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

INGRID ALCALA, individually, and on  
behalf of other members of the general public  
similarly situated;

Plaintiff,

v.

ULTRA CLEAN TECHNOLOGY SYSTEMS  
AND SERVICE, INC. d/b/a ULTRA CLEAN  
TECHNOLOGY, a California corporation;  
and DOES 1 through 100, inclusive;

Defendants.

Case No.: RG21094281 [Consolidated with  
Case No. RG21103305]

Assigned for All Purposes to:  
Honorable Stephen Kaus  
Department 19

**CLASS ACTION**

**PLAINTIFFS' 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: 456999962993]**

[Declarations of Proposed Class Counsel  
(Douglas Han and Joanna Ghosh); Declaration  
of Proposed Administrator (Jodey Lawrence);  
Declaration of Joan Graff; and [Proposed]  
Order filed concurrently herewith]

Hearing Date: October 4, 2023  
Hearing Time: 3:00 p.m.  
Hearing Place: Department 19

Complaint Filed: March 15, 2021  
Trial Date: None Set

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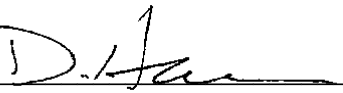
1           **PLEASE TAKE NOTICE** that on October 4, 2023 at 3:00 p.m., or as soon as the matter  
2 may be heard, before the Honorable Stephen Kaus in Department 19 of the Alameda County  
3 Superior Court (Administration Building) located at 1221 Oak Street Oakland, California 94612,  
4 Plaintiffs Ingrid Alcala and Quondrel Grays (“Plaintiffs,” “Plaintiff Alcala,” and “Plaintiff  
5 Grays”) will and hereby do move for an order:

- 6           • Granting Preliminary Approval of the proposed class action settlement and Private  
7           Attorneys General Act of 2004 (“PAGA”) Penalties described herein and as set  
8           forth in the Parties’ Class Action and PAGA Settlement Agreement (“Settlement  
9           Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the  
10          declaration of Douglas Han, including, and not limited to, the means of allocation  
11          and distribution of funds;
- 12          • Conditionally certifying the Class for settlement purposes only;
- 13          • Appointing Plaintiffs as the class representatives;
- 14          • Appointing Justice Law Corporation and Lawyers for Justice, PC as Class  
15          Counsel;
- 16          • Approving the Notice of Class Action Settlement (“Class Notice”) attached as  
17          **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action  
18          Settlement and Setting Hearing for Final Approval of Settlement and Settlement  
19          Agreement;
- 20          • Directing the mailing of the Class Notice with a postage-paid return envelope to  
21          the Class;
- 22          • Approving the deadlines for the notice and settlement administration process;
- 23          • Approving Phoenix Class Action Administrators as the Administrator; and
- 24          • Scheduling a hearing to consider whether to grant Final Approval of the Settlement  
25          Agreement, at which time the Court will also consider whether to grant Final  
26          Approval of the requests for the Class Counsel Fees Payment, Class Counsel  
27          Litigation Expenses Payment, Class Representative Service Payments,  
28          Administration Expenses Payment, and PAGA Penalties.

1 This motion is based upon the following memorandum of points and authorities;  
2 Declarations of Proposed Class Counsel (Douglas Han and Joanna Ghosh); Declaration of the  
3 Proposed Administrator (Jodey Lawrence); Declaration of Joan Graff; [Proposed] Order filed  
4 concurrently with this motion; pleadings and other records on file with the Court in this matter;  
5 and such documentary evidence and oral argument as may be presented at the hearing.  
6

7 Dated: September 7, 2023

**JUSTICE LAW CORPORATION**

8  
9 By:   
10 Douglas Han  
11 *Attorneys for Plaintiffs*  
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1     **I.     INTRODUCTION**

2             This motion seeks preliminary approval of a non-reversionary wage-and-hour class action  
3 and representative PAGA settlement by Plaintiffs on behalf of themselves and all current and  
4 former hourly-paid or non-exempt employees employed by Defendant Ultra Clean Technology  
5 Systems and Services, Inc. d/b/a Ultra Clean Technology (“UCT”) or employed by Defendant  
6 West Valley Staffing Group (“West Valley”) who worked at UCT within the State of California  
7 at any time during the period from September 15, 2016 through January 19, 2023 who did not  
8 sign arbitration agreements (“Class,” “Class Members,” and “Class Period”). At the time of this  
9 filing, the number of Class Members confirmed by Defendants is about six hundred sixty-one  
10 (661). (Declaration of Douglas Han In Support of Plaintiffs’ Motion For Preliminary Approval  
11 of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

12     **II.    BACKGROUND**

13             On January 6, 2021, Plaintiff Alcala, represented by Justice Law Corporation, provided  
14 written notice to the California Labor and Workforce Development Agency and Defendants.  
15 (Han Decl., *supra*, at ¶ 9, Exhibit 3.)

16             On March 15, 2021, Plaintiff Alcala filed a wage-and-hour class action lawsuit in the  
17 Superior Court of California, County of Alameda (Case No. RG21094281). (Han Decl., *supra*,  
18 at ¶ 10, Exhibit 4; Declaration of Joanna Ghosh In Support of Plaintiffs’ Motion For Preliminary  
19 Approval of Class Action Settlement (“Ghosh Decl.”), ¶¶ 8.)

20             On June 30, 2021, Plaintiff Grays, represented by Lawyers for Justice, PC, filed a wage-  
21 and-hour class action lawsuit in the Superior Court of California, County of Alameda (Case No.  
22 RG21103305). (Han Decl., *supra*, at ¶ 11; Ghosh Decl., *supra*, at ¶ 8.)

23             On April 25, 2022, the Parties remotely attended mediation with the mediator Jeffrey A.  
24 Ross. (Han Decl., *supra*, at ¶ 12; Ghosh Decl., *supra*, at ¶ 11.) While the Parties did not initially  
25 settle at mediation, continued negotiations coupled with the mediator’s assistance eventually  
26 allowed the Parties to negotiate a global settlement, subject to the Court’s approval. (*Ibid.*)

27     ///

28     ///

On March 7, 2023, pursuant to the Parties' stipulation, the Court entered an order that consolidated the lawsuits (Operative Complaint) and designated Plaintiff's Alcala's lawsuit as the lead case. (Han Decl., *supra*, at ¶ 13; Ghosh Decl., *supra*, at ¶ 8.)

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

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

Plaintiffs propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 15; Ghosh Decl., *supra*, at ¶¶ 9-10.) Defendants responded to the discovery formal discovery requests. (*Ibid.*) Thereafter, the Parties met and conferred, agreed to engage in the informal exchange of information, and eventually agreed to remotely attend mediation. (*Ibid.*)

Defendants produced hundreds of documents relating to their policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16; Ghosh Decl., *supra*, at ¶¶ 9-10.) As part of Defendants' production, Plaintiffs also reviewed a sampling of time records, pay records, and information relating to the size and scope of the Class and Aggrieved Employees. (*Ibid.*) Several putative class members were also located and interviewed to obtain a better understanding of the alleged day-to-day violations. (*Ibid.*)

Based upon the information provided by Defendants and interviews with putative class members, Plaintiffs contend Defendants: (1) failed to provide employees with legally mandated meal and rest breaks and consistently pay applicable premium wages; (2) failed to pay employees for all hours worked; (3) failed to reimburse employees for necessary business expenses; (4) failed to issue compliant wage statements; and (5) failed to timely pay wages. (Han Decl., *supra*, at ¶¶ 18-25.) Defendants generally deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, and deny any and all liability for the causes of action that are or reasonably could have been alleged based on the facts in the Operative Complaint. (*Id.* at ¶¶ 14, 25.)

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

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

The Parties remotely attended mediation with an experienced wage-and-hour mediator on

1 April 25, 2022. (Han Decl., *supra*, at ¶ 26; Ghosh Decl., *supra*, at ¶ 11.) Under the auspices of  
2 the mediator, the Parties reached a settlement, the terms of which were memorialized in the  
3 Agreement the Parties now seek Preliminary Approval of. (Han Decl., *supra*, at ¶ 26, Exhibits 2,  
4 5; Ghosh Decl., *supra*, at ¶ 11.)

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

6 The Settlement Agreement was reached because of arm's-length negotiations. (Han  
7 Decl., *supra*, at ¶ 30; Ghosh Decl., *supra*, at ¶ 11.) Though cordial and professional, the settlement  
8 negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation,  
9 the Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement  
10 was eventually reached. (*Ibid.*)

11 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense  
12 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶  
13 31; Ghosh Decl., *supra*, at ¶¶ 11, 13.) Plaintiffs and Class Counsel also considered the uncertainty  
14 and risk of further litigation, potential outcome, and difficulties and delays inherent in such  
15 litigation. (*Ibid.*) Plaintiffs and Class Counsel believe the settlement set forth in the Agreement  
16 is fair, adequate, and reasonable and is in the Class Members' best interests. (*Ibid.*)

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

18 The Parties investigated and evaluated the factual strengths and weaknesses of the claims  
19 and defenses before reaching the Settlement and engaged in sufficient investigation, research, and  
20 discovery. (Han Decl., *supra*, at ¶ 32; Ghosh Decl., *supra*, at ¶¶ 9-11.) The information produced  
21 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.  
22 (*Ibid.*) This case has reached the stage where the Parties understand "the strength of the case; the  
23 reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best  
24 possible recovery" sufficient to support the Settlement's reasonableness, adequacy, and fairness.  
25 (Han Decl., *supra*, at ¶ 32; Ghosh Decl., *supra*, at ¶¶ 9-11; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979)  
26 485 F.Supp. 610, 617.)

27 ///

28 ///

1                   **c. Terms of the Settlement**

2                   **i. Deductions from the Settlement**

3           The Parties agreed (subject to the Court’s approval) this action be settled and  
4 compromised for the non-reversionary total sum of \$1,610,000 (“Gross Settlement Amount”)  
5 which includes the: (1) Class Counsel Fees Payment up to \$536,666.67 (1/3 of the Gross  
6 Settlement Amount); (2) Class Counsel Litigation Expenses Payment up to \$35,000; (3) Class  
7 Representative Service Payments totaling \$20,000; (4) Administration Expenses Payment up to  
8 \$15,000; and (5) PAGA Penalties up to \$100,000. (Han Decl., *supra*, at ¶ 27.)

9                   **ii. Calculation of Settlement Payments**

10          After all Court-approved deductions from the Gross Settlement Amount, it is estimated  
11 \$903,333.33 (“Net Settlement Amount”) will be distributed to Participating Class Members.  
12 (Han Decl., *supra*, at ¶ 28.)

13          The Administrator will calculate settlement payments using the formula set forth in the  
14 Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ C(2)(d), C(2)(e).) Individual PAGA  
15 Payments will be allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

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

18          Individual Class Payments will be allocated twenty percent (20%) to the settlement of  
19 wage claims and eighty percent (80%) to the settlement of claims for interest, penalties, and other  
20 non-wage damages. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § C(2)(d)(i).)

21          The allocation of wages, interest, and penalties indicated above was based on the realistic  
22 exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages  
23 if the case went to trial. (Han Decl., *supra*, at ¶ 51.) Plaintiffs added the realistic exposure for  
24 rest break premiums and meal break premiums (\$225,858.79 + \$542,066.26 = \$767,925.05).  
25 (*Ibid.*) Plaintiffs then added the \$767,925.05 to the low end realistic exposure for unpaid wages  
26 due to off-the-clock work and underpaid wages due to rounding (\$767,925.05 + \$206,112.23 +  
27 \$52,646.31 = \$1,026,683.59). (*Ibid.*) The realistic exposure of \$1,026,683.59 that Plaintiffs can  
28 expect to receive if they were to prevail at trial for meal and rest break premiums, low end unpaid

wages due to off-the-clock work, and underpaid wages due to rounding represents about twenty percent (20.47%) of the low end total realistic exposure and PAGA penalties ( $\$1,026,683.59 \div \$5,015,320.47 = 0.2047 \times 100 = 20.47\%$ ). (Han Decl., *supra*, at ¶ 51.) Because this represents almost twenty percent (20%) of wages, allocating twenty percent (20%) to the settlement of wage claims and eighty percent (80%) to the settlement of claims for interest, penalties, and other non-wage damages pursuant to the Settlement is appropriate. (*Ibid.*)

#### **iv. Notice to the Class**

No later than fourteen (14) calendar days after Preliminary Approval, Defendants will deliver the Class Data and PAGA Data to the Administrator. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the Class and PAGA Data, the Administrator will send to all Class Members identified in the Class Data and all Aggrieved Employees identified in the PAGA Data the Class Notice via First-Class U.S. Mail in English and Spanish. (*Id.* at § G(4)(c).)

#### **v. Distribution of Funds**

The Gross Settlement Amount will be funded and disbursed in the manner and time set forth in the Settlement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ D(1), D(2).) Uncashed settlement checks will be canceled and paid to the *cy pres* recipient Legal Aid At Work (“LAAW”). (*Id.* at § D(3)(b).)

#### **vi. The Cy Pres Recipient Is Appropriate**

LAAW satisfies the requirements of Code of Civil Procedure section 384(a): “to ensure that the unpaid cash residue and unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent possible, in a manner designed to further the purposes of the underlying class action or causes of action, or to promote justice for all Californians.” The Code of Civil Procedure section 384(b) further adds:

[T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.

(Code Civ. Proc., § 384, subd. (b).)

LAAW satisfies the legislature’s purpose and goal under Code of Civil Procedure section 384. (Han Decl., *supra*, at ¶ 29; See Declaration of Joan Graff.) LAAW is the type of non-profit organization the legislature had in mind when drafting and amending Code Civil Procedure section 384. (*Ibid.*) Plaintiffs and Class Counsel have no affiliation with or have any interest pertaining to LAAW. (Han Decl., *supra*, at ¶ 29; Ghosh Decl., *supra*, at ¶ 14.)

#### **vii. Release of Claims**

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and Employer Taxes, all Participating Class Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(2).)

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and Employer Taxes, all Aggrieved Employees, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to release the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(3).)

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and Employer Taxes, Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release, and discharge the Released Parties from Plaintiffs’ Release. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(1).) Plaintiffs also expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

Regarding class action releases, “[A] court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in this case are acceptable because they are limited to the scope of the allegations in the operative

complaints. Moreover, the released claims are ““based on *the identical factual predicate* as that underlying the claims in the settled class action.”” (*Amaro v. Anaheim Arena Management, LLC, supra*, 69 Cal.App.5th at p. 537.) In other words, the released claims do not ““go beyond the scope of the allegations in the operative complaint ... .”” (*Ibid.*)

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

The Parties’ counsel are experienced in wage-and-hour, employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1; Ghosh Decl., *supra*, at ¶ 2-7.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel’s experience guided their determination to endorse the Settlement.<sup>1</sup> (*Ibid.*)

**IV. ARGUMENT**

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

California Rules of Court, rule 3.769 requires court approval for class action settlements.<sup>2</sup> “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. 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.
- ...
- (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.

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<sup>1</sup> The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

Courts have discretion to approve settlements that are fair, not collusive, and consider “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 Settlement Is a Reasonable Compromise of Claims**

Understanding the sum in controversy is important 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 is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see also *Munoz*, at p. 409.)

*Kullar* instructs 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 v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require an explicit statement of the maximum amount the class could recover if plaintiff prevailed on all his claims, provided there is a record allowing “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) In other words, “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*, at p. 133.)

**i. The Gross Settlement Amount of \$1,610,000 Is Fair and Reasonable**

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 32; Ghosh Decl., *supra*, at ¶¶ 9-11.)

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1 The claims are predicated on Defendants' alleged: (1) failure to pay overtime wages; (2)  
2 failure to provide meal and rest breaks and consistently pay applicable premiums; (3) failure to  
3 pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage  
4 statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections 2698,  
5 *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han  
6 Decl., *supra*, at ¶ 33.) Defendants vehemently deny the theories of liability. (*Id.* at ¶ 34.)

7 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to  
8 certification are present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in  
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter  
10 of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have  
11 reached different conclusions concerning certification of wage-and-hour claims.<sup>3</sup> (*Ibid.*) These  
12 factors led to discounting the calculations of potential damages.

#### 13 **ii. The PAGA Penalties of \$100,000 Is Reasonable**

14 The provisions of the Labor Code potentially triggering PAGA penalties include, but are  
15 not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510,  
16 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 44.)  
17 Defendants asserted, regardless of the results of the underlying causes of action, PAGA penalties  
18 are not mandatory but permissive and discretionary. (*Ibid.*) Defendants maintained they had a  
19 strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled  
20 state. (Han Decl., *supra*, at ¶ 44; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th  
21 1112 [reducing penalties by 30% under this authority].) Without stacking and limited to the initial  
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25 <sup>3</sup> (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification  
26 of class claiming misclassification and ordering summary adjudication in favor of employees],  
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for  
28 illustrative purposes only]; *Walsh v. IKON Office 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].)

violation, the PAGA penalties would be limited to **\$94,000** (940<sup>4</sup> employees x \$100 initial violation) on the low end and **\$564,000** (940 employees x \$100 initial violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 45-48.)

Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 49.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was arguable the Court would award the maximum penalties. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable given that Defendants are paying an additional \$1,510,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.<sup>5</sup> (*Ibid.*)

Considering the defenses, supporting evidence, and position the case is not suitable for class treatment, the Settlement, including the PAGA penalties, is reasonable, adequate, and fair.

#### **c. Discount Analysis Justifies the Settlement**

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$9,743,837.85** on the low end and **\$10,156,082.31** on the high end. (Han Decl., *supra*, at ¶ 50.)

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<sup>4</sup> The number of Aggrieved Employees exceeds the number of Class Members because individuals who signed an arbitration agreement with a class action waiver are not included in the Class but are still included as Aggrieved Employees.

<sup>5</sup> (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at \*24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

| Category                                  | Potential Exposure                                                | Certification Risk | Merits Risk | Realistic Exposure                                               |
|-------------------------------------------|-------------------------------------------------------------------|--------------------|-------------|------------------------------------------------------------------|
| Rest Break Premiums                       | \$1,882,156.61                                                    | 70%                | 60%         | \$225,858.79                                                     |
| Meal Break Premiums                       | \$2,710,331.28                                                    | 60%                | 50%         | \$542,066.26                                                     |
| Overtime/Minimum Wage: Off-the-Clock Work | \$824,488.92<br>to<br>\$1,236,733.38                              | 50%                | 50%         | \$206,112.23<br>to<br>\$309,183.35                               |
| Overtime/Minimum Wage: Rounding           | \$150,418.04                                                      | 30%                | 50%         | \$52,646.31                                                      |
| Unreimbursed Business Expenses            | \$380,075                                                         | 20%                | 70%         | \$91,218                                                         |
| Wage Statement Penalty                    | \$1,680,000                                                       | 60%                | 60%         | \$268,800                                                        |
| Waiting Time Penalty                      | \$2,116,368                                                       | 60%                | 60%         | \$338,618.88                                                     |
| <b>MAXIMUM TOTAL EXPOSURE</b>             | <b>\$9,743,837.85</b><br>to<br><b>\$10,156,082.31<sup>6</sup></b> |                    |             | <b>\$1,725,320.47</b><br>to<br><b>\$1,828,391.59<sup>7</sup></b> |

Based on this analysis, the realistic recovery for this case is **\$1,725,320.47** on the low end and **\$1,828,391.59** on the high end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount is about sixteen percent (15.85%) of the maximum potential exposure and eighty-eight percent (88.06%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “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.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular 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”). Nevertheless, the Settlement

<sup>6</sup> (Han Decl., *supra*, at ¶¶ 36-43.)

<sup>7</sup> (*Id.* at ¶¶ 52-58.)

provides significant recovery for the Class Members.

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

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*, *supra*, 34 Cal.4th at p. 326.) The California courts will certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*, at ¶ 60.) Plaintiffs contend, as former hourly-paid, non-exempt employees of Defendants, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*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.)

This case involves about six hundred sixty-one (661) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61.) Class Members will be identified by Defendants to the Administrator through a review of the employment records. (*Ibid.*)

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

11                                   **1. Common Issues Predominate**

12           The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
13 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*  
14 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690.) Courts determine  
15 whether the elements necessary to establish liability are susceptible to common proof, even if the  
16 class members must individually prove their damages. (*Brinker Restaurant Corp. v. Superior*  
17 *Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class  
18 certification when the plaintiff can present evidence of common policies. (See, e.g., *JGC*  
19 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS  
20 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*  
21 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court  
22 certified class of dancers on state law claims].)

23           Plaintiffs assert common issues of fact and law predominate as to each of the claims  
24 alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiffs contend all persons employed by Defendants as  
25 hourly-paid or non-exempt employees in California during the Class Period were subject to the  
26 same or similar policies, practices, and procedures described in detail above. (*Ibid.*)

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1 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors  
2 is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) These elements are present.

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

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

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

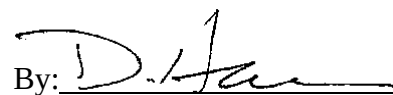
9 The Class Notice meets all these requirements. The Class Notice advises the Class  
10 Members of their right to participate in the Settlement; how and when to object to or request  
11 exclusion from the Settlement; and date, time, and location of the Final Approval Hearing.

12 **V. CONCLUSION**

13 Plaintiffs submit the Settlement is in the best interests of the Class, as it is fair, adequate,  
14 and reasonable. Under the applicable class action criteria and guidelines, the Settlement should  
15 be preliminarily approved by the Court, the Class should be conditionally certified for purposes  
16 of settlement only, and the Class Notice should be approved.

17  
18 Dated: September 7, 2023

**JUSTICE LAW CORPORATION**

19  
20 By: 

Douglas Han  
Attorneys for Plaintiffs

**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 manderson@justicelawcorp.com

On September 7, 2023, I served the foregoing document described as

**PLAINTIFFS' 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: **Alcala v. Ultra Clean Technology Systems and Service, Inc. dba Ultra Clean Technology**  
LWDA/Court Case No.: **LWDA Case No.: CM-817994-21**  
**Court Case No.: RG21094281**  
**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 September 7, 2023, at Pasadena, California.



**Mariah Anderson**