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

KEVIN MCNEIL, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

KIK INTERNATIONAL, LLC, a Delaware
limited liability company; KIK POOL
ADDITIVES, INC., a California
corporation; KIK CUSTOM PRODUCTS,
INC., a Texas corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CIVDS1915438

Honorable Bryan F. Foster
Department S-22

CLASS ACTION

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

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

Hearing Date: November 10, 2021
Hearing Time: 9:00 a.m.
Hearing Place: Department S-22

Complaint Filed: May 21, 2019
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 10, 2021 at 9:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Bryan F. Foster in Department S-22 of the San
3 Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California
4 92415, Plaintiffs Kevin McNeil and Guadalupe Romulo (“Plaintiffs,” “Plaintiff McNeil,” and
5 “Plaintiff Romulo”) will and hereby moves for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
8 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
10 the means of allocation and distribution of funds, and the allocations for penalties
11 under the California Labor Code Private Attorneys General Act of 2004
12 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
13 Enhancement Payments, and the Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
18 attached as **“Exhibit A”** to the Settlement Agreement;
- 19 • Approving the Election Not To Participate or Opt-out Form (“Exclusion Form”)
20 attached as **“Exhibit B”** to the Settlement Agreement;
- 21 • Directing the mailing of the proposed Class Notice and Exclusion Form
22 (collectively, known as the “Notice Packets”) with a postage-paid return
23 envelope to the proposed Class;
- 24 • Approving the proposed deadlines for the notice and Settlement Administration
25 process;
- 26 • Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the
27 Settlement Administrator; and

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$997,500 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and any and all hourly-paid
4 or non-exempt individuals who worked for Defendants KIK International LLC, KIK Pool
5 Additives, Inc., KIK Custom Products Inc., and KIK Custom Products, Inc. (“Defendants”)
6 (whether employees of Defendants or a third-party staffing agency) within the State of California
7 during the Class Period (“Class”). The Class Period is the time period from May 21, 2015, to the
8 date the Court issues an order granting preliminary approval of the Settlement (“Class Period”).
9 At the time of this filing, the number of Class Members confirmed by Defendants is two
10 thousand one hundred seventy-seven (2,177). (Declaration of Douglas Han (“Han Dec.”) at ¶ 8.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
12 and vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this
13 proposed settlement of \$997,500 – with an average Individual Settlement Share estimated at
14 \$245.69¹ – is well within the “ballpark” of reasonableness.

15 As the following sections show, Class Counsel is convinced that the proposed Settlement
16 is in the best interests of the Class based on the negotiations and a detailed knowledge of the
17 issues present in this action. The length and risks of trial and perils of litigation that affect the
18 value of the claims were all carefully weighed. In addition, the defenses asserted by Defendants,
19 particularly, the uncertainty of class certification, the difficulties of complex litigation, the
20 lengthy process of establishing specific damages and various possible delays and appeals, were
21 also carefully considered by Class Counsel in arriving at the proposed Settlement.

22 **II. BACKGROUND**

23 Defendants manufacture consumer chemical and plastic packaging products, offer
24 balance, shock, clarify, chlorine, spa, vinyl pool, and algae care products, sell both branded and
25 private label products in the swimming pool, spa, household, and automotive industries
26 nationwide. (Han Dec., *supra*, at ¶ 9.) This case involves any and all hourly-paid or non-exempt
27 individuals who worked for Defendants (whether employees of Defendants or a third-party

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¹ \$534,875 (Net Settlement Amount) / 2,177 (Class Members) = \$245.69.

1 staffing agency) within the State of California during the time period from May 21, 2015, to the
2 date the Court issues an order granting preliminary approval of the Settlement. (Han Dec., *supra*,
3 at ¶ 9.) Plaintiffs allege that during the Class Period, Defendants’ non-exempt employees work
4 and/or worked on an hourly basis. (*Ibid.*)

5 On May 21, 2019, Plaintiff McNeil, a former employee of Defendants, filed a wage-and-
6 hour class action lawsuit in the Superior Court of California, County of San Bernardino, Case
7 Number CIVDS1915438, on behalf of all current and former California-based (*i.e.*, currently
8 “residing” in California with the intent to remain in California indefinitely) hourly-paid or non-
9 exempt individuals employed (either directly or through a staffing agency or labor contractor) by
10 Defendants within the State of California at any time during the relevant time period. (Han Dec.,
11 *supra*, at ¶ 10.) Plaintiff McNeil’s wage-and-hour class action lawsuit alleged violation of the
12 following: (1) Labor Code sections 510 and 1198 (unpaid overtime); (2) Labor Code sections
13 226.7 and 512(a) (unpaid meal period premiums); (3) Labor Code section 226.7 (unpaid rest
14 period premiums); (4) Labor Code sections 1194, 1197, and 1197.1 (unpaid minimum wages);
15 (5) Labor Code sections 201 and 202 (final wages not timely paid); (6) Labor Code section
16 226(a) (noncompliant wage statements); (7) Labor Code section 2800 and 2802 (unreimbursed
17 business expenses); and (8) Business & Professions Code sections 17200 *et seq.* (*Ibid.*)

18 On June 28, 2019, Plaintiff McNeil’s wage-and-hour class action lawsuit was removed to
19 the United States District Court, Central District of California – Eastern Division, Case Number
20 5:19-cv-01208-JGB-SHK. (Han Dec., *supra*, at ¶ 11.) On July 12, 2019, Plaintiff’s McNeil’s
21 wage-and-hour class action lawsuit was remanded to the Superior Court of California, County of
22 San Bernardino, pursuant to the Parties Joint Stipulation to Remand to State Court. (*Ibid.*)

23 On August 12, 2020, Plaintiff Romulo provided written notice to the Labor and
24 Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
25 Labor Code she contends were violated and the theories supporting her contentions. (Han Dec.,
26 *supra*, at ¶ 12.)

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1 After waiting the requisite sixty-five (65) days for the PAGA notice period to expire,
2 Plaintiff Romulo filed a representative PAGA action on October 20, 2020 in the Superior Court
3 of California, County of San Bernardino, Case Number CIVDS2023661. (Han Dec., *supra*, at ¶
4 13.) The representative PAGA action was brought on behalf of all current or former hourly or
5 non-exempt employees (whether hired directly or through staffing agencies or labor contractors)
6 of Defendants who worked for Defendants at any time during the relevant time period. The
7 theories of liability were predicated on Defendants’: (1) failure to pay minimum and overtime
8 wages; (2) failure to provide meal and rest breaks; (3) failure to pay wages during employment;
9 (4) failure to timely pay wages upon termination; (5) failure to provide complete and accurate
10 wage statements; and (6) failure to reimburse business expenses. (*Ibid.*)

11 The Parties attended a global mediation on Plaintiffs’ claims on July 6, 2021. (Han Dec.,
12 *supra*, at ¶ 14.) Under the auspices of the mediator David A. Rottman, Esq., the Parties were
13 eventually able to reach an agreement on the settlement of the action. (*Ibid.*)

14 In line with the Parties’ decision to enter a settlement, the Parties agreed that Plaintiff
15 McNeil will file a First Amended Complaint (“FAC”) for his wage-and-hour class action lawsuit,
16 Case Number CIVDS1915438. (Han Dec., *supra*, at ¶ 15.) The FAC will add Plaintiff Romulo
17 as an additional plaintiff in the wage-and-hour class action lawsuit and will add the following
18 cause of action: violation of Labor Code sections 2698, *et seq.* (PAGA). (*Ibid.*)

19 Defendants generally and specifically deny any and all liability or wrongdoing of any sort
20 with regard to any of the claims alleged, make no concessions or admissions of liability of any
21 sort, and contend that for any purpose other than settlement, the Actions are not appropriate for
22 class or representative treatment. (Han Dec., *supra*, at ¶ 16.) Defendants assert several defenses
23 to the claims and have denied any wrongdoing or liability arising out of any of the alleged facts
24 or conduct in the Actions. (*Ibid.*)

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III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff McNeil filed his wage-and-hour class action complaint, both Parties engaged in discovery. (Han Dec., *supra*, at ¶ 17.) Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions; and one (1) set of requests for production of documents to each Defendant. (*Ibid.*) Defendants responded to the discovery. (*Ibid.*) Defendants also propounded formal discovery and took Plaintiff McNeil's deposition. (*Ibid.*) Afterwards, the Parties met and conferred regarding this discovery. (*Ibid.*)

Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Actions were filed. (Han Dec., *supra*, at ¶ 18.) Specifically, Defendants produced hundreds of documents relating to their policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, overtime, meal and rest break policies, and payroll and operational policies. (*Ibid.*) As part of Defendants' production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiffs also interviewed dozens of Class Members who worked for Defendants throughout the Class Period. (*Ibid.*)

The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. (Han Dec., *supra*, at ¶ 19.)

Based upon Defendants' discovery responses, Defendants' document production, and interviews Class Counsel had with non-exempt employees, Plaintiffs contend – and Defendants deny – that Defendants failed authorize and permit employees to take legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 20.) Specifically, a combination of understaffing, heavy workloads, and stringent policies prevented employees from receiving compliant meal and rest breaks. (*Ibid.*)

1 Plaintiffs also assert – and Defendants deny – that Defendants failed to pay employees for
2 all hours worked. (Han Dec., *supra*, at ¶ 21.) Specifically, employees were supposedly forced to
3 work additional hours off-the-clock due to onerous policies and Defendants’ expectations. (*Ibid.*)

4 Next, Plaintiffs allege – and Defendants deny – that Defendants maintained an illegal
5 rounding policy that underpaid employees. (Han Dec., *supra*, at ¶ 22.) Specifically, Defendants
6 had in place a timekeeping procedure that used a quarter-hour rounding procedure that
7 apparently worked against employees by failing to record all hours worked. (*Ibid.*)

8 Furthermore, Plaintiffs contend – and Defendants deny – that Defendants failed to
9 incorporate several non-discretionary bonuses and shift differentials into employees’ regular
10 rates of pay overtime compensation. (Han Dec., *supra*, at ¶ 23.) Plaintiffs also assert – and
11 Defendants deny – Defendants failed to calculate and pay sick leave according to Labor Code
12 section 246(l). (*Ibid.*)

13 Additionally, Plaintiffs assert – and Defendants deny – that Defendants failed to
14 reimburse employees for incurring business expenses. (Han Dec., *supra*, at ¶ 24.) Specifically,
15 employees were supposedly forced to use their personal cell phones and vehicles for business-
16 related purposes for which they were not reimbursed. (*Ibid.*)

17 Finally, Plaintiffs allege – and Defendants deny – that Defendants are liable for waiting
18 time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 25-26.)

19 Defendants deny Plaintiffs’ contentions in their entirety. (Han Dec., *supra*, at ¶ 27.)
20 Among other things, Defendants deny Plaintiffs’ meal and rest break contentions on the grounds
21 that they provided breaks within compliant times and that non-exempt employees were given
22 discretion as to when to take their breaks. (*Ibid.*) Defendants also contend that non-exempt
23 employees were allowed to use their meal and rest break time for their own purposes. (*Ibid.*)
24 Moreover, Defendants counter that they were not chronically understaffed, nor did they assign
25 heavy workloads that left employees with no reasonable opportunities to take their meal and rest
26 breaks. (*Ibid.*) By extension, Defendants also assert that there was rarely, if ever, a line of
27 employees attempting to clock in at the same time that pressured employees to arrive to work
28 early to compensate for the waiting time. (*Ibid.*) Defendants further contend that whether non-

1 exempt employees took meal and rest breaks during compliant time frames and were relieved of
2 all duties are questions that could only be resolved by resorting to individualized inquiries to
3 each non-exempt employee and, therefore, class certification would not be appropriate. (Han
4 Dec., *supra*, at ¶ 27.) Defendants also assert that they paid their employees for all times and all
5 hours worked, including overtime, minimum, and premium wages. (*Ibid.*) Furthermore,
6 Defendants counter that their policies (*i.e.*, attendance and tardiness policy) were not enacted to
7 pressure employees to work additional hours off-the-clock or to cut their meal breaks short.
8 (*Ibid.*) Moreover, Defendants argue that they did factor bonuses and shift differentials into
9 employees' regular rates and properly calculated and paid sick leave. (*Ibid.*) By extension,
10 Defendants also assert that only a small percentage of employees were entitled to bonuses, shift
11 differentials, and sick leave pay. (*Ibid.*) Defendants also counter that they reimbursed employees
12 for all business expenses, including using their personal cell phones and vehicles. (*Ibid.*) Finally,
13 Defendants argue that any failure to comply with California labor laws (which they deny) was an
14 honest mistake made in good faith. (*Ibid.*) Thus, Defendants contend any alleged conduct could
15 not be deemed "willful" under Labor Code section 203. (*Ibid.*)

16 As demonstrated above, the Parties took staunchly conflicting positions concerning
17 Defendants' policies and procedures and their effect on hourly-paid and non-exempt employees.

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

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

21 The Parties agreed to go to mediation with experienced wage-and-hour mediator, David
22 A. Rottman, Esq that took place on July 6, 2021. (Han Dec., *supra*, at ¶ 28.) During the
23 mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
24 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the
25 mediator, the Parties were able to reach an agreement on a settlement of the Actions, the terms of
26 which were memorialized in a Settlement Agreement, that the Parties now seek Preliminary
27 Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

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1 **ii. The Settlement Was Reached as a Result of Arm’s-Length**
2 **Negotiations**

3 The Settlement Agreement was reached because of arm’s-length negotiations. (Han
4 Dec., *supra*, at ¶ 46.) Though cordial and professional, the settlement negotiations have been, at
5 all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediation, counsel for the
6 Parties conducted extensive arm’s-length settlement negotiations until an agreement was
7 ultimately reached by all Parties. (*Ibid.*)

8 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
9 expense and length of continued proceedings necessary to continue the litigation against
10 Defendants through class certification and trial and through any possible appeals. (Han Dec.,
11 *supra*, at ¶ 47.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of
12 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
13 (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including
14 formal mediation on July 6, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel
15 believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable
16 settlement, and is in the best interests of the Class. (*Ibid.*)

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

18 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
19 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
20 discovery to support the settlement. (Han Dec., *supra*, at ¶ 48.) The proposed settlement was
21 only possible following significant discovery and evaluation of Defendants’ relevant policies and
22 procedures, as well as the data they produced for the putative Class, which permitted Class
23 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
24 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
25 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
26 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 48.)

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$997,500 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
6 amount not to exceed \$349,125 (thirty-five percent (35%) of the Gross Settlement Amount) to
7 compensate Class Counsel for work already performed and all work remaining to be performed
8 in documenting the settlement, administrating the settlement and securing Court approval; (b)
9 Cost Award for actual litigation costs not to exceed \$25,000;² (c) Class Representative
10 Enhancement Payments in the amount of \$10,000 to each Class Representative in recognition of
11 their work and efforts in obtaining the benefits for the Class and undertaking the risk for the
12 payment of costs in the event this matter had not successfully resolved; (d) Administration Costs
13 to Phoenix, the Settlement Administrator, in the sum currently estimated at \$18,500; and (e)
14 PAGA Payment of \$50,000, seventy-five percent (75%) of which (\$37,500) will be paid to the
15 LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to the aggrieved
16 employees eligible to recover the PAGA Payment that consist of any and all hourly-paid or non-
17 exempt individuals who worked for Defendants (whether employees of Defendants or a third-
18 party staffing agency) within the State of California during the period between August 12, 2019
19 through the date the Court issues an order granting preliminary approval of this Settlement
20 (“Eligible Aggrieved Employees,” “PAGA Payment,” “PAGA Period,” “Individual PAGA
21 Payments”), on a pro rata basis. (Han Dec., *supra*, at ¶ 29.)

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25 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiffs’ motion for
26 final approval. (Han Dec., *supra*, at ¶ 30.) At that time, Plaintiffs will ask the Court to approve the amount of these
27 costs. (*Ibid.*) If Plaintiffs’ actual litigation costs exceed \$25,000, Plaintiffs will only seek reimbursement in the
28 amount of \$25,000. (*Ibid.*) If the amount awarded is less than the amount requested by Class Counsel for the
Attorneys’ Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and will
be distributed to all Class Members who do not submit a valid and timely Exclusion Form requesting to exclude
themselves from the class action Settlement “Participating Class Members”). (*Ibid.*)

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

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 that \$534,875 (“Net Settlement Amount”) will be distributed to Class Members – with an
4 average Individual Settlement Share estimated at \$245.69. (Han Dec., *supra*, at ¶ 31.)

5 Each Participating Class Member’s Individual Settlement Share will be apportioned as
6 follows: (1) thirty-three percent (33%) shall be treated as back wages, subject to applicable
7 withholdings, for which a Form W-2 will be issued; (2) thirty-three percent (33%) will be treated
8 as non-wages, including interest and (3) thirty-four percent (34%) will be treated as penalties, for
9 which an IRS Form 1099 shall be issued to the extent required by the tax code. (Han Dec.,
10 *supra*, at ¶ 32.) The Settlement Administrator will withhold the amount of the Participating Class
11 Members’ portion of normal payroll withholding taxes out of each person’s Individual
12 Settlement Share. (*Ibid.*) The Settlement Administrator will also calculate the amount of the
13 Participating Class Members’ and Defendants’ portion of payroll withholding taxes. (*Ibid.*)
14 Finally, the Settlement Administrator will submit Defendants’ portion of payroll withholding tax
15 calculation to Defendants for additional funding and forward those amounts along with each
16 person’s Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*)

17 The Settlement Administrator will pay each Participating Class Member their Individual
18 Settlement Share from the Net Settlement Amount. (Han Dec., *supra*, at ¶ 33.) The Individual
19 Settlement Share is calculated based on each Participating Class Member’s pro rata share of the
20 Net Settlement Amount based on workweeks during the Class Period as follows:

21 (i) the number of weeks he or she worked for Defendants as a non-exempt
22 employee of Defendants or through a third-party staffing agency during the Class
23 Period, divided by (ii) the total number of weeks worked by all Class Members
24 collectively during the Class Period, which is then multiplied by the Net
25 Settlement Amount. Defendants will include the number of workweeks worked
26 by Class Members in the Class Data which will be used by the Settlement
27 Administrator for purposes of this calculation. (*Ibid.*)

28 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
according to their proportional share, which will be based upon the total number of workweeks
he or she worked during the PAGA Period. (Han Dec., *supra*, at ¶ 34.) The Individual PAGA
Payment is calculated based on each Eligible Aggrieved Employee’s pro rata share of the PAGA

1 Payment allocated to the Eligible Aggrieved Employees based on workweeks during the PAGA
2 Period as follows:

3 (i) the number of work weeks he or she worked for Defendants as a non-exempt
4 employee of Defendants or through a third-party staffing agency during the PAGA
5 Period, divided by (ii) the total number of work weeks worked by all Eligible Aggrieved
6 Employees collectively during the PAGA Period, which is then multiplied by the PAGA
7 Payment allocated to the Eligible Aggrieved Employees. Defendants will include the
8 number of workweeks worked by Class Members in the Class Data which will be used by
9 the Settlement Administrator to calculate the number of weeks worked by each Eligible
10 Aggrieved Employee for purposes of this calculation. (Han Dec., *supra*, at ¶ 34.)

11 The precise number of compensable weeks worked per Class Member will not be known
12 until Defendants have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶
13 35.) The Settlement shall be made on a non-claims-made basis and will be non-reversionary.
14 (*Ibid.*)

15 **iii. Notice to the Class**

16 Within fifteen (15) business days after entry of the Preliminary Approval Order,
17 Defendants shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
18 36.) The Class Data shall be formatted as a Microsoft Excel spreadsheet, or similar format, and
19 shall include, to the extent available: (i) each Class Member's full name; (ii) each Class
20 Member's last-known address; (iii) each Class Member's Social Security and Employee ID
21 number; (iv) the Class Member's relevant dates of employment (relevant dates are dates that the
22 Class Member worked for Defendants as non-exempt employees of Defendants or through a
23 third-party staffing agency within the Class Period and/or PAGA Period); and (v) the number of
24 work weeks worked by the Class Member ("Class Data"). (*Ibid.*)

25 Within fourteen (14) calendar days after Defendants' deadline to provide the Class Data
26 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
27 identified Class Members via first-class U.S. Mail. (Han Dec., *supra*, at ¶ 37.) Class Members
28 are not required to submit a claim form to receive their Individual Settlement Shares pursuant to
the Agreement. (*Ibid.*) Similarly, Eligible Aggrieved Employees are also not required to submit
a claim form to receive their Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and

1 Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively,
2 which is Exhibit 2 to the Declaration of Douglas Han. (Han Dec., *supra*, at ¶ 37.)

3 **iv. Distribution of Funds**

4 No later than fourteen (14) calendar days after the Effective Final Settlement Date,
5 Defendants shall deposit the Gross Settlement Amount of \$997,500 needed to pay the entire
6 Gross Settlement Amount and the employer's share of payroll taxes by wiring the funds to the
7 Settlement Administrator. (Han Dec., *supra*, at ¶ 38.) Defendants shall also provide any tax
8 information that the Settlement Administrator may need to calculate each Participating Class
9 Members' Individual Settlement Shares. (*Ibid.*)

10 No later than fourteen (14) calendar days after the funding of the Settlement, the
11 Settlement Administrator shall calculate and disburse all payments due under the Settlement
12 Agreement, including all Individual Settlement Shares, the Attorneys' Fee Award, the Cost
13 Award, the Class Representative Enhancements, the PAGA Payment, and the Administration
14 Costs. (Han Dec., *supra*, at ¶ 39.) The Settlement Administrator will also forward a check for
15 seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA
16 claim. (*Ibid.*)

17 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
18 their Individual Settlement Share and Individual PAGA Payment checks (which may be issued
19 as a single check) within one hundred eighty (180) calendar days after the checks are mailed to
20 them. (Han Dec., *supra*, at ¶ 40.) If any checks are not redeemed or deposited within ninety (90)
21 calendar days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*)
22 If any checks remain uncashed or not deposited by the expiration of the 90-day period after
23 mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
24 calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or
25 Individual PAGA Payment (as applicable) to the California State Controller's Unclaimed
26 Property Division in accordance with California Unclaimed Property Law so that the
27 Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual
28 Settlement Share and/or Individual PAGA Payment available to him or her per the applicable

claim procedure to request that money from the State of California. (Han Dec., *supra*, at ¶ 40.)

v. Release of Claims

As of the Effective Final Settlement Date, in exchange for the consideration set forth in the Agreement, Plaintiffs and the Participating Class Members shall be deemed to have released the Released Parties from the Released Claims for the Class Period (“Released Claims”). *See* Exhibit 2 §§ I(JJ), III(I). (Han Dec., *supra*, at ¶ 41.)

As of the Effective Final Settlement Date and upon Defendants’ fully funding of the Settlement, the Parties agree the settlement and judgment to be entered by the court following approval of this settlement forever bars Plaintiff Romulo and the LWDA, directly or through any other proxy or agent, from any future prosecution of Labor Code section 2698, *et seq.*, claims based on released claims during the PAGA Period against any of the Released Parties (“PAGA Release”). *See* Exhibits 2 §§ I(JJ), III(K). (Han Dec., *supra*, at ¶ 42.)

The Released Parties include Defendants, and all of Defendants’ present and former subsidiaries, parents, affiliates, and joint ventures, and all of Defendants’ shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them, KIK Custom Products, Inc, and Aerosols Danville Inc., and any individual or entity which could be jointly liable with Defendants for any of the Released Claims, including staffing agencies who hired, provided or assigned Class Members to perform work at Defendants within the Class Period (“Released Staffing Agencies”). Released Staffing Agencies includes, without limitation, Imperial Staffing & Associates, United Employment Solutions Inc., Priority Workforce, Inc., EmployBridge, LLC, Kamran Staffing, Inc., MLG Staffing Experts, LLC, Resource Employment Solutions, TSA Staffing (d/b/a Baron HR), and Adecco. (“Released Parties”). *See* Exhibit 2 § I(KK). (Han Dec., *supra*, at ¶ 43.)

Regarding the Released Claims only, Participating Class Members waive all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding the significance of that waiver. Section 1542 provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her

1 favor at the time of executing the release and that, if known by him or her, would have materially
2 affected his or her settlement with the debtor or released party.” See Exhibit 2 § III(J). (Han
3 Dec., *supra*, at ¶ 44.)

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

5 Both Class Counsel and Counsel for Defendants are particularly experienced in wage and
6 hour employment law and class actions. Class Counsel has significant experience in litigating
7 unpaid wages, non-compliant meal period, and non-compliant rest period class actions. (Han
8 Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

9 Class Counsel has prosecuted numerous cases on behalf of employees for California
10 Labor Code violations and thus are experienced and qualified to evaluate the class claims, to
11 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
12 defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.) This experience instructed Class Counsel on
13 the risks and uncertainties of further litigation and guided their determination to endorse the
14 proposed Settlement.³ (*Ibid.*)

15 **IV. ARGUMENT**

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

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

- 21 (a) A settlement or compromise of an entire class action, or a cause of action
22 in a class action, or as to a party, requires the approval of the court after
23 hearing.

23 . . .

24 ///

25 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
26 Action Settlement has been provided to the Class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

- 1 (c) Any party to a settlement agreement may serve and file a written notice of
2 motion for preliminary approval of the settlement. The settlement
3 agreement and proposed notice to class members must be filed with the
4 motion, and the proposed order must be lodged with the motion.

5 Courts act within their discretion in approving settlements that are fair, not collusive, and take
6 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
7 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
8 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
9 U.S. 905.)

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

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

17 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
18 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
19 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not
20 require an explicit statement of the maximum amount the class could recover if the plaintiff
21 prevailed on all his claims, provided there is a record that allows “an understanding of the
22 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
23 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
24 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
25 itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
26 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
27 499-500.).)

28 As the following subsections show, the Parties’ investigation and discovery revealed
numerous reasons to discount claims and agree to the Settlement.

1 **i. The Settlement Is Fair and Reasonable**

2 The proposed Settlement was only possible following significant discovery and
3 evaluation of Defendants’ relevant policies and procedures, as well as the data Defendants
4 produced for the putative class as referenced in Section III above, which permitted Class Counsel
5 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
6 48.)

7 This discovery informed Plaintiffs’ central theories of liability, which are predicated on
8 Plaintiffs’ claims that Defendants failed to pay overtime wages, failed to pay minimum wages,
9 failed to provide meal and rest breaks and pay applicable premiums, failed to pay final wages in
10 a timely manner, failed to issue compliant wage statements, failed to reimburse business
11 expenses, violated Labor Code section 2698, *et seq.* (PAGA), and violated the Business &
12 Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 49.)

13 Defendants vehemently deny Plaintiffs’ theories of liability and contend, as stated above,
14 that all meal and rest breaks were provided in compliance with California law, that all wages
15 were properly paid to Class Members, that they paid all wages in a timely manner, that they
16 provided wage statements in compliance with Labor Code section 226, and that they reimbursed
17 all business expenses. (Han Dec., *supra*, at ¶ 50.) Defendants further argue that any mistakes
18 made (which they deny) were honest rather than willful. (*Ibid.*) Finally, Defendants counter that
19 if litigation were to continue, they feel confident that they would prevail. (*Ibid.*)

20 Although Plaintiffs believe the case is suitable for certification on the basis that there are
21 company-wide policies that Plaintiffs contend violate California law and uniformly affect the
22 putative class members, uncertainties with respect to certification are always present. (Han Dec.,
23 *supra*, at ¶ 51.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34
24 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*)
25 Decisions following *Sav-On* have reached different conclusions concerning certification of
26 wage-and-hour claims.⁵ (*Ibid.*)

27 ⁵(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
28 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,

1 Although remaining confident in the strengths of his claims, all these factors led Plaintiffs
2 to discount the following calculations of potential damage claims.

3 **ii. The Settlement Amount of \$997,500 Is Reasonable**

4 In addition to being able to discover the strengths and vulnerabilities associated with
5 Plaintiffs' claims, in preparing for mediation, Defendants provided Plaintiffs with a sampling of
6 time and pay records and information regarding the estimated number of pay periods and
7 workweeks worked by putative class members and the average hourly rate for Class Members.
8 (Han Dec., *supra*, at ¶ 52.) Defendants also confirmed that there were approximately 66,600
9 workweeks worked by those Class Members whose workweeks likely presented the greatest
10 settlement value in light of specific defenses or allegations and manageability challenges. (*Ibid.*)
11 Plaintiffs were also able to determine that the average hourly rate for Class Members was
12 \$19.13. (*Ibid.*)

13 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
14 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 246(l), 510,
15 512(a), 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 60.) Defendants asserted
16 that, regardless of the results of the underlying causes of action, PAGA penalties are not
17 mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintained that, in addition
18 to their strong arguments against the underlying claims, they had a strong argument that it would
19 be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v.*
20 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this
21 authority).)

22 Class Counsel calculated penalties under this cause of action by multiplying the number
23 of active Class Members (because of the shortened statutory period for this claim) by the civil
24 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
25 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 61.) Class Counsel then
26 applied discounts in light of the countervailing arguments with regard to the other causes of

27 148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
28 (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).)

1 action, as well as the Court’s power to award “a lesser amount than the maximum civil liability.”
2 (Lab. Code § 2699(e)(2).) (Han Dec., *supra*, at ¶ 61.)

3 Given the state of the law and the range of PAGA penalties requested and actually
4 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
5 for PAGA penalties. (Han Dec., *supra*, at ¶ 62.) However, if PAGA penalties are granted on any
6 one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure for
7 the eligible pay periods could be approximately \$6,449,200 ([46 x \$100] x 1,402 employees).⁶
8 (*Ibid.*) Plaintiffs calculated Defendants’ PAGA exposure using one hundred percent (100%)
9 violation rate based on the average number of pay periods (46) during the one-year statutory
10 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
11 PAGA theories of recovery (6) gives potential civil penalties of \$38,695,200. (*Ibid.*)

12 While Plaintiffs argued they could obtain over \$38 million for PAGA penalties, it seems
13 highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 63.) As
14 noted above, even after determining that PAGA penalties are appropriate, courts have reduced
15 PAGA penalties by about ninety percent (90%) where there are mitigating circumstances.
16 (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s
17 award of less than 10% of maximum PAGA penalty for meal break violations where company
18 sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as to
19 whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be
20 recovered in the same pay period for different Labor Code violations. On one hand, Labor Code
21 section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added),
22 implying a separate civil penalty for each violation. On the other hand, employers cite Labor
23 Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the
24 civil penalty described in subdivision (f)...on behalf of himself or herself and other current or
25 former employees against whom one or more of the alleged violations was committed”

26
27 ⁶ A recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a violation
28 by a Labor Commissioner or court. (*Bernstein v. Virgin America, Inc.* (9th Cir. Feb. 23, 2021) 2021 WL 867583, at
*11-12.) As a result, Plaintiffs estimated the amount of PAGA penalties using the “initial” penalty amount of \$100
under PAGA.

(emphasis added). However, Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$140,200 (1,402 employees x \$100 initial violation) on the low end and \$841,200 on the high end based on six (6) major theories of recovery. This range does not consider any of the many defenses to the applicability of PAGA penalties that Defendants have put forth here. As Defendants have argued vociferously, unlike in *Carrington*, Defendants contend their defenses mean that the PAGA award could ultimately be zero on some or all the claims.

To the extent Defendants’ exposure remains in the millions of dollars, the civil penalties could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken liberties to dramatically reduce the civil penalties. (*See e.g. Viceria v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the defendant acted deliberately or negligently failed to learn about its obligations].) Thus, under a more conservative approach, Class Counsel considered the possibility that the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$841,200 [1,402 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 63.)

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1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Dec., *supra*, at ¶ 64.) Many of the causes of action brought were duplicative of the
3 statutory claims such as violations of California Labor Code sections 226(a), 226.7, 246(l), 510,
4 512(a), 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period
5 are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum
6 penalties under the law. (*Ibid.*) Consequently, allocating \$50,000 to PAGA civil penalties was
7 reasonable based on a rate of \$0.78 per pay period [$\$50,000 \div 64,029$ Pay Periods in PAGA Date
8 Range = \$0.78], given the fact that Defendants are also paying an additional \$947,500 in the
9 class settlement. (Citing *Carrington*, *supra*, 30 Cal.App.5th at 529 (affirming a rate of \$5 per
10 violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75
11 per violation and a total PAGA penalty of \$70,000,000).)) (Han Dec., *supra*, at ¶ 64.) Where
12 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
13 result of self-interest at the expense of other Class Members,” such amounts are generally
14 considered reasonable. (Citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No.
15 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186
16 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which
17 does not allocate any damages to the PAGA claims.”).) (Han Dec., *supra*, at ¶ 64.)

18 Accordingly, taking into consideration Defendants’ defenses, their supporting evidence,
19 and their position that the Class Action is not suitable for class treatment, the settlement amount
20 of \$997,500— with an average Individual Settlement Share estimated at \$245.69—is reasonable
21 and fair.

22 c. Discount Analysis Justifies the Settlement

23 Excluding the civil penalties, which could be completely discretionary, for the reasons
24 stated the total estimated potential exposure, assuming certification and prevailing at trial, would
25 be approximately \$16,985,024.18 on the low end and \$17,622,386.18 on the high end. (Han
26 Dec., *supra*, at ¶ 65.)

27 ///

28 ///

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,366,482.68	75%	65%	\$119,567.23
Meal Break Premiums	\$2,038,033.68	65%	55%	\$320,990.31
Overtime/Minimum Wage: Off-the-Clock	\$1,274,058 to \$1,911,420	70%	60%	\$152,886.96 to \$229,370.40
Overtime/Minimum Wage: Rounding	\$440,389.82	40%	70%	\$79,270.17
Overtime/Minimum Wage: Non-Discretionary Bonuses, Shift Differentials, and Sick Leave Pay	\$417,178	40%	50%	\$125,153.40
Unreimbursed Business Expenses	\$399,594	35%	75%	\$64,934.03
Wage Statement Penalty	\$6,504,000	60%	70%	\$780,480
Waiting Time Penalty	\$4,545,288	60%	70%	\$545,434.56
MAXIMUM TOTAL EXPOSURE	\$16,985,024.18 to \$17,622,386.18⁷			\$2,188,716.66 to \$2,265,200.10⁸

Based on this analysis, the realistic recovery for this case is \$2,188,716.66 on the low end and \$2,265,200.10 on the high end. (Han Dec., *supra*, at ¶ 74.) The Gross Settlement Amount of \$997,500 is approximately five percent (5.66%) of the maximum potential exposure and is approximately forty-four percent (44.04%) of the maximum realistic exposure at trial, which is a good settlement. (*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 1078, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation

⁷ Han Dec., *supra*, at ¶¶ 53-59.

⁸ *Id.*, at ¶¶ 66-73.

1 that induce consensual settlements. The proposed settlement is not to be judged against a
2 hypothetical or speculative measure of what might have been achieved by the negotiators.”).
3 Nevertheless, this settlement is in line with the realistic exposure had Plaintiffs prevailed at trial
4 and provides a significant recovery for the Class Members. Thus, there can be no doubt that this
5 settlement is fair and reasonable.

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

7 For settlement purposes only, the requisites for establishing conditional class certification
8 are met. Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one
9 of a common or general interest, of many persons, or when the parties are numerous, and it is
10 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
11 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
12 “both [1] an ascertainable class and [2] a well-defined community of interest among class
13 members.” (*Ibid.*)

14 The proposed Class is ascertainable and numerous as to make it impracticable to join all
15 Class Members, and there are common questions of law and fact that predominate over any
16 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 75.) Plaintiffs contend
17 that as hourly-paid employees of Defendants, their claims are typical of the claims of the Class
18 Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)
19 Also, Plaintiffs assert the prosecution of separate actions by individual Class Members would
20 create the risk of inconsistent or varying adjudications, and a class action is superior to other
21 available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed below,
22 this case is amenable to class certification. (*Ibid.*)

23 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

24 “Ascertainability is required in order to give notice to putative class members as to whom
25 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
26 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
27 by describing a set of common characteristics sufficient to allow a member of that group to
28 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
2 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

3 The Class Action involves two thousand one hundred seventy-seven (2,177) Class
4 Members, which was confirmed by Defendants. (Han Dec., *supra*, at ¶ 76.) This Class is
5 sufficiently numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
6 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees”
7 is sufficiently numerous).) (Han Dec., *supra*, at ¶ 76.) Further, all Class Members can and will
8 be identified by Defendants to the Settlement Administrator through a review of Defendants’
9 employment records concerning hourly-paid and/or non-exempt employees employed by
10 Defendants within the State of California during the Class Period. (Han Dec., *supra*, at ¶ 76.)

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

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

22 **1. Common Issues Predominate**

23 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
24 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
25 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
26 other words, courts determine whether the elements necessary to establish liability are
27 susceptible to common proof, even if the class members must individually prove their damages.
28 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class

certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class of dancers on state law claims).)

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 77.) Plaintiffs contend all hourly-paid and non-exempt employees who worked for Defendants during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All Plaintiffs' claims surround Defendants' alleged common practice and scheme of failing to maintain compliant meal and rest break practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for noncompliant rest and meal breaks, off-the-clock work, overtime work, sick leave pay, associated wage statement, and waiting time penalties. (*Ibid.*)

2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt employees and allege they and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, improperly calculated and paid sick leave, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 78.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims as alleged arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

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1 Preliminary Approval.

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

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

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

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

13 **V. CONCLUSION**

14 Plaintiffs respectfully submit that the proposed Settlement is in the best interests of the
15 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
16 guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class
17 should be conditionally certified for purposes of settlement only, and the Notice Packet should
18 be approved.

19
20 Dated: October 12, 2021

JUSTICE LAW CORPORATION

21
22 

23 Douglas Han
24 Shunt Tatavos-Gharajeh
25 Phillip Song
26 Haig Hogdanian
27 *Attorneys for Plaintiffs*
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On October 13, 2021, I served the foregoing document described as

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

for the following case: **McNeil v. KIK International, LLC, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 802260-20**
Court Case No.: CIVDS1915438
San Bernardino County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on October 13, 2021, at Pasadena, California.



Anna Okada