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

ROBERT ENRIQUEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: 20CV-03162

Assigned for All Purposes to:
Honorable Brian McCabe
Department 8

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: March 1, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Department 8

Complaint Filed: November 2, 2020
FAC Filed: December 21, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 1, 2022 at 8:15 a.m., or as soon as the matter
2 may be heard before the Honorable Brian McCabe in Department 8 of the Merced County Superior
3 Court, located at 627 W. 21st Street, Merced, CA 95340, Plaintiff Robert Enriquez (“Plaintiff”)
4 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 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 2** to
8 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”), Attorney Fee Award, Cost
11 Award, Class Representative Enhancement Payment, and Administration Costs;
12 • Conditionally certifying the proposed Class for settlement purposes only;
13 • Appointing Plaintiff as the Class Representative;
14 • Appointing Justice Law Corporation as Class Counsel;
15 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
16 attached as **Exhibit A** to the Agreement;
17 • Approving the Election Not to Participate In (“Opt Out” From) Class Action
18 Settlement (“Exclusion Form”) attached as **Exhibit B** to the Agreement;
19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
21 to the proposed Class;
22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
24 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and

25 ///

26 ///

27 ///

- 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 approval of 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 [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: January 28, 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 \$300,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all non-exempt
4 California employees of Defendant Global Modular, Inc. (“Defendant”) during the period from
5 May 8, 2016, to December 1, 2021 (“Class,” “Class Members,” and “Class Period”). At the time
6 of this filing, the number of Class Members is estimated to be one-hundred eighty (180).
7 (Declaration of Douglas Han (“Han Dec.”), ¶¶ 8-9.)

8 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
9 vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this proposed
10 settlement of \$300,000 is well within the range of reasonableness. Class Counsel and Plaintiff is
11 convinced that the proposed Settlement is in the best interests of the Class Members based on the
12 negotiations and a detailed knowledge of the issues present in this action.

13 **II. BACKGROUND**

14 On August 21, 2020, Plaintiff, a former hourly-paid, non-exempt employee of Defendant,
15 provided written notice to the California Labor and Workforce Development Agency (“LWDA”)
16 and Defendant. (Han Dec., *supra*, at ¶ 10.) On November 2, 2020, after the sixty-five (65) day
17 notice period expired, Plaintiff filed a wage-and-hour class action against Defendant in the
18 Superior Court of California, County of Merced, alleging nine (9) causes of action. (*Id.* at ¶ 11.)

19 The Parties attended mediation on Plaintiff’s claims with mediator Kelly A. Knight, Esq.,
20 on October 7, 2021. (Han Dec., *supra*, at ¶ 12.) While the Parties were not able to settle at
21 mediation, with the aid of the mediator and upon further review of Defendant’s financial condition,
22 the Parties were eventually able to reach an agreement on settlement of the action. (*Ibid.*)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

25 After Plaintiff filed his wage-and-hour class action lawsuit, Plaintiff engaged in discovery.
26 (Han Dec., *supra*, at ¶ 14.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of
27 special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for
28 production of documents. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to attend

1 mediation following an informal exchange of information. (Han Dec., *supra*, at ¶ 14.)

2 Prior to the mediation on October 7, 2021 and both before and after the lawsuit was first
3 filed, the Parties conducted significant investigation of the facts and law. (Han Dec., *supra*, at ¶
4 15.) Specifically, Defendant produced documents relating to its wage-and-hour policies, practices,
5 and procedures. (*Ibid.*) Class Counsel also interviewed Class Members who worked for Defendant
6 throughout the Class Period. (*Ibid.*)

7 Based upon the information provided by Defendant and interviews Class Counsel had with
8 non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant: (a) failed to
9 provide employees with legally mandated meal and rest breaks; (b) failed to pay employees for all
10 hours worked; (c) failed to reimburse employees for necessary business expenses; (d) issued
11 noncompliant wage statements; and (e) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶
12 17-22.)

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

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

16 During the Parties' mediation on October 7, 2021, the Parties discussed the risks of
17 continued litigation, certification, and the merits of the claims and defenses versus settlement
18 benefits. (Han Dec., *supra*, at ¶ 24.) While the Parties were not able to settle at mediation, with
19 the aid of the mediator and upon further review of Defendant's financial condition, the Parties
20 were able to reach an agreement on settlement, the terms of which were memorialized in the
21 Settlement Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

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

23 The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
24 *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have always been
25 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted
26 extensive arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

27 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
28 and length of continued proceedings necessary to continue the litigation against Defendant. (Han

Dec., *supra*, at ¶ 41.) Plaintiff and Class Counsel have also considered the inherent uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement, and is in the Class’s best interests. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses before reaching the Settlement and engaged in sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶ 42.) The Settlement was only possible following significant investigation and evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant produced. (*Ibid.*) Furthermore, this case has also reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$300,000 (“Gross Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to Class Counsel in an amount not to exceed \$105,000 (35% of the Gross Settlement Amount); (b) the Cost Award to Class Counsel in an amount not to exceed \$15,000 for reimbursement of litigation costs and expenses; (c) the Class Representative Enhancement Payment in the amount of \$10,000 to Plaintiff for his service as the Class Representative; (d) Administration Costs to Simpluris, the Settlement Administrator, in an amount not to exceed \$10,000; and (e) the PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$5,000) shall be distributed to the Eligible Aggrieved Employees, on a pro rata basis. (Han Dec., *supra*, at ¶ 25.)

ii. Calculation of the Class Members’ Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated

that \$140,000 (“Net Settlement Amount”) will be distributed to Class Members – with an average gross Individual Settlement Share estimated at \$777.77.¹ (Han Dec., *supra*, at ¶ 27.)

Participating Class Member’s Individual Settlement Share will be apportioned as thirty-three percent (33%) wages and sixty-seven percent (67%) penalties and interest. (Han Dec., *supra*, at ¶ 28.)

The Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member in accordance with the formula listed in the Agreement. (Han Dec., *supra*, at ¶ 29.)

The Settlement Administrator shall also pay each Eligible Aggrieved Employee according to his or her proportional share, which will be based upon the total number of pay periods the Eligible Aggrieved Employee worked as a California non-exempt employee of Defendant during the PAGA Timeframe. (Han Dec., *supra*, at ¶ 30.)

iii. Notice to the Class

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 32.) Within fifteen (14) calendar days after the receipt of the Class Data from Defendant, the Settlement Administrator will mail the Notice Packet to the Class Members via first-class regular U.S. using the most current mailing address information available. (*Id.* at ¶ 33.) Class Members are not required to submit a claim form to receive their Individual Settlement Shares. (*Ibid.*)

iv. Distribution of Funds

Defendant shall fund the settlement in twenty consecutive monthly payments by depositing \$15,000.00 per month into the Qualified Settlement Fund (“QSF”) set up by the Settlement Administrator. (Han Dec., *supra*, at ¶ 34.) The Settlement Administrator shall disburse the Maximum Settlement Amount in two disbursements, with the first disbursement made within fourteen (14) calendar days after fifty (50) percent of the Maximum Settlement Amount is deposited into the QSF, and the second disbursement made within fourteen (14) calendar days

¹ \$140,000 (Net Settlement Amount) / 180 (Class Members) = \$777.77.

1 after the remaining fifty (50) percent of the Maximum Settlement Amount is deposited into the
2 QSF. (Han Dec., *supra*, at ¶ 34.)

3 Participating Class Members must cash or deposit their Individual Settlement Share checks
4 within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec.,
5 *supra*, at ¶ 35.) If any checks are not redeemed or deposited within ninety (90) calendar days after
6 mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain
7 uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice,
8 the Settlement Administrator will, within two hundred (200) calendar days after the checks are
9 initially mailed, cancel the check(s), and pay the amount of the Individual Settlement Share(s) to
10 the California State Controller: Unpaid Wage Fund. (*Ibid.*)

11 **v. Release of Claims**

12 Upon Defendant’s fulfillment of its payment obligations under section III (J)(9)(a) of the
13 Agreement, Plaintiff and the other Participating Class Members will fully and finally release and
14 discharge the Released Parties from the Released Claims (“Released Claims”). (Han Dec., *supra*,
15 at ¶ 36; Exhibit 2, *supra*, at §§ I(KK) and III(I).)

16 Upon Defendant’s fulfillment of its payment obligations under section III (H)(8)(a) of the
17 Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not
18 limited to, any and all Eligible Aggrieved Employees are barred from pursuing any action for civil
19 penalties under PAGA, Labor Code sections 2698, *et seq.*, against the Released Parties, based on
20 or arising out of the alleged violations of Labor Code sections alleged in Plaintiff’s PAGA notice
21 to the LWDA and the complaint, and occurring during the PAGA Timeframe. (Han Dec., *supra*,
22 at ¶ 37; Exhibit 2, *supra*, at § III(J).)

23 Upon Defendant’s fulfillment of its payment obligations under section III (H)(8)(a) of the
24 Agreement, in exchange for the Class Representative Enhancement Payment in an amount not to
25 exceed \$10,000, and in recognition of his work and efforts in obtaining the benefits for the Class
26 and undertaking the risk of paying litigation costs in the event this matter had not successfully
27 resolved, Plaintiff provides a general release of claims for himself and any respective spouse, heirs,
28 successors and assigns. (Han Dec., *supra*, at ¶ 38; Exhibit 2, *supra*, at § III(K).)

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

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

10 Counsel for both Parties are particularly experienced in wage-and-hour employment law
11 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel has prosecuted numerous
12 cases on behalf of employees for Labor Code violations and, thus, are experienced and qualified
13 to evaluate the class claims, the settlement versus trial on a fully informed basis, and the viability
14 of the defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of
15 further litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

16 **IV. ARGUMENT**

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

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

22 ///

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

28 ³ The California Supreme Court has also 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

4 ...

5 (c) Any party to a settlement agreement may serve and file a written notice of
6 motion for preliminary approval of the settlement. The settlement
7 agreement and proposed notice to class members must be filed with the
8 motion, and the proposed order must be lodged with the motion.

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

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

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

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

1 **i. The Settlement Amount of \$300,000 Is Fair and Reasonable**

2 The proposed Settlement was only possible following significant investigation and
3 evaluation of Defendant's relevant policies and procedures, as well as the data Defendant produced
4 for the putative class, as referenced in Section III above, which permitted Class Counsel to engage
5 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 42.)

6 This investigation and evaluation informed Plaintiff's central theories of liability. (Han
7 Dec., *supra*, at ¶ 43.) These claims are predicated on Defendant's alleged: (a) failure to properly
8 calculate and pay overtime wages and sick leave pay; (b) failure to provide meal and rest breaks
9 and pay applicable premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages;
10 (e) failure to issue compliant wage statements; (f) failure to reimburse business expenses; (g)
11 violation of Labor Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions
12 Code sections 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiff's theories of liability. (*Id.* at ¶ 43.)

13 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
14 to certification are always present. (Han Dec., *supra*, at ¶ 45.) As the California Supreme Court
15 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
16 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
17 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
18 (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

19 **ii. The PAGA Payment of \$20,000 Is Reasonable**

20 The provisions of the Labor Code potentially triggering PAGA penalties in this case
21 include but are not limited to Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3,
22 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 52.)
23 Defendant asserts that, regardless of the results of the underlying causes of action, PAGA penalties

24 _____
25 ⁴ (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].)

are not mandatory but permissive and discretionary. (Han Dec., *supra*, at ¶ 52.) Defendant also maintains that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$ 7,500** (75 employees x \$100 initial violations) on the low end and **\$45,000** (75 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec., *supra*, at ¶¶ 54-55.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the statutory claims such as violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties was reasonable based on a rate of **\$1.65** per pay period [$\$20,000 \div 12,145$ pay periods in PAGA date range = **\$1.65**], given the fact that Defendant is also paying an additional \$280,000 in the class settlement.⁵ (*Ibid.*) 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.⁶ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$300,000 is reasonable, adequate, and fair.

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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].)

⁶ (*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”).)

c. Discount Analysis Justifies the Settlement

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 about **\$366,080.76** on the low end and **\$428,768.64** on the high end. (Han Dec., *supra*, at ¶ 58.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$214,983.30	70%	60%	\$90,292.99
Meal Break Premiums	\$155,112	60%	50%	\$46,533.60
Overtime/Minimum Wage: Off-the-Clock Work	\$431,577 to \$605,710	60%	60%	\$155,367.72 to \$218,055.60
Unreimbursed Business Expenses	\$23,745	30%	70%	\$4,986.45
Wage Statement Penalty	\$137,500	40%	50%	\$27,500
Waiting Time Penalty	\$207,000	40%	50%	\$41,400
MAXIMUM TOTAL EXPOSURE	\$1,169,917.30 to \$3,291,960.30			\$366,080.76 to \$428,768.64

Based on this analysis, the realistic recovery for this case is **\$366,080.76** on the low end and **\$428,768.64** on the high end. (Han Dec., *supra*, at ¶ 65.) The Gross Settlement Amount of \$300,000 is about twenty-two percent (22%) of the maximum potential exposure and approximately seventy percent (70%) of the maximum realistic exposure at trial. (*Ibid.*)

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 1059, 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*, *supra*, 34 Cal.4th at p. 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. (Han Dec., *supra*, at ¶ 66.) Plaintiff contends that as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the claims of 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 approximately one hundred eighty (180) Class Members. (Han Dec., *supra*, at ¶ 67.) Thus, the Class is sufficiently numerous. (*Ibid.*; *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].)

1 **ii. The Class Members Share a Well-defined Community of Interest**

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

11 **1. Common Issues Predominate**

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

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 68.) Plaintiff contends all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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

27 Typical claims rely on legal theories and facts that are substantially like those of other class
28 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of

1 Defendant and alleges he and the Class Members were employed by the same company and injured
2 by Defendant's common policies and practices related to the claims described above. (Han Dec.,
3 *supra*, at ¶ 69.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class
4 Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based
5 on the same legal theories as those applicable to the Class. (*Ibid.*)

6 **3. Plaintiff Is Adequate to Represent the Class**

7 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 70.)
8 He has conducted himself diligently and responsibly in representing the Class in this litigation,
9 understand his fiduciary obligations, and has actively participated in the prosecution of this case.
10 (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class
11 Counsel with a complete understanding of his work environment and requirements. (*Ibid.*)
12 Further, Plaintiff has no interest that is averse to the interests of the other Class Members. (*Ibid.*)

13 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 14 **of this Controversy**

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

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

23 In deciding whether to approve a proposed class action settlement under Code of Civil
24 Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and
25 reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
26 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
27 after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel
28 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the

percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 at p. 1802.)
All these elements are present here.

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

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

If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for 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.

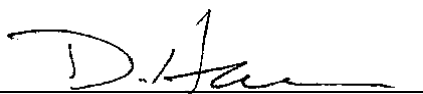
The proposed Notice Packet meets all these requirements. The proposed Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval hearing. (See Han Dec.,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

V. CONCLUSION

Plaintiff submits that the proposed Settlement is in the best interests of the Class, 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 Notice Packet should be approved.

Dated: January 28, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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