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on behalf of themselves and all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 JANINE SALINAS, individually, and on
13 behalf of other members of the general public
similarly situated;

14 Plaintiff,
15 vs.

16 JAFRA COSMETICS INTERNATIONAL,
17 INC., a Delaware corporation; and DOES 1
through 100, inclusive,

18 Defendants.
19

Case No.: 20STCV04284

CLASS ACTION

Assigned for All Purposes To:
Hon. Carolyn Kuhl
Dept.: SS-12

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR AN ORDER (1)
PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Plaintiffs' Memorandum
of Points and Authorities; Declarations of
Douglas Han, Janine Salinas, Brandi Johnson,
and Julie Green; and [Proposed] Order]*

Date: September 20, 2021
Time: 10:30 a.m.

Complaint Filed: February 3, 2020
Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on September 20, 2021 at 10:30 a.m., or as soon thereafter
3 as this matter may be heard, at Department 12-SSC, located at 312 N. Spring Street, Los Angeles,
4 CA 90012, Plaintiffs Janine Salinas and Brandi Johnson (collectively “Plaintiffs”), on behalf of
5 themselves and all persons similarly situated, will and hereby moves this Court pursuant to
6 California Code of Civil Procedure § 382 and California Rule of Court 3.769 for an order:

7 (1) Preliminarily approving the class action settlement reached between the Plaintiffs
8 and Defendant JAFRA COSMETICS INTERNATIONAL, INC. (“Defendant”), including
9 granting preliminary approval of the following class: all current and former individuals who are or
10 who have been employed by Defendant in California from February 3, 2016, through May 30,
11 2021, as a non-exempt employee (or if any such person is incompetent, deceased, or unavailable
12 due to military service, the person’s legal representative or successor in interest evidenced by
13 reasonable verification);

14 (2) Approving the Notice of Class Action Settlement and Procedure for notice to the
15 class, and

16 (3) Setting the final approval hearing.

17 Pursuant to Labor Code § 2699.3(b)(4), the Parties also seek approval of the proposed
18 settlement’s allocation of funds to claims made under the Labor Code Private Attorneys General
19 Act of 2004 (“PAGA”).

20 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Stipulation”), filed
21 concurrently herewith, Defendant does not oppose the preliminary approval of the class action
22 settlement.

23 Under the terms of the Stipulation, the parties have agreed that all claims brought on
24 behalf of the class shall be fully and finally resolved for the total sum of \$150,000.00 (“Maximum
25 Settlement Amount”), to be paid on a non-reversionary basis. The amount remaining of the
26 Maximum Settlement Amount after the following deductions have been made (“Net Settlement
27 Amount”) shall be available for distribution to class members who do not opt out of the settlement:
28

1 • up to one third of the Maximum Settlement Amount, in the amount of Fifty
2 Thousand Dollars and Zero Cents (\$50,000.00), to Class Counsel for attorneys' fees, and not more
3 than Fifteen Thousand dollars (\$15,000.00) in reasonable litigation costs;

4 • up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to the Class
5 Representatives (\$7,500.00 to Class Representative Janine Salinas and \$7,500.00 to Class
6 Representative Brandi Johnson);

7 • claims administration costs not to exceed \$7,500.00;

8 • \$5,000.00 PAGA Payment (\$1,250.00 to be paid to the participating Class
9 Members and \$3,750.00 to be paid to the LWDA);

10 • A credit in the amount of \$32,500.00 towards the satisfaction of the Maximum
11 Settlement Amount, representing the amount previously paid to Class Members and PAGA
12 Members; and

13 • Class Members' share of any employment taxes.

14 This Notice of Motion and Motion is based on the fact that this is a fair and reasonable
15 settlement that benefits the class and was the product of informed, non-collusive negotiations by
16 the parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.*
17 (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44. The
18 proposed settlement meets the legal standard for preliminary approval and is in the best interests of
19 the class; the proposed form of notice explains the settlement terms in a clear and straightforward
20 manner; the proposed procedures for notice provide the best practical notice to the class; and Class
21 Members will have an opportunity to participate in and/or object to the settlement and/or opt-out
22 of the settlement.

23 ///

24 ///

25 ///

1 This Notice of Motion and Motion is based on this Notice, the parties' Stipulation and the
2 exhibits thereto (including the Notice to Class Members), the accompanying Memorandum of
3 Points and Authorities, the Declaration of Douglas Han, the pleadings, records and files in the
4 case, and such other further oral and documentary evidence which may be submitted at or before
5 the hearing on this Motion.

6
7 Dated: August 24, 2021

Respectfully submitted,

8 JUSTICE LAW CORPORATION

9
10 By



11 Douglas Han
12 Shunt Tatavos-Gharajeh
13 Jason Rothman
14 Arsine Grigoryan
15 Attorneys for Plaintiffs Janine Salinas and Brandi
16 Johnson, and all others similarly situated
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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Stipulation”), filed
4 concurrently herewith, the class consists of all current and former individuals who are or who have
5 been employed by Defendant in California during the Class Period as a non-exempt employee (or
6 if any such person is incompetent, deceased, or unavailable due to military service, the person’s
7 legal representative or successor in interest evidenced by reasonable verification) (“Class”). After
8 engaging in substantial investigation and extensive negotiations with the assistance of a respected
9 third-party neutral Jeffrey Krivis, the parties have agreed to settle all claims alleged in the lawsuit
10 on a class-wide non-reversionary basis for \$150,000.00, inclusive of all fees and costs. All 87
11 Class Members shall receive a settlement share unless they opt out.

12 The proposed settlement reflected in the Stipulation is fair, reasonable, and adequate, and
13 in the best interests of the class. Consequently, Plaintiffs, Janine Salinas and Brandi Johnson
14 (“Plaintiffs”) with the consent of Defendant JAFRA COSMETICS INTERNATIONAL, INC.
15 (“Defendant”) (Plaintiffs and Defendant are collectively referred to herein as the “Parties”), hereby
16 moves this Court for an order: (1) granting preliminary approval of the proposed class action
17 settlement, as embodied in the Joint Stipulation of Class Action Settlement (“Stipulation”) filed
18 concurrently herewith; (2) approving the Class Notice to be sent to class members, and the
19 notification schedule as set forth in the Stipulation and the Proposed Order, also filed concurrently
20 herewith; and (3) setting a hearing for final approval of the class action settlement.

21 **II. STATUS OF THE LITIGATION**

22 **A. Procedural History**

23 On February 3, 2020, a lawsuit was commenced against Defendant by Plaintiff Janine
24 Salinas in the Superior Court of California, County of Los Angeles, on behalf of herself and all
25 individuals employed by Defendant as non-exempt employees at any time within four years of the
26 filing of the Action within California. This lawsuit included the following causes of action against
27 Defendant: (1) Failure to Pay Overtime Wages Under Labor Code §§ 510 & 1198, (2) Meal Period
28 Liability Under Labor Code §§ 226.7 & 512(a), (3) Rest-Break Liability Under Labor Code §

1 226.7, (4) Failure to Pay Minimum Wages Under Labor Code §§ 1194 & 1197, (5) Waiting Time
2 Penalties Under Labor Code §§ 201-203, (6) Failure to Provide Compliant Wage Statements
3 Under Labor Code § 226(a), (7) Failure to Reimburse Expenses Under Labor Code §§ 2800 &
4 2802, and (8) Violation of Business & Professions Code § 17200, *et seq.* (Declaration of Douglas
5 Han (“Han Decl.”), filed concurrently herewith, ¶ 11.)

6 On March 1, 2021, the Parties participated in mediation before Jeffrey Krivis. The
7 mediation was a successful, arms-length negotiation with the Parties agreeing to settle the above-
8 entitled matter and enter into this Stipulation. (Han Decl., ¶ 12.)

9 On August 17, 2021, Plaintiff Janine Salinas filed her stipulation regarding First Amended
10 Complaint (i) to include penalties under the Private Attorneys General Act § 2698, *et seq.*, and (ii)
11 to add any additional named representative Plaintiff, Brandi Johnson. (*Id.* at ¶ 13)

12 **B. Investigation**

13 Before filing the above Action, Class Counsel investigated and researched the facts and
14 circumstances underlying the pertinent issues and the law applicable thereto. (Han Decl. at ¶ 14.)
15 This required thorough discussions and interviews between Class Counsel and Plaintiffs, as well as
16 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
17 initial investigation, Class Counsel determined that Plaintiff Janine Salinas’s claims were well
18 suited for class action adjudication owing to what appeared to be a common course of conduct
19 affecting a similarly situated group of employees. (*Id.*)

20 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
21 claims giving rise to the action, including:

- 22 • conducting formal discovery through Form Interrogatories, Special
23 Interrogatories, Request for Production of Documents, Request for Admissions, and circulating a
24 Belaire West Notice amongst Class Members
- 25 • conducting informal discovery and meeting and conferring with defense
26 counsel about same. Defendant’s counsel provided Plaintiffs’ counsel the following
27 documentation informally:
 - 28 ○ All job descriptions of Class Members during the Class Period;

- All applicable employment handbooks from February of 2016 through January of 2021;
 - Payroll, timekeeping records, and paystubs for Plaintiffs;
 - Redacted payroll, timekeeping records, and paystubs comprising of a random sampling of 87 employees.
 - The Parties agreed to a 15% random sampling figure for a total of 13 Class Members.
- reviewing and analyzing time and pay records as well as employment handbooks, Plaintiffs' personnel files, relevant policies and other documentation;
 - researching the applicable law and potential defenses;
 - constructing damage models based on interpretations of California law;
 - meeting and conferring with Plaintiffs' expert on data analysis and estimated exposure of Defendant; and
 - reviewing information provided by Defendant at the mediation.

(Han Decl. at ¶ 15.)

The Class enumerated in this action is ascertainable because the Class Members may be readily identified by reference to Defendant's records. Defendant has agreed to share the information from these records with the Settlement Administrator, CPT Group, in order to identify and contact the Class Members. Our investigation revealed approximately 87 Class Members and PAGA Members at the time of mediation on March 1, 2021. (Han Decl. at ¶ 16.)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.* ¶ 17.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

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1 **C. Settlement Efforts**

2 On March 1, 2021, the Parties mediated this case with Jeffrey Krivis, a respected and
3 highly experienced mediator in wage and hour class actions. (Han Decl. ¶ 18.) During the
4 mediation, the Parties discussed all aspects of the case, including the risks of litigation and the
5 risks to both parties of proceeding with a motion for class certification as well as the law relating
6 to unpaid wages, rest breaks, the addition of meal break claims, and the non-reimbursement of
7 necessary business expenses. (*Id.*) As a result of the mediation, the parties agreed to settle the
8 lawsuit according to the terms set forth in the Stipulation. (*Id.*; See Exhibit 1 attached to Han Decl.
9 (the “Stipulation”).)

10 From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks
11 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
12 Counsel believe that the recovery for each Class Member is fair and reasonable, taking into
13 consideration the amounts received in other wage and hour class actions, the risks inherent in
14 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
15 settlement award he or she will receive. (*Id.*) Further, based on the settlement negotiations, which
16 were hard-fought and conducted in good faith and at arm’s length between attorneys with
17 substantial experience litigating class actions and wage and hour cases, the Stipulation was the
18 product of a non-collusive settlement process in which the Parties were forced to make significant
19 compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

20 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

21 Under the terms of the proposed Stipulation, the Parties have agreed that all claims
22 brought on behalf of the class shall be fully and finally resolved for the amount of \$150,000.00¹
23 (“Maximum Settlement Amount”) on a non-reversionary basis to settle and release all claims
24 asserted by Plaintiffs on behalf of the proposed class. (Han Decl., ¶ 19; Exh. 1, ¶ 14.) The
25 Stipulation defines the class as all current and former individuals who are or who have been
26 employed by Defendant in California during the Class Period as a non-exempt employee (or if any

27 _____
28 ¹ Defendant will be entitled to a credit towards its satisfaction of the Maximum Settlement Amount of \$150,000.00 in
the amount of \$32,500.00, representing the amount previously paid to Class Members and PAGA Members. (Han
Decl., ¶ 22; Exh. 1, ¶ 14.)

1 such person is incompetent, deceased, or unavailable due to military service, the person's legal
2 representative or successor in interest evidenced by reasonable verification). (Han Decl., ¶ 20;
3 Exh. 1, ¶¶ 5-6.)

4 The "PAGA Members" or "Settlement PAGA Members" is defined as "all current and
5 former individuals who are or who have been employed by Defendant in California during the
6 PAGA Period as a non-exempt employee (or if any such person is incompetent, deceased, or
7 unavailable due to military service, the person's legal representative or successor in interest
8 evidenced by reasonable verification). (Han Decl., ¶ 21; Exh. 1, ¶¶ 5-6.)

9 The amount remaining in the Maximum Settlement Amount after the following
10 deductions have been made (called the "Net Settlement Amount") shall be available for
11 distribution to Class Members who do not opt out: (*Id.* at ¶ 20-22.)

12 • up to one third of the Maximum Settlement Amount, in the amount of Fifty Thousand
13 Dollars and Zero Cents (\$50,000.00), to Class Counsel for attorneys' fees, and not more than
14 Fifteen Thousand dollars (\$15,000.00) in reasonable litigation costs² (Han Decl., ¶ 22; Exh. 1, ¶
15 32.);

16 • up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to the Class
17 Representatives (\$7,500.00 to Class Representative Janine Salinas and \$7,500.00 to Class
18 Representative Brandi Johnson);

19 • claims administration cost (not to exceed \$7,500.00) (Han Decl., ¶ 22; Exh. 1, ¶ 34.);
20 and,

21 • \$5,000.00 PAGA Payment (\$1,250.00 to be paid to the participating Class Members
22 and \$3,750.00 to be paid to the LWDA). (Han Decl., ¶ 22; Exh. 1, ¶ 35.).

23 • Defendant will be entitled to a credit in the amount of \$32,500.00 towards the
24 satisfaction of the Maximum Settlement Amount, representing the amount previously paid to Class
25 Members and PAGA Members. (Han Decl., ¶ 22; Exh. 1, ¶ 14.)

26 • Class Members' share of any employment taxes.

28 ² Class Counsel's current litigation costs are currently \$11,554.35. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 The balance (approximately \$26,250.00) will be distributed to Class Members who do not
2 exclude themselves from settlement. (Han Decl., ¶ 23; Exh. 1, ¶ 36.) The Settlement Administrator
3 will calculate the total of Workweeks worked by each Class Member as a non-exempt employee in
4 California during the Class Period and the aggregate total number of Workweeks worked by all
5 Class Members as non-exempt employees in California during the Class Period. (Han Decl., ¶ 23;
6 Exh. 1, ¶ 36(a)-(b).) To determine each Class Member's estimated "Individual Settlement
7 Payment," the Settlement Administrator will use the following formula: The Net Settlement
8 Amount will be divided by the aggregate total number of Workweeks, resulting in the Workweek
9 Value. (*Id.*) Each Class Member's "Individual Settlement Payment" will be calculated by
10 multiplying each individual Class Member's total number of Workweeks by the Workweek Value.
11 (*Id.*) If any Class Member received a settlement during the lawsuit, his or her portion of the
12 Individual Settlement Payment will be reduced by the amount received. If the settlement amount
13 exceeds the Individual Settlement Payment, the Class Member shall receive a minimum Individual
14 Settlement Amount of Fifty Dollars and Zero Cents (\$50.00). If there are any valid and timely
15 Requests for Exclusion from members of the Settlement Class, the Settlement Administrator shall
16 proportionately increase the Individual Settlement Payment for each Class Member according to
17 the number of Workweeks worked, so that the amount actually distributed to the Settlement Class
18 equals 100% of the Net Settlement Amount. (Han Decl., ¶ 23; Exh. 1, ¶ 36(c).)

19 Each PAGA Members Individualized Settlement Payment will be calculated and
20 apportioned from the PAGA Payment amount based on the number of Pay Periods a PAGA
21 Member worked during the PAGA Period as a non-exempt employee in California. (Han Decl., ¶
22 24; Exh. 1, ¶ 37(a)-(c).) The Settlement Administrator will calculate the total number of Pay
23 Periods worked by each PAGA Member as a non-exempt employee in California during the
24 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
25 non-exempt employees in California during the PAGA Period ("Pay Period Value"). (*Id.*) To
26 determine each PAGA Members estimated "Individual Settlement Payment," the Settlement
27 Administrator will use the following formula: The PAGA Payment amount's portion allocated to
28 the PAGA Period will be divided by the aggregate total number of Pay Periods within the PAGA

1 Period, resulting in the Pay Period Value. Each PAGA Member’s “Individual Settlement
2 Payment” will be calculated by multiplying each individual PAGA Member’s total number of Pay
3 Periods by the Pay Period Value. (Han Decl., ¶ 24; Exh. 1, ¶ 37(a)-(c).) PAGA Members will not
4 be able to opt out or request exclusion from the PAGA Payment. (Han Decl., ¶ 24; Exh. 1, ¶
5 37(c).)

6 The amounts distributed to the Participating Class Members will be characterized as 20%
7 alleged wages, 80% as alleged interest and penalties. (Han Decl., ¶ 25; Exh. 1, ¶ 53.) Defendant
8 shall pay the employer’s share of payroll taxes due on the portion of Settlement Payments
9 allocated to wages separately and in addition to the Maximum Settlement Amount. (Han Decl., ¶
10 25; Exh. 1, ¶ 14.)

11 The settlement amount was a compromise figure, factoring in the inherent risks related to
12 certification, liability, damages, and Defendant’s solvency as a result of COVID-19. (Han Decl., ¶
13 26.) However, taking into account all of the circumstances of the action and the defenses raised by
14 Defendant against certification, liability and damages, Class Counsel believes that the settlement is
15 fair and reasonable. (*Id.*)

16 Attached to the Stipulation as **Exhibit A** is the Notice of Class Action Settlement (the
17 “Notice”). The Notice includes a summary of the case and settlement terms and provides Class
18 Members with instructions on how to exclude themselves and object to the settlement. The Parties
19 have approved the Notice, which is to be disseminated to Class Members consistent with the
20 manner and timing set out in the Stipulation and Proposed Order. (Han Decl., ¶¶ 27-28; Exh. A to
21 the Stipulation). The Parties request that this Court approve the Notice as well.

22 The Parties have also agreed that CPT Group (“CPT”) shall handle the notice and claims
23 administration³ (Exh. 1, ¶ 27), and the Parties respectfully request this Court to appoint CPT to
24 handle those procedures. The procedures for mailing notice and processing exclusions and
25 objections as well as distribution of the Net Settlement Amount is detailed in the Stipulation. (Han
26 Decl., ¶ 27-28; Exh. 1, ¶¶ 43-48.)

27
28 ³ The Parties originally agreed to ILYM Group, Inc. However CPT Group was able to provide a competitive rate
after the Parties had signed the Stipulation.

1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

2 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince*
3 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
4 (1981)29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in
5 favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-
6 75. The decision to certify a class is a procedural one and should be based on the allegations in the
7 operative complaint, and not in the perceived factual or legal merit of the class claims. *Linder v.*
8 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

9 To certify a settlement class, the Court must find the two primary requirements for
10 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
11 defined community of interest in the questions of law and fact involving the parties to be
12 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
13 *Company* (1967)67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

14 **A. There Is a Numerous and Ascertainable Class**

15 Whether a class is ascertainable is determined by examining the class definition, the size
16 of the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d
17 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
18 1271. Class members are “ascertainable” where they may be readily identified without
19 unreasonable expense or time.

20 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, this
21 requirement and the requirement of numerosity is met. Class Members are all current and former
22 individuals who are or who have been employed by Defendant in California during the Class
23 Period as a non-exempt employee (or if any such person is incompetent, deceased, or unavailable
24 due to military service, the person’s legal representative or successor in interest evidenced by
25 reasonable verification). (Exh. 1, ¶ 5.) PAGA Member(s)” or “Settlement PAGA Members” means
26 all current and former individuals who are or who have been employed by Defendant in California
27 during the PAGA Period as a non-exempt employee (or if any such person is incompetent,
28

1 deceased, or unavailable due to military service, the person's legal representative or successor in
2 interest evidenced by reasonable verification). (Exh. 1, ¶ 6.)

3 Documents and information exchanged between the Parties reflect a class of
4 approximately 87 combined Class Members and PAGA Members. (Han Decl. ¶¶ 16, 74(a).)
5 Defendant has substantially complete records of each such person, including contact information
6 and social security numbers. (Han Decl. ¶ 16.)

7 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.
8 (Han Decl. ¶ 74(a)-(b).)

9 **B. There Is a Well-Defined Community of Interest**

10 A community of interest is established by the predominance of common issues of law and
11 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

12 [D]oes not depend upon an identical recovery, and the fact that each
13 member of the class must prove his separate claim to a portion of
14 any recovery by the class is only one factor to be considered ... The
15 mere fact that separate transactions are involved does not of itself
16 preclude a finding of the requisite community of interest so long as
17 every member of the alleged class would not be required to litigate
18 numerous and substantial questions to determine his individual right
19 to recover subsequent to the rendering of any class judgment which
20 determined in plaintiffs' favor whatever questions were common to
21 the class.

22 *Id.* at 809.

23 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
24 common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the
25 class is united in its proof. (Han Decl. ¶ 74f.) Because Plaintiffs have alleged a single scheme, "the
26 relevant proof [does] not vary among class members" and "clearly presents a common question
27 fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation*
28 (SDNY 1997) 172 F.R.D. 119, 123 (*citing In Re NASDAQ Market-Makers Antitrust Litigation*,
(SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide
causation, class-wide injury, and class-wide damages when a common course of action has been
shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "eliminates the need for
each class member to prove individually the consequences of the defendants' actions to him or

1 her.” *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1351 (quoting *Rosack v. Volvo of America Corp*
2 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

3 This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
4 wages and overtime, failure to provide timely meal and/or rest breaks or premium payments in lieu
5 thereof, the resulting failure to pay final wages when required, the failure to reimburse necessary
6 business expenditures, the failure to provide accurate paystubs, and largely derivative claims under
7 the Business & Professions Code and PAGA. (Han Decl. ¶ 74f.) Plaintiffs contend these practices
8 effected Class Members and PAGA Members in the same way. Plaintiffs contend these practices
9 resulted in a failure to compensate employees at termination, and incomplete wages displayed on
10 wage statements. The outcome of litigation on this matter depends upon questions that are
11 common to class members. (Han Decl. ¶ 74f.) While Defendant maintained otherwise, these issues
12 will not be decided on the basis of facts peculiar to each Class Member and/or PAGA Member, but
13 rather on the basis of facts common to them all. It is also true that these issues of liability can be
14 determined on a class-wide basis. (*Id.*)

15 C. The Named Plaintiffs’ Claims Are Typical

16 A class representative’s claims are typical when they arise from the same event, practice,
17 or course of conduct that gives rise to the claims of other putative class members, and if their
18 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
19 necessarily identical to the claims of other class members. It is sufficient that the representative is
20 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
21 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
22 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
23 representative must have identical interests with the class members.”). Thus it is not necessary that
24 the class representative should have personally incurred all of the damages suffered by each of the
25 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

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1 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
2 Plaintiffs' claims are typical of class members' claims because they arose from the same factual
3 basis and are based on the same legal theories. (Han Decl. ¶ 74c). Plaintiffs worked as hourly non-
4 exempt-employees in California during the Class Period. (*Id.*) Accordingly, Plaintiffs are members
5 of the class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages
6 and subjected its employees to a detrimental rounding policy, etc.), which would arise if this were
7 individual actions of Plaintiffs applies to the other Class Members as well. As noted in the
8 operative First Amended Complaint, ¶¶ 13-43, Plaintiffs contend Defendant had an alleged
9 practice of failing to provide them all minimum wages owed, rounding time keeping records that
10 reflect total hours worked, failing to pay all premiums payments associated with late and/or missed
11 meal and rest breaks, and failed to reimburse all necessary business expenses, which they also
12 contend applied to the class. (Second Amended Complaint, ¶ 13-43; Han Decl. ¶ 74c.) The answer
13 to these questions would determine Defendant's liability to the putative class. (Han Decl. ¶ 74c).
14 Thus, the claims of Plaintiffs are typical of the claims of the putative class. (*Id.*) Accordingly, the
15 typicality requirement is satisfied. (*Id.*)

16 **D. Adequacy of Class Counsel and Class Representatives**

17 Class Counsel are experienced in class actions, have represented their clients zealously
18 and have no conflicts of interest. (Han Decl., ¶¶ 3-10, 74d). The Class Representatives interests are
19 aligned with those of the Class Members, they have suffered the same injuries as the Class
20 Members, and they have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
21 Representatives are adequate.

22 **E. Predominance and Superiority**

23 Individual issues do not predominate over those common to the class. (Han Decl., ¶¶ 74f-
24 g.) The class action mechanism is superior to individualized actions because class members have
25 little incentive to bring claims that are small. (*Id.*)

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V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by the Court. This is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation (Second) explains:

A two-step process is followed when considering class settlements... If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Manual for Complex Litigation (Second) (1985) at § 30.44. The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. *See, e.g., Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95. Thus, the preliminary approval of the class action settlement by the trial court is simply a “conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. Labor Code § 2699(1)(2). There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as \$0 have been approved. *See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also approved settlements for \$20,000.00 or less. *See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest.LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in \$300,000 settlement).

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

1 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

2 As a matter of public policy, courts both encourage the use of the class action device and
3 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
4 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a
5 failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268,
6 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action
7 litigation is concerned.”).

8 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
9 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
10 negotiations were conducted in good faith. *Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
11 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989)
12 883 F.2d 438, 447. Courts do not substitute their judgment for that of the proponents, particularly
13 when settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
14 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

15 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
16 several factors that should be analyzed in determining if a class action settlement should be
17 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
18 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
19 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
20 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
21 participant; and (8) the reaction of the class members to the proposed settlement.

22 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
23 informal discovery before entering into meaningful settlement negotiations in this matter,
24 including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s
25 time and pay records. (Han Decl., ¶¶ 14-16.) This discovery permitted Class Counsel to fairly
26 evaluate the strengths of the case and the risks associated with ongoing litigation, along with an
27 additional allegation for failure to properly record meal breaks and to pay for meal breaks taken
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late or that were shortened. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (Han Decl., ¶¶ 3-10.)

A. The Strength of Plaintiffs' Case.

The claims in this action include failure to provide accurate wage statements, rounding of hours worked, failure to pay minimum wages and overtime, failure to provide timely meal and/or rest breaks or provide one hour of premium pay in lieu thereof, failure to reimburse business expenses, failure to pay final wages when due, and related claims for violations of California's Business & Professions Code and for penalties under PAGA. (Han Decl., ¶¶ 11-13.)

Class Counsel felt confident in Plaintiffs' case and class certification given that Defendant's policies were applicable to all class members and unlawful on their face. (Han Decl., ¶¶ 29-55.)

B. The Risks Associated with the Merits.

As with all litigation, there are risks that a party will not prevail on the merits. In this case Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members minimum wages and overtime wages for all hours worked as she and other Class Members had to work post-shift hours while off the clock due to Defendant's rounding policy, along with Defendant's failure to properly record meal breaks. (Han Decl., at ¶ 29-46.)

Defendant counters that the allegations regarding failure to pay wages for hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. (Han Decl., at ¶ 32.) Defendant maintained that Class Members were instructed to clock in before attending to any duties and to stop all work after clocking out. Defendant contends that it paid for all reported hours worked, that Class Members were trained to record all hours worked, and that it paid proper overtime and minimum wages to Class Members. (*Id.*) Defendant further argued that to the extent time keeping records were rounded, the rounding was neutral. (*Id.*)

Defendant also argued that Plaintiffs and other class members were provided with the opportunity to take proper meal and rest periods. (*Id.* at ¶¶ 38, 40.) Defendant maintained that its policies and practices allowed its employees reasonable opportunities to take duty-free rest breaks under California law and that rest breaks need not be recorded, making these individualized

1 inquiries and not suitable for class treatment. (Han Decl., at ¶ 32.); *Brinker Restaurant Corp. v.*
2 *Superior Court* (2012) 53 Cal. 4th 1004, 1028-29.) If Defendant's contentions are proven true and
3 prevail in trial, the likely outcome of this claim would be no recovery for Class Members.

4 Plaintiffs also allege that Defendant failed to pay Plaintiffs and other Class Members
5 minimum wages and overtime for all hours worked. (*Id.* at ¶ 31.) Plaintiffs contend that they and
6 other Class Members were not paid proper overtime and minimum wages because Defendant
7 failed to pay Class Members wages for hours worked in excess of eight hours in a day due to
8 Defendant's rounding policy in addition to the worked performed while off the clock. (*Id.* at ¶31.)
9 Defendant argues that the allegations regarding failure to pay Class Members wages for hours
10 worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code §
11 510. Defendant contends that Class Members were instructed to clock in before attending to any
12 duties and to stop all work after clocking out. (*Id.* at ¶ 32.) Defendant contends that they paid for
13 all reported hours worked, that Class Members were trained to record all hours worked and that
14 they paid proper overtime and minimum wages to class members. (*Id.* at ¶ 32.) Defendant further
15 argued that to the extent time keeping records were rounded, the rounding was neutral. (*Id.*)
16 Defendant contends that given its written policies and practices, any unrecorded hours were likely
17 subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying
18 this claim, Class Counsel had to apply a significant discount to damages based on this theory. (*Id.*
19 at ¶ 32.)

20 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

21 In order to establish liability for these penalties, Plaintiffs would first have to establish
22 liability for the underlying claims.

23 Moreover, Defendant argues that meal and rest violations, even if established, could not
24 be the predicate for a Labor Code § 226 wage statement or § 203 waiting time claim. (Han Decl., ¶
25 42.) For example, the California Supreme Court has held that claims for meal and rest period
26 penalties do not constitute "action[s] brought for the nonpayment of wages" for the purpose of
27 determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In *Ling*
28 *v. P.F. Chang's China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an action

1 for unlawful meal and rest periods under the Labor Code “cannot support a section 203 penalty
2 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
3 wages.”). Authority is divided on this point. Moreover, although authority is divided, many district
4 court rulings support the conclusion that any unpaid meal and rest period premium pay cannot give
5 rise to derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236
6 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393
7 (noting a wage statement need only document compensation *actually received* and the hours used
8 to calculate that compensation). Thus, it is unclear if the Court would have permitted untimely
9 wage penalties or wage statement violations for Defendant’s alleged failure to provide meal and
10 rest period penalties.

11 In addition, Plaintiffs would have to establish that Defendant’s conduct was willful to
12 recover waiting time penalties. (Labor Code § 203.) With these penalties there is always the risk
13 that the trier of fact would not have held that Defendant’s actions were done “willfully.” A good
14 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*
15 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiffs allege
16 that Defendant failed to pay for all hours worked and premiums for non-compliant meal and rest
17 breaks. (Han Decl., ¶¶ 37-40.) Plaintiffs contend Class Members are entitled to these wages and
18 premiums, which they allege were not paid at the time of their termination or resignation. If
19 Plaintiffs are successful on their claims, the penalties pursuant to Labor Code § 203 shall attach.
20 Defendant, however, contends that it provided employees with a reasonable opportunity to take
21 meal and rest periods, asked class members to confirm the accuracy of their time records, and
22 therefore had good-faith defenses under *Brinker* and its progeny. As such, there was some risk
23 associated with waiting time penalties that Class Counsel had to consider. (Han Decl., ¶ 45.)

24 **D. The Risks Associated with the PAGA Penalties.**

25 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
26 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
27 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
28 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent

1 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
2 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
3 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
4 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
5 penalty amount specified by this part if, based on the facts and circumstances of the particular
6 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
7 confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
8 1135 [reducing PAGA award on this basis].)

9 Plaintiffs discounted potential penalties under this claim given this authority, and for other
10 reasons. The PAGA claims are premised on the same underlying wage statement and waiting time
11 claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether
12 violations in later pay periods trigger the \$200 penalty under PAGA as a “subsequent violation.”
13 (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair
14 amount of risk associated with PAGA claims. (Han Decl., ¶¶ 47-50.) The Parties also considered
15 that the purpose of PAGA is to “achieve maximum compliance with state labor laws,” and through
16 the proposed settlement, Defendant has agreed to ensure policies comply with California law.
17 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
18 settlement’s contemplated PAGA payment of \$5,000.00 appropriate.

19 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
20 and in the best interest of the Class. (Han Decl., *passim*.)

21 **D. The Risks Associated with the Failure to Reimburse Necessary Business**
22 **Expenses Claim.**

23 Defendant required the Class Members to pay for necessary work related expenses they
24 incurred, including, but not limited to, the cost of cellular telephone service used throughout the
25 course of Plaintiffs’ job related duties. (Han Decl., ¶ 51.) In regards to non-reimbursed personal
26 cell phone usage, Plaintiffs had to regularly use their personally cellular phones for work related
27 purposes while on and off the clock, in part (i) to receive instructions from Defendant’s
28 supervisors, and (ii) to use a work-specific phone application. (*Id.*)

1 Defendant argues that exposure to Defendant is limited and it only affected a handful of
2 employees. (Han Decl., ¶ 52.) Furthermore, Defendant argued that it's employee handbook
3 specifically discouraged the use of cellular phones. (*Id.*) Defendant argued that Plaintiff would be
4 unable to certify the reimbursement claim on the class wide level (*Id.*)

5 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

6 Given the risks outlined above, the issues in this case were complex and the risk for
7 Plaintiffs and the Class Members associated with this litigation was high. (Han Decl., ¶¶ 56-59.) A
8 class trial would have required the retention of expensive expert witnesses, the accrual of
9 extensive litigation costs, and the Parties would have had to spend a substantial amount of time.

10 Finally, given the complexity and unsettled nature of the issues, it is likely that any
11 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
12 further delay for the class members who have already waited years for resolution in this matter.

13 **F. The Risk of Maintaining Class Action Status Through Trial.**

14 In class actions, decertification is always a possibility. There is always a risk that a trial of
15 this magnitude can become unmanageable. (Han Decl., ¶¶ 56-59.) Given cases like *Duran v. U.S.*
16 *Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples
17 in class actions, decertification is a real risk that Class Counsel must take into account.

18 **G. The Amount Offered in Settlement.**

19 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
20 collusive, and arms-length negotiations between the Parties with an experienced mediator. In order
21 to determine the approximate potential damages which would be owed to Class Members, Class
22 Counsel analyzed the time records for Plaintiffs and Defendant provided Class Counsel with
23 records for a sampling of the Class Members. By analyzing this information, Class Counsel was
24 able to estimate the maximum value of the case if Plaintiffs were to prevail at trial.

25 There are approximately 87 total Class Members. Class Counsel estimated the maximum
26 exposure on the unpaid wage claim at \$434,652.00. (*Id.* at ¶ 33.) The maximum exposure for the
27 meal period claim at \$323,190.00 and rest claim at \$791,343.00.⁴ (*Id.* at ¶¶ 36-37.) The maximum

28 ⁴ This rest break number assumed a 100% violation rate which grossly overstates the potential exposure as there was no discoverable data points to show an actual violation rate without taking the depositions of numerous Class

1 exposure for the wage statement claim is \$132,000.00. (Han Decl. at ¶ 43.) The maximum
2 exposure for the waiting time penalties claim is \$173,986.00. (*Id.* at ¶ 46.) On PAGA, Plaintiffs
3 estimated maximum exposure at \$218,600.00. (*Id.* at ¶ 50.)

4 Once Class Counsel was able to determine the maximum potential damages, it was able to
5 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 29-55.) Class Counsel analyzed
6 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
7 of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies all
8 wrongdoing in this matter, and is confident they have strong legal and factual defenses to
9 Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the
10 claims for rest break violations, unpaid wages and for waiting time penalties were not as strong,
11 because of various defenses, including issues not suitable for class treatment, no detriment to the
12 class members over time, and *de minimis* defenses. Defendant may have had the opportunity to
13 establish that they had a good faith belief that they were complying with the law. (*Id.*) After taking
14 into account the likelihood of success on each claim and the challenges faced with certifying these
15 claims, along with Defendant's economic issues related to COVID-19, Class Counsel determined
16 that the settlement amount of \$150,000.00 was fair and reasonable. (*Id.* at ¶ 55.)

17 Under the Settlement, each of the approximately 87 class members will receive on
18 average \$301.72 after expenses. (*Id.*) Class Counsel feels that this Settlement is fair, reasonable,
19 and advantageous to the class. (*Id.* at ¶ 26.)

20 To summarize, the Settlement here is fair because it provides a substantial payment to
21 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides
22 a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class
23 Members proportionally based on their Payout Ratio.

24 As detailed at length in the accompanying Declaration of Douglas Han, the settlement is
25 the result of extensive settlement negotiations between the Parties, conducted at arm's length, and
26 informed by substantial factual and legal investigations. (Han Decl., *passim.*) Throughout this
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1 case, Class Members have been represented by experienced counsel with many years of
2 experience in employment class action litigation. (Han Decl., ¶¶ 3-10.)

3 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
4 including but not limited to, interviewing Plaintiffs at length on repeated occasions; drafting
5 pleadings; conducting informal discovery, meeting and conferring with defense counsel about
6 same; reviewing and analyzing time records and various handbooks and policies, Plaintiffs'
7 personnel file, an agreed upon sampling of data from Defendant's counsel for Class Members, and
8 other documentation; researching California law, preparing for and attending mediation;
9 extensively meeting and conferring with Plaintiffs' analytical expert; and negotiating and
10 finalizing the Stipulation and related documents. (Han Decl., ¶¶ 14-16.)

11 Among those matters considered during the course of settlement negotiations were the
12 strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and length
13 of further litigation, including class certification and the appeals process; the present state of the
14 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
15 of a settlement versus the long wait necessitated by any potential judgment in class members'
16 favor; the burdens of proof necessary to establish liability against Defendant; and Defendant's
17 defenses to the action. (Han Decl., *passim*.)

18 These factors each indicated that the interests of class members are best served by a
19 settlement of this action in the manner and upon the terms set forth in the Stipulation. The
20 Stipulation confers a substantial benefit on the class of up to \$150,000.00, based on the (i) total
21 Workweeks worked by each Class Member as a non-exempt employee in California during the
22 Class Period and the aggregate total number of Workweeks worked by all Class Members as non-
23 exempt employees in California during the Class Period (*Id.* at ¶ 23.), and the (ii) total number of
24 Pay Periods worked by each PAGA Member as a non-exempt employee in California during the
25 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
26 non-exempt employees in California during the PAGA Period. (*Id.* at ¶ 24.) In addition, Class
27 Counsel secured prospective relief for the class in that Defendant will ensure their policies comply
28 with California law.

1 Class Counsel believes that the settlement is fair and reasonable and serves the best
2 interests of the Class Members. (Han Decl. at ¶ 26.) Although the recommendations of counsel
3 proposing the class settlement are not conclusive, the Court can properly take the
4 recommendations into account, particularly if counsel has been involved in litigation for some
5 period of time, appear to be competent, and have experience with this type of litigation, and
6 significant discovery has been completed. *See Newberg*, §11.47.

7 **H. Uncashed Checks, Unpaid Reside or Other Unclaimed Funds**

8 The Parties have agreed that funds from any checks returned as undeliverable, or any
9 checks not negotiated within 180 days, shall be distributed by the Settlement Administrator to
10 the State Controller's Unclaimed Property Fund. (Han Decl., ¶¶ 72-73; Exh. 1, ¶ 51.) No later
11 than ten (10) calendar days after the expiration of the 180 day period, the Settlement
12 Administrator shall deposit the total amounts contained in the settlement checks, and all interest
13 that has accrued, to the State Controller's Unclaimed Property Fund. (*Id.*) The Settlement
14 Administrator shall provide a declaration of deposit with the State Controller's Unclaimed
15 Property Fund, which will be served on Class Counsel and Defendant's Counsel within ten (10)
16 calendar days of payment of the residual to such beneficiary. (*Id.*)

17 Any costs associated with administering the remaining funds under this section (e.g., bank
18 stop-payment charges, settlement administration costs associated with any reserve amount) or
19 payments to the State Controller's Unclaimed Property Fund will be deducted before the deposit
20 into the State Controller's Unclaimed Property Fund. (*Id.*)

21 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND** 22 **REASONABLE**

23 It is appropriate to provide a relatively modest additional incentive payment to the class
24 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
25 F.Supp. 294.

26 Plaintiffs spent a considerable amount of time better apprising themselves of their rights,
27 deciding whether remedial action should be taken, how it should be taken, how the lawsuit would
28 impact them, and finally contacting Class Counsel who spent many hours with each of the

1 Plaintiffs discussing the case and the law. (Han Decl., ¶¶ 66-67.) In the end, Plaintiffs decided to
2 vindicate not only their own rights but also those of their co-workers by pursuing a class action
3 lawsuit. (*Id.*)

4 The courage it took to do this should not be underestimated. By suing Defendant,
5 Plaintiffs contend they increased their respective risk of retaliation by prospective employers. (*Id.*
6 ¶ 68.) Plaintiffs' lawsuit has now cost Defendant considerable resources, and Plaintiffs contends
7 such conduct will not be lost on a prospective employer who have to choose between an applicant
8 who has never sued a prior employer and one who has. (*Id.*) Plaintiffs contend this risk is
9 particularly real in the information age, where employers can, more easily than ever, perform
10 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

11 But Plaintiffs did not allow their fear of the potential repercussions of being a class
12 representative deter them from acting for the benefit of Class Members. (*Id.* ¶ 69.) To the contrary,
13 Plaintiffs have been intimately involved in this case since they each respectively signed on as a
14 class representative. (*Id.*) They have devoted a substantial amount of time to helping Class
15 Counsel effectively develop and prosecute this action at every stage of the litigation since she
16 became a named plaintiff. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff Janine
17 Salinas conferred with Class Counsel on numerous occasions to discuss every aspect of her case.
18 (*Id.*) Plaintiff Brandi Johnson, while not part of the pre-investigation phase of the lawsuit, also
19 spent considerable time with Class Counsel getting apprised of the current state of the case prior to
20 being brought on a class representative. (*Id.*) Plaintiffs have provided Class Counsel with
21 information about Defendant and about the industry generally, reviewed documents, identified
22 witnesses, consulted Class Counsel throughout the litigation, participated in the mediation process,
23 monitored the progress of the litigation with Class Counsel, and reviewed and signed the
24 settlement agreement. (*Id.*)

25 Plaintiffs have spent a significant amount of time with Class Counsel detailing their
26 knowledge of Defendant's practices. (*Id.* ¶ 70.) They have diligently, adequately, and fairly
27 represented Class Members, and have not placed their interests above any member of the putative
28

1 class. (Han Decl., ¶ 70) This sort of payment to a class representative has been a common feature
2 of settlements negotiated by Class Counsel and have been routinely approved by trial courts. (*Id.*)

3 Class Counsel believes that a combined service enhancement award in the amount of
4 \$15,000.00 (\$7,500.00 to Class Representative Janine Salinas and \$7,500.00 to Class
5 Representative Brandi Johnson) to the Class Representatives is fair and reasonable. (*Id.* ¶ 71.)

6 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
7 **CLASS MEMBERS.**

8 Constitutional due process requires that class members be provided with notice sufficient
9 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
10 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
11 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
12 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
13 convey information regarding the settlement and the class members' rights, entitlements, and
14 obligations; and afford class members the opportunity to present their objections. (*Id.*)

15 The Notice meets constitutional standards because it provides all the information a
16 reasonable person would need to make a fully informed decision about the settlement. It will
17 notify all class members of the terms of the settlement, of its effect on their rights, of their options
18 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
19 exercising those options. (Han Decl., ¶¶ 27-28, 60-62.) Moreover, the Notice will specifically
20 direct any class members who have questions or concerns to contact the settlement administrator,
21 CPT Group, or Class Counsel. (*Id.*)

22 The standard for determining the adequacy of notice is whether the notice has "a
23 reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior*
24 *Court* (1975) 50 Cal.App.3d 960, 974. The Judicial Council of California's Deskbook on the
25 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
26 notice by mail is preferred when possible and dissemination of combined certification/settlement
27 notice is a common and accepted practice. *In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.

1 Here, the Notice Packet will be sent via first-class mail to each Class Member. (Han Decl.
2 ¶¶ 27, 60, Exh. 1 ¶¶ 43-45.) If any Notice Packets are returned undeliverable, the Settlement
3 Administrator will forward them to any address appearing on the returned envelope or, if there is
4 no forwarding address, perform a skip trace before mailing them to any addresses thereby
5 identified. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

6 Pursuant to controlling authority, the proposed Class Notice and method of distribution
7 fully comport with due process requirements. Therefore, the Court should approve the Class
8 Notice and direct that it be distributed as proposed herein.

9 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

10 Non-settling parties and third parties periodically may attempt to object to proposed class
11 action settlements, but the right of non-settling parties to object at the final settlement approval
12 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
13 members have standing to object to a proposed settlement. “Beginning from the unassailable
14 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
15 to inject their concerns via objection at the settlement stage would tend to frustrate this goal.”
16 *Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.

17 Since an application is being filed to obtain a good faith determination, no persons other
18 than class members have standing to object to the proposed settlement. *In re School Asbestos*
19 *Litigation* (3rd Cir. 1990) 921 F.2d 1330.

20 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS** 21 **REASONABLE AND SHOULD BE APPROVED.**

22 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an award
23 of fees equal to thirty-three percent of the of the Maximum Settlement Amount, amounting to
24 \$50,000.00, and actual litigation costs of up to \$15,000.00⁵. The requested fees are fair
25 compensation for a law firm involved in undertaking complex, risky, expensive, and time
26 consuming litigation solely on a contingent basis. (Han Decl. ¶¶ 22, 64-65.) Defendant will not
27 oppose Class Counsel’s fee and cost request.

28 ⁵ Class Counsel’s current litigation costs are \$11,554.35. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 California courts routinely look to the federal courts on class action approvals. The Ninth
2 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
3 to award a percentage of the "common fund" created as a result of the settlement. *Vincent v.*
4 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common
5 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
6 so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts have
7 discretion to choose either the percentage-of-the-fund method or the lodestar method. *In re Wash.*
8 *Pub. Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

9 Several courts have, however, expressed frustration with the "lodestar" approach for
10 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
11 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
12 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
13 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
14 demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. The
15 Ninth Circuit has used the percentage of the common fund approach to determine the award of
16 attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79
17 (approving attorneys' fee of 33 1/3% of settlement fund).

18 Class Counsel's application for attorneys' fees in light of the facts and circumstances
19 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
20 percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances
21 of the case. *Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at
22 1378. *Newberg* further notes: "[A]chievement of a substantial recovery with modest hours
23 expended should not be penalized but should be rewarded for considerations of time saved by
24 superior services performed." (*Id.* at §§ 14-10:14-11.)

25 The attorneys' fees request provided for in the Stipulation is commensurate with judicial
26 precedent. Both state and federal courts regularly approve fee awards equal to or greater than the
27 percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir.
28 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*

1 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8%
2 of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C.
3 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker v. City of Los*
4 *Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of
5 recovery achieved).

6 In wage and hour class actions in particular, California trial courts have customarily
7 approved attorney's fees consistent with or greater than the percentage of the common fund
8 requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super.Ct. Case No. BC
9 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
10 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
11 Ct. Case No.BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
12 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
13 *Eaton v. Adolph Coors Company* (2003) Orange County Super.Ct. Case No. 01CC00140 (Hon.
14 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
15 Super.Ct.Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
16 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).

17 Here, Class Counsel has borne the entire risk and cost of litigation and will not receive
18 any compensation until recovery is obtained. (*See Han Decl.*, ¶¶ 64-66.) The Court should also
19 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
20 award for Class Counsel is reasonable.

21 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 22 **APPROVAL**

23 The parties respectfully request this Court, as part of the preliminary approval process, to
24 grant the following relief and make the following orders:

- 25 1. Review and approve the Stipulation;
- 26 2. Review and approve the Notice, attached to the Stipulation as Exhibit A;
- 27 3. Consider and determine that the proposed class action settlement as set forth in the
28 Stipulation preliminarily appears fair, reasonable, and adequate;

1 4. Enter an order conditionally certifying the action as a class action for settlement
2 purposes only and preliminarily approving the proposed class action settlement and the
3 Stipulation;

4 5. Approve and appoint Douglas Han of JUSTICE LAW CORPORATION, to serve
5 as Class Counsel for settlement purposes;

6 6. Approve and appoint CPT Group, as the claims administrator to handle the notice
7 and claims procedures as set forth in the Stipulation;

8 7. Approve the proposed settlement's allocation of funds to claims made under
9 PAGA;

10 8. Order Defendant to disclose to CPT Group, Inc. the names, last-known addresses,
11 telephone numbers, dates of employment, and social security numbers of class members as set
12 forth in the Stipulation;

13 9. Order that CPT Group, Inc. mail the Notice Packet to Class Members; and

14 10. Set a date for the Final Approval Hearing.
15

16 Dated: August 24, 2021

Respectfully submitted,

JUSTICE LAW CORPORATION

18
19 By 

20 Douglas Han
21 Shunt Tatavos-Gharajeh
22 Jason Rothman
23 Arsine Grigoryan
24 Attorneys for Plaintiffs Janine Salinas and Brandi
25 Johnson, and all others similarly situated
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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 August 25, 2021, I served the foregoing document described as

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN ORDER (1)
PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

for the following case: **Salinas v. JAFRA Cosmetics International, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-805170-20**
Court Case No.: 20STCV04284
Los Angeles 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 August 25, 2021, at Pasadena, California.



Anna Okada