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

ANDREA MARQUEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

NIHON KOHDEN AMERICA, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 30-2021-01184495-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

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: 73931273]

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

Hearing Date: April 7, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department CX-105

Complaint Filed: February 17, 2021
FAC Filed: December 30, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 7, 2023, at 10:00 a.m. or as soon as the matter
2 may be heard, before the Honorable Randall J. Sherman in Department CX-105 of the Orange
3 County Superior Court (Civil Complex Center) located at 751 West Santa Ana Boulevard, Santa
4 Ana, California 92701, Plaintiff Andrea Marquez (“Plaintiff”) will and hereby does move for an
5 order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation of Class Action and PAGA
8 Settlement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the
10 means of allocation and distribution of funds;
- 11 • Conditionally certifying the proposed Class for settlement purposes only;
- 12 • Appointing Plaintiff as the class representative;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
15 attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class
16 Action Settlement and Settlement Agreement;
- 17 • Approving the proposed Election Not to Participate In (“Opt Out” From) Class
18 Action Settlement (“Exclusion Form”) attached as **Exhibit B** to the [Proposed]
19 Order Preliminarily Approving Class Action Settlement and Settlement
20 Agreement;
- 21 • Directing the mailing of the proposed Class Notice and Exclusion Form
22 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
23 to the proposed Class;
- 24 • Approving the proposed deadlines for the notice and settlement administration
25 process;
- 26 • Approving Phoenix Class Action Administration Solutions as the Settlement
27 Administrator; and

28 ///

- 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, Cost Award, Class Representative Enhancement Payment, Administration Costs, and Private Attorneys General Act of 2004 (“PAGA”) Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration of the Proposed Settlement Administrator (Jodey Lawrence); [Proposed] Order filed concurrently with this motion; 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: January 18, 2023

JUSTICE LAW CORPORATION

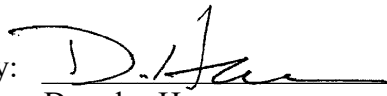
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$150,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of herself and all current and former
4 hourly-paid or non-exempt employees of Vaco LLC who were assigned to work at Nihon Kohden
5 America, Inc. within the State of California during the time period from February 18, 2017 to
6 January 27, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the
7 number of Class Members confirmed by Defendants is estimated to be eighty-four (84).
8 (Declaration of Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval of Class
9 Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 It is requested this Court grant Preliminary Approval because when analyzing the
11 strengths and vulnerabilities of the class claims alongside the potential liability exposure, this
12 Settlement is well within the range of reasonableness. Plaintiff and Class Counsel are convinced
13 the Settlement is in the best interests of the Class Members based on the negotiations and a
14 detailed knowledge of the issues present in this matter.

15 **II. BACKGROUND**

16 On December 14, 2020, Plaintiff provided written notice to the California Labor and
17 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 10.)

18 On February 17, 2021, Plaintiff filed a wage-and-hour class action lawsuit against
19 Defendant Nihon Kohden America, Inc. in the Superior Court of California, County of Orange,
20 alleging nine (9) causes of action. (Han Decl., *supra*, at ¶ 11.)

21 On February 22, 2022, the Parties remotely attended mediation with Jeffrey Krivis, a well-
22 respected mediator experienced in wage-and-hour class actions. (Han Decl., *supra*, at ¶ 12.)
23 While the Parties did not settle at mediation, the mediator assisted the Parties in further
24 negotiations that subsequently resulted in the settlement of this matter on June 29, 2022. (*Ibid.*)

25 In line with the settlement, Plaintiff filed a First Amended Complaint on December 30,
26 2022 that: (a) added Defendant Vaco LLC as an additional defendant; (b) adjusted the “class”
27 definition; and (c) adjusted the “aggrieved employees” definition. (Han Decl., *supra*, at ¶ 13.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
4 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production
5 of documents. (Han Decl., *supra*, at ¶ 15.) Afterwards, the Parties met and conferred and agreed
6 to engage in an informal exchange of information and attend mediation. (*Ibid.*)

7 Prior to mediation, Defendants produced documents relating to their wage-and-hour
8 policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) Plaintiff also reviewed time and
9 pay records and information relating to the size and scope of the Class. (*Ibid.*) Furthermore,
10 several putative class members who worked for Defendants during the Class Period (at least 15)
11 were interviewed to obtain a better understanding of the alleged day-to-day violations. (*Ibid.*)

12 Based upon the information provided by Defendants and interviews with putative class
13 members, Plaintiff contends – and Defendants deny – Defendants: (1) failed to provide employees
14 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
15 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
16 statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

18 **i. The Parties Attended Mediation Which Led to the Settlement**

19 The Parties remotely attended mediation with experienced wage-and-hour mediator
20 Jeffrey Krivis on February 22, 2022. (Han Decl., *supra*, at ¶ 25.) During the mediation, the Parties
21 discussed the risks of continued litigation, the likelihood of certification, and the merits of the
22 Parties’ claims and defenses versus the benefits of settlement. (*Ibid.*) While the Parties did not
23 settle at mediation, continued negotiations along with the mediator’s assistance eventually
24 resulted in a settlement, the terms of which were memorialized in the Settlement Agreement the
25 Parties seek Preliminary Approval of. (*Id.* at ¶ 25; Exhibit 2.)

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

2 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at
3 ¶ 38.) Though cordial and professional, the settlement negotiations have always been adversarial
4 and non- collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted extensive
5 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

6 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
7 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
8 39.) Plaintiff and Class Counsel have considered the uncertainty and risk of further litigation,
9 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and
10 Class Counsel also conducted extensive settlement negotiations. (*Ibid.*) Based on the foregoing,
11 Plaintiff and Class Counsel believe the settlement set forth in the Agreement is a fair, adequate,
12 and reasonable settlement, and is in the Class Members’ best interests. (*Ibid.*)

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

14 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
15 of the Parties claims and defenses and engaged in sufficient investigation, research, and discovery
16 to support the Settlement Agreement. (Han Decl., *supra*, at ¶ 40.) The Settlement Agreement was
17 only possible following significant investigation and evaluation of the relevant policies and
18 procedures in place and the data produced. (*Ibid.*) Collectively, this information permitted Class
19 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
20 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
21 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Ibid.*; *Boyd v.*
22 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

24 **i. Deductions from the Settlement**

25 The Parties agreed (subject to and contingent upon the Court’s approval) this case be
26 settled and compromised for a fixed total non-revisionary amount of \$150,000 (“Gross Settlement
27 Amount”), which includes: (1) Attorney Fee Award of up to \$52,500; (2) Cost Award of up to
28 \$20,000; (3) Class Representative Enhancement Payment of up to \$10,000; (4) Administration

Costs of up to \$7,500; and (5) PAGA Payment of \$15,000. (Han Decl., *supra*, at ¶ 26.)

ii. Calculation of the Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$45,000 (“Net Settlement Amount”) will be distributed to the Participating Class Members, resulting in an average Individual Settlement Share of \$535.71. (Han Decl., *supra*, at ¶ 27.)

Individual Settlement Shares will be calculated using the formula set forth in the Settlement. (Han Decl., *supra*, at ¶ 28.) Eligible Aggrieved Employees’ portion of the PAGA Payment will be calculated using the formula set forth in the Settlement. (*Id.* at ¶ 29.)

iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is Justified Under the Claims of this Action

Individual Settlement Shares will be apportioned as follows: twenty percent (20%) as wages and eighty percent (80%) as penalties and interest. (Han Decl., *supra*, at ¶ 28.)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 58.) Plaintiff added the realistic exposure for rest break premiums and meal break premiums (\$6,575.54 + \$11,000.55 = \$17,576.09). (*Ibid.*) Plaintiff then added the \$17,576.09 to the low end realistic exposure for unpaid wages due to off-the-clock work (\$17,576.09 + \$15,026.08 = \$32,602.17). (*Ibid.*) The realistic exposure of \$32,602.17 Plaintiff can expect to receive if she were to prevail at trial for meal and rest break premiums and low end unpaid wages due to off-the-clock work represents about twenty percent (20%) of the low end total realistic exposure ($\$32,602.17 \div \$162,983.37 = 0.2000 \times 100 = 20.00\%$). (*Ibid.*) Because this represents twenty percent (20%) of wages, allocating twenty percent (20%) as wages and eighty percent (80%) as penalties and interest is appropriate. (*Ibid.*)

iv. Notice to the Class

Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver the Class Data to the Settlement Administrator. (Han Decl., *supra*, at ¶ 30.) The Settlement Administrator will then conduct a National Change of Address Database search for all Class Members to obtain the most up-to-date address. (*Ibid.*)

1 Within thirty (30) calendar days after entry of the Preliminary Approval Order, the
2 Settlement Administrator will mail the Notice Packet to all identified Class Members via first-
3 class regular U.S. Mail, using the most current mailing address information available. (Han Decl.,
4 *supra*, at ¶ 31.) The Notice Packet will only be mailed in English, meaning a translation will not
5 be necessary. (*Ibid.*) Participating Class Members are not required to submit a claim form to
6 receive their Individual Settlement Shares. (*Ibid.*)

7 **v. Distribution of Funds**

8 The Settlement will be funded and distributed in the manner and schedule set forth in the
9 Settlement Agreement. (Han Decl., *supra*, at ¶ 32.)

10 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
11 their Individual Settlement Share checks within one hundred eighty (180) calendar days after the
12 checks are mailed to them. (Han Decl., *supra*, at ¶ 33.) Uncashed settlement checks will be paid
13 to the California State Controller's Unclaimed Property Division. (*Ibid.*)

14 **vi. Release of Claims**

15 As of the Effective Final Settlement Date and upon Defendants' fulfillment of their
16 payment obligations under section III(H)(2) of the Agreement, all Participating Class Members
17 will be bound by a release of all claims and causes of action falling under the definition of
18 Released Claims occurring during the Class Period. (Han Decl., *supra*, at ¶ 34.)

19 As of the Effective Final Settlement Date and upon Defendants' fulfillment of their
20 payment obligations under section III(H)(2) of the Agreement, the LWDA and any other
21 representative, proxy, or agent thereof, including, but not limited to, any and all Eligible
22 Aggrieved Employees, including Plaintiff, are voluntarily and knowingly barred as a matter of
23 law from bringing any and all claims against the Released Parties seeking civil penalties under
24 Labor Code section 2698, *et seq.* (PAGA), based on or arising out of the Labor Code violations
25 alleged in the notice letter to the LWDA and the operative complaints occurring during the PAGA
26 Period. (Han Decl., *supra*, at ¶ 35.)

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1 As of the Effective Final Settlement Date and upon Defendants’ fulfillment of their
2 payment obligations under section III(H)(2) of the Agreement, and in exchange for the Class
3 Representative Enhancement Payment to Plaintiff, in recognition of her work and efforts in
4 obtaining the benefits for the Class and undertaking the risk of paying litigation costs if this matter
5 had not successfully resolved, Plaintiff provides a general release of claims for herself and any
6 spouse, heirs, successors, and assigns. (Han Decl., *supra*, at ¶ 36.) Plaintiff also stipulates and
7 agrees, as of the Effective Final Settlement Date, Plaintiff shall be deemed to have expressly
8 waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits
9 of Civil Code section 1542, or any other similar provision under federal or state law. (*Ibid.*)

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

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

19 Counsel for both Parties are particularly experienced in wage-and-hour employment law
20 and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
21 numerous cases on behalf of employees for Labor Code violations and are experienced and
22 qualified to evaluate the class claims, advantages and disadvantages of settlement versus trial,
23 and viability of the defenses. (*Ibid.*) Class Counsel’s experience guided their determination to
24 endorse the Settlement.¹ (*Ibid.*)

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27 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
28 number of objectors – is not determinable until the Notice Packet has been provided to the Class
Members, 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 Rules of Court, rule 3.769 requires court approval for class action settlements.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

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

14 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
15 the normal perils of litigation as well as the additional uncertainties inherent in complex class
16 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
17 *nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 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 if settlement “of the
20 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and
21 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
22 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
23 399, 409.) The most important factor is “the strength of the case for plaintiffs on the merits,
24 balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see also *Munoz*, at p. 409.)

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28 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, the Parties Federal Rule 23 and federal case law in addition to California law.

1 In weighing the strength of the case, *Kullar* instructs the court is not to “decide the merits
2 of the case or to substitute its evaluation of the most appropriate settlement for that of the
3 attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not
4 require a statement of the maximum sum the class could recover if the plaintiff prevailed on all
5 claims, provided there is a record allowing “an understanding of the amount that is in controversy
6 and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of*
7 *Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement
8 as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that
9 the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

10 **i. The Settlement Amount of \$150,000 Is Fair and Reasonable**

11 The Settlement was only possible following significant investigation and evaluation of the
12 relevant policies and procedures and the data produced for the putative class, as referenced in
13 Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability
14 and potential damages. (Han Decl., *supra*, at ¶ 40.)

15 This investigation and evaluation informed the central theories of liability that are
16 predicated on the alleged: (1) failure to pay overtime wages; (2) failure to provide meal and rest
17 breaks and pay applicable premiums; (3) failure to pay minimum wages; (4) failure to timely pay
18 wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses;
19 (7) violation of Labor Code sections 2698, *et seq.* (PAGA); and (8) violation of Business &
20 Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 41.) Defendants vehemently
21 deny the theories of liability. (*Id.* at ¶ 42.)

22 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
23 to certification are always present. (Han Decl., *supra*, at ¶ 43.) As the California Supreme Court
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
25 a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores*,
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1 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (Han
2 Decl., *supra*, at ¶ 43.) These factors led to discounting the calculations of potential damages.

3 **ii. The PAGA Payment of \$15,000 Is Reasonable**

4 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
5 not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510,
6 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 51.)
7 Defendants asserted, regardless of the results of the underlying causes of action, PAGA penalties
8 are not mandatory but permissive and discretionary. (*Ibid.*) Defendants maintained they had a
9 strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled
10 state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
11 penalties by 30% under this authority].) Defendants argued without stacking and limited to the
12 initial violation, the PAGA penalties would be limited to **\$2,400** (24 employees x \$100 initial
13 violation) on the low end and **\$14,400** (24 employees x \$100 initial violation x 6 theories of
14 recovery) on the high end. (Han Decl., *supra*, at ¶¶ 52-55.)

15 Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
16 at ¶ 56.) Many of the causes of action brought were duplicative of the statutory claims, such as
17 Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*)
18 Thus, allocating \$15,000 to PAGA civil penalties was reasonable based on a rate of **\$19.84** per
19 pay period [$\$15,000 \div 756$ pay periods in PAGA date range], given the fact Defendants are paying
20 an additional \$135,00 in the class settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in
21 good faith and “there is no indication that [the] amount was the result of self-interest at the

22 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
23 of class claiming misclassification and ordering summary adjudication in favor of employees],
24 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
25 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
26 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].)

27 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
28 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].)

expense of other Class Members,” such amounts are generally considered reasonable.⁵ (Han Decl., *supra*, at ¶ 56.)

Considering Defendants’ defenses, supporting evidence, and position the case is not suitable for class treatment, the settlement amount is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$705,515.49** on the low end and **\$735,567.65** on the high end. (Han Decl., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$54,796.14	70%	60%	\$6,575.54
Meal Break Premiums	\$68,753.44	60%	60%	\$11,000.55
Overtime/Minimum Wage: Off-the-Clock Work	\$60,104.31 to \$90,156.47	50%	50%	\$15,026.08 to \$22,539.12
Unreimbursed Business Expenses	\$8,420	20%	70%	\$2,020.80
Wage Statement Penalty	\$75,600	50%	50%	\$18,900
Waiting Time Penalty	\$437,841.60	50%	50%	\$109,460.40
MAXIMUM TOTAL EXPOSURE	\$705,515.49 to \$735,567.65⁶			\$162,983.37 to \$170,496.41⁷

Based on this analysis, the realistic recovery is **\$162,983.37** on the low end and **\$170,496.41** on the high end. (Han Decl., *supra*, at ¶ 65.) The Gross Settlement Amount of \$150,000 is about twenty percent (20.39%) of the maximum potential exposure and around eighty-eight percent (87.98%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 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.”.)

⁶ (Han Decl., *supra*, at ¶¶ 44-50.)

⁷ (*Id.* at ¶¶ 59-64.)

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
3 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
4 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
5 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also
6 *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
7 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
8 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
9 speculative measure of what might have been achieved by the negotiators”). Nevertheless, this
10 settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides
11 significant recovery for the Class Members.

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

13 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one
14 of a common or general interest, of many persons, or when the parties are numerous, and it is
15 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,
16 *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if plaintiff identifies “both [1]
17 an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

18 The Class is ascertainable and numerous as to make it impracticable to join all Class
19 Members, and there are common questions of law and fact that predominate over any questions
20 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 66.) Plaintiff contends, as a former
21 hourly-paid, non-exempt employee of Defendants, her claims are typical of the claims of the
22 Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also,
23 Plaintiff asserts the prosecution of separate actions by individual Class Members would create the
24 risk of inconsistent or varying adjudications, and a class action is superior to other available means
25 for the fair and efficient adjudication of the case. (*Ibid.*)

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

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

9 This case involves approximately eighty-four (84) Class Members, which is sufficiently
10 numerous. (Han Decl., *supra*, at ¶ 67.) All Class Members can and will be identified by the
11 Settlement Administrator through a review of employment records concerning all hourly-paid,
12 non-exempt California employees of Defendants during the Class Period. (*Ibid.*)

13 **ii. The Class Members Share a Well-defined Community of Interest**

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

23 **1. Common Issues Predominate**

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
25 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
26 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
27 other words, courts determine whether the elements necessary to establish liability are susceptible
28 to common proof, even if the class members must individually prove their damages. (*Brinker*

1 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
2 regularly granted class certification when the plaintiff can present evidence of common policies.
3 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
4 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
5 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
6 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

7 Plaintiff asserts common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 68.) Plaintiff contends all Class Members were subject to the
9 same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

10 **2. Plaintiff's Claims Are Typical of the Class Claims**

11 Typical claims rely on legal theories and facts that are substantially like those of other
12 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

13 Plaintiff is a former employee of Defendants and alleges she and the Class Members were
14 employed by the same company and injured by the common policies and practices related to the
15 claims described above. (Han Decl., *supra*, at ¶ 69.) Plaintiff seeks relief for these claims and
16 derivative claims on behalf of the Class. (*Ibid.*) Plaintiff's claims arise from the same employment
17 practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

18 **3. Plaintiff Is Adequate to Represent the Class**

19 Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at
20 ¶ 70.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this
21 litigation, understands her fiduciary obligations, and has actively participated in the prosecution
22 of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to
23 provide Class Counsel with a complete understanding of the work environment and requirements.
24 (*Ibid.*) Furthermore, Plaintiff has no interest averse to the interests of the Class. (*Ibid.*)

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

3 A class action is superior to other available means for the fair and efficient adjudication
4 of this controversy. Plaintiff contends the joinder of all Class Members is impractical and that
5 class treatment will permit many similarly situated persons to prosecute their common claims for
6 settlement purposes simultaneously in a single forum without the duplication of effort and
7 expense numerous individual actions would necessitate. Because some Class Members may still
8 be current employees, Plaintiff believes fear of retaliation further supports the superiority of class-
9 wide relief as this fear often discourages current employees from seeking legal redress.

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

11 In deciding to approve a proposed class action settlement under Code of Civil Procedure
12 section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk*
13 *v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is
14 presumed fair under the following circumstances: (1) parties reached settlement after arm’s-
15 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
16 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors
17 is small. (*Id.* at p. 1802.) All these elements are present here.

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

19 California Rules of Court, rule 3.769(f), provides:

20 If the court has certified the action as a class action, notice of the final approval
21 hearing must be given to class members in the manner specified by the court. The
22 notice must contain an explanation of the proposed settlement and procedures for
23 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.

24 The Notice Packet meets all these requirements. The Notice Packet advises the Class
25 Members of their right to participate in the Settlement, how and when to object to or request
26 exclusion from the Settlement, and date, time, and location of the Final Approval Hearing. (See
27 Han Decl., *supra*, Exhibit 2.)

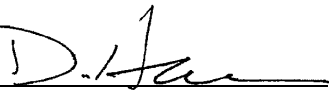
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1 **V. CONCLUSION**

2 Plaintiff submits the Settlement is in the best interests of the Class, as it is fair, adequate,
3 and reasonable. Under the applicable class action criteria and guidelines, the Settlement should
4 be preliminarily approved by the Court, Class should be conditionally certified for purposes of
5 settlement only, and Notice Packet should be approved.

6
7 Dated: January 18, 2023

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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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 January 18, 2023, 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: **Marquez v. Nihon Kohden America, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 815283-20**
Court Case No.: 30-2021-01184495-CU-OE-CXC
Orange 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 January 18, 2023, at Pasadena, California.



Anna Okada