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

STEVEN DELCORSO, individually, and on  
behalf of other members of the general public  
similarly situated, and on behalf of other  
current or former employees pursuant to the  
Private Attorneys General Act of 2004  
("PAGA");

Plaintiff,

v.

WESTLAND TECHNOLOGIES, INC.,  
a California corporation; and DOES 1  
through 100, inclusive;

Defendants.

Case No.: CV-20-002807

Honorable John R. Mayne  
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**

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

Hearing Date: April 6, 2021  
Hearing Time: 8:30 a.m.  
Hearing Place: Dept. 21

Complaint Filed: June 26, 2020  
FAC Filed: February 2021  
Trial: None Set

1           **PLEASE TAKE NOTICE** that on April 6, 2021, and at 8:30 a.m., or as soon as the  
2 matter may be heard before the Honorable John R. Mayne in Department 21 of the Stanislaus  
3 County Superior Court – Main Courthouse, located at 801 10<sup>th</sup> Street, Modesto, California 95354  
4 Plaintiff Steven DelCorso (“Plaintiff”) will and hereby move for an order:

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

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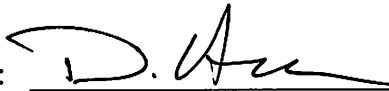
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- 1           • Scheduling a hearing to consider whether to grant Final Approval of the  
2 Settlement, at which time the Court will also consider whether to grant Final  
3 Approval of the requests for Attorney Fee Award, Cost Award, Class  
4 Representative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

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

11  
12 Dated: March 10, 2021

**JUSTICE LAW CORPORATION**

13  
14  
15 By:   
16 Douglas Han  
17 Shunt Tatavos-Gharajeh  
18 Phillip Song  
19 *Attorneys for Plaintiff*  
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1     **I.     INTRODUCTION**

2             This motion seeks Preliminary Approval of a non-reversionary \$222,365 proposed wage  
3 and hour class action settlement by Plaintiff on behalf of themselves and all hourly-paid or non-  
4 exempt employees employed by Defendant Westland Technologies, Inc. (“Defendant”) within  
5 the State of California during the Class Period (“Class”). The Class Period is the time period  
6 from June 20, 2016, to the date the Court issues an order granting preliminary approval of the  
7 Settlement, or March 31, 2021, whichever occurs earlier (“Class Period”). At the time of this  
8 filing, Defendant estimates that there are approximately one hundred twenty-nine (129)  
9 individuals that would be included in this Settlement.

10            It is requested this Court grant Preliminary Approval, as, when analyzing the strengths  
11 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this  
12 proposed settlement of \$222,365 – with an average Individual Settlement Share estimated at  
13 \$390.14<sup>1</sup> – is well within the “ballpark” of reasonableness.

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

21     **II.     BACKGROUND**

22            Defendant is a leading designer and manufacturer of elastomeric products, advanced  
23 polymer products, and complex machined systems that provide survivability and warfighting  
24 enhancements to the U.S. Navy fleet. (Declaration of Douglas Han (“Han Decl.”) ¶ 8.) This case  
25 involves all individuals who worked for Defendant within the State of California as hourly-paid  
26 or non-exempt employees during the time period from June 20, 2016, to the date the Court issues  
27 an order granting preliminary approval of the Settlement, or March 31, 2021, whichever occurs

28            <sup>1</sup> \$50,328.28 (Net Settlement Amount) / 129 (Class Members) = \$390.14

1 earlier (Han Decl., *supra*, at ¶ 8.)

2 June 26, 2020, Plaintiff filed a wage-and-hour class action (Case No. CV-20-002807)  
3 against Defendant in the Superior Court of California, County of Stanislaus, alleging wage and  
4 hour violations on behalf of all current and former current and former California-based hourly-  
5 paid or non-exempt employees (either directly or through a staffing agency or labor contractor)  
6 of Defendant within the State of California at any time during the Class Period. (Han Decl.,  
7 *supra*, at ¶ 9.) The Complaint alleged Defendant’s violation of California Business & Professions  
8 Code section 17200, et seq. (*Ibid.*) Specifically, Plaintiff claimed that Defendant failed to pay  
9 overtime and to properly calculate overtime in violation of California Labor Code sections 510  
10 and 1198; failed to provide legally required meal periods in violation California Labor Code  
11 sections 226.7 and 512(a); failed to provide legally required rest periods in violation of  
12 California Labor Code section 226.7; failed to pay minimum wages in violation of California  
13 Labor Code sections 1194, 1197, and 1197.1; and failed to reimburse business expenses in  
14 violation of California Labor Code sections 2800 and 2802. (*Ibid.*)

15 The Parties agreed to attend mediation on January 21, 2021. (Han Decl., *supra*, at ¶ 10.)  
16 Under the auspices of the mediator Paul Grossman, the Parties were able to reach an agreement  
17 on a settlement. (*Ibid.*)

18 On January 29, 2021 Plaintiff submitted and served a notice letter to the California Labor  
19 & Workforce Development Agency (“LWDA”) pursuant to the Labor Code section 2698, et seq.,  
20 or the Private Attorneys General Act of 2004 (“PAGA”), in accordance with the reporting  
21 requirements of California Labor Code section 2699.3. (Han Decl., *supra*, at ¶ 11.)

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1 In February 2021, in line with the Parties' agreement to enter into a settlement, Plaintiff  
2 filed a First Amended Complaint ("FAC") (Case No. CV-20-002807) against Defendant in the  
3 Superior Court of California, County of Stanislaus. (Han Decl., *supra*, at ¶ 12.) The FAC added  
4 causes of action alleging Defendant's failure to pay overtime wages, failure to pay meal  
5 premiums, failure to pay rest premiums, failure to pay minimum wages, failure to pay final  
6 wages in a timely manner, providing non-compliant wage statements, failure to reimburse  
7 business expenses, violation of PAGA, and violation of California Business & Professions  
8 section 17200, et seq. (*Ibid.*)

9 Defendant generally and specifically denies any and all liability or wrongdoing of any  
10 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of  
11 any sort, and contends that for any purpose other than settlement, the Class and PAGA Claim are  
12 not appropriate for class or representative treatment. (Han Decl., *supra*, at ¶ 13.) Defendant also  
13 asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out  
14 of any of the alleged facts or conduct in the Class and PAGA Claim. (*Ibid.*)

### 15 **III. INVESTIGATION/ LITIGATION HISTORY**

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

17 After the filing of the Complaints, the Parties engaged in significant investigation and  
18 discovery. (Han Decl., *supra*, at ¶ 14.) Plaintiff propounded one (1) set of special  
19 interrogatories, one (1) set of requests for production, one (1) set of form interrogatories, and one  
20 (1) set of requests for admission on Defendant. Afterwards, the Parties engaged in significant  
21 litigation and investigation. (*Ibid.*)

22 Prior to mediation, Defendant produced hundreds of documents relating to its policies,  
23 practices, and procedures regarding reimbursement of business expenses, paying non-exempt  
24 employees for all hours worked, meal and rest period policies, and payroll and operational  
25 policies. (Han Decl., *supra*, at ¶ 15.) As part of Defendant's production, Plaintiff also reviewed  
26 time records, pay records, and information relating to the size and scope of the Class, as well as  
27 data permitting Plaintiff to understand the number of workweeks in the Class Period. (*Ibid.*)  
28 Furthermore, Plaintiff interviewed several Class Members who worked for Defendant throughout

1 the Class Period. (Han Decl., *supra*, at ¶ 15.) Defendant also provided evidence of *Pick Up Stix*  
2 settlements, release agreements, and arbitration agreement for Class Members. (*Ibid.*)

3 Based upon Defendant’s document production and informal exchange of information, as  
4 well as communications Plaintiff’s Counsel had with Class Members, Plaintiff contends – and  
5 Defendant denies – Defendant uniformly failed to provide legally mandated meal and rest  
6 breaks. (Han Decl., *supra*, at ¶ 16.) Specifically, while Defendant’s meal and rest break policies  
7 appeared to be facially compliant, Defendant implemented an unofficial policy or practice of  
8 pressuring employees to skip, cut short, and/or take late meal and rest breaks. (*Ibid.*) In other  
9 words, because Defendant is a leading producer of elastomeric products, advanced polymer  
10 products, and complex machined systems for the U.S. Navy fleet, employees were under  
11 pressure to meet frequent and urgent deadlines due to the high demand for Defendant’s products.  
12 (*Ibid.*) Moreover, because Defendant’s facilities were also understaffed, employees were forced  
13 to undertake heavy workloads. (*Ibid.*) Additionally, employees were forced to cut their breaks  
14 short to tend to their machines and were forced to shorten their meal breaks by up to twenty (20)  
15 minutes to accommodate for time spent waiting in line to clock in and out. (*Ibid.*) Pressures  
16 from supervisors to not slow down production also forced employees to forego their breaks.  
17 (*Ibid.*) Finally, Defendant did not have a policy, practice, or procedure to pay premium wages for  
18 missed, shortened, interrupted, or late meal or rest breaks throughout the relevant period. (*Ibid.*)

19 In addition, Plaintiff contends – and Defendant denies – that Defendant did not  
20 compensate employees for all hours worked. (Han Decl., *supra*, at ¶ 17.) Specifically,  
21 Defendant’s working hours, meal and rest period, and overtime policies forced employees to  
22 perform work pre- and post-shift and during their breaks without compensation because  
23 Defendant’s policies required employees to clock in and out at the start and end times of their  
24 scheduled shifts and for their meal breaks or else face disciplinary action but discouraged  
25 overtime by requiring employees to obtain pre-approval while simultaneously creating pressure  
26 to complete work and maximize productivity. (*Ibid.*) This resulted in employees being forced to  
27 work off-the-clock pre-shift, post-shift, and during meal periods without pay to avoid  
28 disciplinary action for failing to comply with Defendant’s policies and to meet Defendant’s

1 expectations. (Han Decl., *supra*, at ¶ 17.) Furthermore, employees were routinely asked to  
2 perform pre- and post-shift work. (*Ibid.*) For instance, machine operators were often asked to  
3 come in thirty (30) minutes to one (1) hour early to perform pre-shift duties but were explicitly  
4 told not to clock in. (*Ibid.*) Other employees were required to come in about ten (10) minutes  
5 early every day to clean tools and personal protective equipment (“PPEs”) but were also not paid  
6 for this time. (*Ibid.*) Even after clocking out, managers and supervisors would ask employees for  
7 help with shipping or packaging. (*Ibid.*)

8 Furthermore, Plaintiff contends – and Defendant denies – that Defendant failed to include  
9 a non-discretionary bonus in employees’ regular rate of pay for purposes of overtime  
10 compensation. (Han Decl., *supra*, at ¶ 18.) Specifically, Defendant pays its employees a non-  
11 discretionary bonus, which appears on employees’ pay stubs simply as “Bonus.” (*Ibid.*)  
12 However, Defendant has not factored this bonus into employees’ regular rate of pay for purposes  
13 of overtime compensation. (*Ibid.*)

14 Plaintiff also contends – and Defendant denies – that Defendant is liable for waiting time  
15 penalties. (Han Decl., *supra*, at ¶ 19.) Specifically, Defendant owes wages and compensation for  
16 missed meal and rest breaks as a matter of fact and law. (*Ibid.*) But Defendant intentionally  
17 failed or refused to perform an act, which was required to be done, constituting “willful” conduct  
18 and justifying “waiting-time” penalties under Labor Code section 203 to its former employees.  
19 (*Ibid.*)

20 Moreover, Plaintiff asserts – and Defendant denies – Defendant’s failure to pay all  
21 minimum, overtime, and premium wages owed consequently violates Defendant’s obligation to  
22 provide complete and accurate wage statements. (Han Decl., *supra*, at ¶ 20.) As explained  
23 above, Defendant’s policies and practices operated to deprive employees of wages due and  
24 owing them, including overtime wages, minimum wages, and meal and rest premium wages.  
25 (*Ibid.*) These earned wages were consequently not paid or recorded, resulting in a failure to  
26 maintain accurate records. (*Ibid.*) Furthermore, Defendant maintained illegal and uniform  
27 practices of requiring employees to perform pre- and post-shift work off-the-clock that resulted  
28 in consistent underreporting of employees’ total hours worked. (*Ibid.*) As a result, wage

1 statements would necessarily be incomplete and inaccurate. (Han Decl., *supra*, at ¶ 20.)

2 Finally, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse  
3 employees for necessary business expenses. (Han Decl., *supra*, at ¶ 21.) Specifically, employees  
4 were required to purchase boots and latex gloves out-of-pocket, the combined cost of which  
5 ranges from \$600-\$1,000 for which they were not reimbursed. (*Ibid.*) Moreover, Defendant's  
6 expense policy states that while employees will be reimbursed for ordinary and reasonable  
7 business expenses, employees cannot incur expenses without prior authorization. (*Ibid.*) As a  
8 result, this policy made it difficult for employees to receive reimbursement for the replacement  
9 PPEs needed immediately and/or unexpectedly. (*Ibid.*) These PPEs were also often worn down  
10 due the harsh chemicals employees work around. (*Ibid.*)

11 Defendant denies Plaintiff's contentions in their entirety. (Han Decl., *supra*, at ¶ 22.)  
12 Among other things, Defendant denies Plaintiff's rest and meal break contentions and contends  
13 that it provided compliant meal and rest breaks in practice and maintained policies pertaining  
14 meal and rest break premiums. (*Ibid.*) Moreover, Defendant argues that it did not force its  
15 hourly-paid or non-exempt employees to work off-the-clock for which they were not  
16 compensated. (*Ibid.*) Defendant argues that provided its employees wage statement in  
17 compliance with Labor Code section 226(a). (*Ibid.*) Moreover, Defendant asserts that it provided  
18 its former employees final wages in a timely manner. (*Ibid.*) Defendant also argues that it  
19 reimbursed its employees for necessary business expenses. (*Ibid.*) Finally, Defendant maintained  
20 that this matter could never be certified due to the overwhelming individualized issue. (*Ibid.*)

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

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1                   **b. The Parties Attended Mediation Which Ultimately Led to the Settlement**  
2                   **Agreement**

3           Plaintiff and Defendant agreed to go to mediation with experienced wage and hour  
4 mediator, Paul Grossman on January 21, 2021. (Han Decl., *supra*, at ¶ 23.) During the  
5 mediation, Plaintiff and Defendant discussed the risks of continued litigation, risks of  
6 certification and on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the  
7 auspices of the mediator, the Parties eventually reached a global settlement, the terms of which  
8 were memorialized in the Settlement Agreement that the Parties seek Preliminary Approval of in  
9 the instant motion. (*Ibid.*; Exhibit 2.)

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

11                   **i. Deductions from the Settlement**

12           The Parties have agreed (subject to and contingent upon the Court’s approval) that the  
13 Class Action be settled and compromised for the non-reversionary total sum of \$222,365 (“Gross  
14 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award of up to  
15 \$77,827.75 (thirty-five percent (35%) of the Gross Settlement Amount) to compensate Class  
16 Counsel for work already performed and all work remaining to be performed in documenting the  
17 settlement, administrating the settlement and securing Court approval; (b) Cost Award not to  
18 exceed \$20,000<sup>2</sup>; (c) Class Representative Enhancement Payment to the named Class  
19 Representative in a sum not to exceed \$10,000 to Plaintiff in consideration for a general release  
20 of claims, for initiating and prosecuting the current Class Action, serving as the Class  
21 Representative, work performed, and risks undertaken for the payment of attorneys’ fees and  
22 costs in the event he had been unsuccessful in this matters; (d) Administration Costs to Simpluris

23 \_\_\_\_\_  
24 <sup>2</sup> The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s Motion for Final  
25 Approval. (Han Decl., *supra*, at ¶ 25.) At that time, Plaintiff will ask the Court to approve the amount of these  
26 costs. (*Ibid.*) If Plaintiff’s actual costs exceed \$20,000, Plaintiff will only seek reimbursement in the amount of  
27 \$20,000. (*Ibid.*) In the event the Court does not approve the entirety of the application for the Attorney Fee Award  
28 and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither  
Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount  
requested and the amount awarded. (*Ibid.*) If the amount awarded is less than the amount requested by Class  
Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement  
Amount and will be distributed to all Class Members who do not submit a valid and timely request to exclude  
themselves from the class action Settlement (“Participating Class Members”). (*Ibid.*)

1 currently estimated at \$5,000 but not to exceed \$7,500; (e) credit of \$51,709 already paid to  
2 certain Class Members as part of the *Pick Up Stix* settlement campaign; and (f) payment of  
3 \$7,500 to the LWDA, which is seventy-five percent (75%) of the \$10,000 allocated to Plaintiff's  
4 claims under PAGA. (Han Decl., *supra*, at ¶ 24.)

5 **ii. Calculation of the Settlement Payments to Class Members**

6 After all Court-approved deductions from the Gross Settlement Amount, it is estimated  
7 that \$50,328.28 ("Net Settlement Amount"), less all applicable employee taxes on the wage  
8 portion of the Individual Settlement Shares, will be distributed to Class Members – with an  
9 average Individual Settlement Share estimated at \$390.14. (Han Decl., *supra*, at ¶ 26.) The  
10 Settlement Administrator will pay each Participating Class Member an Individual Settlement  
11 Share from the Net Settlement Amount based on the following formula:

12 The Individual Settlement Share is calculated based on each Participating Class  
13 Member's pro rata share of the Net Settlement Amount based on workweeks  
14 during the Class Period as follows: (i) the number of weeks he or she worked as a  
15 hourly-paid or non-exempt employee during the Class Period, divided by (ii) the  
16 total number of weeks worked by all Participating Class Members collectively  
17 during the Class Period, which is then multiplied by the Net Settlement Amount.  
18 (*Ibid.*)

19 The Settlement Administrator shall also pay each aggrieved employees eligible to recover  
20 the PAGA Payment that consist of all hourly-paid or non-exempt employees who worked for  
21 Defendant within the State of California during the period between January 29, 2020 through the  
22 date the Court signs an order granting preliminary approval of this Settlement, or March 31,  
23 2021, whichever occurs earlier, ("Eligible Aggrieved Employee," and "PAGA Period")  
24 according to their proportional share. (Han Decl., *supra*, at ¶ 26.) This will be based upon the  
25 total number of pay periods he or she was employed during the PAGA Period. (*Ibid.*) The  
26 Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata  
27 share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on pay periods  
28 during the PAGA Period as follows: (i) the number of pay periods he or she worked as a hourly-  
paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of pay  
periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period,

1 which is then multiplied by the PAGA Payment (\$7,500) allocated to the Eligible Aggrieved  
2 Employees. (Han Decl., *supra*, at ¶ 26.)

3 The precise number of compensable weeks worked per Class Member will not be known  
4 until Defendant has tabulated them, following Preliminary Approval. (Han Decl., *supra*, at ¶  
5 27.) No portion of the Gross Settlement Amount of \$222,365 will revert to Defendant for any  
6 reason. (*Ibid.*)

7 Each Participating Class Member's Individual Settlement Share will be apportioned as  
8 follows: twenty percent (20%) wages and eighty percent (80%) interest, penalties, and  
9 reimbursements. (Han Decl., *supra*, at ¶ 28.) The portion paid as wages shall be subject to all  
10 tax withholdings customarily made from an employee's wages and all other authorized and  
11 required withholdings and shall be reported by W-2 forms. (*Ibid.*) The employees' share of  
12 payroll tax withholdings shall be withheld from each persons' Individual Settlement Share.  
13 (*Ibid.*)

### 14 **iii. Notice to the Class**

15 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,  
16 Defendant shall deliver to the Settlement Administrator a Microsoft Excel spreadsheet that will  
17 include: (i) each Class Member's full name; (ii) each Class Member's last-known address; (iii)  
18 each Class Member's Social Security and Employee ID number; and (iv) the Class Member's  
19 relevant dates of employment ("Class Data"). (Han Decl., *supra*, at ¶ 29.)

20 Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data  
21 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all  
22 identified Class Members via first-class regular U.S. Mail after conducting a search based on the  
23 National Change of Address Database ("NCAO") to update and correct any known or  
24 identifiable address changes. (Han Decl., *supra*, at ¶ 30.) The Notice Packet advises the Class of  
25 their rights to participate in the Settlement and how to and when to object or request exclusion  
26 from the Settlement. (*Ibid.*) Class Members are not required to submit a claim form to receive  
27 their Individual Settlement Shares pursuant to the Settlement. Eligible Aggrieved Employees are  
28 also not required to submit a claim form to receive their Individual PAGA Payment. (*Ibid.*) The

proposed Class Notice is attached as **Exhibits A** to the Settlement and the proposed Exclusion Form is attached as **Exhibit B** to the Settlement, which is **Exhibit 2** to the Declaration of Douglas Han.

#### **iv. Distribution of Funds**

No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit \$170,656 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Decl., *supra*, at ¶ 31.) Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Shares. (*Ibid.*)

Within fourteen (14) calendar days after the deadline to Fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. (Han Decl., *supra*, at ¶ 32.) The Settlement Administrator will 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 and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Decl., *supra*, at ¶ 33.) 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 or Individual PAGA Payment (as applicable) to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA Payment available to him or her per the applicable claim procedure to request that money from

the State of California. (Han Decl., *supra*, at ¶ 33.)

#### **v. Release of Claims**

As of the Effective Final Settlement Date, in exchange for the consideration set forth in the Settlement, Plaintiff and the Participating Class Members release 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, attorneys, and any entities that may be considered joint employers (“Released Parties”) from the Released Claims for the Class Period. (Settlement Agreement, § (I)(KK)). (Han Decl., *supra*, at ¶ 34.)

As of the Effective Final Settlement Date, 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 for the PAGA Released Claims during the PAGA Period. The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion. (Settlement Agreement, § (I)(FF)). (Han Decl., *supra*, at ¶ 35.)

#### **IV. ARGUMENT**

##### **a. Class Action Settlements are Subject to Court Review**

Rule 3.769 requires court approval for class action settlements.<sup>3</sup> “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:

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<sup>3</sup> 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; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

4 ...

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

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

14 **b. Conditional Certification of the Class is Appropriate**

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

22 The proposed Class is ascertainable and numerous as to make it impracticable to join all  
23 Class Members, and there are common questions of law and fact that predominate over any  
24 questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 36.) Plaintiff’s claims  
25 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately  
26 protect the interests of the Class. (*Ibid.*) Furthermore, prosecution of separate actions by  
27 individual Class Members would create the risk of inconsistent or varying adjudications, and a  
28 class action is superior to other available means for the fair and efficient adjudication of the case.  
(*Ibid.*)

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1                   **c. The Settlement is Fair, Reasonable, and Adequate**

2           In deciding whether to approve a proposed class action settlement under Code of Civil  
3 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and  
4 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class  
5 action settlement is presumed fair under the following circumstances: (1) the parties reached  
6 settlement after arms-length negotiations; (2) investigation and discovery were sufficient to  
7 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;  
8 and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at p. 1802.) As  
9 the following shows, all of these elements are present here, and the Court’s grant of Preliminary  
10 Approval is therefore requested.

11                   **i. The Proposed Class is Ascertainable and Sufficiently Numerous**

12           “Ascertainability is required in order to give notice to putative class members as to whom  
13 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)  
14 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs  
15 by describing a set of common characteristics sufficient to allow a member of that group to  
16 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*  
17 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be  
18 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

19           The Class Action involve one hundred twenty-nine (129) Class Members. (Han Decl.,  
20 *supra*, at ¶ 37.) This Class is sufficiently numerous. (*Ibid.*) Furthermore, all Class Members  
21 can and will be identified by Defendant to the Settlement Administrator through a review of  
22 Defendant’s employment records concerning all individuals who worked for Defendant in the  
23 State of California as non-exempt hourly employees during the Class Period. (*Ibid.*)

24   ///

25   ///

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

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

11            The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
12 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People, supra*, 155  
13 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)  
14 Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor  
15 policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

16            Here, Plaintiff asserts that common issues of fact and law predominate as to each of the  
17 claims alleged by Plaintiff. All hourly-paid and non-exempt employees employed by Defendant  
18 during the Settlement Class Period were subject to the same or similar employment practices,  
19 policies, and procedures. (Han Decl, *supra*, at ¶¶ 16-21.) All of Plaintiff’s claims surround  
20 Defendant’s common practice and scheme of failing to properly compensate employees, *inter*  
21 *alia*, for non-compliant rest and meal periods, overtime wages, work performed off-the-clock,  
22 associated waiting time and wage statement penalties, and unreimbursed business expenses.  
23 (*Ibid.*) Specifically, Plaintiff alleges that Defendant failed to provide complaint meal and rest  
24 rest breaks. (*Id.* at ¶ 16.) Though Defendant had a meal and rest break policy in place, Plaintiff  
25 contend that pressure to meet frequent and urgent deadlines due to the high demand for  
26 Defendant’s products and heavy workloads forced employees to work through, cut short, skip,  
27 and/or interrupt their meal and rest breaks. (*Ibid.*) Furthermore, Plaintiff alleges that Defendant’s  
28 stringent policies pressured employees to work off-the-clock, to work through their meal and rest

breaks, and perform pre-shift and post-shift work. (Han Decl., at ¶ 17.) Plaintiff also alleges that Defendant consistently did not include a non-discretionary bonus in employees' regular rate of pay for purposes of overtime compensation. (*Id.* at ¶ 18.) Finally, Plaintiff alleged that Defendant did not reimburse its employees for all business-related expenses, such as purchasing boots and latex gloves out-of-pocket and replacing PPEs. (*Id.* at ¶ 21.) As a result, all of the Class Members, including Plaintiff, were uniformly not paid for all of the hours they worked for Defendant during the Class Period. Based on these facts, Plaintiff concludes that the proposed Class is readily certifiable in this case. Accordingly, the Court should provisionally certify the Class for settlement purposes only.

**d. 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 Decl., *supra*, at ¶ 38.) Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. (*Ibid.*) Counsel for the Parties conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached by the Parties. (*Ibid.*) The terms of the settlement are memorialized in the Settlement Agreement. (*Ibid.*)

Plaintiff believes in the merits of his case, but also recognizes the expenses, length, uncertainty, and inherent risks of litigation and understand the benefit of the Class receiving settlement funds immediately as opposed to risking continued litigation, the merits of the case before and after trial, damages awarded, and an appeal that can take years to litigate. (Han Decl., *supra*, at ¶ 39.)

**e. 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. 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, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 40.) This litigation 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.)

**f. 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 Decl., *supra*, at ¶¶ 4-7, Exhibit 1.)

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 and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Han Decl., *supra*, at ¶¶ 4-7, Exhibit 1.) This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed Settlement.<sup>4</sup>

**g. 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.*)

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 Plaintiff’s Class could recover if it prevailed on all its 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*, 186

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<sup>4</sup> The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a settlement as in  
2 good faith under *Code of Civil Procedure* § 877.6, the court must at least satisfy itself that the  
3 class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at  
4 p. 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

5 As the following subsections show, the Parties’ investigation and discovery revealed  
6 plenty of reasons to discount claims and agree to this Settlement.

7 **i. The Settlement is Fair and Reasonable**

8 The proposed Settlement was only possible following significant discovery and  
9 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendants  
10 produced for the putative Class, as referenced in Section III above, which permitted Class  
11 Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl.,  
12 *supra*, at ¶ 40.)

13 This discovery and informal exchange of information resulted in Plaintiff’s central  
14 theories of liability, which are predicated on Plaintiff’s claims that since June 20, 2016,  
15 Defendant failed to pay overtime wages, failed to authorize its employees to take legally  
16 mandated meal and rest breaks, failed to pay premium wages, failed to pay final wages in a  
17 timely manner, failed to provide compliant wage statements, failed to reimburse necessary  
18 business expenses, violated PAGA, and violated California Business & Professions section  
19 17200, et seq. (Han Decl., *supra*, at ¶ 41.)

20 Defendant vehemently denies Plaintiff’s theories of liability and contends, as stated  
21 above, that all meal and rest periods were provided in compliance with California law, that all  
22 wages were properly paid to Class Members, that Defendant provided wage statements in  
23 compliance with Labor Code section 226, that Defendant paid final wages in a timely manner  
24 pursuant to section 203, and that Defendant reimbursed all necessary business expenses. (Han  
25 Decl., *supra*, at ¶ 42.) Defendant also argues that if litigation were to continue, it feels confident  
26 that it would prevail. (*Ibid.*)

27 ///

28 ///

1 Although Plaintiff believes the case is suitable for certification on the claimed basis that  
2 there are company-wide policies that Plaintiff contends violate California law and uniformly  
3 affect the putative Class Members, uncertainties concerning certification are always present.  
4 (Han Decl., *supra*, at ¶ 43.) As the California Supreme Court ruled in *Sav-On v. Superior Court*  
5 (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion.  
6 Decisions following *Sav-On* have reached different conclusions, concerning certification of wage  
7 and hour claims.<sup>5</sup> (*Ibid.*)

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

10 **ii. The Settlement Amount of \$222,365 is Reasonable**

11 In addition to being able to discover the strengths and vulnerabilities associated with  
12 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of  
13 time and pay records and information regarding the estimated number of workweeks worked by  
14 putative Class Members and the average hourly rate for Class Members. (Han Decl., *supra*, at ¶  
15 44.) Plaintiff hired an expert to analyze this data and calculate damages for Plaintiff's various  
16 claims. (*Ibid.*) Based on the information Defendant provided, Plaintiff's expert calculated that  
17 there were approximately 9,169 workweeks worked by putative class members, which was  
18 extrapolated to 12,805 workweeks. (*Ibid.*) Plaintiff's expert was also able to determine that the  
19 average hourly rate for Class Members was \$19.41. (*Ibid.*)

20 Plaintiff contends that Defendant uniformly failed to provide legally mandated meal and  
21 rest breaks. (Han Decl., *supra*, at ¶ 16.) Specifically, pressures from supervisors and heavy  
22 workloads imposed on employees due to Defendant being understaffed forced employees to take  
23 late meal and rest breaks or skip them entirely. (*Ibid.*) Based on a reasonable violation rate of a  
24 meal and rest break violation per week, Defendant's potential exposure for the meal and rest

25  
26 <sup>5</sup> (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming  
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171  
28 P.3d 545 (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148  
Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*  
(2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th  
1422 (affirming denial of certification).)

1 period claim would be \$497,090.10 (12,805 workweeks x \$19.41 average hourly rate x 2 meal  
2 and rest break violations per week).

3 In addition, Plaintiff contends that Defendant did not compensate employees for all hours  
4 worked. (Han Decl., *supra*, at ¶ 17.) Specifically, Defendant's stringent policies that  
5 discouraged overtime forced employees to perform work pre- and post-shift and during their  
6 meal and rest breaks without compensation. (*Ibid.*) Based on a reasonable estimate that Class  
7 Members were able to prove that they worked approximately one (1) hour of off-the-clock work  
8 each shift, a reasonable estimate of damages at trial would be \$248,545.05 for minimum wage  
9 exposure (12,805 workweeks x 1 hour calculated using a rate of \$19.41 average hourly rate of  
10 pay). If using the overtime rate, as certain shifts exceeded eight (8) hours per day or forty (40)  
11 hours per week and Defendant failed to include its non-discretionary incentive payments in its  
12 employees' regular rate of pay, a reasonable estimate of damages at trial would be \$372,881.60  
13 (12,805 workweeks x 1 hour calculated using a rate of \$29.12).

14 Furthermore, Plaintiff claims that Plaintiff and the Class Members are entitled to waiting  
15 time penalties under Labor Code section 203 for underpaid minimum and overtime wages and  
16 compensation for time worked off-the-clock, and missed meal and rest breaks. (Han Decl.,  
17 *supra*, at ¶ 19.) Based on these theories, Plaintiff calculates Defendant's maximum potential  
18 exposure as to this claim to be approximately \$242,236.80 (8 hours x \$19.41 average hourly rate  
19 x approximately 52 former non-exempt employees who worked within three-year limitations  
20 period x 30 days).

21 Plaintiff also claims Defendant's failure to pay all minimum, overtime, and premium  
22 wages owed violated Defendant's obligation to provide complete and accurate wage statements.  
23 (Han Decl., *supra*, at ¶ 20.) Moreover, Defendant's policies and practices that forced employees  
24 to work off-the-clock resulted in consistent underreporting of employees' total hours worked.  
25 (*Ibid.*) Plaintiff calculate Defendant's total exposure as to the claim for wage statement penalties  
26 to be \$298,150 (([1 x \$50] + [33 x \$100]) x 89 employees).

27 ///

28 ///

1 Finally, Plaintiff asserts that Defendant failed to reimburse its employees for all  
2 necessary business expenses, such as purchasing boots and latex gloves and replacing PPEs.  
3 (Han Decl., *supra*, at ¶ 21.) The the combined cost of these purchases ranged from \$600-\$1,000  
4 for which they were not reimbursed. Thus, the amount of Defendant’s damages for unreimbursed  
5 business expenses is approximately \$103,200 (129 employees x \$800 business expenses).

6 The provisions of the Labor Code potentially triggering PAGA penalties in this case  
7 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,  
8 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 45.) Defendant asserted that, regardless of  
9 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive  
10 and discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against  
11 the underlying claims, it had a strong argument that it would be unjust to award maximum  
12 PAGA penalties given the current unsettled state of law. (*Ibid.*)

13 Class Counsel calculated penalties under this cause of action by multiplying the number  
14 of active Class Members (because of the shortened statutory period for this claim), by the civil  
15 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code  
16 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 46.) Class Counsel then  
17 applied discounts in light of the countervailing arguments with regard to the other causes of  
18 action, as well as the Court’s power to award “a lesser amount than the maximum civil liability.”  
19 (*Id.* (citing Lab. Code § 2699(e)(2).).)

20 Given the state of the law and the range of PAGA penalties requested and actually  
21 awarded in California courts, it is difficult to determine a reasonable value and actual exposure  
22 for PAGA penalties. (Han Dec., *supra*, at ¶ 47.) However, if PAGA penalties are granted on any  
23 one of the violations alleged in Plaintiff’s operative complaint, the total penalties exposure for  
24 the eligible pay periods could be approximately \$596,300 ([1 x \$100] + [33 x \$200] x 89  
25 employees). (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using one hundred percent  
26 (100%) violation rate based on the average number of pay periods (34) during the one-year  
27 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations  
28 under the PAGA theories of recovery (6) gives potential civil penalties of \$3,577,800. (*Ibid.*)

1 Although Plaintiff argued they could obtain over \$3 million for PAGA penalties, it  
2 seemed highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶  
3 48.) PAGA’s plain language indicates that an employer will be assessed a lower, “initial”  
4 penalty for each initial pay period in which a violation occurs, and a higher, “subsequent”  
5 penalty for each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd.  
6 (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4<sup>th</sup> 1157; however, the court held, “Until  
7 the employer has been notified that it is violating a Labor Code provision (whether or not the  
8 commissioner or court chooses to impose penalties), the employer cannot be presumed to be  
9 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties [and  
10 will be assessed only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4<sup>th</sup> at 1209.) This  
11 language could be interpreted as indicating that until the Labor Commissioner or a court informs  
12 an employer that it has violated the Labor Code, the employer can only be assessed the “initial”  
13 violation rate. Under this interpretation, the maximum individual civil penalty for one statutory  
14 violation is \$8,900 (89 employees x 100 (initial violation), and for all possible Labor Code  
15 violations is \$53,400.

16 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may  
17 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period  
18 for different Labor Code violations. On the one hand, Labor Code section 2699, subdivision (f)  
19 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty  
20 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision  
21 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in  
22 subdivision (f)...on behalf of himself or herself and other current or former employees against  
23 whom one or more of the alleged violations was committed” (emphasis added). However,  
24 Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. Of Calif., Inc.*  
25 (9<sup>th</sup> Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9<sup>th</sup> Cir. 2015) 795 F.3d 1057,  
26 which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking”  
27 of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties  
28 would be limited to \$8,900 on the low end and \$53,400 on the high end based on six (6) major

1 theories of recovery.

2 To the extent Defendants' exposure remains in the millions of thousands of dollars, the  
3 civil penalties would certainly be "unjust, arbitrary and oppressive, or confiscatory." In fact,  
4 many courts have taken liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v.*  
5 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9\* [preliminarily approving  
6 class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims'  
7 full potential value, where "Plaintiffs face[d] a substantial risk of recovering nothing on either  
8 class or PAGA claims"]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037  
9 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of  
10 the PAGA claims' potential value, where the defendant's obligations were "genuinely unclear"  
11 and there was no evidence the defendant acted deliberately or negligently failed to learn about its  
12 obligations].).

13 Under a more conservative approach, Plaintiff's counsel considered the possibility that  
14 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$53,400  
15 [89 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 48.)

16 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.  
17 (Han Dec., *supra*, at ¶ 49.) Many of the causes of action brought were duplicative of the  
18 statutory claims such as violations of California Labor Code §§ 226.7, 510, 512(a), 1194, 1198,  
19 and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It  
20 was indeed arguable whether the Court would award the maximum penalties under the law.  
21 (*Ibid.*) Thus, allocating \$10,000 to PAGA civil penalties was reasonable based on a rate of \$3.32  
22 per pay period [ $\$10,000 \div 3,008$  Pay Periods in PAGA Date Range = \$3.00], given the fact that  
23 Defendant is also paying an additional \$212,365 in the Class settlement. (*Id.* (citing see  
24 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per  
25 violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75  
26 per violation and a total PAGA penalty of \$70,000,000).)) Where PAGA penalties are  
27 negotiated in good faith and "there is no indication that [the] amount was the result of self-  
28 interest at the expense of other Class Members," such amounts are generally considered

reasonable. (Han Dec., *supra*, at ¶ 49. (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.4<sup>th</sup> 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 \$222,365 – with an average Individual Settlement Share estimated at \$390.14 – is a reasonable and fair settlement.

**h. Discount Analysis Justifies the Settlement**

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$1,389,221.95 on the low end to \$1,513,558.50 on the high end. (Han Decl., *supra*, at ¶ 50.)

| Category                        | Potential Exposure                              | Certification Risk | Merits Risk | Realistic Exposure                          |
|---------------------------------|-------------------------------------------------|--------------------|-------------|---------------------------------------------|
| Meal Premiums and Rest Premiums | \$497,090.10                                    | 75%                | 60%         | \$49,709.01                                 |
| Unpaid Overtime/Minimum Wages   | \$248,545.05<br>or<br>\$372,881.60              | 70%                | 50%         | \$37,281.76<br>or<br>\$55,932.24            |
| Waiting Time Penalty            | \$242,236.80                                    | 50%                | 50%         | \$60,559.20                                 |
| Wage Statement Penalty          | \$298,150                                       | 50%                | 50%         | \$74,537.50                                 |
| Unreimbursed Business Expenses  | \$103,200                                       | 60%                | 50%         | \$20,640                                    |
| <b>MAXIMUM TOTAL EXPOSURE</b>   | <b>\$1,389,221.95<br/>or<br/>\$1,513,558.50</b> |                    |             | <b>\$242,727.47<br/>or<br/>\$261,377.95</b> |

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1 Class Counsel applies a seventy-five percent (75%) certification risk and a sixty percent  
2 (60%) merits risk for meal and rest break exposure. (Han Decl., *supra*, at ¶ 51.) Defendant's  
3 meal and rest break policies complied with the law. (*Ibid.*) But employees also pressured to skip  
4 their meal and rest breaks in order to meet frequent and urgent deadlines due to the high demand  
5 for Defendant's products and not wishing to be reprimanded by supervisors for slowing down  
6 production. (*Ibid.*) Defendant being understaffed also imposed a large workload onto  
7 employees, which contributed to the pressure that forced them to forgo their meal and rest  
8 breaks. (*Ibid.*) Finally, Defendant did not have a policy or practice in place to pay premium  
9 wages for missed meal and rest breaks. (*Ibid.*) While Class Counsel believes class could be  
10 certified on a well-established factual record, these theories are difficult to certify, thus, a  
11 seventy-five percent (75%) certification risk is justified. (*Ibid.*) Moreover, Defendant may  
12 submit evidence and testimony that employees who worked through their meal and rest breaks  
13 chose to do so, meaning they were not pressured or forced. (*Ibid.*) Defendant could also submit  
14 evidence that it did pay premium wages to employees who chose to work through their meal and  
15 rest breaks. (*Ibid.*) In other words, Defendant could assert that the work environment did not  
16 pressure or force any of the employees to forgo or cut short their meal and rest breaks. (*Ibid.*)  
17 Defendant can also argue that it did not have an auto-deduction policy for meal breaks to give  
18 the appearance that employees were receiving their meal breaks when they were actually not.  
19 (*Ibid.*) Thus, Class Counsel believes a sixty percent (60%) merits risk is appropriate. (*Ibid.*)

20 For unpaid overtime/minimum wage and off-the-clock work, Class Counsel believes a  
21 seventy percent (70%) certification risk and a fifty percent (50%) risk on the merits are justified.  
22 (Han Decl., *supra*, at ¶ 52.) Specifically, Defendant's stringent working hours, meal and rest  
23 period, and overtime policies forced employees to work off-the-clock without asking for  
24 overtime pay out of fear of disciplinary action. (*Ibid.*) This included machine operators being  
25 routinely asked to come in thirty (30) minutes to one (1) hour early to perform pre-shift duties  
26 without being permitted to clock in and other employees being required to come in about ten (10)  
27 minutes early every day to clean tools and PPEs without being compensated. (*Ibid.*) Employees  
28 were also requested by managers and supervisors to remain on the work premises after clocking

1 out to assist with shipping or packaging. (Han Decl., *supra*, at ¶ 52.) However, Class Counsel  
2 believes a seventy percent (70%) certification risk is justified because Defendant may argue that  
3 it did not have policies or practices that pressured any of its employees to work off-the-clock and  
4 that employees who chose to perform off-the-clock work did so at their own discretion and  
5 without Defendant's knowledge. (*Ibid.*) In other words, machine operators chose to arrive early  
6 to perform their regularly scheduled work, and other employees chose to arrive early to clean  
7 their tools and PPEs by their own volition. (*Ibid.*) Furthermore, Defendant may also assert that  
8 only a small subset of employees actually worked off-the-clock without compensation, and the  
9 amount of time they worked off-the-clock was minimal at best. (*Ibid.*) Finally, as to the non-  
10 discretionary bonus that Defendant paid its employees, Defendant could testify not all of its  
11 employees were eligible for or may have obtained such a bonus. (*Ibid.*) In other words,  
12 Defendant's bonus was not meant to affect its employees' regular rate of pay for overtime  
13 purposes. (*Ibid.*) For these reasons, Class Counsel believes a further fifty percent (50%) risk on  
14 the merits is justified. (*Ibid.*)

15 Plaintiff's claims for waiting time penalties are based on Plaintiff's claims for underpaid  
16 minimum wages, overtime wages, compensation for time worked off-the-clock, and for missed  
17 meal and rest breaks. (Han Decl., *supra*, at ¶ 53.) For the reasons explained in the sections  
18 above, Class Counsel believes that a fifty percent (50%) certification risk and a fifty percent  
19 (50%) merits risk are justified. (*Ibid.*)

20 Similarly, Plaintiff's claims for wage statement penalties are based on Defendant's failure  
21 to maintain accurate records due to the exclusion of wages due and owed to Class Members,  
22 including meal and rest premiums, overtime wages, minimum wages, and off-the-clock work.  
23 (Han Decl., *supra*, at ¶ 54.) This claim is a derivative of these underlying violations. Class  
24 Counsel believes this justifies a fifty percent (50%) certification and merits risk. (*Ibid.*)

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1 Finally, Class Counsel believes that a sixty percent (60%) certification risk and fifty  
2 percent (50%) merits risk are justified for unreimbursed business expenses. (Han Decl., *supra*, at  
3 ¶ 55.) There were a number of employees that were forced to use their own funds to purchase  
4 boots and latex gloves in order to be able to perform their duties. (*Ibid.*) Defendant also has a  
5 questionable reimbursement policy that only authorizes reimbursements if there is prior  
6 authorization and does not define “ordinary” and “reasonable” business expenses. (*Ibid.*)  
7 However, Defendant could present evidence and testimony at trial that most employees were  
8 reimbursed for purchasing boots and latex gloves out-of-pocket. (*Ibid.*) Defendant can also  
9 present evidence that only a small percentage of employees actually used their own funds to  
10 purchase work equipment. (*Ibid.*) Finally, Defendant may present testimony as to the validity of  
11 its reimbursement policy. (*Ibid.*) As a result, Class Counsel believes a sixty percent (60%)  
12 certification risk and fifty percent (50%) merits risk are warranted. (*Ibid.*)

13 Based on this analysis, the realistic recovery for this case is \$242,727.47 on the low end  
14 to \$261,377.95 on the high. (Han Decl., *supra*, at ¶ 56.) The Gross Settlement Amount of  
15 \$222,365 is approximately fourteen percent (14.7%) of the maximum potential exposure and  
16 approximately eighty-five percent (85.1%) of the highest realistic exposure at trial, which is in  
17 the ballpark of reasonableness and an excellent settlement. (*Ibid.*)

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

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

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

Plaintiff respectfully submits that the proposed Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable, and one that should ultimately be granted Final Approval. 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.

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DA

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