests of the other Class Members. (*Ibid.*)

4 **4. Class Action Is Superior for the Fair and Efficient**
5 **Adjudication of this Controversy**

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

13 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

21 **f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

22 California Rules of Court, rule 3.769(f), provides:

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

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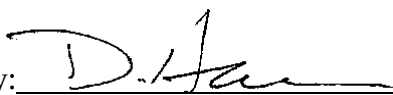
1 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
2 advises the Class Members of their right to participate in the Settlement; how and when to object
3 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
4 Hearing. (See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

5 **V. CONCLUSION**

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

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11 Dated: April 20, 2022

JUSTICE LAW CORPORATION

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13 By: 
14 Douglas Han
15 Attorneys for Plaintiff
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