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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANGELA BURMAYAN, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiffs,

v.

WECK ANALYTICAL ENVIRONMENTAL
SERVICES, INC., a California corporation;
WECK LABORATORIES, INC., an unknown
business entity; and DOES 1 through 100,
inclusive;

Defendant.

Case No.: 20STCV30871

Honorable William F. Highberger
Department 10

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); Declarations of Proposed
Class Representatives (Angela Burmayan and
Marisol Torres); and [Proposed] Order filed
concurrently herewith]

Hearing Date: September 29, 2021
Hearing Time: 2:30 p.m.
Hearing Place: Department 10

Complaint Filed: August 12, 2020
FAC Filed: November 10, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 29, 2021 at 2:30 p.m., or as soon as the
2 matter may be heard, before the Honorable William F. Highberger in Department 10 of the Los
3 Angeles County Superior Court (Spring Street Courthouse), located at 312 North Spring Street,
4 Los Angeles, California 90012, Plaintiffs Angela Burmayan and Marisol Torres (“Plaintiffs,”
5 “Plaintiff Burmayan,” and “Plaintiff Torres”) 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 and Representative Action Settlement
18 (“Class Notice”) attached as **“Exhibit A”** to the Settlement Agreement;
- 19 • Approving the Election Not To Participate In (Opt Out From) Class Action
20 Settlement Form (“Exclusion Form”) attached as **“Exhibit B”** to the Settlement
21 Agreement;
- 22 • Directing the mailing of the proposed Class Notice and Exclusion Form
23 (collectively, known as the “Notice Packets”) with a postage-paid return
24 envelope to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and Settlement Administration
26 process;

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- Approving Phoenix Class Action Settlement Administrators (“Phoenix”) as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

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

Dated: September 7, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Talia Lux
Haig Hogdanian
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$550,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all persons who
4 worked for Defendant Weck Analytical Environmental Services, Inc. d/b/a Weck Laboratories,
5 Inc. (“Defendant”) in California as an hourly-paid or non-exempt employee during the Class
6 Period (“Class”). The Class Period is the time period from April 6, 2016, to October 28, 2021
7 (“Class Period”). At the time of this filing, the number of Class Members provided by
8 Defendants that has been extrapolated through the Class Period is estimated to be one hundred
9 twenty-eight (128).

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
11 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
12 proposed settlement of \$550,000 – with an average Individual Settlement Share estimated at
13 \$2,051.95¹ – is well within the “ballpark” of reasonableness.

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

21 **II. BACKGROUND**

22 Founded in 1964, Defendant was initially a contract research laboratory focusing on
23 providing laboratory services for industrial quality control. (Declaration of Douglas Han (“Han
24 Dec.”) at ¶ 9.) Since its inception, Defendant has become a full service specialized
25 environmental testing laboratory. (*Ibid.*) This case involves all persons who worked for
26 Defendant in California as an hourly-paid or non-exempt employee during the time period from
27 April 6, 2016, to October 28, 2021. (*Ibid.*) Plaintiffs always allege that during the Class Period,
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¹ \$262,650 (Net Settlement Amount) / 128 (Class Members) = \$2,051.95.

1 Defendant's non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

2 On August 12, 2020, Plaintiff Burmayan, a former employee of Defendant, filed a wage-
3 and-hour class action lawsuit in the Superior Court of California, County of Los Angeles, on
4 behalf of all current and former hourly-paid or non-exempt employees of Defendant within the
5 State of California at any time during the relevant period. (Han Dec., *supra*, at ¶ 10.) Plaintiff
6 Burmayan's complaint alleged eight (8) causes of action for numerous violations of the
7 California Labor Code and California Business & Professions Code. (*Ibid.*) Specifically,
8 Plaintiff Burmayan's complaint alleged the following causes of action: (1) violation of Labor
9 Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and
10 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest
11 period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid minimum
12 wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6)
13 violation of Labor Code sections 226(a) (noncompliant wage statements); (7) violation of Labor
14 Code section 2800 and 2802 (unreimbursed business expenses); and (8) violation of Business &
15 Professions Code sections 17200 *et seq.* (*Ibid.*)

16 On August 10, 2020, Plaintiff Burmayan provided written notice to the Labor and
17 Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the
18 Labor Code she contends were violated and the theories supporting her contentions. (Han Dec.,
19 *supra*, at ¶ 11.)

20 After waiting the requisite sixty-five (65) days for the PAGA notice period to expire,
21 Plaintiff Burmayan filed a First Amended Complaint ("FAC") on November 10, 2020 in the
22 Superior Court of California, County of Los Angeles. (Han Dec., *supra*, at ¶ 12.) The FAC
23 added Plaintiff Torres as an additional plaintiff and class representative and added the following
24 cause of action: (1) violation of Labor Code section 2698, *et seq.* (PAGA). (*Ibid.*)

25 The Parties attended mediation on Plaintiffs' claims on July 28, 2021. (Han Dec., *supra*,
26 at ¶ 13.) Under the auspices of the mediator Jeffrey A. Ross, the Parties were eventually able to
27 reach an agreement on the settlement of the action. (*Ibid.*)

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1 Defendant generally and specifically denies all liability or wrongdoing of any sort
2 regarding any of the claims alleged, makes no concessions or admissions of liability of any sort,
3 and contends that for any purpose other than settlement, the Class Action is not appropriate for
4 class or representative treatment. (Han Dec., *supra*, at ¶ 14.) Defendant also asserts several
5 defenses to the claims and has denied any wrongdoing or liability arising out of any of the
6 alleged facts or conduct in the Class Action. (*Ibid.*)

7 **III. INVESTIGATION/ LITIGATION HISTORY**

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

9 After Plaintiff Burmayan filed her wage-and-hour class action complaint, both Parties
10 engaged in discovery. (Han Dec., *supra*, at ¶ 15.) Plaintiffs propounded one (1) set of form
11 interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions; and
12 one (1) set of requests for production of documents. (*Ibid.*) Afterwards, the Parties met and
13 conferred regarding this discovery. (*Ibid.*)

14 Prior to the mediation with Jeffrey A. Ross on July 28, 2021 and both before and after the
15 Class Action was filed, the Parties conducted significant investigation and discovery of the facts
16 and law. (Han Dec., *supra*, at ¶ 16.) Specifically, Defendant produced hundreds of documents
17 relating to its policies, practices, and procedures regarding reimbursement of business expenses,
18 paying non-exempt employees for all hours worked, meal and rest period policies, and payroll
19 and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time
20 records, pay records, and information relating to the size and scope of the Class, as well as data
21 permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*)
22 Furthermore, Plaintiffs interviewed several Class Members who worked for Defendant
23 throughout the Class Period. (*Ibid.*)

24 The Parties agree that the above-described investigation and evaluation, as well as the
25 information exchanged during the settlement negotiations, are more than sufficient to assess the
26 merits of the respective Parties' positions and to compromise the issues on a fair and equitable
27 basis. (Han Dec., *supra*, at ¶ 17.)

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1 Based upon Defendant's document production and interviews Class Counsel had with
2 non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to
3 provide employees with legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.)
4 Specifically, Defendant allegedly assigning a high volume of time-sensitive workloads coupled
5 with being understaffed prevented employees from receiving compliant meal and rest breaks.
6 (*Ibid.*) This issue was exacerbated by Defendant purportedly deducting thirty (30) minutes from
7 employees timecards to show employees took meal breaks even if they did not and failing to pay
8 premium wages for noncompliant meal and rest breaks. (*Ibid.*)

9 Plaintiffs also assert – and Defendant denies – that Defendant failed to pay employees for
10 all hours worked. (Han Dec., *supra*, at ¶ 19.) Specifically, Defendant maintained stringent
11 policies that pressured off-the-clock work that was exacerbated by the volume of time-sensitive
12 work that forced employees to work additional hours. (*Ibid.*) Furthermore, Plaintiffs allege – and
13 Defendant denies – that Defendant failed to include bonuses in employees' regular rates of pay
14 for overtime compensation purposes. (Han Dec., *supra*, at ¶ 20.)

15 Additionally, Plaintiffs contend – and Defendant denies – that Defendant failed to
16 reimburse employees for incurring business expenses. (Han Dec., *supra*, at ¶ 21.) Specifically,
17 Defendant's policies purportedly downplayed the need to reimburse business expenses despite
18 employees purchasing new shoes to effectively perform their duties and using their personal cell
19 phones for business-related purposes. (*Ibid.*)

20 Finally, Plaintiffs allege – and Defendant denies – that Defendant is liable for waiting
21 time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 22-23.)

22 Defendant denies Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 24.)
23 Among other things, Defendant denies Plaintiffs' meal and rest break contentions on the grounds
24 that it provided breaks within compliant times and that non-exempt employees were given
25 discretion as to when to take their breaks. (*Ibid.*) Defendant also contends that non-exempt
26 employees were allowed to use their meal and rest break time for their own purposes. (*Ibid.*)
27 Moreover, Defendant counters that it did not assign excessive, time-sensitive workloads that
28 pressured employees to work through their meal and rest breaks and provided reasonable

opportunities to take breaks more than the required time periods. (*Ibid.*) By extension, Defendant argues it did not automatically deduct meal breaks from employees' timecards if employees did not receive full and timely meal breaks. (*Ibid.*) Defendant further contends that whether non-exempt employees took meal and rest breaks during compliant time frames and were relieved of all duties are questions that could only be resolved by resorting to individualized inquiries to each non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*) Defendant also asserts that it paid its employees for all times and all hours worked, including overtime, minimum, and premium wages. (*Ibid.*) Furthermore, Defendant counters that it had policies expressly prohibiting off-the-clock work and did not have policies or practices that pressured employees to work additional hours off-the-clock without asking for compensation. (*Ibid.*) Moreover, Defendant contends that it did factor non-discretionary bonuses into eligible employees' regular rates for overtime purposes. (*Ibid.*) Defendant also asserts that its policies were not intended downplay reimbursing employees and that it reimbursed employees for all business expenses, including making business purchases and using their personal cell phones. (*Ibid.*) Finally, Defendants argue that any failure to comply with California labor laws (which it denies) was an honest mistake made in good faith. (*Ibid.*) Thus, Defendant contends any alleged conduct could not be deemed "willful" under Labor Code section 203. (*Ibid.*)

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

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

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

The Parties agreed to go to mediation with experienced wage-and-hour mediator, Jeffrey A. Ross. (Han Dec., *supra*, at ¶ 25.) The mediation took place on July 28, 2021. (*Ibid.*) During the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action, the

terms of which were memorialized in a Settlement Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec., *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediation, counsel for the Parties conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached by all Parties. (*Ibid.*)

Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification and trial and through any possible appeals. (Han Dec., *supra*, at ¶ 43.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including formal mediation on July 28, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (Han Dec., *supra*, at ¶ 44.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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 \$550,000 (“Maximum
5 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
6 amount not to exceed \$192,500 (thirty-five percent (35%) of the Maximum Settlement Amount)
7 to compensate Class Counsel for work already performed and all work remaining to be
8 performed in documenting the settlement, administering the settlement and securing Court
9 approval; (b) Cost Award for actual litigation costs not to exceed \$20,000;² (c) Class
10 Representative Enhancement Payments in the amount of \$10,000 to each Class Representative in
11 recognition of their work and efforts in obtaining the benefits for the Class and undertaking the
12 risk for the payment of costs in the event this matter had not successfully resolved; (d)
13 Administration Costs to Phoenix, the Settlement Administrator, in the sum currently estimated at
14 \$4,850 but not to exceed \$5,000; and (e) PAGA Payment of \$50,000, seventy-five percent (75%)
15 of which (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$12,500)
16 shall be distributed to the aggrieved employees eligible to recover the PAGA Payment that
17 consist of all hourly-paid or non-exempt employees of Defendant in California during the period
18 from August 10, 2019, to October 28, 2021 (“Eligible Aggrieved Employees,” “PAGA Period,”
19 “Individual PAGA Payments,” and “PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at
20 ¶ 26.)

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26 ² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiffs’ motion for
27 final approval. (Han Dec., *supra*, at ¶ 27.) At that time, Plaintiffs will ask the Court to approve the amount of these
28 costs. (*Ibid.*) If Plaintiffs’ actual litigation costs exceed \$20,000, Plaintiffs will only seek reimbursement in the
amount of \$20,000. (*Ibid.*) If the amount awarded is less than the amount requested by Class Counsel for the
Attorney 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 request 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 Maximum Settlement Amount, it is
3 estimated that \$262,650 (“Net Settlement Amount”) will be distributed to Class Members – with
4 an average Individual Settlement Share estimated at \$2,051.95. (Han Dec., *supra*, at ¶ 28.)

5 Each Participating Class Member’s Individual Settlement Share will be apportioned as
6 follows: thirty-three percent (33%) wages and sixty-seven percent (67%) interest and penalties.
7 (Han Dec., *supra*, at ¶ 29.) The Settlement Administrator will withhold the amount of the
8 Participating Class Members’ portion of normal payroll withholding taxes out of each person’s
9 Individual Settlement Share. (*Ibid.*) The Settlement Administrator will also calculate the
10 amounts of the Participating Class Members’ and Defendant’s portions of payroll withholding
11 taxes. (*Ibid.*) Furthermore, the Settlement Administrator will submit Defendant’s portion of
12 payroll withholding tax calculation to Defendant for additional funding and forward those
13 amounts along with each person’s Individual Settlement Share withholdings to the appropriate
14 taxing authorities. (*Ibid.*)

15 The Settlement Administrator will pay each Participating Class Member an Individual
16 Settlement Share from the Net Settlement Amount. (Han Dec., *supra*, at ¶ 30.) The Individual
17 Settlement Share is calculated based on each Participating Class Member’s pro rata share of the
18 Net Settlement Amount based on workweeks during the Class Period as follows:

19 (i) the number of weeks he or she worked as a hourly-paid or non-exempt
20 employee during the Class Period, divided by (ii) the total number of weeks
21 worked by all Class Members collectively during the Class Period, which is then
22 multiplied by the Net Settlement Amount. The Settlement Administrator will use
23 the Class Data to calculate the number of workweeks worked by each Class
24 Member based on their dates of employment for purposes of this calculation.
25 (*Ibid.*)

26 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
27 according to his or her proportional share, which will be based upon the total number of pay
28 periods he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 31.) The
29 Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee’s pro rata
30 share of the PAGA Payment allocated to Eligible Aggrieved Employees based on pay periods
31 during the PAGA Period as follows:

(i) the number of pay periods he or she worked as a hourly-paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of periods worked by each Eligible Aggrieved Employee based on their dates of employment for purposes of this calculation. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 32.) No portion of the Maximum Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 33.) The Class Data will be formatted as a Microsoft Excel spreadsheet and shall include each Class Member's: (i) full name; (ii) last-known address; (iii) Social Security and Employee ID number, if any; and (iv) relevant dates of employment ("Class Data"). (*Ibid.*)

Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 34.) Class Members are not required to submit a claim form to receive their Individual Settlement Share 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 Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively, which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

iv. Distribution of Funds

No later than thirty (30) calendar days after the date the Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no Plaintiffs in intervention at the time the Court grants Final Approval of the Settlement, the date the Court enters judgment granting Final Approval of the Settlement, Defendant shall deposit the Maximum Settlement Amount of \$550,000 needed to pay the entire Maximum Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶ 35.) Defendant shall at this time provide any

1 tax information that the Settlement Administrator may need to calculate each Participating Class
2 Member's Individual Settlement Share. (*Ibid.*)

3 Within fourteen (14) calendar days after the deadline to fund the Settlement, the
4 Settlement Administrator shall calculate and disburse all payments due under the Settlement
5 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
6 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the
7 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 36.) The Settlement
8 Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the
9 LWDA for settlement of the PAGA claim. (*Ibid.*)

10 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
11 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
12 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 37.) If any
13 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
14 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed
15 or not deposited by the expiration of the 90-day period after mailing the reminder notice, the
16 Settlement Administrator will, within two hundred (200) calendar days after the checks are
17 mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as
18 applicable) to the California State Controller's Office in accordance with California Unclaimed
19 Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will
20 have his or her Individual Settlement Share and/or Individual PAGA Payment available to him or
21 her per the applicable claim procedure to request that money from the State of California. (*Ibid.*)

22 **v. Release of Claims**

23 Upon Defendant's fulfillment of its payment obligations under Section III (I)(8)(a) of the
24 Agreement, in exchange for the consideration set forth in the Agreement, Plaintiffs and the
25 Participating Class Members release the Released Parties from the Released Claims arising
26 during the Class Period ("Released Claims"). *See* Exhibit 2 §§ I(JJ), III(J). (Han Dec., *supra*, at ¶
27 38.)

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1 Upon Defendant’s fulfillment of its payment obligations under Section III (I)(8)(a) of the
2 Agreement, the LWDA and each Eligible Aggrieved Employee, including Plaintiffs, individually
3 and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and
4 assigns hereby voluntarily and knowingly is barred from bringing any action for the PAGA
5 Released Claims during the PAGA Period. (Han Dec., *supra*, at ¶ 39.) The release of the PAGA
6 Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a
7 timely and valid request for exclusion. Aggrieved Employees may not exclude themselves from
8 the PAGA Released Claims (“PAGA Released Claims”). *See* Exhibits 2 §§ I(EE), III(K). (*Ibid.*)

9 The Released Parties include Defendant and its past or present officers, directors,
10 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
11 consultants, attorneys, insurers and reinsurers, both individually and in their business capacities,
12 and their respective successors and predecessors in interest, subsidiaries, affiliates, parents,
13 attorneys, and any entities that may be considered joint employers and their respective present
14 and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers,
15 directors, employees, agents, attorneys, insurers, successors and assigns, both individually and in
16 their business capacities (“Released Parties”). *See* Exhibit 2 § I(KK). (Han Dec., *supra*, at ¶ 40.)

17 Upon Defendant’s fulfillment of its payment obligations under Section III (I)(8)(a) of the
18 Agreement, and in exchange for the Class Representative Enhancement Payments to the
19 Plaintiffs in amounts not to exceed \$10,000 each, in recognition of their work and efforts in
20 obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event
21 this matter had not successfully resolved, Plaintiffs provide a general release of claims for
22 themselves and their spouses, heirs, successors and assigns. *See* Exhibit 2 § III(L). (Han Dec.,
23 *supra*, at ¶ 41.)

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

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

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

7 **IV. ARGUMENT**

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

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

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

16 . . .

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

21 Courts act within their discretion in approving settlements that are fair, not collusive, and take
22 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
23 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
24 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
25 U.S. 905.)

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27 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
28 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.

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

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

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

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

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

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

22 The proposed Settlement was only possible following significant discovery and
23 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant
24 produced for the putative class as referenced in Section III above, which permitted Class Counsel
25 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
26 44.)

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28 ///

1 This discovery informed Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendant failed to pay overtime wages, failed to pay minimum wages,
3 failed to provide meal and rest breaks and pay applicable premiums, failed to pay final wages in
4 a timely manner, failed to issue compliant wage statements, failed to reimburse business
5 expenses, violated Labor Code section 2698, *et seq.* (PAGA), and violated the Business &
6 Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 45.)

7 Defendant vehemently denies Plaintiffs' theories of liability and contend, as stated above,
8 that all meal and rest breaks were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that it paid all wages in a timely manner, that it provided
10 wage statements in compliance with Labor Code section 226, and that it reimbursed all business
11 expenses. (Han Dec., *supra*, at ¶ 46.) Defendant further contends that any mistakes made (which
12 it denies) were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were
13 to continue, it feels confident that it would prevail. (*Ibid.*)

14 Although Plaintiffs believe the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiffs contends violate California law and uniformly affect the
16 putative class members, uncertainties with respect to certification are always present. (Han Dec.,
17 *supra*, at ¶ 47.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34
18 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of
20 wage-and-hour claims.⁵ (*Ibid.*)

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

23 ///

24 ///

26 ⁵(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,
148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
(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 **ii. The Settlement Amount of \$550,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
4 time and pay records and information regarding the estimated number of pay periods and
5 workweeks worked by putative class members and the average hourly rate for class members.
6 (Han Dec., *supra*, at ¶ 48.) Defendant also confirmed that there were approximately 7,945
7 workweeks worked by Class Members. (*Ibid.*) Plaintiffs were also able to determine that the
8 average hourly rate for Class Members was \$18.69. (*Ibid.*)

9 Moreover, provisions of the Labor Code potentially triggering PAGA penalties in this
10 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
11 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 55.) Defendant asserted that,
12 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
13 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong
14 arguments against the underlying claims, it had a strong argument that it would be unjust to
15 award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore*
16 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).)

17 Class Counsel calculated penalties under this cause of action by multiplying the number
18 of active Class Members (because of the shortened statutory period for this claim), by the civil
19 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
20 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 56.) Class Counsel then
21 applied discounts in light of the countervailing arguments with regard to the other causes of
22 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
23 (Lab. Code § 2699(e)(2).) (*Ibid.*)

24 Given the state of the law and the range of PAGA penalties requested and actually
25 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
26 for PAGA penalties. (Han Dec., *supra*, at ¶ 57.) However, if PAGA penalties are granted on
27 any one of the violations alleged in Plaintiffs' operative complaint, the total penalties exposure
28

1 for the eligible pay periods could be approximately \$184,600 ([26 x \$100] x 71 employees).⁶
2 (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent (100%)
3 violation rate based on the average number of pay periods (26) during the one-year statutory
4 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
5 PAGA theories of recovery (6) gives potential civil penalties of \$1,107,600. (*Ibid.*)

6 Although Plaintiffs argued they could obtain over \$1 million for PAGA penalties, it
7 seems unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 58.) As
8 noted above, courts have reduced PAGA penalties by about 90% where there are mitigating
9 circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
10 trial court’s award of less than 10% of maximum PAGA penalty for meal break violations where
11 company sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as
12 to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be
13 recovered in the same pay period for different Labor Code violations. On one hand, Labor Code
14 section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added),
15 implying a separate civil penalty for each violation. On the other hand, employers cite Labor
16 Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the
17 civil penalty described in subdivision (f)...on behalf of himself or herself and other current or
18 former employees against whom one or more of the alleged violations was committed”
19 (emphasis added). However, Defendants contended that the Ninth Circuit’s opinions in *Ubrino v.*
20 *Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir.
21 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of
22 removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial
23 violation, the PAGA penalties would be limited to \$7,100 (71 employees x \$100 initial violation)
24 on the low end and \$42,600 on the high end based on six (6) major theories of recovery.

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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.

1 To the extent Defendants' exposure remains in the millions of dollars, the civil penalties
2 could be "unjust, arbitrary and oppressive, or confiscatory." In fact, many courts have taken
3 liberties to dramatically reduce the civil penalties. (*See e.g. Viceria v. Mistras Grp., Inc.* (N.D.
4 Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that
5 included a PAGA set-aside of just 0.15 percent of the PAGA claims' full potential value, where
6 "Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims"];
7 *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class
8 action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims' potential
9 value, where the defendant's obligations were "genuinely unclear" and there was no evidence the
10 defendant acted deliberately or negligently failed to learn about its obligations].) Thus, under a
11 more conservative approach, Class Counsel considered the possibility that the Court could assess
12 only the initial violation rate, bringing the basic PAGA penalty to \$42,600 [71 employees x \$100
13 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 58.)

14 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
15 (Han Dec., *supra*, at ¶ 59.) Many of the causes of action brought were duplicative of the
16 statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a),
17 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
18 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
19 under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based
20 on a rate of \$27.34 per pay period [$\$50,000 \div 1,829$ Pay Periods in PAGA Date Range =
21 \$27.34], given the fact that Defendant are also paying an additional \$500,000 in the class
22 settlement. (Citing *Carrington, supra*, 30 Cal.App.5th at 529 (affirming a rate of \$5 per
23 violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75
24 per violation and a total PAGA penalty of \$70,000,000).) (Han Dec., *supra*, at ¶ 59.) Where
25 PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the
26 result of self-interest at the expense of other Class Members," such amounts are generally
27 considered reasonable. (Han Dec., *supra*, at ¶ 59.) (citing *Hopson v. Hanesbrands Inc.* (N.D.
28 Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g.,

Nordstrom Com. Cases (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

Accordingly, taking into consideration Defendants’ defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$550,000— with an average Individual Settlement Share estimated at \$2,051.95—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$1,138,179.82 on the low end and \$1,249,608.44 on the high end. (Han Dec., *supra*, at ¶ 60.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$172,499.36	70%	60%	\$20,699.92
Meal Break Premiums	\$179,461.38	40%	50%	\$53,838.41
Overtime/Minimum Wage: Off-the-Clock	\$222,738.08 to \$334,166.70	60%	50%	\$44,547.62 to \$66,833.34
Overtime/Minimum Wage: Non-Discretionary Bonuses	\$3,883	30%	40%	\$1,630.86
Unreimbursed Business Expenses	\$42,128	20%	60%	\$13,480.96
Wage Statement Penalty	\$181,050	25%	50%	\$67,893.75
Waiting Time Penalty	\$336,420	25%	50%	\$126,157.50
MAXIMUM TOTAL EXPOSURE	\$1,138,179.82 to \$1,249,608.44⁷			\$328,249.02 to \$350,534.74⁸

Based on this analysis, the realistic recovery for this case is \$328,249.02 on the low end and \$350,534.74 on the high end. (Han Dec., *supra*, at ¶ 68.) The Maximum Settlement Amount of \$550,000 is approximately forty-four percent (44.01%) of the maximum potential exposure and is approximately one hundred fifty-six percent (156.90%) of the maximum realistic exposure

⁷ Han Dec., *supra*, at ¶¶ 49-54.

⁸ *Id.*, at ¶¶ 61-67.

1 at trial, which is an excellent settlement. (*Ibid.*)

2 The only question at preliminary approval is whether the settlement is within the range of
3 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
4 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
5 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
6 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
7 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
8 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
9 that induce consensual settlements. The proposed settlement is not to be judged against a
10 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)
11 Nevertheless, this settlement is in line with the realistic exposure had Plaintiffs prevailed at trial
12 and provides a significant recovery for the Class Members. Thus, there can be no doubt that this
13 settlement is fair and reasonable.

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

15 For settlement purposes only, the requisites for establishing conditional class certification
16 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is
17 one of a common or general interest, of many persons, or when the parties are numerous, and it
18 is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*
19 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
20 “both [1] an ascertainable class and [2] a well-defined community of interest among class
21 members.” (*Ibid.*)

22 The proposed Class is ascertainable and numerous as to make it impracticable to join all
23 Class Members, and there are common questions of law and fact that predominate over any
24 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 69.) Plaintiffs contend
25 that as hourly-paid employees of Defendant, their claims are typical of the claims of the Class
26 Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)
27 Also, Plaintiffs contend the prosecution of separate actions by individual Class Members would
28 create the risk of inconsistent or varying adjudications, and a class action is superior to other

1 available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed below,
2 this case is amenable to class certification. (*Ibid.*)

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

4 “Ascertainability is required in order to give notice to putative class members as to whom
5 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
6 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
7 by describing a set of common characteristics sufficient to allow a member of that group to
8 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
9 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
10 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

11 The Class Action involves one hundred twenty-eight (128) Class Members that were
12 extrapolated through the Class Period. (Han Dec., *supra*, at ¶ 70.) This Class is sufficiently
13 numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531,
14 n.5 (finding that a proposed class of “as many as 190 current and former employees” is
15 sufficiently numerous).) (Han Dec., *supra*, at ¶ 70.) Further, all Class Members can and will be
16 identified by Defendant to the Settlement Administrator through a review of Defendant’s
17 employment records concerning hourly-paid and non-exempt employees employed by Defendant
18 within the State of California during the Class Period. (Han Dec., *supra*, at ¶ 70.)

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

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

1 application of each of these factors is discussed below.

2 **1. Common Issues Predominate**

3 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
4 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
5 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
6 other words, courts determine whether the elements necessary to establish liability are
7 susceptible to common proof, even if the class members must individually prove their damages.
8 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
9 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v.*
10 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving
11 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-
12 21244 (court certified class of dancers on state law claims).)

13 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
14 alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 71; Declaration of Angela Burman (“Burmayan
15 Dec.”), at ¶¶ 6-8, 12-15; Declaration of Marisol Torres (“Torres Dec.”), at ¶¶ 6-7, 11-13.)
16 Specifically, Plaintiffs contend all hourly-paid and non-exempt employees who worked for
17 Defendant during the Class Period were subject to the same or similar employment practices,
18 policies, and procedures. (Han Dec., *supra*, at ¶ 71; Burmayan Dec., *supra*, at ¶¶ 6-8, 12-15;
19 Torres Dec., *supra*, at ¶¶ 6-7, 11-13.) All of Plaintiffs’ claims surround Defendant’s alleged
20 common practice and scheme of failing to maintain compliant meal and rest break policies and
21 practices, failing to reimburse business expenses, and failing to fully and properly compensate
22 employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime
23 work, associated wage statement, and waiting time penalties. (Han Dec., *supra*, at ¶ 71;
24 Burmayan Dec., *supra*, at ¶¶ 7-8, 12-15; Torres Dec., *supra*, at ¶¶ 7, 11-13.)

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2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially similar to 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 Defendant's common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 72; Burmayan Dec., *supra*, at ¶¶ 6-8, 12-15; Torres Dec., *supra*, at ¶¶ 6-7, 11-13.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (Han Dec., *supra*, at ¶ 72; Burmayan Dec., *supra*, at ¶¶ 6-8, 12-16; Torres Dec., *supra*, at ¶¶ 6-7, 11-14.) 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. (Han Dec., *supra*, at ¶ 72; Burmayan Dec., *supra*, at ¶¶ 6-8, 12-15; Torres Dec., *supra*, at ¶¶ 6-7, 11-13.)

3. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 73; Burmayan Dec., *supra*, at ¶ 16; Torres Dec., *supra*, at ¶ 14.) They have conducted themselves diligently and responsibly in representing the Class in this litigation, understands their fiduciary obligations, and have actively participated in the prosecution of this case. (Han Dec., *supra*, at ¶ 73; Burmayan Dec., *supra*, at ¶¶ 9-11, 17; Torres Dec., *supra*, at ¶¶ 8-10, 15.) Plaintiffs have spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (Han Dec., *supra*, at ¶ 73; Burmayan Dec., *supra*, at ¶¶ 10-11; Torres Dec., *supra*, at ¶¶ 9-10.) Furthermore, Plaintiffs do not have any interest that is adverse to the interest of other Class Members. (Han Dec., *supra*, at ¶ 73; Burmayan Dec., *supra*, at ¶¶ 16, 18-19; Torres Dec., *supra*, at ¶¶ 14, 16-17.) The proposed Class Counsel is also adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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

3 A class action is superior to other available means for the fair and efficient adjudication
4 of this controversy. Plaintiffs contend the joinder of all members of the proposed class is
5 impractical and that class treatment will permit a large number of similarly-situation persons to
6 prosecute their common claims in a single forum simultaneously for settlement purposes without
7 the necessary duplication of effort and expense that numerous individual actions would
8 engender. Moreover, because a number of Class Members are current employees, Plaintiffs
9 believe the fear of retaliation further support superiority of class-wide relief because that fear of
10 retaliation often discourages victims from seeking legal redress while currently employed by the
11 same employer.

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

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

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

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

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

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

5 **V. CONCLUSION**

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

11
12 Dated: September 7, 2021

JUSTICE LAW CORPORATION

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