

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

TOM TESENE, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

BOSSARD, INC., a Delaware corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: RG21088612

Assigned for All Purposes to:
Honorable Noel Wise
Department 24

CLASS ACTION

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

[Reservation ID: R-004108041942]

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

Hearing Date: April 7, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 24

Complaint Filed: February 9, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 7, 2022 at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Noel Wise in Department 24 of the Alameda Superior Court
3 Administration Building, located at 1221 Oak Street, Oakland, California 94612, Plaintiff Tom
4 Tesene (“Plaintiff”) will and hereby moves for an order:

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

27 ///

- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the Administration Costs, and approval of the allocation for PAGA penalties.

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

Dated: March 11, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Talía Lux
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	13
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	13
ii.	The Settlement Was Reached Because of Arm's-Length Negotiations ..	13
iii.	The Settlement Is the Result of Thorough Investigation and Discovery .	14
c.	Terms of the Proposed Settlement	14
i.	Deductions from the Settlement.....	14
ii.	Calculation of the Individual Settlement Payments to Class Members...	15
iii.	Notice to the Class	16
iv.	Distribution of Funds	17
v.	Release of Claims	18
d.	Counsel for Both Parties Are Experienced in Similar Litigation	19
IV.	ARGUMENT	20
a.	Class Action Settlements Are Subject to Court Review	20
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	20
i.	The Settlement Is Fair and Reasonable.....	21
ii.	The PAGA Settlement Amount Is Reasonable	22
c.	Discount Analysis Justifies the Settlement	25
d.	Conditional Certification of the Class Is Appropriate	26
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	26
ii.	The Class Members Share a Well-Defined Community of Interest	27
1.	Common Issues Predominate.....	28
2.	Plaintiff's Claims Are Typical of the Class Claims	28

3.	Plaintiff is Adequate to Represent the Class.....	29
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	29
e.	The Settlement Is Fair, Reasonable, and Adequate	29
f.	Notice to Class Members Complies with California Rule of Court 3.769(f)	30
V.	CONCLUSION.....	30

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aguilar v. Cintas Corp. No. 2,</i> (2006) 144 Cal.App.4th 121	22
<i>Amaro v. Anaheim Arena Management, LLC</i> (2021) 69 Cal.App.5th 521	19
<i>Bartold v. Glendale Federal Bank,</i> (2000) 81 Cal.App.4th 816	27
<i>In re Beef Industry Antitrust Litigation,</i> (5th Cir. 1979) 607 F.2d 167	20
<i>Boyd v. Bechtel Corp.,</i> (N.D. Cal. 1979) 485 F.Supp. 610	14, 21
<i>Brinker Restaurant Corporation v. Superior Court,</i> (2012) 53 Cal.4th 1024	28
<i>Capitol People First v. Department of Developmental Services,</i> (2007) 155 Cal.App.4th 676	27
<i>Carrington v. Starbucks Corp.,</i> (2018) 30 Cal.App.5th 504	23, 25
<i>City of Detroit v. Grinnell Corporation,</i> (2d Cir. 1974) 495 F.2d 448.....	26
<i>Classen v. Weller,</i> (1983) 145 Cal.App.3d 27	28
<i>Costter v. Lyft, Inc.,</i> (N.D. Cal. 2016) 193 F.Supp.3d 1030	24
<i>Dunbar v. Albertson's Inc.,</i> (2006) 141 Cal.App.4th 1422	22
<i>Dunk v. Ford Motor Co.,</i> (1996) 48 Cal.App.4th 1794	19, 29

Cases	Page(s)
<i>Espinoza v. Galardi South Enterprises Inc.,</i> (S.D. Fla. 2016) Case No. 1:14-cv-21244	28
<i>Ghazaryan v. Diva Limousine, Ltd.,</i> (2008) 169 Cal.App.4th 1524	27
<i>Green v. Obledo,</i> (1981) 29 Cal.3d 126	20
<i>Harris v. Superior Court,</i> (2007) 154 Cal.App.4th 164	22
<i>Hicks v. Kaufman & Broad Home Corp.,</i> (2001) 89 Cal.App.4th 908	27
<i>Hopson v. Hanesbrands Inc.,</i> (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900	25
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i> (1981) 452 U.S. 905.....	20
<i>Jones v. JGC Dallas LLC,</i> (N.D. Tex. 2014) Case No. 3:11-cv-02743	28
<i>Kullar v. Foot Locker Retail, Inc.,</i> (2008) 168 Cal.App.4th 116	20, 21
<i>Linder v. Thrifty Oil Co.,</i> (2000) 23 Cal.4th 429	27
<i>Linney v. Cellular Alaska Partnership,</i> (9th Cir. 1998) 151 F.3d 1234	26
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i> (2010) 186 Cal.App.4th 399	20, 21
<i>Nordstrom Com. Cases,</i> (2010) 186 Cal.App.4th 576	25

Cases	Page(s)
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , (2004) 34 Cal.4th 319	22, 26, 27, 28
<i>In re Tableware Antitrust Litig.</i> , (N.D. Cal. 2007) 484 F.Supp.2d 1078	26
<i>Tech-Bilt v. Woodward-Clyde & Associates</i> , (1985) 38 Cal.3d 488	21
<i>Thurman v. Bayshore Transit Mgmt.</i> (2012) 203 Cal.App.4th 1112	22
<i>Ubrino v. Orkin Svcs. Of Calif., Inc.</i> , (9th Cir. 2013) 726 F.3d 118	24
<i>Vasquez v. Superior Court</i> , (1971) 4 Cal.3d 800	20
<i>Viceral v. Mistras Grp., Inc.</i> , (N.D. Cal. Oct. 11, 2016) 2016 WL 5907869.....	24
<i>Walsh v. IKON Solutions, Inc.</i> , (2007) 148 Cal.App.4th 1440	22
<i>Yocupicio v. PAE Grp., LLC</i> , (9th Cir. 2015) 795 F.3d 1057	24
Rules	
Rule 3.769	20, 30
Federal Rule 23	20
Statutes	
Business and Professions Code §§ 17200.....	11, 22
Code of Civil Procedure § 382.....	26, 29
Code of Civil Procedure § 877.6.....	21
Labor Code § 201.....	11, 22, 24
Labor Code § 202.....	11, 22, 24

Statutes	Page(s)
Labor Code § 203.....	22, 24
Labor Code § 204.....	22, 24
Labor Code § 226.....	11, 22, 24
Labor Code § 226.7.....	11, 22, 24
Labor Code § 227.3.....	22
Labor Code § 246.....	22, 24
Labor Code § 510.....	11, 22, 24
Labor Code § 512.....	11, 22, 24
Labor Code § 1174.....	22, 24
Labor Code § 1194.....	11, 22, 24
Labor Code § 1197.....	11, 22, 24
Labor Code § 1197.1.....	22
Labor Code § 1198.....	11, 22, 24
Labor Code § 2698.....	11
Labor Code § 2699.....	22, 23
Labor Code § 2751.....	22
Labor Code § 2800.....	11, 22, 24
Labor Code § 2802.....	11, 22, 24

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$299,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of himself and all hourly-paid or non-
4 exempt employees of Defendant Bossard, Inc. (“Defendant”) in California at any time during
5 the Class Period (“Class”). The Class Period covers the time period between February 9, 2017
6 to March 3, 2022 (“Class Period”). At the time of this filing, the number of Class Members is
7 currently estimated to be eighty-eight (88). (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.)

8 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
9 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
10 proposed settlement of \$299,000 – with an average Individual Settlement Payment amount
11 estimated at \$1,640.34¹ – is well within the “ballpark” of reasonableness.

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

19 **II. BACKGROUND**

20 Defendant is a corporation that specializes in industrial fastening and assembly
21 technology. This case involves all hourly-paid or non-exempt employees of Defendant in
22 California at any time during the Class Period (“Class”). The Class Period is the time period
23 between February 9, 2017 to March 3, 2022 (“Class Period”). (Han Dec., *supra*, at ¶ 10.)

24 On November 9, 2020, Plaintiff provided written notice to the California Labor and
25 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
26 Labor Code he contends were violated, and the theories supporting his contentions. The sixty-
27

28

¹ \$144,350 (Net Settlement Amount) / 88 (Class Members) = \$1,640.34.

1 five (65) day notice period expired on or about January 13, 2021, and the LWDA did not take
2 any action to investigate or prosecute this matter. (Han Dec., *supra*, at ¶ 11.)

3 On February 9, 2021, Plaintiff filed a wage-and-hour class action complaint against
4 Defendant Bossard, Inc. in the Superior Court of California, County of Alameda (Case No.
5 RG21088612) (“Class Action”). Plaintiff’s wage-and-hour class action complaint alleged the
6 following nine (9) causes of action: (1) violation of California Labor Code sections 510 and
7 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal
8 break premiums); (3) violation of Labor Code section 226.7 (unpaid rest break premiums); (4)
9 violation of Labor Code section 1194 and 1197 (unpaid minimum wages); (5) violation of
10 Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code
11 section 226(a) (noncompliant wage statements); (7) violation of Labor Code sections 2800 and
12 2802 (unreimbursed business expenses); (8) violation of Labor Code sections 2698 *et seq.*
13 (Private Attorneys General Act of 2004 [“PAGA”]); and (9) violation of California Business &
14 Professions Code section 17200, *et seq.* (Han Dec., *supra*, at ¶ 12.)

15 The Parties attended mediation on Plaintiff’s claims on December 3, 2021. Under the
16 auspices of the mediator Kelly Knight, the Parties were eventually able to reach an agreement
17 on the settlement of the action (Han Dec., *supra*, at ¶ 13.)

18 Defendant generally and specifically denies all liability or wrongdoing of any sort
19 regarding any of the claims alleged, makes no concessions or admissions of liability of any sort,
20 and contends that for any purpose other than settlement, the Class Action is not appropriate for
21 class treatment. Furthermore, Defendant asserts several defenses to the claims, and has denied
22 any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action
23 (Han Dec., *supra*, at ¶ 14.)

24 **III. INVESTIGATION/ LITIGATION HISTORY**

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

26 After Plaintiff filed his wage-and-hour class action complaint, Plaintiff propounded one
27 (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for
28 admissions; and one (1) set of requests for production of documents. Afterwards, the Parties met

1 and conferred regarding this discovery, but Defendant did not provide formal discovery
2 responses. (Han Dec., *supra*, at ¶ 15.)

3 Prior to the mediation with Kelly Knight on December 3, 2021, and both before and
4 after the Class Action was filed, the Parties conducted significant investigation and discovery of
5 the facts and law. Specifically, Defendant produced hundreds of documents relating to its
6 policies, practices, and procedures regarding the allegations in the Class Action, including
7 reimbursement of business expenses, paying non-exempt employees for all hours worked, meal
8 and rest break policies, and payroll and operational policies. As part of Defendant's production,
9 Plaintiff reviewed time records, pay records, and information relating to the size and scope of
10 the Class, as well as data permitting Plaintiff to understand the number of workweeks in the
11 Class Period. Plaintiff also interviewed several Class Members who worked for Defendant
12 during the Class Period. (Han Dec., *supra*, at ¶ 16.)

13 More specifically, Defendant provided Plaintiff with all employee time and pay records.
14 This information included data for all seventy-two class members who worked from the
15 beginning of the Class Period through December 2020. Defendant also provided information
16 regarding the estimated number of workweeks and pay periods worked by putative class
17 members and their average hourly rate. Defendant also confirmed that there were approximately
18 4,598 workweeks worked by Class Members throughout the entire Class Period. Plaintiff was
19 also able to determine that the average hourly rate for Class Members was \$16.80. Additionally,
20 Class Counsel conducted detailed interviews with nine Class Members to assess the allegations
21 in the case. Finally, Class Counsel hired Berger Consulting Group, data experts, to aid in the
22 data collection and analysis in preparation for mediation. (Han Dec., *supra*, at ¶ 49.)

23 Based upon Defendant's document production and interviews Class Counsel had with
24 non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant failed to
25 provide employees legally mandated meal and rest breaks. Specifically, Plaintiff alleged that
26 Defendant had in place improper, uniform policies and practices that prevented employees from
27 receiving compliant meal and rest breaks. (Han Dec., *supra*, at ¶¶ 18-19.)

28 Plaintiff also alleges – and Defendant denies – that Defendant failed to compensate

1 employees for all hours worked. Specifically, Defendant purportedly forced employees to work
2 off-the-clock for which they were not compensated. Defendant also supposedly failed to factor
3 non-discretionary bonuses into employees' regular rates of pay for overtime compensation or
4 properly calculate and pay sick leave. (Han Dec., *supra*, at ¶¶ 20-21.)

5 Next, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse
6 employees for necessary business-related expenses. This apparently extended to not
7 reimbursing employees for business purchases (*i.e.*, steel-toe boots) or using their personal cell
8 phones for business-related purposes. (Han Dec., *supra*, at ¶ 22.)

9 Plaintiff contends – and Defendant denies – that Defendant is liable for waiting time
10 penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 23-24.)

11 Defendant denies Plaintiff's contentions in their entirety. As demonstrated above, the
12 Parties took staunchly conflicting positions concerning Defendant's policies and procedures and
13 their effect on non-exempt employees. (Han Dec., *supra*, at ¶ 25.)

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

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

17 The Parties agreed to go to mediation with experienced wage-and-hour mediator Kelly
18 Knight that took place on December 3, 2021. During the mediation, the Parties discussed the
19 risks of continued litigation, risks of certification, and risks on the merits of the claims versus
20 the benefits of settlement. Under the auspices of the mediator, the Parties were eventually able
21 to reach an agreement on a settlement of the Class Action, the terms of which were
22 memorialized in a "Joint Stipulation and Settlement Agreement" ("Settlement Agreement,"
23 "Settlement," or "Agreement"), that the Parties now seek Preliminary Approval of in the instant
24 motion. (Han Dec., *supra*, at ¶ 26, Exhibit 2.)

25 **ii. The Settlement Was Reached Because of Arm's-Length Negotiations**

26 The Settlement Agreement was reached because of arm's-length negotiations. Though
27 cordial and professional, the settlement negotiations have been, always, adversarial, and non-
28 collusive in nature. At the mediation, Counsel for the Parties conducted extensive arm's length

1 settlement negotiations until an agreement was ultimately reached by all Parties (Han Dec.,
2 *supra*, at ¶ 43.)

3 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
4 expense and length of continued proceedings necessary to continue the litigation against
5 Defendant through class certification and trial and through any possible appeals. Plaintiff and
6 Class Counsel have also considered the uncertainty and risk of further litigation, the potential
7 outcome, and the difficulties and delays inherent in such litigation. Moreover, Plaintiff and
8 Class Counsel have conducted extensive settlement negotiations, including formal mediation on
9 December 3, 2021. Based on the foregoing, Plaintiff and Class Counsel believe the settlement
10 set forth in the Agreement is a fair, adequate, and reasonable settlement, and is in the best
11 interests of the Class. (Han Dec., *supra*, at ¶ 44.)

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

14 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
15 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
16 discovery to support the settlement. The proposed settlement was only possible following
17 significant informal discovery and evaluation of Defendant’s relevant policies and procedures,
18 as well as the data they produced for the putative Class, which permitted Class Counsel to
19 engage in a comprehensive analysis of liability and potential damages. Furthermore, this case
20 has reached the stage where “the Parties certainly have a clear view of the strengths and
21 weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D.
22 Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 45.)

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

24 **i. Deductions from the Settlement**

25 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
26 action be settled and compromised for the non-reversionary total sum of \$299,000 (“Maximum
27 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
28 Class Counsel in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement

1 Amount, or \$104,650; (b) the Cost Award to Class Counsel as reimbursement for actual
2 litigation costs not to exceed \$15,000; (c) the Class Representative Enhancement Payment in the
3 amount of \$10,000 to Plaintiff as the Class Representative; (d) the Administration Costs to
4 Simpluris, Inc. (“Simpluris”), the Settlement Administrator, not to exceed \$5,000; and (e)
5 PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) shall be paid to the
6 LWDA and twenty-five percent (25%) of which (\$5,000) shall be distributed to all current and
7 former hourly-paid or non-exempt employees of Defendant in California at any time during the
8 period between November 9, 2019 and March 3, 2022 (“PAGA Payment,” “Individual PAGA
9 Payments,” “PAGA Timeframe,” “Eligible Aggrieved Employees”), on a pro rata basis (Han
10 Dec., *supra*, at ¶ 27.)

11 **ii. Calculation of the Individual Settlement Payments to Class Members**

12 After all Court-approved deductions from the Maximum Settlement Amount, it is
13 estimated that \$144,350 (“Net Settlement Amount”) will be distributed to Class Members –
14 with an average Individual Settlement Share estimated at \$1,640.34. (Han Dec., *supra*, at ¶ 29.)

15 Individual Settlement Payment will be apportioned as follows: sixty-six percent (66%)
16 wages seventeen percent (17%) penalties and seventeen percent (17%) interest. (Han Dec.,
17 *supra*, at ¶ 30.)

18 The Individual Settlement Payment will be calculated based on each Participating Class
19 Member’s pro rata share of the Net Settlement Amount based on workweeks during the Class
20 Period as follows:

21 (i) the number of workweeks the Participating Class Member worked during the Class
22 Period, based on the Class Data provided by Defendant, (ii) divided by the total number
23 of workweeks worked by any and all Participating Class Members collectively during
24 the Class Period, based on the same Class Data, (iii) which is then multiplied by the Net
25 Settlement Amount. One day worked in a given week will be credited as one workweek
26 for purposes of this calculation. Therefore, the value of each Participating Class
27 Member’s Individual Settlement Share ties directly to the number of workweeks the
28 Participating Class Member worked during the Class Period (Han Dec., *supra*, at ¶ 31.)

Furthermore, the Individual PAGA Payment will be calculated based on each Eligible
Aggrieved Employee’s pro rata share of the PAGA Payment allocated to the Eligible Aggrieved
Employees based on pay periods during the PAGA Timeframe as follows:

1 (i) the number of pay periods the Eligible Aggrieved Employee worked during the
2 PAGA Timeframe, based on the class Data provided by Defendant, (ii) divided by the
3 total number of pay periods worked by any and all Eligible Aggrieved Employees
4 collectively during the PAGA Timeframe, based on the same Class Data, (iii) which is
5 then multiplied by the \$5,000 of PAGA Payment allocated to the Eligible Aggrieved
6 Employees. One day worked in a given pay period will be credited. As a pay period for
purposes of this calculation. Therefore, the value of each Eligible Aggrieved
Employee's portion of the PAGA Payment ties directly to the number of pay periods the
Eligible Aggrieved Employee worked during the PAGA Timeframe. (Han Dec., *supra*,
at ¶ 32.)

7 The precise number of compensable weeks worked per Class Member will not be known
8 until Defendant has tabulated them, following preliminary approval. No portion of the
9 Maximum Settlement Amount will revert to Defendant for any reason. (Han Dec., *supra*, at ¶
10 33.)

11 **iii. Notice to the Class**

12 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
13 Defendant shall deliver a database to the Settlement Administrator, containing the following
14 information: (i) the full name, last known address, and full Social Security number of all Class
15 Members; (2) the start and end dates for each period during the Class Period that any Class
16 Member was employed by Defendant; (3) the total workweeks that the Class Member worked
17 during the Class Period; and (4) the total pay periods that the Eligible Aggrieved Employee
18 worked during the PAGA Period ("Class Data"). (Han Dec., *supra*, at ¶ 34.)

19 Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data
20 to the Settlement Administrator, the Settlement Administrator will mail the Notice of Class
21 Action Settlement ("Class Notice") and the Election Not To Participate In (Opt Out From) Class
22 Action Settlement Form ("Exclusion Form") (collectively, known as "Notice Packet") to all
23 identified Class Members via first-class regular U.S. Mail. Class Members and Eligible
24 Aggrieved Employees are not required to submit a claim form to receive their Individual
25 Settlement Payments and/or Individual PAGA Payments respectively pursuant to the
26 Agreement. The proposed Class Notice and Exclusion Form are attached as Exhibits A and B to
27 the Settlement Agreement respectively, which is Exhibit 2 to the Declaration of Douglas Han.
28 (Han Dec., *supra*, at ¶ 35.)

1 **iv. Distribution of Funds**

2 No later than fourteen (14) calendar days after the Effective Final Settlement Date,
3 Defendant shall deposit the Maximum Settlement Amount of \$299,000 by wiring the funds to
4 the Settlement Administrator. Defendant shall also at this time provide any tax information that
5 the Settlement Administrator may need to calculate each Participating Class Member's
6 Individual Settlement Payment (Han Dec., *supra*, at ¶ 36.)

7 Within fourteen (14) calendar days after the deadline to fund the Settlement, the
8 Settlement Administrator shall calculate and disburse all payments due under the Settlement
9 Agreement, including all Individual Settlement Payments, the Attorney Fee Award, the Cost
10 Award, the Class Representative Enhancement Payment, the PAGA Payment, and the
11 Administration Costs. The Settlement Administrator will also forward a check for seventy-five
12 percent (75%) of the PAGA Payment (\$15,000) to the LWDA for settlement of the PAGA
13 claim (Han Dec., *supra*, at ¶ 37.)

14 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
15 their Individual Settlement Payment and Individual PAGA Payment checks within one hundred
16 eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed
17 or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will
18 send a reminder postcard indicating that unless the check is redeemed or deposited in the next
19 ninety (90) calendar days, it will expire and become non-negotiable, and offering to replace the
20 check if it was lost or misplaced. If any checks remain uncashed or not deposited by the
21 expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator
22 will, within two hundred (200) calendar days after the checks are initially mailed, cancel the
23 check(s), and pay the amount of the Individual Settlement Payment(s) and/or portion(s) of the
24 PAGA Payment to the California State Controller: Unpaid Wage Fund. (Han Dec., *supra*, at ¶
25 38.)

26 **v. Release of Claims**

27 Upon the Effective Final Settlement Date, each Participating Class Member shall be
28 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever

1 released, relinquished, and discharged all Released Claims against all Released Parties
2 (“Released Claims”). *See* Exhibit 2 §§ I.HH. & III.K. (Han Dec., *supra*, at ¶ 39)

3 Upon the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved
4 Employee, and their heirs, executors, administrators, representatives, attorneys, successors and
5 assigns shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and
6 forever released, relinquished, and discharged all PAGA Released Claims and voluntarily and
7 knowingly are barred from bringing any action for the PAGA Released Claims that arose during
8 the PAGA period applicable to the Eligible Aggrieved Employee (“PAGA Released Claims”).
9 *See* Exhibit 2 §§ I.CC. & III.K. (Han Dec., *supra*, at ¶ 40.)

10 The Released Parties shall include: Defendant Bossard, Inc. and its present and former
11 parent companies, present owners, former owners, subsidiaries, shareholders, officers, directors,
12 employees, agents, attorneys, insurers, successors, and assigns, and any individual or entity
13 which could be jointly liable with Defendant, or any of them, including but not limited to
14 Bossard US Holdings, Inc. and Bossard North America, Inc. (“Released Parties”). *See* Exhibit
15 2 § I.II. (Han Dec., *supra*, at ¶ 41.)

16 Upon the Effective Final Settlement Date and in accordance with paragraph III.J.8.b. of
17 the Agreement, and in exchange for the Class Representative Enhancement Payment to Plaintiff
18 in amount not to exceed \$10,000, in recognition of his work and efforts in obtaining the benefits
19 for the Class, and undertaking the risk for the payment of costs in the event this matter had not
20 successfully resolved, Plaintiff provides a general release of claims for himself and his spouses,
21 heirs, successors and assigns, in addition to the Released Claims and PAGA Released Claims,
22 and further includes, without limitation, any and all claims whatsoever regarding Plaintiff’s
23 employment and/or the termination of his employment including, but not limited to, any claims
24 for wages, bonuses, severance pay, employment benefits, stock options, violation of any
25 personnel policy, any claims based on discrimination, harassment, unlawful retaliation,
26 violation of public policy, or damages of any kind whatsoever, arising out of any common law
27 torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of
28 wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on

1 Defendant’s right to terminate the employment relationship, or any federal, state, or other
2 governmental statute, executive order, regulation or ordinance, or common law, or any other
3 basis whatsoever, to the fullest extent provided by law. Plaintiff shall be deemed to have, and by
4 operation of the Final Judgment shall have, expressly waived and relinquished to the fullest
5 extent permitted by law the provisions, rights, and benefits of section 1542 of the California
6 Civil Code, or any other similar provision under federal or state law that purports to limit the
7 scope of a general release.. *See* Exhibit 2 § III.M. (Han Dec., *supra*, at ¶ 42.)

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

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

17 Both Class Counsel and Defendant’s counsel are particularly experienced in wage-and-
18 hour employment law and class actions. Class Counsel have significant experience in litigating
19 unpaid wages, non-compliant meal break, and non-compliant rest break class actions. (Han
20 Dec., *supra*, at ¶¶ 2-8, Exhibit 1.)

21 Class Counsel has prosecuted numerous cases on behalf of employees for California
22 Labor Code violations and, thus, are experienced and qualified to evaluate the class claims, to
23 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
24 defenses. This experience instructed Class Counsel on the risks and uncertainties of further
25 litigation and guided their determination to endorse the proposed Settlement.² (Han Dec.,
26 *supra*, at ¶¶ 2-8, Exhibit 1.)

27
28 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
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.

1 **IV. ARGUMENT**

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

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

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

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

13 Courts act within their discretion in approving settlements that are fair, not collusive, and take
14 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
15 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
16 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981)
17 452 U.S. 905.)

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

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
21 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.*
22 (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los*
23 *Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the
24 strength of the case for plaintiffs on the merits, balanced against the amount offered in
25 settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also
26 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

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

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

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

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

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
17 discovery to support the settlement. The proposed settlement was only possible following
18 significant discovery and evaluation of Defendant’s relevant policies and procedures, as well as
19 the data they produced for the putative Class, which permitted Class Counsel to engage in a
20 comprehensive analysis of liability and potential damages. Furthermore, this case has reached
21 the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their
22 cases” sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485
23 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 45.)

24 This discovery resulted in Plaintiff’s central theories of liability, which are predicated on
25 Plaintiff’s claims that Defendant failed to pay overtime wages, failed to pay minimum wages,
26 failed to provide meal and rest breaks and pay applicable premiums, failed to pay wages in a
27 timely manner, failed to issue compliant wage statements, failed to reimburse business
28 expenses, failed to keep requisite payroll records, failed to properly calculate and pay sick leave,

violated PAGA, and violated the Business & Professions Code sections 17200, *et seq.* Defendant has denied Plaintiff's theories of liability (Han Dec., *supra*, at ¶¶ 46-47.)

Although Plaintiff believes the case is suitable for certification on the basis that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the putative Class Members, uncertainties with respect to certification are always present. As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions concerning certification of wage-and-hour claims.⁴ (Han Dec., *supra*, at ¶ 48.)

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

Taking into consideration Defendant's defenses, its supporting evidence, and its position that the Class Action is not suitable for class treatment, the settlement amount of \$299,000 – with an average settlement share estimated at \$1,640.34 – is reasonable and fair.

ii. The PAGA Settlement Amount Is Reasonable

Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246(l), 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2751(b), 2800, and 2802. Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the current unsettled state of law (*Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) (Han Dec., *supra*, at ¶ 57.)

///

⁴(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 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 Class Counsel calculated penalties under this cause of action by multiplying the number
2 of active Class Members (because of the shortened statutory period for this claim) by the civil
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
4 section 2699.5 that were applicable in this case. Class Counsel then applied discounts in light of
5 the countervailing arguments with regard to the other causes of action, as well as the Court's
6 power to award "a lesser amount than the maximum civil liability." (Lab. Code § 2699(e)(2).)
7 (Han Dec., *supra*, at ¶ 58.)

8 Given the state of the law and the range of PAGA penalties requested and actually
9 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
10 for PAGA penalties. However, if PAGA penalties are granted on any one of the violations
11 alleged in Plaintiff's operative complaint, the total penalties exposure for the eligible pay
12 periods could be approximately \$244,000 ($[(1 \times \$100) + (30 \times \$200)] \times 40$ employees). Plaintiff
13 calculated Defendant's PAGA exposure using one hundred percent (100%) violation rate based
14 on the average number of pay periods (31) during the one-year statutory period. Multiplying the
15 PAGA exposure by the number of alleged violations under the PAGA theories of recovery (7)
16 gives potential civil penalties of \$1,708,000 (Han Dec., *supra*, at ¶ 59.)

17 Although Plaintiff argued he could obtain nearly \$2 million for PAGA penalties, it
18 seems unlikely that the Court would award such a large amount. As noted above, courts have
19 reduced PAGA penalties by about 90% where there are mitigating circumstances. (*Carrington*
20 *v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of less
21 than 10% of maximum PAGA penalty for meal break violations where company sought to
22 comply with the law).) Furthermore, PAGA's statutory language is unclear as to whether PAGA
23 penalties may be "stacked" – that is, whether multiple civil penalties can be recovered in the
24 same pay period for different Labor Code violations. On one hand, Labor Code section 2699,
25 subdivision (f) establishes "a civil penalty for a violation" (emphasis added), implying a
26 separate civil penalty for each violation. On the other hand, employers cite Labor Code section
27 2699, subdivision (g)(1), which states that "an aggrieved employee may recover the civil
28 penalty described in subdivision (f)...on behalf of himself or herself and other current or former

employees against whom one or more of the alleged violations was committed” (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$4,000 (40 non-exempt employees x \$100 initial violation) on the low end and \$28,000 ([40 non-exempt employees x \$100 x 7 theories of recovery] on the high end (Han Dec., *supra*, at ¶ 60.)

To the extent Defendant’s exposure remains in the millions of dollars, the civil penalties could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken liberties to dramatically reduce the civil penalties. (See e.g. *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the defendant acted deliberately or negligently failed to learn about its obligations].) Thus, as explained above, under a more conservative approach, under a more conservative approach, Class Counsel considered the possibility that without stacking and limited to the initial violation, the PAGA penalties would be limited to \$4,000 (40 non-exempt employees x \$100 initial violation) on the low end and \$28,000 ([40 non-exempt employees x \$100 x 7 theories of recovery] on the high end (Han Dec., *supra*, at ¶ 60.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246(l), 510, 512(a), 1174(d), 1194, 1197, 1198, 2800, and 2802. Thus, the maximum penalties for each pay period are not justified. It was indeed arguable whether the Court would award the maximum penalties under the law.

Consequently, allocating \$20,000 to PAGA civil penalties was reasonable based on a rate of \$16.00 per pay period [\$20,000 ÷ 1,250 Pay Periods in PAGA Date Range = \$16.00], given the fact that Defendant is also paying an additional \$279,000 in the class settlement.⁵ When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁶ (Han Dec., *supra*, at ¶ 61.)

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 \$878,786.88 on the low end and \$936,721.68 on the high end. (Han Dec., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$188,052.48	60%	60%	\$30,088.40
Meal Break Premiums	\$146,176.80	50%	40%	\$43,853.04
Overtime/Minimum Wage: Off-the-Clock	\$115,869.60 to \$173,804.40	50%	50%	\$28,967.40 to \$43,451.10
Overtime/Minimum Wage: Non-Discretionary Bonuses and Sick Leave Pay/Premium Wages	\$79,392	30%	30%	\$38,902.08
Unreimbursed Business Expenses	\$25,696	30%	70%	\$5,396.16
Wage Statement Penalty	\$122,000	30%	50%	\$42,700
Waiting Time Penalty	\$201,600	30%	50%	\$70,560
MAXIMUM TOTAL EXPOSURE	\$878,786.88 to \$936,721.68⁷			\$260,467.08 to \$274,950.78⁸

Based on this analysis, the realistic recovery for this case is \$260,467.08 on the low end and \$274,950.78 on the high end. The Maximum Settlement Amount of \$299,000 is

⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

⁶ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 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.”).)

⁷ (Han Dec., *supra*, at ¶¶ 53-58.)

⁸ (Han Dec., *supra*, at ¶¶ 65-71.)

1 approximately thirty-two percent (31.93%) of the maximum potential exposure and is one-
2 hundred nine percent (108.75%) of the maximum realistic exposure at trial, which is an
3 excellent settlement. (Han Dec., *supra*, at ¶ 70.)

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

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

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

24 Plaintiff contends that the proposed Class is ascertainable and numerous as to make it
25 impracticable to join all Class Members, and there are common questions of law and fact that
26 predominate over any questions affecting any individual Class Member. Plaintiff contends that
27 Plaintiff’s claims are typical of the claims of the Class Members, and Class Counsel will fairly
28 and adequately protect the interests of the Class. Also, the prosecution of separate actions by

individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (Han Dec., *supra*, at ¶ 71.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

The Class Action involves eighty-eight (88) Class Members. Thus, the Class is sufficiently numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous).) (Han Dec., *supra*, at ¶ 72.)

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

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

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiff asserts that common issues of fact and law predominate as to each of the claims he alleged. All hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. All Plaintiff's claims surround Defendant's alleged common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to pay minimum wages, failing to reimburse business expenses, failing to keep requisite payroll records, and failing to fully and properly compensate employees for, *inter alia*, noncompliant rest and meal breaks, off-the-clock work, overtime work, sick leave pay, associated wage statement, and waiting time penalties (Han Dec., *supra*, at ¶ 73.)

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.) Plaintiff was a non-exempt employee and alleges he 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, unpaid minimum wages, improperly factored non-discretionary bonuses, improperly calculated sick leave pay, untimely paid wages, inaccurate wage statements, improperly kept requisite payroll records, and unreimbursed

1 business expenses. Plaintiff seeks relief for these claims and derivative claims on behalf of all
2 Class Members. Thus, Plaintiff's claims arise from the same employment practices and are
3 based on the same legal theories as those applicable to the other Class Members. (Han Dec.,
4 *supra*, at ¶ 74.)

5 **3. Plaintiff is Adequate to Represent the Class**

6 Plaintiff has proven to be an adequate Class Representative. He has conducted himself
7 diligently and responsibly in representing the Class in this litigation, understands his fiduciary
8 obligations, and has actively participated in the prosecution of this case. Plaintiff has spent time
9 in meetings and conferences with counsel to provide counsel with a complete understanding of
10 his work environment and requirements. Furthermore, Plaintiff does not have any interest that is
11 averse to the interest of other Class Members. Moreover, the proposed Class Counsel is
12 adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-8 & 75, Exhibit 1.)

13 **4. Class Action is Superior for the Fair and Efficient**

14 **Adjudication of this Controversy**

15 A class action is superior to other available means for the fair and efficient adjudication
16 of this controversy. Joinder of all Class Members is impractical. Class treatment will permit
17 many similarly-situation persons to prosecute their common claims in a single forum
18 simultaneously for settlement purposes without the necessary duplication of effort and expense
19 that numerous individual actions would engender. Also, because several Class Members are
20 current employees, the fear of retaliation further support superiority of class-wide relief because
21 that fear of retaliation often discourages victims from seeking legal redress while currently
22 employed by the same employer.

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

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

1 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
2 and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
3 1794, at p. 1802.) As the foregoing analysis shows, all these elements are present here. Thus,
4 Plaintiff requests that this Court grant his motion for Preliminary Approval.

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

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

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

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

16 **V. CONCLUSION**

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

22
23 Dated: March 11, 2022

JUSTICE LAW CORPORATION

24
25 By: 
26 Douglas Han
27 Shunt Tatavos-Gharajeh
28 Talia Lux
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On March 11, 2022, I served the foregoing document described as

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

for the following case: **Tesene v. Bossard, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-812056-20**
Court Case No.: RG21088612
Alameda 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 March 11, 2022, at Pasadena, California.



Flor Gonzalez