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individually, and on behalf of all other similarly
situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DIEGO DEGANTE, individually, and on
behalf of all other similarly situated
employees,

Plaintiffs,

vs.

SUN LEE, INC., a California corporation,
and DOES 1 through 50, inclusive,

Defendant.

Case No.: 20STCV31759
Related Case: 21STCV07574

[Assigned for all purposes to the Hon. Amy D.
Hogue, Dept. 7

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: January 6, 2022
Time: 11:00 a.m.
Place: Department 7

Action Filed: August 18, 2020
FAC Filed: November 20, 2020
Trial Date: None

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 6, 2022 at 11:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department 7 of the above-captioned court, located at 312 N. Spring Street,
4 Los Angeles, California 90012, the Honorable Amy D. Hogue, presiding, Plaintiff Diego Degante will,
5 and hereby does, move this Court to:

6 1. Preliminarily approve the settlement described in the Stipulation of Class Action and
7 PAGA Settlement (attached as **Exhibit A** to the Declaration of Armond M. Jackson), which contains the
8 principal terms of the class action settlement between Plaintiff Diego Degante and Defendant Sun Lee,
9 Inc. (“Defendant”);

10 2. Conditionally certify the proposed Settlement Class;

11 3. Approve distribution of the proposed Notice of Class Action and PAGA Settlement
12 (“Notice of Class Action Settlement”) to the Settlement Class (attached as **Exhibit 1** to **Exhibit A** of the
13 Declaration of Armond M. Jackson);

14 4. Appoint Plaintiff Diego Degante as the class representative;

15 5. Appoint Jackson Law, APC as class counsel;

16 6. Appoint Simpluris, Inc. as the settlement administrator; and

17 7. Set a hearing date for final approval of the settlement.

18 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
19 Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement; (3)
20 the Declaration of Armond M. Jackson; (4) the Stipulation of Class Action and PAGA Settlement; (5)
21 the Notice of Class Action Settlement; (6) the [Proposed] Order Granting Preliminary Approval of the
22 Stipulation of Class Action and PAGA Settlement; (7) the records, pleadings, and papers filed in this
23 action; and (8) such other documentary and oral evidence or argument as may be presented to the Court
24 at or prior to the hearing of this Motion.

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1 Dated: October 14, 2021

Respectfully submitted,

2
3 By: /s/ Armond M. Jackson

Armond M. Jackson, Esq.

Andrea M. Fernandez, Esq.

4 **JACKSON LAW, APC**

5 Attorneys for Plaintiff DIEGO DEGANTE and all
6 other similarly situated employees
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Diego Degante (“Plaintiff”) seeks preliminary approval of the Parties’ Stipulation of Class Action and PAGA Settlement (hereinafter “Stipulation” or “Settlement”), which if approved by the Court, would provide valuable monetary relief for 84 current and former employees of Defendant Sun Lee, Inc. “Defendant”) (collectively with Plaintiff, the “Parties”). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit A** to the Declaration of Armond M. Jackson (“Jackson Decl.”), the basic terms of which provide for:

- (1) Conditional certification of the Settlement on behalf of Class Members defined as: All hourly paid warehouse workers employed by Defendant in the State of California during the Class Period, which is from August 18, 2016 through the date the Court enters an order granting preliminary approval of the Stipulation.
- (2) A non-reversionary Class Settlement Amount of \$208,000 in addition to employer payroll taxes which will be paid separately by Defendant. The Maximum Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$114,923.60 (the Maximum Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”), and without the need to submit claims for payment.
 - (b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$69,326.40) and litigation costs and expenses not to exceed \$10,000, to Jackson Law, APC (“Class Counsel”).
 - (c) Settlement Administration Costs, currently estimated at \$5,000, to be paid to the jointly selected settlement administrator, Simpluris, Inc.¹
 - (d) A \$3,750.00 payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).
 - (e) Class Representative Enhancement Payment of \$5,000 to Diego Degante for his service on behalf of the Settlement Class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class Members’ behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm’s-

¹ The parties obtained several bids for settlement administration and ultimately selected Simpluris, Inc. to administer the settlement based on price and reliability.

length with helpful guidance from mediator Eleanor Barr, Esq., an experienced, well-respected class action mediator, and the Stipulation confers substantial benefits to Class Members. The relief offered by the Settlement—**average payment of \$1,368.13** per full-time Class Member—is particularly impressive when viewed against the difficulties in pursuing wage and hour cases. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial.

As discussed below, the proposed Stipulation satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Moreover, the proposed group of Class Members is appropriate for provisional certification. Accordingly, the Parties respectfully request that this Court grant preliminary approval of the Settlement.

II. FACTS AND PROCEDURE

A. Summary of the Litigation.

Defendant is a small, family-run business that imports and distributes Asian food products. Defendant has distribution facilities in Santa Fe Springs, California, Hayward, California, Houston, Texas, and Tacoma, Washington. Employees at the distribution facilities include three departments: Office, Sales, and Warehouse. Plaintiff Degante was employed by Defendant from 2000 to around June 15, 2020 as a non-exempt Warehouse helper at the distribution facility in Santa Fe Springs. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendant’s eighty-four (84) Warehouse workers in the State of California, during the Class Period. [*Id.*]

On August 18, 2020, Plaintiff filed a Class Action Complaint in the Los Angeles County Superior Court alleging violations of the California Labor Code and applicable wage orders for the following claims: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to provide and maintain accurate itemized wage statements; (6) failure to pay timely wages upon termination; as well as an addition claim for (7) unlawful business practices under Business and Professions Code section 17200 et. seq. in order to extend the claims back four years to August 18, 2020. Plaintiff Degante also submitted a PAGA notice letter to the LWDA on August 21, 2020, and amended his Complaint to add that claim on or around November 20, 2020. [Jackson Decl. ¶ 4.]

1 Thereafter, Plaintiff served a set of written discovery, including a Request for Production of
2 Documents and Special Interrogatories. Defendant served its responses on February 10, 2021. In its
3 responses, Defendant agreed to complete a *Belaire West* procedure prior to producing contact information
4 for the putative class members. Defendant also agreed to produce the time records and wage statements
5 for a 25% sample of the putative class members, upon completion of the *Belaire West* notice procedure.
6 [Jackson Decl. ¶ 5.]

7 Plaintiff also agreed to exclude the Office and Sales department employees and limit the class to
8 the Warehouse workers only. After completion of a *Belaire West* notice, mailed to all putative class
9 members, 72 putative class members permitted disclosure of their contact information, and time and
10 payroll data to Plaintiff's counsel. [Jackson Decl. ¶ 6.] After completion of the *Belaire West* notice
11 procedure in May 2021, the parties agreed Defendant would produce a complete set of all the time cards
12 and wage statements for a 25% of those 72 Warehouse workers who did not opt out, as a statistically
13 significant sampling size for expert analysis. Defendant produced such data for twenty (20) Warehouse
14 workers, including Plaintiff Diego Degante. Prior to the mediation and for purposes of the Settlement, the
15 parties relied upon expert analysis of the time cards and wage statements by a prominent expert consultant
16 in the area of wage and hour class actions, Aaron Woolfson ("expert" or "the expert") and, ultimately,
17 provided the expert all of the wage statements for all 84 Warehouse workers. [Jackson Decl. ¶ 7.]

18 Plaintiff's primary theories of liability are as follows:

- 19 • **Unlawful Meal Period Policy Claim:** Plaintiff alleges that Defendant failed to provide
20 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
21 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶ 8.]
- 22 • **Unlawful Rest Break Policy Claim:** Plaintiff alleges that Defendant failed to permit and
23 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶ 9.]
- 24 • **Minimum Wage and Overtime Claim:** Plaintiff alleges that Defendant's practices of
25 having employees begin work before clocking in and also having employees clock out at the end of their
26 shifts but then finish their work effectively forced Class Members to work off-the-clock in order to
27 complete all of their assigned daily duties, which resulted in unpaid hours worked that also should have
28 been paid at the overtime rate of pay. [Jackson Decl. ¶ 10.]

1 • **Wage Statement Claim:** Plaintiff alleges that Defendant failed to provide complete and
2 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
3 statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked
4 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 11.]

5 After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for
6 August 18, 2021. Prior to the mediation, Defendant supplemented their formal written discovery by
7 providing Plaintiff with Plaintiff's personnel file, Defendant's Employee Handbook, the total number of
8 Class Members, including those formerly employed during the class period, and the total number of pay
9 periods and workweeks during the class period. Plaintiff's counsel thoroughly reviewed the foregoing
10 documents prior to mediation. [Jackson Decl. ¶ 12.] The Parties also relied upon the expert to analyze a
11 statistically significant sampling of class-wide timekeeping data and then even provided the expert with
12 the entire set of wage statements for all 84 putative class members, which was integral for assessing the
13 value of the claims and determining a realistic range of recovery for settlement purposes. [Jackson Decl. ¶
14 13.]

15 **B. The Parties Settled at the Mediation.**

16 On August 18, 2021, the Parties participated in a full day of mediation with mediator Eleanor
17 Barr, Esq., an experienced mediator of wage and hour class actions. Mediator Barr helped to manage the
18 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the
19 conclusion of the mediation, the Parties jointly drafted a Memorandum of Understanding containing the
20 material terms of the Parties' agreement. [Jackson Decl. ¶ 14.] Thereafter, the Parties jointly drafted and
21 executed the Stipulation. [Jackson Decl., **Exhibit A.**] At all times, the Parties' negotiations were
22 adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable
23 compromise of the claims at issue. [Jackson Decl. ¶ 14.]

24 **C. The Proposed Settlement Fully Resolves Plaintiff's Claims.**

25 **1. Composition of the Settlement Class and Settlement Consideration**

26 The proposed group of Class Members consists of all hourly paid Warehouse workers employed
27 by Defendant in California during the Class Period, which is from August 18, 2016 through the date the
28 Court enters an order granting preliminary approval of the Stipulation.

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-reversionary Maximum Settlement Amount of \$208,000.00. The Maximum Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) \$69,326.40 in requested attorneys' fees and up to \$10,000.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs capped at \$5,000; (4) an allocation of \$3,750.00 to the LWDA; and (5) a Class Representative Enhancement Payment of \$5,000 to Plaintiff Degante for his service on behalf of the Class Members.

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the LWDA, and the Class Representative Enhancement Payment, the Net Settlement Amount will be distributed to Participating Class Members. The Net Settlement Amount will be paid to Participating Class Members, and without the need to submit claims for payment.

2. Formula for Calculating Settlement Payments

Each Class Member's share of the Net Settlement will be proportional to the Qualified Pay Periods that he or she worked during the Class Period. The Settlement Administrator will calculate Individual Settlement Payments as follows:

- Defendant will calculate the "Qualified Pay Periods" worked by each Class Member during the Class Period and the aggregate Qualified Pay Periods worked by all Class Members during the Class Period, which is from August 18, 2016 through the date the court enters an order granting preliminary approval of the Stipulation, and provide that to the Settlement Administrator.
- To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: the respective Qualified Pay Periods worked for each Class Member will be divided by the Total Qualified Pay Periods worked for all Settlement Class Members who do not opt out, resulting in the Payment Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to get his or her Individual Settlement Payment.
- Each Individual Settlement Payment will be reduced by any legally mandated deductions for each Participating Class Member, including both employee-side tax withholdings or deductions. Employer payroll taxes will be paid on top of the Maximum Settlement Amount.
- The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion ("Participating Class Members".) If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the Qualified Pay Periods worked, so that the amount actually distributed to all the Participating Class Members equals 100% of the Net Settlement Amount.

1 The **average payment will be \$1,368.13** per full-time Class Member, assuming no Class
2 Members opt out. If there are any opt-outs, that average will increase. This average net recovery is
3 significantly higher than many wage and hour class action settlements approved by California state and
4 federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
5 recovery of approximately \$120); *Ressler v. Federated Dept. Stores, Inc.*, Case No. BC335018 (L.A.
6 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
7 No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of about \$65); and *Gomez v.*
8 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of about \$20).

9 **3. Release by the Participating Class Members**

10 In exchange for the Maximum Settlement Amount, Plaintiff and Class Members will agree to
11 release the following Released Claims that accrue from August 18, 2016 through the date the court enters
12 an order granting preliminary approval of the Stipulation:

13 All claims, rights, demands, liabilities, and causes of action of every nature and
14 description, as alleged in the Complaint, or based on the facts alleged in the Complaint,
15 including for meal and rest breaks; unpaid wages, including minimum wages,
16 regular wages, overtime and double time wages; wage statement violations;
untimely wages, wages due upon termination, civil and statutory penalties,
and derivative claims.

17 [Jackson Decl., **Exhibit A** (¶ 38.)]

18 **III. ARGUMENT**

19 **A. The Court Should Preliminarily Approve the Proposed Settlement.**

20 **1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair,** 21 **Adequate, and Reasonable.**

22 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
23 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
24 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for
25 their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
26 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final
27 approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary
28 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the

1 proposed order, and (4) must identify any agreement regarding attorneys' fees. [Rule 3.769(b) and (c).]

2 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1)
3 schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to
4 the class of the hearing and "an explanation of the proposed settlement." The court must also approve a
5 procedure for class members to file objections to the settlement. [Rule 3.769(f).] At the final approval
6 hearing, the court must conduct an inquiry into the fairness of the proposed settlement. [Rule 3.769(g).]

7 Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement,
8 preliminary approval is warranted if the settlement falls within a "reasonable range." [See *North County*
9 *Contractor's Ass'n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90 (1994); Conte &
10 Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) ("Newberg"). Reasonableness and fairness
11 are presumed where: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and
12 discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in
13 similar litigation;" and (4) the percentage of objectors "is small." [*Dunk v. Ford Motor Co.*, 48 Cal. App.
14 4th 1794, 1802 (1996).] The presumption of fairness is consistent with California's public policy goal of
15 favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors
16 settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally
17 favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v.*
18 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the
19 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation").]

20 In reviewing the fairness of a class action settlement, due regard should be given to what is
21 "otherwise a private consensual agreement between the parties." [*Cellphone Termination Fee Cases*, 186
22 Cal. App. 4th at 1389.] The inquiry "must be limited to the extent necessary to reach a reasoned judgment
23 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
24 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [*Id.*]

25 **2. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and**
26 **Legal Issues and Objectively Assessed the Settlement's Reasonableness.**

27 By engaging in a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel
28 can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,

1 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and
2 circumstances, including the risk of significant delay and uncertainty associated with litigation, various
3 defenses asserted by Defendant. [Jackson Decl. ¶ 15.]

4 Prior to the outset of the litigation, Plaintiff provided his Counsel with detailed accounts of his
5 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
6 violations. In addition to informing Plaintiff's Counsel's initial evaluation of the lawsuit, the information
7 that Plaintiff and other employees provided also influenced Plaintiff's Counsel's discovery efforts.
8 [Jackson Decl. ¶ 16.]

9 Plaintiff's discovery requests led to the production of considerable information relied upon for the
10 Settlement, including a statistically significant sampling of thousands of pages of timekeeping and payroll
11 records, and policies and practices directly pertaining to the alleged Labor Code violations at issue, as well
12 as the contact information for seventy-two (72) Class Members. Plaintiff's Counsel reviewed Defendant's
13 written policies provided in its Employee Handbook, and reviewed the entire set of thousands of pages of
14 data and documents produced by Defendant through the analysis of an expert. From this analysis,
15 Plaintiff's Counsel was able to analyze Labor Code issues, theories and alleged violations that would have
16 provided direct evidence for use at trial in a class and PAGA action. Plaintiff's Counsel and the expert
17 analyzed the timekeeping and payroll data, in order to assess, *inter alia*, the incidence of meal and rest
18 period violations, and premiums paid for said violations, the minimum and overtime rates paid to Class
19 Members, the amount of underpaid minimum, regular and overtime wages, the accuracy of the wage
20 statements, and the amount of waiting time penalties under Cal. Labor Code § 203. [Jackson Decl. ¶ 17.]

21 Plaintiff's Counsel interviewed Plaintiff who provided accounts of his own experience, which
22 enabled Plaintiff's Counsel to understand the theories explaining the respective frequencies of the alleged
23 violations borne out in the data and records produced and to learn more about the day-to-day
24 circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 18.] Overall, Plaintiff's Counsel
25 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff's
26 suitability as a class representative through interviews, background investigations, and analyses of his
27 employment files and related records; (2) researching similar wage and hour class actions as to the claims
28 brought, the nature of the positions, and the type of employer; (3) analyzing employee time and wage

1 records; (4) analyzing Defendant’s labor policies and practices; (5) researching settlements in similar
2 cases; (6) researching Plaintiff’s novel theories of liability; (7) interviewing Class Members regarding the
3 alleged claims; (8) evaluating Plaintiff’s claims and estimating Defendant’s liability for purposes of
4 settlement; (9) drafting the mediation brief; and (10) participating in the mediation. [Jackson Decl. ¶ 18.]

5 **3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which**
6 **All Parties Were Represented by Experienced Counsel.**

7 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
8 settlement’s fairness.” [State v. Levi Strauss & Co., 41 Cal. 3d 460, 482 (1986).] Courts presume the
9 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;
10 thus, there is a presumption that settlement negotiations are conducted in good faith. [Newberg, § 11.51.]

11 On August 18, 2021, the Parties participated in a mediation with mediator Eleanor Barr, Esq., who
12 helped manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to
13 both sides. [In re Apple Computer, Inc. Derivative Litig., No. C 06-4128 JF (HRL), 2008 U.S. Dist.
14 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
15 inference of a collusive settlement); D’Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001) (same).]
16 At all times, the Parties’ negotiations were adversarial and non-collusive. After a full day of mediation,
17 the Parties reached a settlement in principal and executed a detailed Memorandum of Understanding,
18 before entering in the long form Settlement on October 13, 2021. [Jackson Decl. ¶ 19.]

19 Experienced class action counsel represented both Parties throughout the case and settlement
20 negotiations. Plaintiff is represented by Armond M. Jackson of Jackson Law, APC, who regularly litigates
21 wage and hour claims through certification and on the merits, and has considerable experience settling
22 wage and hour class actions. [Jackson Decl. ¶¶ 20-23.] Defendant Sun Lee, Inc. is represented by
23 Atkinson, Andelson, Loya, Ruud & Romo, APC, who operates a large, respected wage and hour defense
24 practice.

25 **4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant’s**
26 **Defenses and the Risks and Expense of Continued Litigation.**

27 In seeking approval, a settling party must provide sufficient information to “enable the court to
28 make an independent assessment of the adequacy of the settlement terms.” [Kullar v. Foot Locker Retail,

1 *Inc.*, 168 Cal. App. 4th 116, 131–32 (2008).] However, “[i]t is well-settled law that a cash settlement
2 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
3 unfair.” [See *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615,
4 628 (9th Cir. 1982).] “The proposed settlement is not to be judged against a hypothetical or speculative
5 measure of what might have been achieved by the negotiators.” [*Id.* at 625.] “Estimates of a fair
6 settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the
7 case, and the expected delay in recovery (often measured in years).” [*In re Toys R Us-Delaware, Inc.—*
8 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).] In
9 other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should
10 discount the value of the settled claims for risks such as changes in the law, the probability of success, and
11 other factors.²

12 Settling parties are not however required to partake in a hypothetical accounting exercise: [*Kullar*
13 does not . . . require any such explicit statement of [maximum] value; it requires a record which allows “an
14 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”
15 [*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409–10 (2010) (*quoting Kullar* 168 Cal.
16 App. 4th at 120 (emphasis added))]. Overall, the most important factor in determining whether a
17 settlement is fair and reasonable is the strength of the case for plaintiffs on the merits balanced against the
18 amount offered in the settlement. [*Id.* at 409 n.6 (*quoting Kullar*, 168 Cal. App. 4th at 130).]

19 Based on the information and evidence provided by Defendant in discovery, the expert analysis of
20 the time cards and wage statements, and Plaintiff’s Counsel’s own independent investigation, Plaintiff’s
21 Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant’s
22 maximum theoretical exposure by: (i) the strength of Defendant’s affirmative defenses; (ii) the risk of
23 losing a motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a
24

25
26
27
28 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining
whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case
and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” [*Id.* at 188
(*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). See *Nat’l Rural Telecomm. Coop. v. Directv,*
Inc., 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be
acceptable even though it amounts to only a fraction of the potential recovery”).

1 class and PAGA trial would be unmanageable;³ (iv) the risk of losing on various dispositive or quasi-
2 dispositive motions that Defendant will bring before trial (e.g., motion to strike class and representative
3 allegations, motion to decertify a class action, and/or motions for summary judgment) which may
4 eliminate all or some of Plaintiff's claims, or bar evidence necessary to prove such claims; (v) the risk of
5 losing some or all of the claims at trial; (vi) the chances a Court may find Defendant did not willfully
6 refuse to pay discharged or terminated employees (i.e. a good faith failure) under Cal. Lab. Code section
7 203; (vii) the chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e,
8 a good faith failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the
9 chances of the Court exercising its discretion to reduce PAGA penalties (see Cal. Lab. Code section
10 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a
11 class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice
12 and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being
13 reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the
14 "Discount Factors"). [Jackson Decl. ¶ 24.]

15 Based on the preceding and considering the aggregate value of the claims in light of the Discount
16 Factors, Plaintiff's Counsel valued the claims for settlement purposes at between **\$0** and **\$677,245.86**.
17 [Jackson Decl. ¶ 24.] It must be underscored, however, that the reasonableness of a settlement is not
18 dependent upon its actual value approaching the potential recovery Plaintiff might have received had he
19 succeeded at trial. Indeed, "[t]he determination whether a settlement is reasonable does not involve the
20 use of a 'mathematical equation yielding a particularized sum.'" [*Frank v. Eastman Kodak Co.*, 228
21 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66
22 (S.D.N.Y. 1993)).]

23 **i. Wage Statement Data and Range of Damages**

24 Expert review of the entire set of wage statements for all 84 Warehouse workers revealed the
25 following: (1) approximately 3,673 semi-monthly pay periods since August 18, 2016; (2) approximately
26

27 ³ Similar to class actions, California trial courts will strike PAGA claims where too many allegedly
28 aggrieved employees would be required to show that they were, in fact, aggrieved, rendering the claim
unmanageable because countless mini-trials would be necessary before the aggrieved employees were
known and the claim could proceed. [*Wesson v. Staples the Office Superstore, LLC* (September 9, 2021)
2021 WL 4099059.]

1,800 pay periods since August 18, 2019; (3) approximately 7,500 workweeks since August 18, 2016; (4) approximately 33,936 shifts since August 18, 2016; (5) 34 currently employed Warehouse workers and 50 formerly employed Warehouse workers since August 18, 2016; and (6) an average final rate of pay of \$15.64/hour. [Jackson Decl. ¶ 25.] The following is a table of potential damages:

August 18, 2016 through August 18, 2021			
Claim	Highest Theoretical Damage Exposure	Reasonable Range of Damages and Penalties	
Failure to Provide Meal Breaks	\$ 227,296.12 (damages) and \$180,000.00 (civil penalties) for a total of \$407,296.12	\$0	\$113,648.06 (damages) and \$90,000.00 (civil penalties) for a total of \$203,648.06
Failure to Provide Rest Breaks	\$227,296.12 (damages) and \$180,000 (civil penalties) for a total of \$407,296.12	\$0	\$56,824.03 (damages) and \$45,000 (civil penalties) for a total of \$101,824.03.
Failure to Pay Minimum and Overtime Wages	\$375,867.54	\$0	\$187,933.77
Failure to Provide Accurate Wage Statements	\$90,000.00	\$0	\$90,000.00
Waiting Time Penalties	\$187,680.00	\$0	\$93,840.00
Total Damages (excluding attorneys' fees and interest):	\$1,468,139.78.00	\$0	\$677,245.86

[Jackson Decl. ¶ 25.]

ii. Meal and Rest Period Claims

An employer's only obligation is to provide meal periods and authorize and permit rest periods, not to police its employees to ensure that they take their lunches and breaks. (See *Brinker, supra*, 53 Cal.4th at 1028, 1034.)

Plaintiff alleges that Defendant understaffed shifts and scheduled meal periods such that employees did not take their meal periods within the first five hours of a shift, were less than thirty minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiff alleges employees were not authorized to take rest periods due to understaffing. Expert analysis of the sample time records Defendant produced for 20 of the 84 Warehouse workers, and an extrapolation of the result of the analysis

1 to all 84 Warehouse workers revealed the following findings: (1) Approximately 31,202 shifts greater
2 than 3 and a half hours and 28,855 shifts greater than 5 hours; (2) Out of the 28,855 shifts greater than 5
3 hours, the estimated meal period violation rate is 50.3%, or 14,533 potential shifts with a violation, while
4 avoiding double counting of shifts with both a late or short or missing second meal period, and impacting
5 2,679 pay periods. [Jackson Decl. ¶ 26.]

6 Although Defendant's time records may create a rebuttable presumption that it did not provide
7 meal periods on those occasions, in compliance with California law, *see, e.g., Donahue v. AMN Services,*
8 *LLC* (2021) 11 Cal.5th 58, other evidence could potentially rebut the presumption or minimizes the
9 potential value of the claims. [Jackson Decl. ¶ 27.]

10 First, Defendant alleged it provided the Warehouse workers with its Employee Handbook, which
11 sets forth meal and rest period policies consistent with California law. To the extent Plaintiff may allege
12 he felt pressured by his duties or schedule, this evidence is rebuttable by Defendant's evidence
13 demonstrating Plaintiff voluntarily elected to forego his break in such instances to complete his work, not
14 in response to any policy or directive of Defendant. [Jackson Decl. ¶ 28.]

15 Second, expert analysis of the time and payroll data for all Warehouse workers only reveals
16 *possible* meal period violations and in fifty percent of the shifts greater than 5 hours. The other alternative
17 interpretation anticipated by Plaintiff is that it demonstrates that Defendant, in fact, does provide
18 employees with complete meal periods which could potentially undermine any claim of a systemic pattern
19 or practice of failing to provide meal periods since employees choose to take them a few minutes late or
20 short on their own volition at other times. Furthermore, since employees are not required in California to
21 record their rest periods times, this claim may present difficulties when proving the extent of any rest
22 break violations. [Jackson Decl. ¶ 29.]

23 Third, expert analysis revealed evidence of 8,061 potentially short meal periods (i.e. less than 30
24 minutes) and 2,340 potentially "late" meal periods (i.e. started after the fifth hour), but most of those "meal
25 period violations" are just a few minutes short or late. While there may be a limited "de minimis" defense
26 in California for meal period claims, *see Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, such evidence
27 cuts both ways as it underscores the likelihood of personal choice by employees electing to delay their
28 breaks for a few minutes or knock off a minute or two early and get back to work on their own, as

1 opposed to an express policy that schedules breaks late or the presence of express work deadlines that
2 effectively forces employees to cut breaks short. There is no evidence of the latter in this case.
3 Furthermore, in opposition to any motion for class certification, Defendant represented it would present
4 declarations from dozens of employees attesting to Defendant's lawful meal and rest period policies and
5 practices, and how employees personally chose to skip, delay or shorten breaks on their own without any
6 influence from Defendant. [Jackson Decl. ¶ 30.]

7 Therefore, based on the foregoing and the "Discounted Factors" described above, these claims
8 should be discounted.. After taking into account the foregoing considerations and the Discount Factors,
9 Plaintiff assessed the combined value of the meal and rest period claims, inclusive of civil penalties, at
10 between **\$0** and **\$305,472.09**. [Jackson Decl. ¶ 31.]

11 More specifically, the high end of the realistic range for the meal period claim accounts for all the
12 Discount Factors to consider the best scenario of a trier of fact finding for liability and damages as half of
13 the 50.3% violation rate (14,533 shifts divided by 2 = 7,266.5 multiplied times average final rate of pay of
14 \$15.64 per hour = \$113,648.06) and \$100 in civil penalties under PAGA for half of the eligible pay
15 periods during the PAGA period (i.e. approximately 1,800 wage statements since August 18, 2019
16 divided by 2 = 900 multiplied times \$100 = \$90,000.00) for a total of \$203,648.06 as the realistic case
17 scenario for the meal period claim. [Jackson Decl. ¶ 32.]

18 For the rest periods, the risk to Plaintiff is greater due to the additional consideration of a lack of
19 rest period recordkeeping requirement. Therefore, Plaintiff estimates the best case scenario at one quarter
20 of a 50.3% violation rate found in the meal period records. The calculation is as follows: 14,533 shifts
21 divided by 4 = 3,633.25 multiplied times average final rate of pay of \$15.64 per hour = \$56,824.03; and
22 \$100 in civil penalties under PAGA for one quarter of the eligible pay periods (1,800 divided by 4 = 450)
23 multiplied times \$100 = \$45,000, for a total of \$101,824.03 as the realistic case scenario for the rest period
24 claim. [Jackson Decl. ¶ 33.]

25 **iii. Minimum Wage and Overtime Claim**

26 Based on Plaintiff's experiences and discussion with other Warehouse workers, Plaintiff alleges
27 that the lack of sufficient staffing and relief coverage effectively forced Class Members to work off-the-
28 clock before and after their shifts for about 10-15 minutes per day, to complete all assigned duties,

1 particularly at the end of the day after clocking out, including clean-up work and sometimes a security
2 screening prior to leaving the premises. [Jackson Decl. ¶ 34.] Plaintiff further alleges that even a cursory
3 comparison and review of employees' time cards and corresponding wage statements evidences clear
4 underpayment of wages based on the hours worked as indicated in the time cards. [*Id.*]

5 Employees are entitled to be paid for all "hours worked." [See *Morillion v. Royal Packing Co.*
6 (2000) 22 Cal.4th 575, 582 ("hours worked" means the time during which an employee is subject to the
7 control of an employer, and includes all the time the employee is suffered or permitted to work, whether or
8 not required to do so.)) California Labor Code sections 1194, 1197, 1197.1, and 510 and the applicable
9 Wage Orders mandate that employees must be compensated for all hours worked at minimum wage or
10 greater, or at an overtime rate of 1.5 times the regular rate of pay for hours worked in excess of 8 in a
11 workday or 40 in a workweek. Moreover, IWC Wage Order 1-2001, § 7 requires employers to keep
12 accurate information with respect to time records showing when employees begin and end each work
13 period, daily hours worked, and meal periods, except meal periods during which all operations cease.

14 Additionally, Labor Code section 204 provides, in relevant part:

15 (a) All wages . . . earned by any person in any employment are due and payable twice
16 during each calendar month . . .

17 (b)(1) Notwithstanding any other provision of this section, all wages earned for labor in
18 excess of the normal work period shall be paid no later than the payday for the
19 next regular pay period.

20 In this case, common proof of unpaid minimum and overtime wages for "off-the-clock" work
21 could be difficult given the risks of certification as well as to demonstrate at trial for purposes of finding
22 class-wide liability and damages. As with the preceding claims, Plaintiff had to discount the value of the
23 minimum wage and overtime claim to account for the risks of continued litigation and Defendant's
24 affirmative defenses. [Jackson Decl. ¶ 35.]

25 For example, Defendant will simply argue: (i) that Plaintiff will not be able to present any
26 evidence of a company-wide, uniform policy requiring employees to work off-the-clock and (ii) it cannot
27 be held liable because it did not know employees were actually performing work off-the-clock. [*Brinker*,
28 53 Cal. 4th at 1017 ("[w]ith respect to the third contested subclass, covering allegations that employees
were required to work "off-the-clock," no evidence of common policies or means of proof was supplied,
and the trial court therefore erred in certifying a subclass"); see also *Garcia v. Sun Pacific Farming Coop.*,

No. CV F 06-0871 LJO TAG, 2008 U.S. Dist. LEXIS 111969 (E.D. Cal. May 14, 2008) (denying motion for class certification of state wage and hour law and other claims allegedly resulting from off-the-clock work).] [Jackson Decl. ¶ 36.]

Furthermore, although employees are permitted to arrive early at the job site, Defendant will argue that its policies align with those in the *See's Candy Shops, Inc.* matter in that employees were expressly prohibited from working, when on premises before and after their scheduled shift, but allowed to pursue personal activities. [See, e.g. *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (Court found employees were not subject to control of employer for time spent on employer's premises prior to the start of a shift, even when clocked in, because employer prohibited employees from performing any work before scheduled start time and employees were free to pursue any personal activities during that time before a shift.))] Moreover, as with the meal and rest break claims, Defendant represented it will likely be able to garner numerous declarations in support of their defense that no such off-the-clock work took place. [Jackson Decl. ¶ 37.]

Furthermore, any occasional mismatch between the time cards and wage statements likely reflects Defendant's "pay current" policy and practice that sometimes pays employees on the current pay period for hours worked during the prior pay period in compliance with Labor Code section 204(b). In fact, whether through application of Defendant's "pay current" policy or unwittingly through Defendant's payroll miscalculations, Warehouse workers were grossly overpaid, in the aggregate, during the class period. Expert analysis of the 20-employee sample of time cards and wage statements, and extrapolation to all 84 class members, revealed that, in the aggregate, Defendant underpaid Warehouse workers by 14,696 minutes (244.93 hours), across 249 paychecks, but overpaid Warehouse workers by 39,129 minutes (652.15 hours), across 1,078 paychecks, for a net overpayment of 407.22 hours. [Jackson Decl. ¶ 38.]

As such, in regard to Plaintiff's second theory Defendant argues that its payroll simply miscalculated the information on the time cards when processing the wage statements which could impact the value of these claims. As to the unrecorded "off-the-clock" work theory, Defendant's maximum exposure for 15 minutes of unpaid wages per day is calculated as follows: 33,396 shifts x 15 minutes per shift divided by 60 (minutes per hour) = 8,349 unpaid hours during the class period. 8,349 x \$15.64

1 average hourly rate x 1.5 overtime rate (assuming all off the clock work should have been paid overtime
2 wages) = \$195,867.54. PAGA civil penalties could theoretically be as high as \$180,000.00 (\$100 civil
3 penalty x 1,800 eligible pay periods since August 18, 2019), for a total theoretical exposure of
4 \$375,867.54 for Plaintiffs' minimum wage and overtime claims. [Jackson Decl. ¶ 39.]

5 However, based on certain Discount Factors (i.e. lack of common evidence such as express
6 policies and customer deadlines), the lack of documentary evidence, and Defendant's ability to garner
7 numerous declarations in support of its defense to this claim, Plaintiff's discount is reasonable. Plaintiff
8 estimates that a more realistic high end of exposure discounts the top end by at least 50% of the highest
9 theoretical amount, leaving a more realistic range of recovery between \$0 and \$187,933.77. [Jackson
10 Decl. ¶ 40.]

11 iv. Wage Statement Claim

12 Plaintiff alleges that Defendant failed to provide Plaintiff with timely and accurate wage
13 statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for all hours
14 worked, and improper overtime premium pay. Plaintiff also alleges Labor Code section 226 damages
15 should apply to an anomaly on certain Warehouse workers wage statements that label some of them as
16 "Salaries-Warehouse" and omit their regular rate of pay and hours worked at that rate of pay. This claim
17 will likely fail at the class certification stage and/or at trial. [Jackson Decl. ¶ 41.]

18 Labor Code section 226 requires that employers provide wage statements that accurately set forth
19 a variety of items including, but not limited to, gross wages earned, total hours worked, deductions, net
20 wages earned, the periods of employment, and hourly rates and corresponding number of hours at each
21 rate. Labor Code section 226 further provides, in relevant part:

22 (2)(B) An employee is deemed to suffer injury for purposes of this subdivision if
23 the employer fails to provide accurate and complete information as required by any
24 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee
25 **cannot promptly and easily determine** from the wage statement alone one or more
of the following:

26 (i) The **amount of the gross wages or net wages** paid to the employee during the
27 pay period or any of the other information required to be provided on the itemized
wage statement pursuant to **items (2) to (4), inclusive, (6), and (9)** of subdivision (a)

28 . . .

1 (C) For purposes of this paragraph, “*promptly and easily determine*” means a
2 reasonable person would be able to readily ascertain the information without
3 reference to other documents or information.

4 Defendant provided wage statements with the itemized information, as required under Cal. Lab.
5 Code section 226, to its Warehouse workers, including Plaintiff, on a semi-monthly basis. To the extent
6 this claim is derivative of the claims set forth above - that Plaintiff’s wage statements were not accurate
7 because Plaintiff was not paid an additional hour of pay when he was not provided meal and rest periods,
8 not paid for all hours worked, and not properly compensated for all overtime premium pay - the claim
9 bears the same risk for failure as the factual reasons discussed above. [Jackson Decl. ¶ 42.]

10 Furthermore, actions for violations of the Labor Code’s meal and rest break provisions do not
11 entitle employees to pursue the derivative waiting time and itemized wage statement penalties. [See
12 *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444.]

13 Additionally, to the extent Plaintiff alleges wage statement violations for the Warehouse workers
14 labeled as “Salaries-Warehouse” because their wage statements omit their regular rate of pay and hours
15 worked at that rate of pay, Defendant will argue that should not be considered the type of omission that
16 creates damages. [Jackson Decl. ¶ 43.]

17 Moreover, Defendant will argue that Labor Code section 204(b) permits employers to advance
18 wages or pay for excess hours worked in one pay period onto the next pay period. Defendant will claims
19 that expert analysis of the disparity between Defendant’s time records and wage statements reflect the
20 “pay current” practice by Defendant, in compliance with Labor Code section 204(b). [Jackson Decl. ¶
21 44.]

22 Furthermore, to award statutory penalties under section 226(e), Plaintiff would have had to show
23 that Defendant knowingly and intentionally issued wage statements with unlawful deficiencies. [See
24 Labor Code § 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142–43 (2011); *see also Elliot v.*
25 *Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1180–81 (2008).]

26 With the foregoing in mind, any such statutory penalties under Labor Code § 226 needs to be
27 adjusted to account for risks and uncertainties. Labor Code § 226(e)(1) provides that an employee is
28 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
a violation occurs and one hundred dollars (\$100) per employee for each violation in a “subsequent pay

period,” not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

First, penalty provisions are limited to the one-year statute of limitation under California Code of Civil Procedure §340.

Defendant issued approximately 1,800 wage statements since August 18, 2019 (one year prior to the filing of the Complaint). Assuming all wages statements dating back one year prior to the filing of the complaint are inaccurate, then the Defendant is liable for no more than \$90,000 in Labor Code Section 226 penalties (1,800 x \$50 or \$100 = \$90,000 or \$180,000.) Therefore, in light of these considerations and the Discount Factors, Plaintiff assessed the settlement value of the wage statement claim at between **\$0 and \$180,000**. [Jackson Decl. ¶ 46.]

v. Waiting Time Penalties

This claim is based on Plaintiff's allegations that an extra hour of pay was not provided when meal or rest breaks were not provided, and that Warehouse workers were not paid all minimum and overtimes premium wages. On the assumption that all 50 formerly employed Warehouse workers are owed some unpaid wages, then the highest theoretical amount for potential waiting time penalties is calculated as follows: 50 former employees x 30 days x 8 hours per day x \$15.64 average hourly wage = \$187,680.00. However, for the reasons discussed above, Defendant will argue that it will be difficult for Plaintiff to present substantial common evidence that he and the putative class members were not paid all wages due at the time of termination as to all formerly employed Warehouse workers. [Jackson Decl. ¶ 47.]

Additionally, the current law for violations of Labor Code's meal break provisions do not entitle employees to pursue the derivative waiting time and itemized wage statement penalties. [See *Naranjo v. Spectrum Security Services, Inc.*, *supra*, 40 Cal.App.5th 444.] As such, Plaintiff estimates that the reasonable case scenario is 50% of the theoretical best case scenario of \$187,680.00. Therefore, a reasonable range of potential waiting time penalties is **\$0 to \$93,840**. [Jackson Decl. ¶ 48.]

5. The Settlement Amount Is Fair and Reasonable Compensation for the Class

As the above analysis shows, Plaintiff's Counsel objectively and knowledgably balanced the strengths and weaknesses of the claims against the risk of continued litigation and was able to determine

1 the realistic range of settlement recovery of \$0 and \$677,245.86. The Net Settlement Amount guarantees
2 \$1,368.13 per full-time class member, in the pockets of 84 low wage workers today, and not a mere
3 speculative return, years into the future. It also provides closure for all parties involved. Therefore, in this
4 case, the settlement value of \$208,000.00 falls well within the range of reasonableness, and is thus fair,
5 adequate, and reasonable.

6 **B. The Proposed Notice Properly Informs Class Members About the Settlement.**

7 Class members are entitled to the best practical notice under the circumstances. [*Kass v. Young*,
8 67 Cal. App. 3d 100, 106 (1977) (“*Kass*”).] The purpose of the notice is to give class members sufficient
9 information to decide whether to accept the benefits offered, opt out and pursue their own remedies, or
10 object to the settlement. [*Trotsky v. Los Angeles Fed. Savings & Loan Ass’n*, 48 Cal. App. 3d 143, 151–
11 52 (1975).] The notice must advise class members “that they may be excluded from the class if they so
12 request and that they will be bound by the judgment, whether favorable or not, if they do not request
13 exclusion.” [*Kass*, 67 Cal. App. 3d at 106.] In a case such as this involving a significant number of class
14 members, California authorities generally require service of the class notice by mail or similar reliable
15 means. [*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972
16 (1975).]⁴

17 The proposed Class Notice will be mailed to the Class by First Class mail and will include
18 information regarding the nature of the lawsuit, a summary of the Settlement’s terms, the class definition,
19 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the
20 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
21 Released Claims. Before mailing the Class Notice, the Administrator will verify the addresses produced
22 by Defendant for each Class Member using the National Change of Address Database. In the event Class
23 Notices are returned as undeliverable, the Administrator will attempt to locate a current address through
24 the use of skip tracing or other automated search. [Jackson Decl., **Exhibit A** (¶ 60.)] This method is
25 designed to maximize the Class Member response rate while ensuring cost effective administration of the
26 settlement. In past cases, similar notice methods to class members have resulted in strong response rates.

27
28 ⁴ Due process does not require that each class member actually receive a notice, but rather a procedure
reasonably certain to reach class members. [Wright, A. Miller & M. Kane, *Federal Practice and
Procedure* § 1789, at 253 (2d ed. 1986).]

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (The class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”).]

C. The Court Should Preliminarily Approve the Enhancement Payment.

Enhancement payments “are fairly typical in class action cases.” [*Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).] Enhancement payments “are intended to compensate class representative for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” [*Rodriguez*, 563 F.3d at 958–59; see also *Clark v. American Residential Svcs., LLC*, 175 Cal. App. 4th 785 (2009).]

Subject to Court approval, therefore, the Settlement provides for a Class Representative Enhancement Payment of \$5,000 for Plaintiff. The enhancement payment is fair and reasonable compensation for Plaintiff’s efforts in representing the putative Class and the interests of the State of California, for assisting counsel with the litigation, at mediation, and settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. [Declaration of Diego Degante, ¶¶ 1-7.]

Plaintiff will file a motion seeking award of the negotiated Class Representative Enhancement Payment if preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the Class Representative Enhancement Payment.

D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs.

The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. Plaintiffs will seek Court approval of attorneys’ fees of \$69,326.40 which is 33.33% of the Maximum Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the

1 time of the Final Approval Hearing.

2 California courts routinely award attorneys' fees equaling one-third or more of the
3 potential value of the common fund. *See Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008)
4 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
5 fee awards in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey
6 P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, *J. of Empirical Legal Studies*,
7 Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have
8 come to a similar conclusion that a one-third fee is consistent with market rates). At final approval, Class
9 Counsel will fully brief the merits of its request for attorneys' fees and costs.

10 **E. California Law Authorizes Provisional Certification for Settlement Purposes.**

11 **1. The California Standard for Class Certification**

12 Class actions are statutorily authorized "when the question is one of common or general interest,
13 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
14 court." [Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008) ("*Lee*").]
15 Class certification is appropriate when there is an "ascertainable class and a well-defined community of
16 interest among class members." [*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004)
17 ("*Sav-On*").] Class treatment is appropriate even if class members at some point may be required to make
18 an individual showing as to eligibility for recovery. [*Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App.
19 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

20 **2. The Proposed Settlement Class is Ascertainable, and There is a Well-**
21 **Defined Community of Interest Among Class Members.**

22 Whether a class is "ascertainable" within the meaning of Section 382 is "determined by
23 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class
24 members." [*Lee*, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be readily
25 identified without unreasonable expense or time by reference to official records. [*Id.*] The community of
26 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class
27 representative with claims or defenses typical of the class; and (3) a class representative and counsel who
28 can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the element of

1 predominance, the California Supreme Court noted that the “ultimate question” is whether “the issues
2 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
3 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
4 litigants.” [*Brinker*, 53 Cal. 4th at 1021–22.]

5 The proposed Settlement Class consists of all hourly Warehouse workers employed by Defendant
6 in California during the Class Period, which is August 18, 2016 through the date the Court enters an order
7 granting preliminary approval of the Settlement. Defendant’s payroll records show that there are 84
8 persons in the Class, making joinder of all Class Members impracticable. Further, because all Class
9 Members are either current or former employees of Defendant, the class is readily ascertainable from
10 Defendant’s regular business records.

11 Conditional certification of the proposed group of Class Members is warranted here given the
12 relatively relaxed standard for certification at the preliminary approval stage. [*See Dunk v. Ford Motor*
13 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
14 settlement cases).]⁵ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
15 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
16 class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure, Rule
17 23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

18 Here, the California statutes relating to Plaintiff’s claims apply to all Class Members. Plaintiff
19 contends that Defendant’s policies and practices apply classwide and liability can be determined by facts
20 common to all class members, i.e., common policies or de facto common practices that deny Class
21 Members’ meal and rest periods, and pay for all hours worked. The wage and hour issues are numerous
22 and substantial, and a class action is the most advantageous method of adjudicating the claims of the
23 Class. For example, Plaintiff contends that his meal and rest period claims are readily certifiable because
24 whether Defendant’s policies and practices violate the law “is by its nature a common question eminently
25 suited for class treatment.” [*Brinker*, 53 Cal. 4th at 1033; *see Faulkinbury v. Boyd & Assocs., Inc.*, 216

26
27 ⁵ See also Newberg on Class Actions § 13:18 (5th ed.) (Courts “declin[e] to treat formal class certification
28 as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the
preliminary approval stage.”) (citing, e.g., *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016
WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a
cursory approach appears the norm.”).)

1 Cal. App. 220, 237 (2013) (“[Defendant’s] liability, if any, would arise upon a finding that its uniform rest
2 break policy, or lack of policy, was unlawful.”); *Benton v. Telecom Network Specialists, Inc.*, 200 Cal.
3 App. 4th 701 (2013) (reversing denial of class certification and remanding where employer failed to adopt
4 any policy authorizing and permitting meal and rest breaks).]

5 Plaintiff also contends his wage and hour claims are typical of the proposed group of Class
6 Members because they arise from the same factual basis and are based on the same legal theories
7 applicable to the Class. Likewise, Plaintiff’s interests are coextensive with the interests of the Class and he
8 alleges that he was injured by the same company-wide practices to which the proposed Settlement Class
9 was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the
10 interests of the Class by initiating this litigation and evaluating the fairness of the proposed settlement.

11 Additionally, Plaintiff is represented by competent counsel who has extensive experience in
12 litigating wage and hour class action cases. [Jackson Decl. ¶¶ 20-23.] Plaintiff’s Counsel has successfully
13 briefed, argued, certified, and gained state court settlement approval of the same or similar class-wide
14 causes of action that are at issue in this case. Plaintiff’s Counsels’ wage and hour class action expertise
15 establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class action is
16 superior to a multitude of individual lawsuits. Given the size and amount of each individual Class
17 Member’s claim, Class Members likely have little incentive to litigate their claims on an individual basis
18 because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs
19 any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

20 **IV. CONCLUSION**

21 The Parties have negotiated a fair, reasonable settlement and presented the required for
22 preliminary approval, and as such, request that the Court preliminarily approve the settlement.

23
24 Dated: October 14, 2021

JACKSON LAW, APC

25
26 By: /s/ Armond M. Jackson

Armond M. Jackson, Esq.

Andrea M. Fernandez, Esq.

JACKSON LAW, APC

Attorneys for Plaintiff DIEGO DEGANTE and all
28 other similarly situated employees

DEGANTE v. SUN LEE, INC.
LASC CASE NO.: 20STCV31759

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee 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 2 Venture Parkway, Suite 240, Irvine, California 92618.

On October 14, 2021, I served the foregoing document, described as **NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Paul S. Fleck
David M. Lester
Joshua N. Lange
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Attorneys for DEFENDANT SUN LEE, INC.

☐ **(BY MAIL)** I placed such envelope, with postage thereon prepaid, in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, Service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☒ **(BY ELECTRONIC MAIL)** I sent such document via electronic mail to the email(s) noted above.

☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on October 14, 2021, at Los Angeles, California.



ARMOND M. JACKSON