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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ZAID HASSAN, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

WESTPAC LABS, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2021-00008722-CU-OE-CTL

Assigned for All Purposes to:
Honorable James A. Mangione
Department C-75

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**

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

Hearing Date: August 26, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department C-75

Complaint Filed: March 1, 2021
FAC Filed: June 22, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 26, 2022 at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable James A. Mangione in Department C-75 of the San Diego
3 County Superior Court (Hall of Justice), located at 330 West Broadway San Diego, California
4 92101, Plaintiffs Zaid Hassan and Rebecca Cummins (“Plaintiffs,” “Plaintiff Hassan,” and
5 “Plaintiff Cummins”) will and hereby move for an order, as follows:

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

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

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

Dated: July 18, 2022

JUSTICE LAW CORPORATION

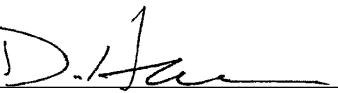
By: 
Douglas Han
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This Motion seeks preliminary approval of a non-reversionary \$1,200,000 proposed wage-
3 and-hour class and Private Attorneys General Act of 2004 (“PAGA”) action settlement by
4 Plaintiffs Zaid Hassan and Rebecca Cummins (“Plaintiffs,” “Plaintiff Hassan,” and “Plaintiff
5 Cummins”) on behalf of themselves and on behalf of all current and former hourly-paid or non-
6 exempt employees of Defendant WestPac Labs, Inc. (“Defendant”) within the State of California
7 at any time during the period from February 26, 2020, through June 28, 2022 (“Class,” “Class
8 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
9 estimated to be eight hundred eighty-one (881). (Declaration of Douglas Han In Support of
10 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this proposed
13 Settlement of \$1,200,000 is well within the range of reasonableness. Class Counsel and Plaintiffs
14 are convinced the proposed Settlement is in the best interests of the Class Members based on the
15 negotiations and a detailed knowledge of the issues present in this action.

16 **II. BACKGROUND**

17 On February 26, 2021, Plaintiff Hassan provided written notice to the California Labor and
18 Workforce Development Agency (“LWDA”) and Defendant, setting forth the facts and theories
19 of alleged violations against Defendant. (Han Decl., *supra*, at ¶ 10.)

20 On March 1, 2021, Plaintiff Hassan filed the instant wage-and-hour class action lawsuit in
21 the Superior Court of California, County of San Diego (Case No. 37-2021-00008722-CU-OE-
22 CTL), alleging eight (8) causes of action. (*Id.* at ¶ 11.) On May 5, 2021, Plaintiff Hassan filed a
23 separate representative PAGA action in the Superior Court of California, County of San Diego
24 (Case No. 37-2021-00020092-CU-OE-CTL). (*Id.* at ¶ 12.)

25 The Parties attended mediation on Plaintiff Hassan’s claims with mediator Lynn Frank on
26 April 24, 2022 that resulted in the settlement of both cases. (Han Decl., *supra*, at ¶ 13.)

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1 Plaintiff Hassan filed a First Amended Complaint on June 22, 2022 adding: (1) a PAGA
2 cause of action; (2) additional factual allegations and theories of liability; (3) Plaintiff Cummins
3 as an additional plaintiff; and (4) adjusted the Class definition and “aggrieved employees”
4 definitions to “all current and former hourly-paid or non-exempt employees of Defendants within
5 the State of California, at any time during the period from February 26, 2020, through June 28,
6 2022 or the date of preliminary approval, whichever date is earlier.” (Han Decl., *supra*, at ¶ 14)
7 Pursuant to the Parties’ Settlement Agreement, Plaintiffs also requested the dismissal of Plaintiff
8 Hassan’s representative PAGA action. (*Ibid.*)

9 **III. INVESTIGATION/ LITIGATION HISTORY**

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

11 The Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.) Plaintiffs propounded one
12 (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for
13 admissions, and one (1) set of requests for production to Defendant. (*Ibid.*) Thereafter, the Parties
14 met and conferred and agreed to engage in the informal exchange of information. (*Ibid.*)

15 The Parties conducted significant investigation and discovery before and after this case
16 was filed. (Han Decl., *supra*, at ¶ 17.) Defendant produced hundreds of documents relating to its
17 policies, practices, and procedures, as well as pertinent data for the Class Members so that the
18 Parties could fully investigate the claims at issue and understand their strengths and weaknesses.
19 (*Ibid.*) As part of Defendant’s production, Plaintiffs reviewed time records, pay records, and
20 information relating to the size and scope of the Class. (*Ibid.*) Plaintiffs also interviewed several
21 Class Members who worked for Defendant. (*Ibid.*)

22 Based upon the information provided by Defendant and interviews Class Counsel had with
23 hourly-paid or non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant:
24 (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay
25 employees for all hours worked, including minimum wages and overtime; (c) failed to reimburse
26 employees for necessary business expenses; (d) issued noncompliant wage statements; and (e) is
27 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-25.)

28 ///

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

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

4 On April 24, 2022, the Parties attended a full day Zoom mediation with experienced
5 mediator, Lynn Frank. (Han Decl., *supra*, at ¶ 26.) With the mediator's assistance, the Parties
6 reached an agreement, the terms of which were memorialized in the Settlement Agreement. (*Id.* at
7 ¶ 26; Exhibit 2.) As part of the Settlement Agreement, the Parties agreed to permit Plaintiff Hassan
8 to submit a First Amended Complaint described above and for Plaintiffs to request the dismissal
9 of Plaintiff Hassan's representative PAGA action. (*Ibid.*).

10 Defendant denies any liability or wrongdoing of any kind associated with the claims
11 alleged in this case and disputes the damages and penalties claimed by Plaintiffs. (Han Decl.,
12 *supra*, ¶ 26.) Defendant further contends, for any purpose other than settlement, Plaintiffs' claims
13 are not appropriate for class or representative action treatment based on the terms of an arbitration
14 agreement with class and representative action waivers that applied to Plaintiffs and the Class
15 Members. (*Ibid.*) Defendant argues, among other things, it has always complied with the Labor
16 Code and the Industrial Wage Commission Orders. (*Ibid.*)

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

18 The Settlement Agreement was reached because of arm's-length negotiations. (Han Decl.,
19 *supra*, at ¶ 38.) Though cordial and professional, the settlement negotiations were adversarial and
20 non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted extensive arm's-
21 length settlement negotiations until an agreement was reached. (*Ibid.*)

22 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense
23 and length of continued proceedings necessary to continue the litigation against Defendant. (Han
24 Decl., *supra*, at ¶ 39.) Plaintiffs and Class Counsel considered the inherent uncertainty and risk of
25 further litigation, the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*)
26 Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
27 reasonable settlement, and is in the Class's best interests. (*Ibid.*)

28 ///

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

2 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties’
3 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
4 research, and discovery. (Han Decl., *supra*, at ¶ 40.) The Settlement was only possible following
5 significant investigation and evaluation of Defendant’s relevant policies and procedures. (*Ibid.*)
6 This case has reached the stage where “the Parties certainly have a clear view of the strengths and
7 weaknesses of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and
8 fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.) Although Defendant
9 denies any liability, Defendant is agreeing to the Settlement solely to avoid the cost of litigation.
10 (*Ibid.*) Accordingly, the Parties desire to fully, finally, and forever settle, compromise and
11 discharge all disputes and claims arising from or relating to the action on the terms set forth in the
12 Settlement and detailed herein. (*Ibid.*)

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

14 **i. Deductions from the Settlement**

15 The Parties agreed this action be settled and compromised for the non-reversionary total
16 sum of \$1,200,000 (“Gross Settlement Amount”) which includes: (a) Attorney Fee Award of
17 \$420,000 (35% of the Gross Settlement Amount); (b) Cost Award of \$20,000; (c) Class
18 Representative Enhancement Payments of \$10,000 to each Plaintiff; (d) Administration Costs of
19 \$15,000; and (e) PAGA Payment of \$100,000. (Han Decl., *supra*, at ¶ 27.)

20 **ii. Calculation of the Class Members’ Individual Settlement Shares**

21 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
22 that \$625,000 (“Net Settlement Amount”) will be distributed to Class Members – with an *average*
23 gross Individual Settlement Share estimated at \$709.42.¹ (Han Decl., *supra*, at ¶ 28.)

24 Each Participating Class Member will receive a proportionate share of the Net Settlement
25 Amount that will be calculated by the Settlement Administrator in accordance with the formula
26 set forth in the Agreement. (Han Decl., *supra*, at ¶ 29.) Individual Settlement Shares will be
27 apportioned twenty percent (20%) wages and eighty percent (80%) penalties and interests. (*Ibid.*)

28 ¹ \$625,000 (Net Settlement Amount) / 881 (Class Members) = \$709.42

1 The Settlement Administrator will also pay each Class Member their portion of the twenty-
2 five percent (25%) of the PAGA Payment (\$25,000) from the Gross Settlement Amount using the
3 formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 30.) Each Class Member's share of the
4 PAGA Payment will be apportioned as one hundred percent (100%) penalties. (*Ibid.*)

5 **iii. Notice to the Class**

6 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
7 Defendant shall deliver to the Class Data to the Settlement Administrator. (Han Decl., *supra*, at ¶
8 32.) Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data to
9 the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all
10 identified Class Members via first-class regular U.S. Mail. (*Ibid.*) Class Members are not required
11 to submit a claim form to receive their Individual Settlement. (*Ibid.*)

12 **iv. Distribution of Funds**

13 The Settlement will be funded pursuant to the timeline and manner set forth in the
14 Agreement. (Han Decl., *supra*, at ¶ 33.) Uncashed settlement checks will be mailed to the
15 California State Controller's Unclaimed Property Division. (*Ibid.*)

16 **v. Release of Claims**

17 As of the Effective Final Settlement Date, in exchange for the consideration set forth in the
18 Agreement, Plaintiffs and the Participating Class Members do and shall be deemed to have fully,
19 finally, and forever released, settled, compromised, relinquished, and discharged any and all
20 Released Claims against any and all Released Parties. (Han Decl., *supra*, at ¶ 34.)

21 As of the Effective Final Settlement Date, Plaintiffs, individually and on behalf of the State
22 of California, and all Class Members, do and shall be deemed to have fully, finally, and forever
23 released, settled, relinquished, and discharged any and all of the Released Parties of and from any
24 and all PAGA Released Claims. (Han Decl., *supra*, at ¶ 35.)

25 As of the Effective Final Settlement Date, and in exchange for the Class Representative
26 Enhancement Payments of \$10,000 to each Plaintiff, in recognition of their work and efforts in
27 obtaining the benefits for the Class and undertaking the risk for the payment of costs if this matter
28 had not successfully resolved, Plaintiffs provide a general release of claims for themselves and

1 their spouses, heirs, successors and assigns. (Han Decl., *supra*, at ¶ 36.) Plaintiffs' Release of
2 Claims also includes a waiver of Civil Code section 1542. (*Ibid.*)

3 Released Parties include Defendant and its present and former members, owners, directors,
4 officers, subsidiaries, parents, affiliates, successors, predecessors, related entities, and joint
5 venturers, and each of their respective present and former officers, directors, stockholders,
6 managers, agents, employees, assigns or legal representatives. (Han Decl., *supra*, at ¶ 37.)

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

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

16 Both Parties' counsel are experienced in wage-and-hour employment law and class and
17 PAGA actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous
18 cases on behalf of employees for Labor Code violations and are experienced and qualified to
19 evaluate the class claims, the settlement versus trial on a fully informed basis, and the viability of
20 the defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of
21 further litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

22 After factoring in the risks explained in this Motion, Class Counsel believes that the
23 proposed Settlement is fair and reasonable. (*Id.* at ¶¶ 58-64, 70.)

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26
27 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
28 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
had an opportunity to respond. This information will be provided to the Court in conjunction with
the Motion for Final Approval of Class Action Settlement.

1 **IV. ARGUMENT**

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

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

- 7 (a) A settlement or compromise of an entire class action, or a cause of action in
8 a class action, or as to a party, requires the approval of the court after
9 hearing.
10 ...
11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

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

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

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

25 ///

26 _____
27 ³ The California Supreme Court has also authorized California’s trial courts to use Federal
28 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, Plaintiffs cites Federal Rule 23 and federal case law in addition to California law.

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

11 **i. The Settlement Amount of \$1,200,000 Is Fair and Reasonable**

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

16 Plaintiffs' claims are predicated on Defendant's purported: (1) failure to pay overtime
17 wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay
18 minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
19 (6) failure to reimburse business expenses; (7) violation of Labor Code section 2698, *et seq.*
20 (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl.,
21 *supra*, at ¶ 41.) Defendant denies Plaintiffs' theories of liability. (*Id.* at ¶ 42.)

22 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
23 to certification are always present. (Han Decl., *supra*, at ¶ 43.) As the California Supreme Court
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
25 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
26 *Stores, Inc.* reached different rulings concerning certification of wage-and-hour claims.⁴ (*Ibid.*)

27 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
28 of class claiming misclassification and ordering summary adjudication in favor of employees],

1 Class Counsel understand Defendant makes the following defenses, among others, in
2 connection with Plaintiffs' claims: (1) Defendant contends its policies specifically prohibit off-
3 the-clock work and that its employees were paid for all time under Defendant's control or that they
4 were suffered or permitted to work; (2) Defendant contends overtime was paid at the correct
5 regular rate of pay; (3) Defendant contends Plaintiffs and Class Members were compensated for
6 driving and commute time and that they were required to don and doff personal protective
7 equipment on the clock (and not during meal or rest breaks); (4) Defendant contends it maintained
8 compliant meal and rest break policies and practices during the Class Period such that all Class
9 Members were provided with all required meal periods and rest breaks and were paid premiums
10 when appropriate; (5) Defendant denies Class Members were owed any expense reimbursement
11 because all Class Members were not required to use their personal cell phones for work, were
12 properly reimbursed for all mileage, and reimbursement for scrubs or leather shoes was not
13 required under applicable law; and (6) Defendant denies it owes wage statement or waiting time
14 penalties. Lastly, Defendant contends no class action or PAGA claim is tenable because Plaintiffs
15 and Class Members signed enforceable agreements to arbitrate, which contain valid class action
16 and representative PAGA action waivers. Thus, Defendant contends no damages can be recovered
17 on a class-wide or representative basis. While Plaintiffs disagree with Defendant's contentions,
18 Plaintiffs certainly had to acknowledge there are risks associated with establishing liability.
19 Because there was uncertainty associated with these claims, Plaintiffs ultimately believed a
20 discount was appropriate.

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26 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
27 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
28 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 **ii. The PAGA Payment of \$100,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
4 226(e), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800,
5 and 2802. (Han Decl., *supra*, at ¶ 51.) Defendant asserted PAGA penalties are not mandatory but
6 permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments
7 against the underlying claims, it had a strong argument it would be unjust to award maximum
8 PAGA penalties given the law’s unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012)
9 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued
10 without stacking and limited to the initial violation, the PAGA penalties would be limited to
11 **\$88,100** (881 employees x \$100) on the low end and **\$792,900** (881 employees x \$100 x 9 theories
12 of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 52-55.)

13 Plaintiffs recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶
14 56.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) Thus,
15 allocating \$100,000 to PAGA civil penalties was reasonable based on a rate of **\$3.93** per pay period
16 [$\$100,000 \div 25,463$ pay periods in PAGA date range = **\$3.93**], given Defendant is paying an
17 additional \$1,100,00 in the class settlement.⁵ (*Ibid.*) When PAGA penalties are negotiated in good
18 faith and “there is no indication that [the] amount was the result of self-interest at the expense of
19 other Class Members,” such amounts are generally considered reasonable.⁶ (*Ibid.*)

20 Considering Defendant’s defenses, its supporting evidence, and its position the case is not
21 suitable for class treatment, the Settlement of \$1,200,000 is reasonable, adequate, and fair.

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24 ⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
25 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
26 \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁶ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”.)

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$7,326,207.43** on the low end and **\$7,816,960.54** on the high end. (Han Decl., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$677,331.36	70%	60%	\$81,279.76
Meal Break Premiums	\$166,266.06	60%	50%	\$33,253.21
Overtime/Minimum Wage: Off-the-Clock Work	\$981,000.81 to \$1,471,753.92	50%	50%	\$245,250.20 to \$376,938.48
Unreimbursed Business Expenses	\$414,664	30%	70%	\$87,079.44
Wage Statement Penalty	\$2,510,850	60%	60%	\$401,736
Waiting Time Penalty	\$2,576,095.20	60%	60%	\$412,175.23
MAXIMUM TOTAL EXPOSURE	\$7,326,207.43 to \$7,816,960.54⁷			\$1,260,773.84 to \$1,392,462.12⁸

Based on this analysis, the realistic recovery for this case is **\$1,260,773.84** on the low end and **\$1,392,462.12** on the high end. (Han Decl., *supra*, at ¶ 64.) The Gross Settlement Amount of \$1,200,000 is about fourteen percent (14.34%) of the maximum potential exposure and approximately eighty-two percent (82.20%) 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 Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very

⁷ (Han Decl., *supra*, at ¶¶ 44-50.)

⁸ (*Id.* at ¶¶ 58-63.)

1 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
2 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
3 speculative measure of what might have been achieved by the negotiators”). This settlement is in
4 line with the realistic exposure had Plaintiffs prevailed at trial and provides a significant recovery.

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

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

12 Plaintiffs contend the Class is ascertainable and numerous to make it unfeasible to join all
13 Class Members, and there are common questions of law and fact predominating. (Han Decl., *supra*,
14 at ¶ 65.) Plaintiffs contend as former hourly-paid, non-exempt employees of Defendant, their
15 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
16 the Class’s interests. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual Class
17 Members would create the risk of inconsistent adjudications. (*Ibid.*)

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

19 “Ascertainability is required in order to give notice to putative class members as to whom
20 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
21 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
22 by describing a set of common characteristics sufficient to allow a member of that group to identify
23 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
24 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
25 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

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1 This case involves about eight hundred eighty-one (881) Class Members. (Han Decl.,
2 *supra*, at ¶ 66.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine,*
3 *Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190
4 current and former employees” is sufficiently numerous].)

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

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

15 **1. Common Issues Predominate**

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

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1 Plaintiffs contend they assert common issues of fact and law predominate as to each of the
2 claims. (Han Decl., *supra*, at ¶ 67.) Plaintiffs contend all Class Members were subject to the same
3 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

4 **2. Plaintiffs' Claims Are Typical of the Class Claims**

5 Typical claims rely on legal theories and facts substantially like those of other class
6 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former employees of
7 Defendant and allege they and the Class Members were employed by the same company and
8 allegedly injured by Defendant's common policies and practices related to the claims described
9 above. (Han Decl., *supra*, at ¶ 68.) Plaintiffs seek relief for these claims and derivative claims on
10 behalf of all Class Members. (*Ibid.*) Plaintiffs' claims arise from the same alleged employment
11 practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

12 **3. Plaintiffs Are Adequate to Represent the Class**

13 Plaintiffs contend they have proven to be adequate Class Representatives. (Han Decl.,
14 *supra*, at ¶ 69.) Plaintiffs have conducted themselves diligently and responsibly in representing the
15 Class in this litigation, understand their fiduciary obligations, and have actively participated in the
16 prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class
17 Counsel to provide Class Counsel with a complete understanding of their work environment.
18 (*Ibid.*) Plaintiffs claim to have no interest averse to the interests of the other Class Members. (*Ibid.*)

19 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 20 **of this Controversy**

21 A class action is superior to other available means for the fair and efficient adjudication of
22 this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class
23 treatment will permit similarly situated persons to prosecute their common claims for settlement
24 purposes simultaneously in a single forum without the duplication of effort and expense numerous
25 individual actions would necessitate. Because several Class Members are current employees,
26 Plaintiffs believe – and Defendant disputes – fear of retaliation further supports the superiority of
27 class-wide relief as this fear often discourages current employees from seeking legal redress.

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

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

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

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

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

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

19 **V. CONCLUSION**

20 Plaintiffs submit the proposed Settlement is in the best interests of the Class, as it is fair,
21 adequate, and reasonable. Under the applicable class action criteria and guidelines, the proposed
22 Settlement should be preliminarily approved by the Court, the Class should be conditionally
23 certified for purposes of settlement only, and the Notice Packet should be approved.

24
25 Dated: July 18, 2022

JUSTICE LAW CORPORATION

26
27 

28 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 July 18, 2022, 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: **Hassan v. WestPac Labs, Inc.**
LWDA/Court Case No.: **LWDA-CM-823011-21**
37-2021-00008722-CU-OE-CTL
San Diego 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 July 18, 2022, at Pasadena, California.



Mariah Anderson