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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

DANIEL SONICO, individually, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act ("PAGA") and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

JI MEDICAL, INC. d/b/a RAMAT MEDICAL, a California corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: RG20062766

Honorable Winifred Y. Smith
Department 21

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-2237585]

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

Hearing Date: March 26, 2021
Hearing Time: 10:00 a.m.
Hearing Place: Department 21

Action Filed: May 11, 2020
FAC Filed: January 6, 2021
Trial: None Set

PLEASE TAKE NOTICE that on March 26, 2021 at 10:00 a.m. or as soon as the matter may be heard before the Honorable Winifred Y. Smith in Department 21 of the Alameda County Superior Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiff Daniel Sonico, ("Plaintiff,") will and hereby move for an order:

- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Parties' Joint Stipulation and Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), attached as **"EXHIBIT 1"** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds, and the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and the Administration Costs;
- Conditionally certifying the proposed Class for settlement purposes only;
- Appointing Plaintiff as the Class Representative;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice") attached as "**Exhibit A**" to the Settlement Agreement;
- Approving the Election Not To Participate or Opt-out Form ("Exclusion Form") attached as "**Exhibit B**" to the Settlement Agreement;
- Directing the mailing of the proposed Class Notice and Exclusion Form (collectively, known as the "Notice Packets") with a postage-paid return envelope to the proposed Class;
- Approving the proposed deadlines for the notice and Settlement Administration process;
- Approving Simpluris, Inc ("Simpluris"), as the Settlement Administrator; and

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- 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 Attorney Fee Award, Cost Award, 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: February 9, 2021

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Shunt Tatavos-Gharajeh
Areen Babajanian
Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a non-reversionary $169,800 proposed wage and hour class action settlement by Plaintiff on behalf of himself and all individuals who are or were employed in California as hourly, non- exempt employees by JI Medical, Inc. d/b/a Ramat Medical ("Defendant") during the Class Period. ("Class"). The Class Period is the time period from May 11, 2016, to January 31, 2021 ("Class Period"). At the time of this filing, the number of Class Members provided by Defendant is currently estimated to be sixty-eight (68).

It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant's potential liability exposure, this proposed settlement of $169,800 – with an average settlement share amount estimated at $1,005.46[1] – is well within the "ballpark" of reasonableness.

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

II. BACKGROUND

Defendant is a Durable Medical Equipment (DME) supplier in the healthcare industry serving the long-term care industry. (Declaration of Douglas Han ("Han Dec.") at ¶ 9.) Defendant engages in large part in the cleaning and supply of sterilized hospital equipment, including beds, sheets, etc. (*Ibid.*) This case involves all individuals who are or were employed in California as hourly, non- exempt employees by Defendant during the Class Period. (*Ibid.*) Plaintiff alleges that at all times during the Class Period, Defendant's non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

[1] $68,371 (Net Settlement Amount) / 68 (Class Members) = $1,005.46.

On May 11, 2020, Plaintiff filed his class action lawsuit against Defendant in the Superior Court of California, County of Alameda, alleging: (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2) violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§ 1194 and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California Labor Code §226(a) (non-compliant wage statements); (7) violation of California Labor Code § 2800 and 2802 (unreimbursed business expenses); and (8) violation of California Business and Professions Code § 17200, et seq. for Defendant's alleged failure to pay all wages owed. (Han Dec., *supra*, at ¶ 10.)

On December 7, 2020, Plaintiff provided notice to Defendant and the California Labor and Workforce Development Agency ("LWDA") pursuant to Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 ("PAGA"). (Han Dec., *supra*, at ¶ 11.) The notice letter alleged failure to properly pay its hourly-paid or-non-exempt employees for all hours worked, failure to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failure to issue complaint wage statements, and failure to reimburse for all necessary business costs and expenses. (*Ibid.*) Plaintiff has not received a notification from the LWDA indicating it intends to pursue claims against Defendant. (*Ibid.*)

On January 6, 2021, Plaintiff filed a First Amended Complaint included a PAGA cause of action. (Han Dec., *supra*, at ¶ 12.) The Eligible Aggrieved Employees are the aggrieved employees eligible to recover the PAGA Payment that consist of all non-exempt employees who worked for Defendant within the State of California between December 7, 2019 to January 31, 2021 ("Eligible Aggrieved Employees" and "PAGA Timeframe"). (*Ibid.*) The incorporated PAGA cause of action alleged failure to pay minimum and overtime wages, failure to provide meal periods and rest breaks, failure to timely way wages during employment and upon termination, failure to provide complete and accurate wage statements, and failure to reimburse business expenses. (*Ibid.*)

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The Parties attended mediation of Plaintiff's claims on December 3, 2020. (Han Dec., *supra*, at ¶ 13.) At the conclusion of the mediation, the Parties were eventually able to reach an agreement on a settlement of the Class Action. (*Ibid.*)

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

III. INVESTIGATION/ LITIGATION HISTORY

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

After filing the Complaint, both Parties engaged in discovery. Plaintiff propounded one (1) set of form interrogatories, two (2) sets of special interrogatories, one (1) set of requests for admissions; and two (2) sets of requests for productions. (Han Dec., *supra*, at ¶ 15.) Afterwards, the Parties met and conferred regarding this discovery. (*Ibid.*)

Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. (Han Dec., *supra*, at ¶ 16.) Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiff also reviewed time records, pay records, employee handbook, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiff also engaged in a *Belaire* opt-out process and obtained the putative Class's contact information. (*Ibid.*)

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Plaintiff also interviewed dozens Class Members who worked for Defendant throughout the Class Period. (Han Dec., *supra*, at ¶ 17.) The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. (*Ibid.*)

Based upon Defendant's formal and informal discovery responses, as well as interviews Plaintiff's counsel had with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant failed to authorize and permit putative Class Members to take compliant, legally-mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Specifically, Plaintiff asserts that Defendant has not provided any evidence of a written meal and rest break policy prior to January 2019. (*Ibid.*) Even after January 2019, employees did not receive instructions concerning meal and rest breaks, particularly amongst the class of drivers. (*Ibid.*) Drivers were unable to unplug from work as they were driving under compressed deadlines and could not stop their vehicles. (*Ibid.*) Employees were also harassed by dispatch to speed them along and were thus pressured to not take their due breaks. (*Ibid.*) Moreover, Plaintiff contends Defendant failed to relieve employees of all duty, failed to relinquish control over their activities and permit a reasonable opportunity to take an uninterrupted thirty (30) minute meal break and impeded and/or discouraged them from taking their breaks. (*Ibid.*) Specifically, drivers are never relieved of duty while driving on their routes because dispatch is in constant communication with drivers. (*Ibid.*) If dispatch notices employees are stopping or taking too long between stops, they are instructed to continue working in order to meet delivery time windows. (*Ibid.*) Drivers are also forced to remain on-duty because they have responsibility over their truck as they contain valuable medical rental equipment. (*Ibid.*) In other words, the nature of the job itself pressured employees to skip meal and rest breaks, and breaks were often cut short, skipped, or missed when drivers would arrive and needed to make an urgent delivery. (*Ibid.*) Thus, Plaintiff contends that Defendant has a policy and practice to pressure employees not to take a fully compliant meal break for the full thirty (30) minutes or rest breaks for the full ten (10) minutes as required by law. (*Ibid.*) Additionally, Plaintiff contends that these rampart meal and rest issues are expressed by non-driver employees who were also deprived from being provided with a duty-free meal period as a result of Defendant's practices and non-compliant policies. (Han Dec., *supra*, at ¶ 18.) Finally, Plaintiff contends that Defendant does not have a policy or practice to pay premium wages pursuant to California Labor Code section 226.7. (*Ibid.*)

Additionally, Plaintiff contends – and Defendant denies – that Defendant's time records confirm that employees were subjected to an improper auto-deducting policy and were not compensated for all times worked, including off-the-clock work and overtime work. (Han Dec., *supra*, at ¶ 19.) Specifically, Defendant's time and payroll records demonstrate a clear pattern of automatic deduction of either thirty (30) minutes or one (1) hour from time worked by employees. (*Ibid.*) This resulted in Defendant denying employees thirty (30) minutes worth of wages from nearly every shift worked. (*Ibid.*) Due to the delivery window times imposed by the customers and productivity expectations, employees were discouraged from taking uninterrupted meal and rest breaks, and some employees received instructions that they are required to work through meal and rest breaks. (*Ibid.*) Consequently, this practice results in a failure to pay all minimum wages and overtime wages as applicable. (*Ibid.*) Furthermore, Plaintiff asserts that paycheck stubs did not reflect time actually worked because some drivers were generally expected to work for twelve (12) hours per day but were only allowed to submit ten (10) hours as worked. (*Ibid.*) Specifically, drivers often make deliveries on their way home after clocking out or pick up equipment before their shifts. (*Ibid.*) Overtime was only sparingly authorized, meaning if orders were piling up and overtime was not authorized, warehouse equipment cleaners were required to work off-the-clock in order to ensure that drivers would be able to fulfill customer orders. (*Ibid.*) Additionally, employees were subject to a black box of time recording policies in that the time they worked did not reflect what they were paid. (*Ibid.*) In other words, the total worked time is downgraded/rounded to an even eight (8) hours a day and seventy-two (72) total for the pay period. (*Ibid.*) It is estimated that this practice resulted in twenty (20) minutes of unpaid overtime. (*Ibid.*) Finally, Plaintiff asserts that Defendant paid employees non-discretionary bonuses and commissions but failed to incorporate these bonuses and incentive pay into its calculation of the regular rate. (*Ibid.*)

Plaintiff also contends – and Defendant denies – that Defendant failed to reimburse necessary business-related expenses incurred by employees. (Han Dec., *supra*, at ¶ 20.) Specifically, Plaintiff asserts that employees were required to be available to respond to calls on their personal cell phones at all hours. (*Ibid.*) Employees were also required to use GPS through their phones to complete their driving duties. Furthermore, Plaintiff contends that employees were required to purchase work pants ($30-$40) and slip-resistant shoes ($50-$100) for which they were not reimbursed. (*Ibid.*) Limited use gas cards were provided to groups of employees, and therefore employees would have to expend their own money on filling up gas on occasion. (*Ibid.*) Accordingly, it is estimated that a reasonable $100 per month was unreimbursed to drivers. (*Ibid.*)

Furthermore, Plaintiff contends – and Defendant denies – that Defendant is liable for waiting time penalties. (Han Dec., *supra*, at ¶ 21.) Specifically, Plaintiff asserts that Defendant's hourly-paid or non-exempt employees are entitled to back underpaid overtime and compensation for time worked off-the-clock as well as missed meal periods and rest breaks, thereby triggering waiting time penalties under section 203. (*Ibid.*) Thus, Defendant owes overtime wages and compensation for missed meal periods and rest breaks as a matter of fact and law. (*Ibid.*) But Defendant intentionally failed or refused to perform an act which was required to be done, constituting "willful" conduct and justifying "waiting time" penalties under section 203 to its former employees. (*Ibid.*)

Finally, Plaintiff contends – and Defendant denies – that Defendant's wage statement liability and its exposure to statutory penalties is substantial. (Han Dec., *supra*, at ¶ 22.) Specifically, Plaintiff argues that Defendant failed to accurately record hours worked by employees and the appropriate line items for which employees were being compensated. (*Ibid.*) This likely resulted in Defendant issuing wage statements in violation of section 226(a). (*Ibid.*)

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Defendant denies Plaintiff's contentions in their entirety. (Han Dec., *supra*, at ¶ 23.) Among other things, Defendant denies Plaintiff's rest and meal break contentions, on the grounds that it provided rest and meal periods within compliant times and that non-exempt employees were given discretion as to when to take their rest and meal periods. (*Ibid.*) Defendant also contends that its rest and meal period policies complied with California law and that non-exempt employees were allowed to use their rest period and meal period time for their own purposes. (*Ibid.*) Defendant further contends that whether non-exempt employees took meal and rest periods during compliant time frames and were relieved of all duties are questions that could only be resolved by resorting to individualized inquiries to each non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*) Defendant also asserts it paid its employees for all times worked, including the overtime, minimum, premium, and bonus wages. (*Ibid.*) Further, Defendant contends that Plaintiff's claims regarding off-the-clock work, unpaid overtime, and unreimbursed business expenses are trivial. (*Ibid.*) Finally, Defendant argues that its failure to comply with California labor laws was an honest mistake made in good faith and, therefore, could not be deemed "willful" under section 203. (*Ibid.*)

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

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

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

The Parties agreed to go to mediation with experienced wage and hour mediator, Kelly A. Knight, Esq. The mediation took place on December 3, 2020. (Han Dec., *supra*, at ¶ 24.) During the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Following the mediation, the Parties were eventually able to reach an agreement on settlement of the Class Action, the terms of which were memorialized in the Settlement Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

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

The Settlement was reached as a result of arm's-length negotiations. (Han Dec., *supra*, at ¶ 39.) Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediation, counsel for the Parties conducted extensive arm's-length settlement negotiations until the Parties ultimately reached an agreement. (*Ibid.*)

Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense and length of the proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. (Han Dec., *supra*, at ¶ 40.) Plaintiff and Class Counsel have also taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel have conducted extensive settlement negotiations, including a formal mediation on December 3, 2020. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (Han Dec., *supra*, at ¶ 41.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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c. Terms of the Proposed Settlement

i. Gross Settlement Amount

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of $169,800 ("Gross Settlement Amount" or "GSA") which includes, subject to Court approval: (a) Attorney Fee Award in an amount not to exceed $59,430 (thirty-five percent (35%) of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement and securing Court approval; (b) Cost Award for actual litigation costs not to exceed $20,000[2]; (c) Class Representative Enhancement Payment to the named Class Representative in an amount not exceed $10,000 in recognition of Plaintiff's work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved; (d) Administration Costs to Simpluris the Settlement Administrator, that are estimated at approximately $4,499 but not to exceed $5,000; (e) PAGA Payment of $10,000, seventy-five percent (75%) of which ($7,500) be paid to the LWDA and twenty-five percent (25%) of which ($2,500) will be part of the Net Settlement Amount to be distributed to Eligible Aggrieved Employees on a pro rata basis; and (f) a credit of $19,800 paid to Class Members as part of individual settlement obtained during the pendency of the Class Action ("Pick Up Stix Settlement Fund"). (Han Dec., *supra*, at ¶ 25.)

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[2] The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiff's motion for final approval. (Han Dec., *supra*, at ¶ 26.) At that time, Plaintiff will ask the Court to approve the amount of these costs. (*Ibid.*) If Plaintiff's actual litigation costs exceed $20,000, Plaintiff will only seek reimbursement in the amount of $20,000. (*Ibid.*) If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to all Class Members who do not submit a valid and timely request to exclude themselves from the Settlement ("Participating Class Members"). (*Ibid.*)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that $68,371 which includes the Pick Up Stix Settlement Fund credit ("Net Settlement Amount" or "NSA") will be distributed to Class Members – with an average Individual Settlement Share estimated at $1,005.46. (Han Dec., *supra*, at ¶ 27.) The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. (*Ibid.*) The Settlement Administrator will also calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. (*Ibid.*) The Settlement Administrator will also submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate tax authorities. (*Ibid.*) Subject to the terms and conditions of the Settlement Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member based on the following formula:

> Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked as a non-exempt employee during the Class Period based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Individual Settlement Share will be reduced if a Participating Class Member received a portion of the Pick Up Stix Settlement Fund. (*Ibid.*)

The Settlement Administrator will also pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. (Han Dec., *supra*, at ¶ 28.) The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (i.e., the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the $2,500 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. (*Ibid.*) That number will then be multiplied by the individual Eligible

Aggrieved Employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. (Han Dec., *supra*, at ¶ 28.)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 29.) No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; and (5) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class ("Database"). (Han Dec., *supra*, at ¶ 30.)

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Notice Packets to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members. (Han Dec., *supra*, at ¶ 31.) The Notice Packets advises the Class of their rights to participate in the Settlement and how to and when to object or request exclusion from the Settlement. (*Ibid.*) Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to the Settlement Agreement. (*Ibid.*) The proposed Class Notice and Exclusion Form are attached as Exhibits A and B to the Settlement Agreement, which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

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iv. Distribution of Funds

If no objection to the Settlement is made, Defendant shall deposit $150,000 by wiring the funds to the Settlement Administrator within sixty (60) calendar days of the date of the final approval order. (Han Dec., *supra*, at ¶ 32.)

Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 33.) The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. (*Ibid.*)

Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 34.) If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member will have his or her Individual Settlement Share available to him or her per the applicable claim procedure to request that money from the State of California. (*Ibid.*) Similarly, Settlement checks issued to the Eligible Aggrieved Employees pursuant to the Settlement Agreement shall expire one hundred eighty (180) days from the date they are issued by Defendant. (*Ibid.*) Any unclaimed funds after the one hundred eighty (180) days shall be remitted to the State Controller's Office. (*Ibid.*)

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v. Release of Claims

Upon Defendant's fulfillment of its payment obligations under Section III (K)(8)(a) of the Settlement Agreement, the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the consideration provided for by the Settlement Agreement are all claims, demands, rights, liabilities and causes of action that were asserted in the Complaint or that could have been asserted based on the factual allegations in the Complaint, including but not limited to claims for 1) failure to pay all wages due including minimum wage and/or overtime; 2) failure to provide meal period premiums; 3) failure to provide rest breaks premiums; 4) failure to pay minimum wages; 5) failure to timely pay final wages to terminated employees; 6) failure to comply with employee wage statement provisions of the California Labor Code; 7) failure to reimburse business expenses; 8) violations of the Labor Code Private Attorneys General Act of 2004; and 9) a violation of the Unfair Competition Law ("Released Claims"). (Han Dec., *supra*, at ¶ 35.) This release only applies to claims that arose during the Class Periods when Class Members were employed by Defendant in a non-exempt position. (*Ibid.*)

The release will be as to the Released Parties, which shall include Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys ("Released Parties"). (Han Dec., *supra*, at ¶ 36.)

Upon Defendant's fulfillment of its payment obligations under Section III (K)(8)(a) of the Settlement Agreement, the LWDA and each Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly is barred from bringing any and all claims seeking civil penalties under the California Labor Code predicated on the PAGA Claims asserted in the Complaint, during the PAGA Timeframe against Defendant. (Han Dec., *supra*, at ¶ 37.) The release of the PAGA Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion. (*Ibid.*)

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Finally, upon Defendant's fulfillment of its payment obligations under Section III (K)(8)(a) of the Settlement Agreement, and in exchange for the Class Representative Enhancement Payment to Plaintiff in an amount not to exceed $10,000, in recognition of his work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for himself and his spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment with Defendant or the remuneration for, or termination of, such employment. (Han Dec., *supra*, at ¶ 38.) Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542. (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Plaintiff's counsel and Defendant's counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff's counsel has significant experience in litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions. (Han Dec., *supra*, at ¶¶ 2-7.)

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

[3]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.

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
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> . . .
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> (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

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

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

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

i. The Settlement Is Fair and Reasonable

The proposed Settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data Defendant produced for the putative Class as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 41.)

This discovery resulted in Plaintiff's central theories of liability, which are predicated on Plaintiff's claims that, since at least May 11, 2016, Defendant has violated the California Labor and California Business and Professions Codes by carrying out a uniform practice and procedure of failing to compensate Plaintiff and putative Class Members by failing to pay minimum wages, overtime wages, and premium wages for missed meal and rest periods, failing to pay timely wages (waiting time penalties), failing to provide accurate and itemized wage statements and keep requisite payroll records, failing to reimburse business expenses, and engaging in unfair business practices under California Business & Professions Code section 17200. (Han Dec., *supra*, at ¶ 42.)

Defendant vehemently denies Plaintiff's theories of liability and contends, as stated above, that all meal and rest periods were provided in compliance with California law, that all wages were properly paid to Class Members, that it did not fail to reimburse employees for business-related expenses, that it provided final wages in a timely manner, and that it provided wage statements in compliance with Labor Code section 226. (Han Dec., *supra*, at ¶ 43.) Defendant further contends that any mistakes made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to continue, it feels confident that it would prevail. (*Ibid.*)

Although Plaintiff believes the case is suitable for certification on the claimed basis that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the putative Class Members, uncertainties concerning certification are always present. (Han Dec., *supra*, at ¶ 44.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On* have reached different conclusions concerning certification of wage and hour claims.[5] (*Ibid.*)

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

ii. The Settlement Amount of $169,800 Is Reasonable

In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of time and pay records and information regarding the estimated number of workweeks worked by putative class members and the average hourly rate for class members. (Han Dec., *supra*, at ¶ 45.) Based on this information, there were approximately 4,950 workweeks worked by Class

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[5](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).)

Members. (Han Dec., *supra*, at ¶ 45.) Plaintiff was also able to determine that the average hourly rate for Class Members was $15.66. (*Ibid.*)

Specifically, Plaintiff contends – and Defendant denies – that Defendant's time records confirm that employees were subjected to an improper auto-deducting policy and were not compensated for all times worked, including off-the-clock work and overtime work. (Han Dec., *supra*, at ¶ 19.) If this theory was certified and Plaintiff was able to prove that Class Members worked off-the clock work each shift, a reasonable estimate of damages at trial would be $193,792.50 (4,950 workweeks x $15.66 average hourly rate x 0.5 hours x 5 days). If using the overtime rate as certain shifts exceeded eight (8) hours per day or forty (40) hours per week, estimated damages at trial would be $290,688.75 (4,950 workweeks x rate of $23.49 x 0.5 hours x 5 days).

Additionally, Plaintiff contends – and Defendant denies – that Defendant failed to authorize and permit putative Class Members to take compliant, legally-mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Plaintiff calculates Defendant's reasonable potential exposure for the meal and rest period claim to be approximately $387,585 (4,950 workweeks x $15.66 average hourly rate x 5 meal or rest break violations per week).

Furthermore, Plaintiff claims – and Defendant denies – that Defendant is liable for wage statement penalties pursuant to section 226(a). (Han Dec., *supra*, at ¶ 23.) Plaintiff calculates Defendant's maximum potential exposure as to this claim to be approximately $75,200 ([1 x $50] + [23 x $100] x 32 employees (based on 24 average pay periods).

Plaintiff also claims – and Defendant denies – that Plaintiff and the Class Members are entitled to waiting time penalties under section 203 due to Defendant's failure to pay its hourly-paid and non-exempt employees for overtime, time worked off-the-clock, and missed rest and meal breaks. (Han Dec., *supra*, at ¶ 24.) Plaintiff calculates Defendant's maximum potential exposure as to this claim to be approximately $154,094.40 (8 hours x $15.66 average hourly rate x approximately 41 former non-exempt employees x 30 days).

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Moreover, Plaintiff contends – and Defendant denies – that Defendant failed to reimburse necessary business-related expenses incurred by employees. (Han Dec., *supra*, at ¶ 21.) Plaintiff calculates Defendant's potential exposure to be approximately $10,880 (($35 cell phone x 68 employees) + ($75 boots x 68 employees) + ($100 gas x 34 drivers)).

The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 46.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant 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. (*Ibid.*)

Class Counsel calculated penalties under this cause of action by multiplying the number of active Class Members (because of the shortened statutory period for this claim), by the civil penalties that each could be awarded for the Labor Code sections enumerated under Labor Code section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 47.) Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, as well as the Court's power to award "a lesser amount than the maximum civil liability." (*Id.* (citing Lab. Code § 2699(e)(2).).)

Given the state of the law and the range of PAGA penalties requested and actually awarded in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA penalties. (Han Dec., *supra*, at ¶ 48.) However, if PAGA penalties are granted on any one of the violations alleged in Plaintiff's operative complaint, the total penalties exposure for the eligible pay periods could be approximately $150,400 ([1 x $100] + [23 x $200] x 32 employees). (*Ibid.*) Plaintiff calculated Defendant's PAGA exposure using one hundred percent (100%) violation rate based on the average number of pay periods (24) during the one-year statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the PAGA theories of recovery (6) gives potential civil penalties of $902,400. (*Ibid.*)

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Although Plaintiff argued he could obtain over $900,000 for PAGA penalties, it seemed highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 49.) PAGA's plain language indicates that an employer will be assessed a lower, "initial" penalty for each initial pay period in which a violation occurs, and a higher, "subsequent" penalty for each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, "Until the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties [and will be assessed only the 'initial' violation rate]." (*Amaral, supra,* 163 Cal.App.4th at 1209.) This language could be interpreted as indicating that until the Labor Commissioner or a court informs an employer that it has violated the Labor Code, the employer can only be assessed the "initial" violation rate. Under this interpretation, the maximum individual civil penalty for one statutory violation is $3,200 (32 x 100 (initial violation), and for all possible Labor Code violations is $19,200.

Furthermore, PAGA's statutory language is unclear as to whether PAGA penalties may be "stacked" – that is, whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. On the one hand, Labor Code section 2699, subdivision (f) establishes "a civil penalty for a violation" (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that "an aggrieved employee may recover the civil 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, Defendants contended that the Ninth Circuit's opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents "stacking" of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to $3,200 on the low end and $19,200 on the high end based on five major theories of recovery.

To the extent Defendants' exposure remains in the hundreds of thousands of dollars, the civil penalties would certainly 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].).

Under a more conservative approach, Plaintiff's counsel considered the possibility that the Court could assess only the initial violation rate, bringing the basic PAGA penalty to $19,200 [32 employees x $100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 49.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Dec., *supra*, at ¶ 50.) Many of the causes of action brought were duplicative of the statutory claims such as violations of California Labor Code §§ 226.7, 510, 512(a), 1194, 1198 and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating $10,000 to PAGA civil penalties was reasonable based on a rate of $12.90 per pay period [$10,000 ÷ 775 Pay Periods in PAGA Date Range = $12.90], given the fact that Defendant is also paying an additional $159,800 in the Class settlement. (*Id*. (citing 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).)) Where 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. (*Id*. (citing *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.").)

Accordingly, taking into consideration Defendant's defenses, its supporting evidence, and its position that the Action is not suitable for class treatment, the settlement amount of $169,800— with an average Individual Settlement Share estimated at $1,005.46—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately $821,552 on the low end and $918,448 on the high end. (Han Dec., *supra*, at ¶ 51.)

Category	**Potential Exposure**	**Certification Risk**	**Merits Risk**	**Realistic Exposure**
Meal Premiums and Rest Premiums	$387,585	50%	50%	$96,896.25
Overtime/Minimum Wage: Off-the-Clock	$193,972.50 to $290,688.75	25%	50%	$72,672.18 to $109,008.28
Unreimbursed Business Expenses	$10,880	25%	50%	$4,080
Waiting Time Penalty	$154,094.40	25%	50%	$57,785.40
Wage Statement Penalty	$75,200	25%	50%	$28,200
MAXIMUM TOTAL EXPOSURE	**$821,552** to **$918,448**			**$259,633.83** to **$295,969.93**

Plaintiff applies fifty percent (50%) certification risk and fifty percent (50%) merits risk discounts for both rest and meal break exposure. (Han Dec., *supra*, at ¶ 52.) Defendant maintained a policy and practice of not providing reasonable opportunities for its employees to take breaks. (*Ibid.*) This involved drivers often being unable to unplug from work as they were driving under compressed deadlines and could not stop their vehicles. (*Ibid.*) In other words, the nature of the job itself pressured employees to skip meal and rest breaks, and breaks were often cut short, skipped, or missed when drivers would arrive and needed to make an urgent delivery. (Han Dec., *supra*, at ¶ 52.) Additionally, Defendant failed to relieve employees of all duty, failed to relinquish control over their activities and permit a reasonable opportunity to take an uninterrupted meal break and impeded and/or discouraged them from taking their breaks. (*Ibid.*) Further, Defendant did not have a practice or procedure of paying rest premiums and did not pay the full amounts required for meal premiums. (*Ibid.*) For these reasons, Class Counsel believes fifty percent (50%) certification risk discounts are justified. (*Ibid.*) However, Defendant may produce evidence and testimony that employees who worked through their breaks chose, rather than were forced, to do so, or that employees waived their breaks altogether. (*Ibid.*) Thus, Class Counsel believes this justifies additional fifty percent (50%) merits risk discounts. (*Ibid.*)

For unpaid wages involving off-the-clock work, including overtime work, Class Counsel believes a twenty-five percent (25%) certification risk and a fifty percent (50%) merits risk discount are justified. (Han Dec., *supra*, at ¶ 53.) Defendant had a policy and practice of auto-deducting either thirty (30) minutes or one (1) hour from the time worked by employees, which resulted in employees being deprived at least thirty (30) minutes worth of wages nearly every shift. (*Ibid.*) Moreover, pressures from tight delivery windows and productivity expectations discouraged employees to take breaks and forced them to work off-the-clock, which resulted in employees not receiving all minimum wages and overtime wages. (*Ibid.*) At trial, however, Defendant may be able to show that the policy did not result in illegal deductions but that Class Members actually received their meal breaks so no violations occurred. (*Ibid.*) For these reasons, Class Counsel believes a fifty percent (50%) discount due to risk on the merits is also justified. (*Ibid.*)

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For Plaintiff's section 2802 claim for unreimbursed business expenses, Class Counsel believes a twenty-five percent (25%) certification risk and fifty percent (50%) merits risk discount are justified. (Han Dec., *supra*, at ¶ 54.) Defendant required employees to purchase personal protective equipment (i.e., work pants and slip-resistant shoes) and to use their personal cellular phones for business purposes and did not reimburse employees for these expenses. (*Ibid.*) However, Defendant may produce evidence and testimony that few employees were required to make these purchases and that those who did were, in fact, reimbursed. (*Ibid.*) In addition, Defendant will likely produce evidence that the estimated damages for this claim vary among the Class Members depending on the duties they were required to perform for Defendant, making Defendant's total exposure difficult to calculate. (*Ibid.*) For these reasons, Class Counsel believes the aforementioned discounts are appropriate. (*Ibid.*)

Plaintiff's section 203 claim for waiting time penalties is based on Plaintiff's claims for unpaid overtime, time worked off-the-clock, and missed rest and meal breaks. (Han Dec., *supra*, at ¶ 55.) If Plaintiff prevails on these underlying claims, it will lead to waiting time penalties. (*Ibid.*) However, Defendant may argue that any failure to pay wages due and owing to employees in a timely manner was not "willful" under section 203 and was instead an honest mistake made in good faith. (*Ibid.*) For these reasons and the reasons explained in the previous sections, Class Counsel believes a twenty-five percent (25%) certification risk and fifty percent (50%) risk on the merits are justified. (*Ibid.*)

Finally, Plaintiff's section 226(a) claim for wage statement penalties is based on Defendant's failure to maintain accurate records. (Han Dec., *supra*, at ¶ 56.) Defendant failed to accurately record hours worked by putative Class Members and the appropriate line items for which employees were being compensated. (*Ibid.*) This subsequently resulted in Defendant issuing wage statements that failed to accurately state the numbers of hours worked in violation of the California Labor Code. (*Ibid.*) However, Defendant's error most likely did not affect all employees. (*Ibid.*) In addition, Defendant may argue that its failure to provide accurate wage statements was not "knowing and intentional" under section 226(a). (*Ibid.*) Thus, Class Counsel believes a twenty-five percent (25%) certification risk and fifty percent (50%) risk on the merits are justified. (Han Dec., *supra*, at ¶ 56.)

Based on this analysis, the realistic recovery for this case is $259,633.83 on the low end and $295,969.93 on the high end. (Han Dec., *supra*, at ¶ 57.) The Gross Settlement Amount of $169,800 is approximately eighteen percent (18.4%) of the maximum potential exposure and approximately sixty-five percent (65.4%) of the realistic exposure at trial, which is in the ballpark of reasonableness. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig*. (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.").)

d. Conditional Certification of the Class Is Appropriate

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

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Here, the proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 58.) Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Further, 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. (*Ibid.*) As discussed below, this case is amenable to class certification. (*Ibid.*)

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 sixty-eight (68) Class Members. (Han Dec., *supra*, at ¶ 59.) This Class is sufficiently numerous. (*Id.* (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).) Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records concerning hourly-paid and non-exempt employees employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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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. Common Issues Predominate

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

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Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged by Plaintiff. (Han Dec., *supra*, at ¶ 60.) 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. (*Ibid.*) All of Plaintiff's claims surround Defendant's common practice and scheme of failing to maintain compliant rest and meal break policies and practices and failing to fully and properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime work, business expenses, and associated wage statement and waiting time penalties. (*Ibid.*)

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

Typical claims rely on legal theories and facts that are substantially similar to other class members. **(***Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Here, Plaintiff was a non-exempt employee and alleges that he and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to rest and meal breaks, uncompensated off-the-clock work, unpaid overtime, unreimbursed business expenses, untimely paid wages, and inaccurate wage statements. (Han Dec., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

3. Plaintiff is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 62.) He has conducted himself diligently and responsibly in representing the class in this litigation, understands his fiduciary obligations, and has actively participated in the prosecution of this case. Plaintiff has spent time in meetings and conferences with counsel to provide counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Further, Plaintiff does not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) Moreover, proposed class counsel is adequate to represent the class. (Han Dec., *supra*, at ¶¶ 2-7.)

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4. Class Action is a Superior for the Fair and Effieicent Adjudication of this Controversy

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

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

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

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

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

V. CONCLUSION

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

Dated: February 9, 2021

JUSTICE LAW CORPORATION

Douglas Han
Shunt Tatavos-Gharajeh
Areen Babajanian
Attorneys for Plaintiff

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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On February 10, 2021, at, 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:	**Sonico v. JI Medical, Inc. dba Rabat Medical**
LWDA/Court Case No.:	**LWDA-CM-814667-20**
	RG20062766
	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 February 10, 2021, at Pasadena, California.

Allana Rivera