

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 326572)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiff

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

DYRON DORSEY, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

KRUGER FOODS, INC., a California
corporation ; and DOES 1 through 100,
inclusive;

Defendants.

Case No. STK-CV-UOE-2020-0002099

Honorable Erin Guy Castillo
Department 10B

**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:
Hearing Time: 9:00 a.m.
Hearing Place: Department 10B

Complaint Filed: February 10, 2020
FAC Filed: May 27, 2021
Trial: None Set

1 **PLEASE TAKE NOTICE** that on _____ and at 9:00 a.m., or as soon as the
2 matter may be heard before the Honorable Erin Guy Castillo of the San Joaquin County Superior
3 Court, Stockton Courthouse –Department 10B, located at 180 E. Weber Ave., Stockton,
4 California 95202, Plaintiff Dyron Dorsey, (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Joint Stipulation of Class Action Settlement and
7 Release (“Settlement Agreement”), attached as “**EXHIBIT 2**” to the Declaration
8 of Douglas Han, including, and not limited to, the means of allocation and
9 distribution of funds, and the allocations for penalties under the California Labor
10 Code Private Attorneys General Act of 2004 (“PAGA”), attorneys’ fees and costs,
11 Enhancement Award, and approval of the allocation for the PAGA payment and
12 the Settlement Administration Expenses;
- 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;
- 18 • Directing the mailing of the proposed Class Notice with a postage-paid return
19 envelope to the proposed Class Members;
- 20 • Approving the proposed Claim Form (“Claim Form”) attached as “Exhibit B” to
21 the Settlement Agreement;
- 22 • Approving the proposed deadlines for the notice and Settlement Administration
23 process;

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- Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement, at which time the Court will also consider whether to grant Final Approval of the requests for Class Counsel Award, Cost Award, Service Award, and approval of the allocation for the PAGA payment and the Settlement Administration Expenses.

This motion is based upon the following memorandum of points and authorities; the Declaration of proposed Class Counsel (Douglas Han); and the [Proposed] Order filed concurrently with this motion, as well as 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: June 16, 2021

JUSTICE LAW CORPORATION

By: _____



Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff Dyron Dorsey (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of
3 Class Action Settlement and Release (“Settlement Agreement”) entered into by and between
4 Plaintiff, individually and on behalf of the proposed Class, and Defendant Kruger Foods, Inc.
5 (“Kruger Foods” or “Defendant”). Subject to Court approval, Plaintiff and Defendant (“Parties”)
6 have agreed to settle this lawsuit for a Maximum Settlement Amount of up to \$1,000,000. A
7 copy of the Settlement Agreement is attached as “**EXHIBIT 2**” to the Declaration of Douglas
8 Han (“Han Decl.”).

9 The Maximum Settlement Amount includes the following: (a) attorneys’ fees of up to
10 \$350,000 (35% of the Maximum Settlement Amount) to compensate Class Counsel for work
11 already performed and all work remaining to be performed in documenting the settlement,
12 administrating the settlement and securing Court approval; (b) actual litigation costs of up to
13 \$20,000 for serving as Class Counsel;¹ (c) an Enhancement Award to the Plaintiff in a sum not to
14 exceed \$7,500 for his efforts and service leading to this Settlement; (d) an allocation of
15 Settlement Administration Expenses to Simpluris, Inc. (“Settlement Administrator” or
16 “Simpluris”) of up to \$7,500; and (e) payment for \$50,000 in civil penalties under the California
17 Private Attorneys General Act of 2004, as amended, California Labor Code sections 2698, *et seq.*
18 (“PAGA”), of which seventy-five (75%) will be paid to the California Labor and Workforce
19 Development Agency (“LWDA”) and the remaining twenty-five (25%) will remain part of the
20 Net Settlement Amount. (Settlement Agreement, 10:2-6.)

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¹ The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff’s motion for final
27 approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. If Plaintiff’s actual costs
28 exceed \$20,000, Plaintiff will only seek reimbursement in the amount of \$20,000. If Plaintiff’s actual costs are
 lower than \$20,000, Plaintiff will seek reimbursement of his actual litigation costs and the difference shall become
 part of the Net Settlement Amount and be available for distribution to Participating Class Members.

1 Plaintiff seeks to certify the following Class for settlement purposes, consisting of
2 approximately two-hundred and forty-six (246) Class Members: (Han Decl. ¶ 63.)

3 All persons who are or have been employed by Defendant in the State of
4 California as hourly workers from February 10, 2016 through April 9, 2021.
5 (individually referred to as “Class Member”).

6 Class Members who timely submit valid Claim Forms to Simpluris will be issued a share
7 of the Net Settlement Amount on a *pro rata* basis based upon the number of workweeks they
8 have worked as hourly-paid employees during the Class Period. Workweeks will be calculated
9 by Simpluris for each Class Member by dividing the total days employed as a Class Member
10 during the Class Period by seven. (Settlement Agreement, 9:19-20.) The Net Settlement Amount
11 refers to the Maximum Settlement Amount, less Court-approved attorneys’ fees and litigation
12 costs, Enhancement Award, settlement administration Expenses, employer’s share of payroll
13 taxes and the PAGA civil penalty payment to the LWDA. (Settlement Agreement, 7:3-13.) This
14 proposed Settlement Agreement resolves all of Plaintiff’s and the Class Members’ Released
15 Claims against Defendant.

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

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1 **II. BACKGROUND**

2 Established in 1930 and located in Stockton, California, Defendant Kruger Foods, Inc.
3 offers food products such as pickles, relish, peppers, mayonnaise, dressing, and other refrigerated
4 products to the bulk industrial and food service industries, including major clients such as
5 Subway, with products ranging anywhere from individual packets to 55-gallon plastic drums.
6 (Declaration of Douglas Han (“Han Decl.”) ¶ 8.) This case involves all current and former
7 hourly-paid or non-exempt employees employed by Defendant in the State of California at any
8 time during the period from February 10, 2016 to the date the Court issues an order granting
9 preliminary approval of the Settlement or April 9, 2021. (*Ibid.*)

10 On February 10, 2020, Saranny Pho filed a class action complaint alleging violation of
11 California Business & Professions Code sections 17200, *et seq.* against Defendant in the San
12 Joaquin County Superior Court in the State of California. (Han Decl. ¶ 9.) The complaint alleged
13 a series of Labor Code violations as the basis for her claims, which included: failure to pay
14 overtime in violation of Labor Code sections 510 and 1198, failure to provide meal periods in
15 violation of Labor Code sections 226.7 and 512(a) and the Industrial Welfare Commission
16 (“IWC”) Wage Orders, failure to provide rest periods in violation of Labor Code sections 226.7
17 and the IWC Wage Orders, failure to pay minimum wages in violation of Labor Code sections
18 1194, 1197 and 1197.1 and the IWC Wage Orders, and failure to reimburse business expenses in
19 violation of Labor Code sections 2800 and 2801. (*Ibid.*)

20 The Parties agreed to attend a mediation of Plaintiff’s claims on February 3, 2021. (Han
21 Decl. ¶ 10.) At the conclusion of the mediation, the Parties were able to reach an agreement as a
22 result of arms-length negotiations with mediator Jeffrey A. Ross. (*Ibid.*) Upon the conclusion of
23 the mediation, on February 8, 2021, the parties executed a confidential memorandum of
24 understanding finalizing the terms of the Settlement. (*Ibid.*)

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1 Since the mediation, on May 25, 2021, Plaintiff filed a stipulation and order to file a First
2 Amended Class Action Complaint, substituting Plaintiff Dyron Dorsey for Saranny Pho, and
3 adding claims under the Labor Code and the Private Attorneys General Act (“PAGA”). (Han
4 Decl. ¶ 11.) Plaintiff filed his First Amended Complaint in the Superior Court for the County of
5 San Joaquin on May 27, 2021, pursuant to the parties’ stipulation and the Court’s order. (*Ibid.*)

6 Defendant denies the allegations of the class action in their entirety, denies any liability
7 or wrongdoing of any kind associated with the claims alleged in this action, and further denies
8 that, for any purpose other than settling this action, this matter is appropriate for class treatment.
9 Defendant further contends that it has complied at all times with all applicable California laws,
10 the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition
11 Law. Defendant finally contends that, if this matter were to be litigated further, it would have
12 strong defenses to class certification and on the merits. (*Ibid.*)

13 **III. INVESTIGATION/ LITIGATION HISTORY**

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

15 After Plaintiff filed the original complaint, Plaintiff engaged in discovery. On February
16 27, 2020, Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
17 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production
18 on Defendant. Defendant provided responses only to Plaintiff’s Special Interrogatories (Set
19 One) Nos.1-4 on April 2, 2020. (Han Decl. ¶ 13.) On June 29, 2020, Plaintiff sent Defendant
20 correspondence informally requesting class-wide data needed to prepare for the mediation, upon
21 which the parties began to informally meet and confer on discovery. (*Ibid.*)

22 As the result of discovery conducted by Plaintiff, Defendant produced a large volume of
23 documents including employee handbooks, meal and rest period policies, Plaintiff’s personnel
24 files, payroll records, and time records. (Han Decl. ¶ 14.) Plaintiff also engaged in a Belaire opt-
25 out process and obtained the putative class contact information. (*Ibid.*)

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1 Plaintiff also was in communication with numerous current and former non-exempt
2 employees of Defendant. (Han Decl. ¶ 15.) These employees apprised Plaintiff of their
3 experiences working for Defendant. (*Ibid.*)

4 Based upon Defendant's discovery responses, informal exchange of information, and
5 document production, as well as interviews Plaintiff's counsel had with non-exempt employees,
6 Plaintiff contends—and Defendant denies—that he and the class members did not receive all
7 regular and overtime wages to which they were entitled to. (Han Decl. ¶ 16.) Moreover, Plaintiff
8 contends that he and the class members were rarely afforded timely, uninterrupted meal and rest
9 breaks while working, and in doing so, Defendant did not maintain a code-compliant meal break
10 or rest break policy during the class period. (*Ibid.*) Plaintiff contends that Defendant failed to pay
11 premium wage compensation owed to non-exempt employees for the non-compliant meal and
12 rest periods. (*Ibid.*) Plaintiff also contends that Defendant failed to properly compensate
13 employees for off-the-clock pre-shift work at the applicable minimum, regular, or overtime rate.
14 (*Ibid.*)

15 In addition, Plaintiff contends—and Defendant denies—that Defendant failed to timely
16 pay wages and failed to provide employees with accurate wage statements. (Han Decl. ¶ 17.)
17 Plaintiff also contends that Defendant failed to pay minimum wages to Plaintiff and other class
18 members. (*Ibid.*) Lastly, Plaintiff contends—and Defendant denies—that Defendant failed to
19 reimburse employees for all necessary expenditures incurred by employees. (*Ibid.*)

20 Defendant denies Plaintiff's contentions in their entirety. (Han Decl. ¶ 18.) Among other
21 things, Defendant denies Plaintiff's overtime contentions, contending that employees were
22 properly paid for all hours worked, received all regular and overtime wages to which Plaintiff
23 and other employees were entitled to, and provided them with complaint meal and rest breaks in
24 accordance with California and federal law. (*Ibid.*) Defendant further contends that it timely paid
25 wages and provided accurate wage statements. (*Ibid.*)

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

3 **b. The Parties Attended Mediation Which Led to the Joint Stipulation**

4 The Parties agreed to go to mediation with experienced wage and hour mediator, Jeffrey
5 A. Ross. (Han Decl. ¶ 19.) The mediation took place on February 3, 2021. (*Ibid.*) During the
6 mediation, the parties discussed the risks of continued litigation and the merits of the claims
7 versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the parties were able
8 to reach an agreement on settlement, the terms of which were memorialized in a "Joint
9 Stipulation of Class Action Settlement and Release" (referred to herein as the "Settlement
10 Agreement") that the Parties seek preliminary approval of in the instant motion. (*Id.*; Ex. 1.)
11 Attached to Declaration of Douglas Han as **EXHIBIT 2** is a true and correct copy of the
12 Settlement Agreement.

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

14 **i. Deductions from the Settlement**

15 Under the terms of the Settlement Agreement, Defendant will pay a Maximum
16 Settlement Amount ("MSA") of up to \$1,000,000 to all Class Members on a claims-made basis.
17 (Han Decl. ¶ 20.) Subject to Court approval, the Net Settlement Amount ("NSA"), which is the
18 maximum amount that will be made available to pay the Class Members, will be calculated by
19 deducting the following amounts from the MSA: (a) attorneys' fees of up to \$350,000 (35% of
20 the MSA) to compensate Class Counsel for work already performed and all work remaining to
21 be performed in documenting the settlement, administering the settlement and securing Court
22 approval; (b) actual litigation costs of up to \$20,000 for serving as Class Counsel;² (c) an
23 Enhancement Award to the Plaintiff in a sum not to exceed \$7,500 for his efforts and service
24 leading to this Settlement; (d) an allocation of settlement administration expenses to Simpluris,

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26 ² The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiff's motion for final
27 approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. (Han Decl. ¶ 20.) If
28 Plaintiff's actual costs exceed \$20,000, Plaintiff will only seek reimbursement in the amount of \$20,000. (*Ibid.*) If
Plaintiff's actual costs are lower than \$20,000, Plaintiff will seek reimbursement of his actual litigation costs and the
difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class
Members. (*Ibid.*)

1 estimated at approximately \$7,500; and (e) the PAGA civil penalty payment to the LWDA of
2 \$37,500 (which is 75% of \$50,000 allocated to Plaintiff's claims under PAGA). (Han Decl. ¶
3 20.)

4 **ii. Calculation of the Class Settlement Awards to Class Members**

5 The Net Settlement Amount will be divided and distributed *pro rata* to Class Members
6 based upon the number of Workweeks worked during the Class Period ("Individual Settlement
7 Award."). (Han Decl. ¶ 21.) To be valid, a Claim Form must be duly signed, dated, and
8 postmarked by the Class Member to Simpluris no later than thirty (30) calendar days after
9 Simpluris mails the Class Notice and the Claim Form, together with a postage-paid return
10 envelope to the Class Members. (*Ibid.*)

11 The gross amount of each Class Member's Individual Settlement Award will be
12 calculated as follows and as described in Paragraph 14(c)(i) of the Settlement Agreement:

13 (a) **"Class Workweeks:"** The Settlement Administrator will calculate the total number
14 of Workweeks for each Class Member by dividing the total days employed as a Class
15 Member during the Class Period by seven. (Han Decl. ¶ 21.)

16 (b) **"Individual Settlement Award:"** The Settlement Administrator will use the
17 following formula: (Net Settlement Amount / Class Workweeks) x Individual
18 Workweeks for each individual Class Member. (Han Decl. ¶ 21.)

19 Defendant will pay no less than fifty percent (50%) of the Net Settlement Amount to
20 Class Members who submit timely and valid Claim Forms. (Han Decl. ¶ 22.) In the event that
21 fewer than fifty percent (50%) of the workweeks are claimed by participating Class Members
22 who submit valid and timely Claim Forms, the amount claimed shall be grossed up to fifty
23 percent (50%) of the Net Settlement Amount on a pro rata basis. (*Ibid.*)

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1 The Individual Settlement Award for each Class Members will be allocated as follows:
2 one third (1/3) will be allocated to alleged unpaid wages for which IRS Forms W-2 will issue;
3 one third (1/3) will be allocated to alleged unpaid penalties for which IRS Forms 1099-MISC
4 will issue; and one third (1/3) will be allocated to alleged unpaid interest for which IRS Forms
5 1099-MISC will issue. (Han Decl. ¶ 23.) The employer's share of payroll taxes on the wage-
6 portion of each Individual Settlement Award will be included in the Maximum Settlement
7 Amount. Individual Settlement Awards will be subject to the employee's share of employment
8 taxes and withholdings with respect to the wage portion (*Ibid.*)

9 Class Members may exclude themselves from the Settlement by submitting a timely
10 written request to Simpluris. The written request ("Request for Exclusion") should state that
11 he/she has received the Class Notice, decided not to participate in the Settlement, and words to
12 the effect that he/she desires to be excluded from the Settlement. (Han Decl. ¶ 24.) The Request
13 for Exclusion must also state the individual's (a) full name; (b) address; (c) date of birth; and (d)
14 generally the dates he/she was working as a non-exempt employee for Defendant in California.
15 (*Ibid.*) The Request for Exclusion must also be signed, dated, and mailed by First Class U.S.
16 Mail, or the equivalent, to Simpluris. (*Ibid.*) All Requests for Exclusion must be postmarked and
17 mailed to Simpluris no later than thirty (30) calendar days after Simpluris mails the Class Notice
18 to the Class Members. Any individual who submits a Request for Exclusion will not be allowed
19 to object to the terms of the Settlement. (*Ibid.*)

20 If any Class Member wishes to object to any aspect of the proposed Settlement, he/she
21 may do so by filing a written objection and a notice of intention to appear at the Final Approval
22 hearing with Simpluris. (Han Decl. ¶ 25.) Any written objection must state each specific reason
23 in support of the objection and any legal support for each objection. (*Ibid.*) The written objection
24 must include: (a) the objector's full name, address, telephone number and the last four digits of
25 the objector's Social Security Number; and (b) the dates he/she worked as a non-exempt
26 employee in California with Defendant. (*Ibid.*) To be valid and effective, any objections to
27 approval of the Settlement must be delivered to Simpluris, Class Counsel, and counsel for
28 Defendant no later than thirty (30) calendar days after Simpluris mails the Class Notice to the

Class Members. (Han Decl. ¶ 25.)

Within fifteen (15) calendar days after the Effective Date (as defined in paragraph 14 of the Settlement Agreement), Simpluris will cause the Settlement Awards to be mailed to the Class Members. (Han Decl. ¶ 26.)

The Individual Settlement Award checks will remain negotiable for one-hundred and eighty (180) calendar days from which the date on which they were issued to the Class Members. (Han Decl. ¶ 27.) Any checks that remain uncashed after 180 days of issuance will be sent to the State of California State Controller's Unclaimed Wages Fund. (*Ibid.*)

iii. Release of Claims

In exchange for a Class Settlement Award, Participating Class Members release the Released Parties from the Released Class Claims. (Han Decl. ¶ 28.) Released Class Claims means all claims, actions, demands, causes of action, suits obligations, damages, restitution, penalties, rights, liabilities, or legal theories of relief, under state or federal wage and hour law arising out of or related to claims that were alleged or could have been alleged based on the factual allegations in the Actions, including but not limited to all of the following: (1) all claims for alleged failure to pay minimum wages, straight time, overtime, or double time wages, failure to pay wages for off-the-clock work, and failure to pay other wages of any kind during employment under Labor Code sections 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and Industrial Welfare Commission ("IWC") Order No. 3-2001; (2) failure to provide meal periods or pay meal period premiums under Labor Code sections 512, 226.7, and IWC Wage Order No. 3-2001; (3) failure to provide rest periods or pay rest period premiums under Labor Code section 226.7, and IWC Wage Order No. 3-2001; (4) failure to provide accurate and itemized wage statements under Labor Code section 226; (5) untimely wages and waiting time penalties under Labor Code sections 201, 202, 203, 204 and 210; (6) unreimbursed business expenses under Labor Code sections 2800 and 2802; (7) violation of Business & Professions Code section 17200 *et seq.* including, but not limited to, all claims for unfair, unlawful and harmful conduct to class members, the general public and Defendant's competitors and claims of unlawfully gaining an unfair advantage over other businesses; (8) PAGA claims for civil penalties due to any Labor

Code violations by Defendant arising out of or related to events alleged in the complaint including, but not limited to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800 and 2802, and IWC Wage Order No. 3-2001; (9) penalties of any nature; (10) interest; (11) attorneys' fees and costs; (12) and any other claims arising out of or related to the respective Complaints filed in the Action during the Class Period (collectively the "Released Claims"). (Han Decl. ¶ 28.)

The release will be as to the Released Parties, which shall include: (i) Defendant, Kruger Foods, Inc.; (ii) each of Defendant's respective past, present and future parents, subsidiaries and affiliates including, without limitation, any corporation, limited liability company, partnership, trust, foundation and non-profit entity which controls, is controlled by, or is under common control with Defendant Kruger Foods, Inc.; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing, including, but not limited to, temporary agencies (collectively "Released Parties"), from all claims based on the factual allegations made in the Complaint and which could have been made based on the factual allegations in the Complaint for the period February 10, 2016 through April 9, 2021 or preliminary approval of the Settlement. (Han Decl. ¶ 29.)

iv. Range of Individual Settlement Awards That Will Likely Be Issued to Class Members

Class Members who submit claims to the Settlement Administrator (Simpluris) will be issued payments based on the total number of Individual Workweeks they worked as a member of the Class during the Class Period ("Class Workweeks"). (Han Decl. ¶ 30.) As discussed *supra*, the Individual Settlement Awards will be calculated by dividing the Net Settlement Amount by the Class Workweeks worked by the entire Class Period, and multiplying that sum by the Individual Workweeks for each individual Class Member resulting in the estimated Individual Settlement Award. (*Ibid.*)

For example, some ranges of Individual Settlement Awards to Class Members, based on various potential lengths of employment during the Class Period, are listed below:

Approximately 1 year: $((\$577,500 / 30,724) \times 52) = \$977.41^3$

Approximately 2 years: $((\$577,500 / 30,724) \times 104) = \$1,954.82$

Approximately 3 years: $((\$577,500 / 30,724) \times 156) = \$2,932.24$

Approximately 4 years: $((\$577,500 / 30,724) \times 208) = \$3,909.65^4$ (Han Decl. ¶ 30.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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

...

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

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

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³ The number of Workweeks used for these calculations is based on the dates of employment extrapolated to the anticipated preliminary approval date

⁴ These calculations assume a 100% claims rate.

⁵ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 The approval process of any class action settlement is done in two steps: (1) an earlier
2 conditional review by the court; and (2) a later detailed review after the period during which
3 notice is distributed to class members for their comment or objections. Conte & Newberg,
4 *Newberg on Class Actions* (4th ed. 2002) § 11.24. This procedure, which is commonly utilized
5 by both federal and state courts, assures class members of the protection of procedural due
6 process safeguards and enables a court to fulfill its role as the guardian of the interests of the
7 settlement class.

8 Accordingly, preliminary approval does not require a court to make a final determination
9 that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the
10 final approval stage, after notice of the settlement has been given to the class members, and they
11 have had an opportunity to voice their views of the settlement or to exclude themselves from the
12 settlement. See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court also
13 need not reach any ultimate conclusions on the issues of fact and law which underlie the merits
14 of the dispute, and need not engage in a trial on the merits. See *City of Detroit v. Grinnell*
15 *Corporation* (2d Cir. 1974) 495 F. 2d 448, 456; *Officers for Justice v. Civil Service Commission*
16 *of City and County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625. Neither formal notice
17 nor a hearing is required for the trial court to grant provisional class certification and preliminary
18 approval; the court may grant such relief upon an informal application by the settling parties and
19 may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*,
20 at § 11.25.

21
22 **b. Preliminary Approval of the Proposed Settlement is Appropriate**

23 To grant preliminary approval of a class action settlement, the trial court must
24 preliminarily determine whether the settlement is fundamentally fair, adequate, and reasonable.
25 *Dunk, supra*, 48 Cal.App.4th at p. 1800. The court has broad powers to determine whether a
26 proposed settlement is fair under the circumstances of the case. *Id.* at p. 1801. To make this
27 fairness determination, courts must consider several relevant factors, including “the strength of
28 the plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk

1 of maintaining class action status through trial, the amount offered in settlement, the extent of
2 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
3 [.]” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors is not exclusive and the court is
4 free to engage in a balancing and weighing of the factors depending on the circumstances of each
5 case.” *Wershba, supra*, 91 Cal.App.4th at p. 245. Furthermore, courts give “proper deference to
6 the private consensual decision of the parties[.]” *Hanlon, supra*, 150 F. 3d at p. 1027 (citation
7 omitted).

8 The burden is on the proponent of the settlement to show that it is fair and reasonable.
9 *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of fairness exists where: (1)
10 the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
11 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
12 litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at p.
13 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
14 1151.

15
16 **c. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

17 The Settlement was reached as a result of arms-length negotiations. (Han Decl. ¶ 31.)
18 Though cordial and professional, the settlement negotiations have been, at all times, adversarial
19 and non-collusive in nature. (*Ibid.*) At both mediations, Counsel for the Parties conducted
20 extensive arm’s length settlement negotiations until the parties could not reach settlement.
21 However, these negotiations led to an agreement that was later acceptable by the Parties. (*Ibid.*)
22 The terms of the Settlement are memorialized in the Settlement Agreement. (*Ibid.*; Ex. 2).

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1 Plaintiff believes in the merits of his case, but also recognize the inherent risks of
2 litigation and understands the benefit of the Class receiving settlement funds immediately, as
3 opposed to risking continued litigation, the merits of the case before and after trial, damages
4 awarded, and an appeal that could take years to litigate. (Han Decl. ¶ 32.)

5 **d. The Settlement Agreement is Fair, Reasonable, and Adequate**

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

13 Here, a Maximum Settlement Amount of up to \$1,000,000 represents a fair, adequate,
14 and reasonable resolution of the case. (Han Decl. ¶ 33.) The proposed Settlement was calculated
15 using information and data uncovered through litigation, formal and informal discovery, case
16 investigation, and the informal exchange of information in the context of mediation. (*Ibid.*) The
17 proposed Settlement takes into account the potential risks and rewards inherent in any case and,
18 in particular, with this case. Considering all of the facts in this case, the amount of the proposed
19 Settlement represents a substantial global recovery for all Class Members. (*Ibid.*)

20 Assuming that all of the requested payments, fees, and costs are approved and paid in the
21 full amounts requested, the Net Settlement Amount is currently estimated to be approximately
22 \$577,500. (Han Decl. ¶ 34.) No less than fifty percent (50%) of this sum will be paid out to the
23 Class Members. (*Ibid.*) Each Individual Settlement Award will be calculated based upon the
24 number of Workweeks attributable to the Class Member during the Class Period. There is no
25 reason to doubt the fairness of the proposed plan of allocation of the Settlement funds for
26 purposes of preliminary approval. Even at the final approval stage, “[a]n allocation formula need
27 only have a reasonable, rational basis [to warrant approval], particularly if recommended by
28

1 experienced and competent counsel.” *In re American Bank note Holographics, Inc., Securities*
2 *Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. (Han Decl. ¶ 34.)

3 In light of the above considerations, Class Counsel believe that the proposed Settlement
4 as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.
5 (Han Decl. ¶ 35.) Although the recommendations of Class Counsel are not conclusive, the Court
6 can properly take the recommendations into account, particularly if Class Counsel appear to be
7 competent, have experience with this type of litigation, and significant discovery and
8 investigation have been completed. *Newberg* §11.47. Accordingly, the Court should grant
9 preliminary approval of the proposed Settlement.

10 **e. Value of Settlement**

11 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, Plaintiffs
12 have conducted a significant amount of discovery and investigation in order to evaluate the
13 potential value and merit of all of the claims. (Han Decl. ¶ 36.) The discovery and information
14 obtained in this case allowed Plaintiff to develop a damages model and complete evaluation of
15 the defenses that Defendant has asserted. (*Ibid.*). As outlined in the Declaration of Douglas Han,
16 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior
17 to entering into the proposed Settlement. (*Ibid.*)

18 In addition to being able to discover the strengths and vulnerabilities associated with
19 Plaintiff’s claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
20 time and pay records and information regarding the estimated number of workweeks worked by
21 putative class members and the hourly rates for class members. (Han Decl. ¶ 37.) Plaintiff’s
22 expert extrapolated that, as of February 3, 2021, the Class Period includes approximately 30,724
23 workweeks. (*Ibid.*) Plaintiff determined the average hourly rate for class members was \$14.50.
24 (*Ibid.*)

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1 Specifically, Plaintiff claims—and Defendant denies—that Defendant’s employees are
2 not provided with compliant meal periods and rest breaks. (Han Decl. ¶ 38.) Plaintiff contends
3 that Defendant has not maintained any code-compliant (or written) meal break or rest break
4 policy during the entire class period. (*Ibid.*) Rather, Defendant maintained an informal policy of
5 failing to provide employees with meal and rest breaks during the entire class period. (*Ibid.*)

6 Regarding rest breaks, Defendant does not have a policy, practice, or procedure to pay
7 premium wages for missed, shortened, interrupted, or late rest breaks, and resultantly has not
8 paid a single rest premium during the entire class period. (Han Decl. ¶ 39.) Moreover, Plaintiff
9 alleges that Defendant would frown upon employees taking any rest breaks, even going as far as
10 reprimanding them for taking a break when one had not been provided the entire shift. (*Ibid.*)
11 Plaintiff also alleges that because of a high volume of work that was expected to be completed
12 by strict deadlines and cut-offs, added with limited staffing levels and inadequate coverage,
13 production employees were pressured to rush back from their meal periods, frequently cutting
14 them short, in order to continue working and maintain production speed. (*Ibid.*)

15 Utilizing the sampling time and pay data records for 246 Class Members, Plaintiff was
16 able to establish that 82.8% of all shifts had at least one unique meal break violation. (Han Decl.
17 ¶ 40.) Importantly, 99.8% of shifts between 10 and 12 hours did not have a recorded second meal
18 break, and 48.7% of shifts between 5 and 6 hours did not have a recorded first meal break. (*Ibid.*)
19 Accordingly, extrapolated to the total number of workweeks (30,724), using Plaintiff’s
20 calculated average of 4.3 shifts per workweek, Plaintiff calculates Defendant’s maximum
21 potential exposure for the meal period claim to be approximately \$1,586,151.08.⁶ (*Ibid.*)

22 Moreover, 75.3% of all shifts had at least one unique rest break violation. (Han Decl. ¶
23 41.) Thus, Plaintiff calculates Defendant’s maximum potential exposure for the rest period claim
24 to be approximately \$2,670,024.93.⁷ (*Ibid.*)

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26
27 ⁶**Maximum Potential Exposure for Meal Period Claim** = 30,724 workweeks x 4.3 shifts/workweek x .828
violations/shift x \$14.50/violation = **\$1,586,151.08**

28 ⁷**Maximum Potential Exposure for Rest Period Claim** = 30,724 workweeks x 4.3 shifts/workweek x .753
violations/shift x \$14.50/violation = **\$1,442,477.97**

1 Additionally, Plaintiff claims—and Defendant denies—that Defendant maintained an
2 improper alternative workweek schedule. (Han Decl. ¶ 42.) Specifically, Defendant failed to
3 meet its burden to show that it conducted compliant alternative workweek elections prior to
4 implementing its alternative workweek schedule. (*Ibid.*) Specifically, by presenting the work
5 schedule at a meeting on October 2 and having the election on October 15, Defendant's election
6 failed to strictly comply with the election procedures set forth in IWC Order 4-2001(3)(C)(3)
7 because it did not provide written disclosure at least 14 days prior to voting. (*Ibid.*) For the
8 15,714 pay periods analyzed, 66.5% of these pay periods had unpaid overtime wages due to the
9 improper alternative workweek schedule, totaling to \$826,252 in unpaid overtime wages. (*Ibid.*)

10 Further, Plaintiff claims—and Defendant denies—that Defendant's rounding practice,
11 failure to pay all minimum and overtime wages, and failure to pay meal break and rest break
12 premiums resulted in Defendant issuing inaccurate wage statements in violation of *California*
13 *Labor Code* section 226(a). (Han Decl. ¶ 43.) Plaintiff calculates Defendant's maximum
14 potential exposure as to this claim to be approximately \$984,000.00⁸ (based on 246 employees
15 within the one-year statute of limitations). (*Ibid.*)

16 If Plaintiff can prove Defendant's failure to pay all wages owed, Plaintiff is then entitled
17 to waiting time penalties in the amount of 30 days' worth of wages. (Han Decl. ¶ 44.) Plaintiff
18 calculates Defendant's maximum potential exposure as to this claim to be approximately
19 \$1,807,836.00⁹ (based on 96 terminated employees within the three-year statute of limitations).
20 (*Ibid.*)

21 Plaintiff also claims – and Defendant denies– that employees were regularly required to
22 perform job duties off-the-clock pre-shift, for which they were not compensated at the applicable
23 minimum, regular, or overtime rate. Plaintiff estimates that on average, employees were
24 regularly spending five (5) minutes before the start of their scheduled shifts to complete their
25 daily tasks. (Han Decl. ¶ 45.) Employees were often required to perform small tasks, such as

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27 ⁸ **Maximum Potential Exposure for Wage Statement Violations** = (246 eligible Class Members x \$4,000 (65.4
avg. pay periods) = **\$984,000.00**

28 ⁹ **Maximum Potential Exposure for Waiting Time Penalties** = (8 hours x \$14.50/average hourly rate x
approximately 96 former non-exempt employees x 30 days) = **\$334,080.00**

entering the locker room to don and doffed personal protective equipment, securing necessary equipment, and taking a temperature check. (Han Decl. ¶ 45.) At times, employees also would have to wait in line for a few minutes in order to clock in or out because two shifts were using a limited number of clocks at the same time. (*Ibid.*) In taking the most conservative potential time of five minutes for purposes of this analysis, Plaintiff calculates Defendant's maximum potential exposure for Plaintiff's off-the-clock claim to be approximately \$222,749.00.¹⁰ (*Ibid.*)

Plaintiff claims – and Defendant denies – that employees were required to use non-slip rubber boots when working, but Defendant only offered an initial set of boots to employees, and thus, subsequent replacements had to be purchased by the employees themselves. Because employees would work with vinegar and brines, employees would have to frequently replace their footwear due to the acidic nature of these liquids. (Han Decl. ¶ 46.) Plaintiff alleges that Defendant was required to reimburse employees for this expense, under Labor Code § 2802, but failed to do so. (*Ibid.*) Defendant attributed no value to this claim. (*Ibid.*) Based upon investigation with class members, Plaintiff estimates that an average pair of non-slip rubber boots would cost around \$20. For the 246 employees analyzed, in using an estimate of about 75% of these employees reporting that they were not reimbursed for their replacement boots, and assuming one employee bought one replacement pair, Plaintiff calculates that Defendant failed to pay \$3,690.00¹¹ under this theory of liability. (*Ibid.*)

The provisions of the Labor Code potentially triggering PAGA penalties, in this case, include but are not limited to Labor Code sections 201-204, 226(a), 226.7, 246, 510, 512(a), 1174, 1194, 1197, 1198, 2800, and 2802. (Han Decl. ¶ 47.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

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¹⁰ **Maximum Potential Exposure for Off-the-Clock Claim** = 30,724 workweeks x (.5 x \$14.50/average hourly rate) = **\$222,749.00**

¹¹ **Reimbursement of Business Expenses** = (.75 x 246) x 20 = **\$3,690.00**

1 Class Counsel calculated penalties under this cause of action by multiplying the number
2 of active Class Members (because of the shortened statutory period for this claim), by the civil
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
4 section 2699.5 that were applicable in this case. (Han Decl. ¶ 48.) Class Counsel then applied
5 discounts in light of the countervailing arguments concerning the other causes of action, as well
6 as the Court’s power to award “a lesser amount than the maximum civil liability.” (*Ibid.*) Lab.
7 Code § 2699(e)(2).

8 Given the state of the law and the range of PAGA penalties requested and actually
9 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
10 for PAGA penalties. (Han Decl. ¶ 49.) However, if PAGA penalties are granted on any one of
11 the violations alleged in Plaintiff’s operative complaint, the total penalties exposure could be
12 approximately \$0 to \$6,076,200 (246 employees x [(1 initial violation x \$100) + (123 subsequent
13 violations x \$200)]). (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using a 100%
14 violation rate based on the average number of pay periods (124.9) during the one-year statutory
15 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
16 PAGA theories of recovery (6) gives potential civil penalties of \$0 to \$36,457,200. (*Ibid.*)

17 Although Plaintiff argued he could obtain over \$30,000,000 for PAGA penalties, it
18 seemed highly unlikely that the Court would award such a large amount. PAGA’s plain
19 language indicates that an employer will be assessed a lower, “initial” penalty for each initial pay
20 period in which a violation occurs, and a higher, “subsequent” penalty for each subsequent pay
21 period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.*
22 (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has been notified
23 that it is violating a Labor Code provision (whether or not the commissioner or court chooses to
24 impose penalties), the employer cannot be presumed to be aware that its continuing
25 underpayment of employees is a ‘violation’ subject to penalties [and will be assessed only the
26 ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could be
27 interpreted as indicating that until the Labor Commissioner or a court informs an employer that it
28 has violated the Labor Code, the employer can only be assessed the “initial” violation rate.

1 Under this interpretation, the maximum individual civil penalty for one statutory violation is
2 \$24,600 (246 employees x 100 (initial violation)), and for all possible Labor Code violations is
3 \$147,600.

4 Furthermore, PAGA's statutory language is unclear as to whether PAGA penalties may
5 be "stacked" – that is, whether multiple civil penalties can be recovered in the same pay period
6 for different Labor Code violations. On the one hand, Labor Code section 2699, subdivision (f)
7 establishes "a civil penalty for a violation" (emphasis added), implying a separate civil penalty
8 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
9 (g)(1), which states that "an aggrieved employee may recover the civil penalty described in
10 subdivision (f)...on behalf of himself or herself and other current or former employees against
11 whom one or more of the alleged violations was committed" (emphasis added). However,
12 Defendant contended that the Ninth Circuit's opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th
13 Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which,
14 preclude the aggregation of PAGA penalties for purposes of removal, prevents "stacking" of
15 PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would
16 be limited to \$24,600 on the low end and \$147,600 on the high end based on six (6) major
17 theories of recovery. (Han Decl. ¶ 49-52).

18 To the extent Defendant's exposure remains in the millions of dollars, the civil penalties
19 would certainly be "unjust, arbitrary and oppressive, or confiscatory." In fact, many courts have
20 taken liberties to dramatically reduce the civil penalties. (See e.g. *Viceral v. Mistras Grp., Inc.*
21 (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action
22 settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims' full
23 potential value, where "Plaintiffs face[d] a substantial risk of recovering nothing on either class
24 or PAGA claims"]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
25 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
26 the PAGA claims' potential value, where the defendant's obligations were "genuinely unclear"
27 and there was no evidence the defendant acted deliberately or negligently failed to learn about its
28 obligations].). (Han Decl. ¶ 50.)

1 Under a more conservative approach, Named Plaintiff's counsel considered the
2 possibility that the Court could assess only the initial violation rate, bringing the basic PAGA
3 penalty to \$147,600 [246 employees x \$100 x 6 theories of recovery]. (Han Decl. ¶ 51.)

4 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
5 Many of the causes of action brought were duplicative of the statutory claims such as violations
6 of California Labor Code §§ 226(e), 226.7, 510, 512(a), 1194, 1198 and 2802. (Han Decl. ¶ 52.)
7 Of these violations, section 226(e) is a derivative claim. (Han Decl. ¶ 53.) However, employees
8 may have waived meal breaks and rest breaks. (*Ibid.*) Thus, the maximum penalties for each pay
9 period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the
10 maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties,
11 based on a rate of approximately \$7.97 per violation, was reasonable (6,277 Pay Periods in
12 PAGA Date Range x \$7.965 = \$50,000). (*Ibid.*) (See *Carrington v. Starbucks Corp.*, 30
13 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000
14 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of
15 \$70,000,000).) (*Ibid.*) Where PAGA penalties are negotiated in good faith and "there is no
16 indication that [the] amount was the result of self-interest at the expense of other Class
17 Members," such amounts are generally considered reasonable. (*Ibid.*) (*Hopson v. Hanesbrands*
18 *Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see*,
19 *e.g.*, *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 ("[T]rial court did not abuse its
20 discretion in approving a settlement which does not allocate any damages to the PAGA
21 claims.")) Also, negotiations were under the auspices of a well-respected mediator, Jeffrey A.
22 Ross. who regularly mediates wage and hour litigation involving PAGA claims. Plaintiff's
23 counsel gave deference to an experienced mediator's proposal which provided approximately
24 \$7.97 per pay period for this claim.

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i. 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 \$5,399,400.05. (Han Decl. ¶ 54.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Meal Premiums	\$1,586,151.08	25%	50%	\$594,806.66
Rest Premiums	\$1,442,477.97	25%	50%	\$540,929.24
Alternative Workweek Schedule (AWS)	\$826,252.00	25%	25%	\$464,766.75
Wage Statement Penalty	\$984,000.00	50%	50%	\$246,000.00
Off the Clock	\$222,749.00	75%	50%	\$27,843.63
Reimbursement	\$3,690.00	0%	75%	\$922.50
Waiting Time Penalty	\$334,080.00	50%	25%	\$125,280.00
MAXIMUM TOTAL EXPOSURE	\$5,399,400.05			\$2,000,548.78

Plaintiff applies a 25% certification risk discount for meal period exposure. Because Defendant had a policy to never provide second meal breaks for shifts between 10 and 12 hours, Class Counsel believes that the certification is likely. (Han Decl. ¶ 55.) Class Counsel believes that a 25% discount is justified. (*Ibid.*) Also, there is a 50% risk on the merits because Defendant may submit evidence and testimony that meal breaks were provided, Class Members chose to take non-compliant breaks (late or short), and Class Members waived their meal breaks altogether. (*Ibid.*)

Plaintiff applies a 25% certification risk for rest period claims because 35.8% of all shifts had a rest period violation. (Han Decl. ¶ 56.) Moreover, Plaintiff applies a 50% merits risk because Defendant may submit evidence that rest breaks were provided and that Class members waived their rest breaks. (*Ibid.*)

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1 For the alternative workweek schedule claims, Plaintiff discounts the potential exposure
2 by only 25% for certification risk. (Han Decl. ¶ 57.) If and once certified, there is a 25% merits
3 risk given that the evidence has already indicated that Defendant committed a clear violation of
4 the election procedures set forth in IWC Order 4-2001(3)(C)(3). (Han Decl. ¶ 42.) Defendant
5 could perhaps argue that their procedures were nevertheless compliant, or that the violation was
6 to some degree *de minimis*, but these arguments are not likely to succeed. Thus, a 25% merits
7 risk is justified.

8 Defendant's potential exposure for inaccurate wage statement claims has a 50%
9 certification risk because it is not certain that all wage statements were inaccurate, and many of
10 the alleged inaccuracies in the wage statements are derivative of claims for missed meal and rest
11 breaks. (Han Decl. ¶ 58.) Moreover, there is a 50% merits risk because Defendant may argue that
12 its failure to provide accurate wage statements was not "knowing and intentional" under Labor
13 Code § 226. (*Ibid.*) Defendant may also argue that meal and rest premium payments are not
14 wages, so failure to make these payments to employees does not constitute a violation under
15 Labor Code § 226. (*Ibid.*) Thus, a 50% merits risk is justified. (*Ibid.*)

16 Plaintiff also applies a 75% certification risk discount for his off-the-clock claim, because
17 it is not certain that each employee spent 5 minutes on off-the-clock work, let alone performed
18 any off-the-clock work pre-shift. (Han Decl. ¶ 59.) There is also a 50% merits risk because
19 Defendant could bring testimonial or documentary evidence showing that a number of
20 employees did not work off-the-clock, or that off-the-clock work could have been less than 5-10
21 minutes total. (*Ibid.*)

22 Plaintiff moreover applies a 0% certification risk for his reimbursement claim, but applies
23 a 75% merits risk, mainly given that it would be difficult to determine how many individual
24 employees (out of the class of 246) who purchased a replacement pair of non-slip rubber boots.
25 (Han Decl. ¶ 60.) In addition, it would also be nearly significantly difficult to determine which
26 employees purchased more than one pair. (*Ibid.*) Defendants would likely echo these
27 reservations, and attribute these business reimbursements as difficult to credit. Thus, a 75%
28 merits risk is appropriate. (*Ibid.*)

1 Finally, Plaintiff applies a 50% certification risk discount for waiting time penalty
2 exposure because it is not certain that Defendant paid all 96 terminated employees in an untimely
3 manner. (Han Decl. ¶ 61.) In fact, Defendant may bring evidence showing that it paid a portion
4 of employees in a timely manner. (*Ibid.*) And there is a 25% merits risk because Defendant may
5 argue that any failure to timely pay employees was not “willful” under Labor Code § 203. (*Ibid.*)

6 Based on this analysis, the realistic recovery for this case is \$2,000,548.78. (Han Decl. ¶
7 62.) The Maximum Settlement Amount of \$1,000,000 is approximately 18.5% of the maximum
8 potential exposure and approximately 49.9% of the realistic exposure at trial, which is in the
9 ballpark of reasonableness. (*Ibid.*)

10 The only question at preliminary approval is whether the settlement is within the range of
11 possible approval. (*In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal.
12 2007).) “The fact that a proposed settlement may only amount to a fraction of the potential
13 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
14 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
15 455, see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,1242 (“[I]t is
16 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
17 that induce consensual settlements. The proposed settlement is not to be judged against a
18 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)

19 **f. Conditional Certification of the Class is Appropriate**

20 For settlement purposes only, the requisites for establishing conditional class certification
21 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
22 of a common or general interest, of many persons, or when the parties are numerous, and it is
23 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
24 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
25 “both [1] an ascertainable class and [2] a well-defined community of interest among class
26 members.” (*Ibid.*)

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

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

9 This action involves two-hundred and forty-six (246) Class Members. (Han Decl. ¶ 63)
10 This Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
11 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
12 former employees” is sufficiently numerous).) Further, all Class Members can and will be
13 identified by Defendant to the Settlement Administrator through a review of Defendant’s
14 employment records concerning non-exempt or hourly employees who worked for Defendant in
15 the State of California during the Class Period.

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

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

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1 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
2 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
3 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)
4 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor
5 policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

6 Here, Plaintiff asserts that common issues of fact and law predominate as to each of the
7 claims alleged by Plaintiff. All hourly-paid or non-exempt employees who worked for
8 Defendant during the Class Period were subject to the same or similar employment practices,
9 policies, and procedures. (Han Decl. ¶¶ 16-18.) All of the claims surround Defendant’s
10 common practice and scheme of failing to properly account for all hours worked by non-exempt
11 employees and failing to pay them, *inter alia*, for overtime work, and non-compliant meal and
12 rest periods, and associated inaccurate wage statements and waiting time penalties. (*Ibid.*)

13 Specifically, Plaintiff contends 99.8% of shifts between 10 and 12 hours did not have a
14 recorded second meal break, evidence a uniform practice to not provide and authorize proper
15 meal breaks. (Han Decl. ¶ 63.) Additionally, Plaintiff contends 99.7% of shifts greater than 12
16 hours did not have a recorded second meal break. (*Ibid.*) As a result, all of the Class Members,
17 including Plaintiff, were uniformly not paid for all of the hours they worked for Defendant
18 during the Class Period. Based on these facts, Plaintiff concludes that the proposed Class is
19 readily certifiable in this case. Accordingly, the Court should provisionally certify the Class for
20 settlement purposes only. (*Ibid.*)

21 **g. The Settlement Is the Result of Thorough Investigation and Discovery**

22 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
23 before reaching the proposed settlement, and engaged in sufficient investigation, research and
24 discovery to support the settlement. (Han Decl. ¶¶ 13-15.) The proposed settlement was only
25 possible following discovery and evaluation of Defendant’s policies and procedures, as well as
26 the data produced for the putative class, which permitted Class Counsel to engage in a
27 comprehensive analysis of liability and potential damages. (Han Decl. ¶ 65.) The case is at the
28 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.)

h. Request for Attorneys’ Fees and Costs Award

Class Counsel have actively investigated and litigated this case for months, and were actively preparing for class certification. (Han Decl. ¶ 66). The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted formal and informal investigations and discovery into the facts of the case, including obtaining the class contact list, interviewing Plaintiffs and dozens of other putative class members, and reviewing and analyzing a volume of documents and data produced by Defendant and obtained through other sources. (*Ibid.*). These documents and data included, and were not limited to, personnel records for Plaintiffs and other putative class members (including detailed time and pay records), payroll and pay history data for Class Members, and Defendant’s operations and employment policies, procedures, and practices. (*Ibid.*). Class Counsel also prepared multiple forms of written discovery requests and met and conferred with defense counsel on numerous occasions regarding issues relating to the pleadings, discovery, proper jurisdiction and venue, among other issues. (*Ibid.*). Class Counsel will provide evidence as to the time worked, litigation efforts, and further argument at the time of filing their memorandum in connection with the final fairness hearing and in support of their request for Attorneys’ Fees and Costs. (*Ibid.*)

The proposed Settlement establishes a Maximum Settlement Amount of up to \$1,000,000. The proposed Settlement provides for Class Counsel to apply to the Court for an award of attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (or \$350,000) and litigation costs and expenses in an amount not to exceed \$20,000. (Han Decl. ¶ 67.) The requested attorneys’ fee award is commensurate with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination they have shown, (4) the results they have achieved throughout the litigation, (5) the value of the Settlement they have achieved

1 for Class Members, and (6) the other cases they turned down in order to devote their time and
2 efforts to this matter. (Han Decl. ¶ 67.) The proposed Class Notice will provide the Class
3 Members with information as to the amounts allocated toward Attorneys' Fees and Costs under
4 the Settlement Agreement, and that Class Counsel will apply for Attorneys' Fees and Costs, as
5 provided for by the Settlement. (*Ibid.*)

6 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
7 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
8 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the
9 "experienced trial judge is the best judge of the value of professional services rendered in his
10 court[.]" *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that
11 attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for
12 the result achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47. In *Lealao*, the
13 court held that when an action leads to a recovery that can be "monetized" with a reasonable
14 degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees
15 freely negotiated in the legal marketplace in comparable litigation." *Id.* at p. 50. In cases where
16 class members present claims against a maximum settlement fund and the settlement agreement
17 provides that the defendant agrees to paying the attorneys a percentage of the same, use of the
18 percentage method is appropriate. *Id.* at p. 32.

20 Class Counsel's application for attorneys' fees in light of the facts and circumstances
21 surrounding the case is well within the range of reasonableness. Historically, courts have
22 awarded fees as high as fifty percent (50%) of the settlement fund, depending on the
23 circumstances of the case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D.
24 D.C. 1981) 526 F. Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million
25 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480
26 F. Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees). California
27 Courts routinely approve attorneys' fees "averag[ing] around one-third of the recovery." *Chavez*
28 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of

contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage and hour). In the present case, Class Counsel have borne all the risks and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl. ¶ 68.) Considering the amount of the fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. (*Ibid.*)

i. 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, and unfair business practices class actions. (Han Decl. ¶¶ 1-7, **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. (*Id.*) This experience instructed Plaintiff's counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.¹² (*Id.*)

j. Appointment of Simpluris, Inc. as the Settlement Administrator

The parties have agreed to select Simpluris, Inc. as the Settlement Administrator to administer the proposed Settlement. (Han Decl. ¶ 69.) The Settlement Administrator will mail the Notice and Claim Form to Class Members. (*Ibid.*) The Settlement Administrator will receive, review, and process Claim Forms, any written requests for exclusion or objections to the proposed Settlement (including distribution to counsel for the parties), and any written disputes and supporting documentation as to the validity of the information regarding the number of each Class Member's Workweeks preprinted on the Claim Form. (*Ibid.*) The Settlement

¹²The 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 Administrator will calculate each Class Member's Individual Settlement Award, withhold
2 applicable employment taxes, prepare and deliver necessary tax documentation, transmit the
3 appropriate payroll taxes and informational and other tax return filings on behalf of Defendant,
4 transmit the payments provided by the Settlement, prepare weekly reports for the parties, and
5 perform any other usual and customary duties for administering a class action settlement. (Han
6 Decl. ¶ 69.)

7 The settlement administration fees and expenses are set not to exceed \$7,500, which will
8 be paid out of the Maximum Settlement Amount in accordance with the payment schedule
9 provided for by the Settlement Agreement. (Han Decl. ¶ 70.) Considering the number of Class
10 Members, the estimated costs are reasonable. (*Ibid.*) Accordingly, the Court should appoint
11 Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Class Notice and
12 Claim Form to the Class Members in the manner requested and based on the proposed deadlines
13 as set forth in the Settlement Agreement and described in section (IV)(l), *infra*.

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

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

16
17 If the court has certified the action as a class action, notice of the final approval
18 hearing must be given to class members in the manner specified by the court. The
19 notice must contain an explanation of the proposed settlement and procedures for
20 class members to follow in filing written objections to it and in arranging to
21 appear at the settlement hearing and state any objections to the proposed
22 settlement.

23 The proposed Class Notice provides information on the meaning and nature of the Class;
24 the terms and provisions of the proposed Settlement, including the Class Members' release of
25 claims if they do not opt-out; the relief the proposed Settlement Agreement will provide to the
26 Class Members; and the requests for Plaintiffs' Attorneys' Fees and Costs and Class
27 Representative Enhancement Payment, and approval of the PAGA Payment and Claims
28 Administration Costs. (Han Decl. ¶ 71.) The proposed Notice of Class Action Settlement also
sets forth the date, time, and place of the Final Approval/Settlement Fairness Hearing; and the

1 procedures and deadlines for submitting a Claim Form, Request for Exclusion, or Notice of
2 Objection to the proposed Settlement Agreement. (*See* Han Decl.; Ex. A to Ex 1.).

3 The proposed Notice of Class Action Settlement will be mailed to the Class Members,
4 together with the proposed Claim Form¹³, which will provide pertinent employment information
5 for each Class Member, including the number of his or her Workweeks. The proposed Claim
6 Form will state the estimated gross amount of each Class Member's Individual Settlement
7 Award and provide detailed instructions on how to properly complete the Claim Form and timely
8 submit it to the Settlement Administrator, as well as the procedure and deadline for challenging
9 the number of Workweeks provided on the Claim Form.

10 The proposed notice procedure provided by the proposed Settlement fulfills the
11 requirement of neutrality in class notices. *Newberg*, at § 8.39. "Sufficient information about the
12 case should be provided to enable class members to make an informed decision about their
13 participation." *Manual for Complex Litigation* (4th ed. 2004) § 21.311. The proposed Class
14 Notice summarizes the proceedings to date and the terms and conditions of the proposed
15 Settlement in an informative and coherent manner. The proposed Class Notice recognizes that
16 the Court has not yet granted final approval and apprises the Class Members of how to object to
17 the proposed Settlement. The proposed Notice Packet satisfies all due process requirements and
18 complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2)
19 and 23(e); *Newberg*, at §§ 8.21, 8.39; *Manual*, at §§ 21.311, 21.312; *See Cartt, supra*, 50 Cal.
20 App. 3d at 960. Accordingly, the Court should approve the proposed Class Notice and the
21 proposed Claim Form.

22 **I. Proposed Deadlines for the Notice Process**

23 At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines
24 for the notice and claims administration process. *Newberg*, at § 11.26. The notice process
25 entails the mailing of the Class Notice and Claim Form to all known and reasonably
26 ascertainable Class Members based on Defendant's payroll records. Within twenty (20) calendar
27

28 ¹³ Settlement Agreement, Exh. B.

1 days following preliminary approval of the Settlement, Defendant will provide the Settlement
2 Administrator a spreadsheet of the Class Members' names, last-known home addresses, last-
3 known home telephone numbers, Social Security Numbers or Federal Employment Identification
4 Numbers, and workweeks during the Class Period. (Han Decl. ¶ 72.)

5 Within thirty (30) calendar days after the Court's preliminary approval of this Settlement,
6 Simpluris will mail the Class Notice and Claim Form to Class Members. (Han Decl. ¶ 73.).
7 Notices returned to Simpluris as non-delivered during the thirty (30) calendar day period for the
8 filing of claims shall be resent to the forwarding address, if any, on the returned envelope. If
9 there is no forwarding address, Simpluris will do an NCOA check and will skip-trace return mail
10 and re-mail within three (3) business days of receipt using the Class Member's Social Security
11 Number; this search will be performed only once per Class Member by Simpluris. (*Ibid.*)

12 Class Members will have thirty (30) calendar days from the initial mailing of the Class
13 Notice and Claim Form to submit their Claim Forms, Requests for Exclusion, or Notice of
14 Objection to Simpluris, as measured by the postmark date or facsimile-stamped date. (Han Decl.
15 ¶ 74.).

16 Within thirty (30) calendar days after the Effective Date as defined in Paragraph 14 of the
17 Settlement Agreement, Simpluris will cause the Settlement Awards to be mailed to the Class
18 Members. (Han Decl. ¶ 26.) The Individual Settlement Award checks will remain negotiable for
19 one-hundred and eighty (180) calendar days from which the date on which they were issued to
20 the Class Members. (Han Decl. ¶ 27.) Any checks that remain uncashed after 180 days of
21 issuance will be sent to the State of California State Controller's Unclaimed Wages Fund. (*Ibid.*)

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1 **m. Appointment of the Class Representative and Approval of the Class**
2 **Representative Enhancement Award**

3 A named plaintiff is eligible for payment that reasonably compensates him for
4 undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone*
5 *Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1393; *Bell v. Farmers Ins. Exchange*
6 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their
7 efforts in bringing the case); *Stevens v. Safeway, Inc.* (C.D. Cal. Feb. 25, 2008) Case No. 05-
8 01988, 2008 U.S. Dist. LEXIS 17119 (\$20,000 and \$10,000 to two class representatives); *In Re*
9 *Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D. Pa. July 16, 2009) Case No.
10 06-3202, 2009 U.S. Dist. LEXIS 60790 (\$20,000 each to three class representatives).

11 Plaintiff spent a substantial amount of time and effort in producing relevant documents
12 and employment records and provided the facts and evidence necessary to prove the allegations.
13 (Han Decl. ¶ 75.). Plaintiff was available whenever the Class Counsel needed him and actively
14 tried to obtain information that would benefit the Class. (*Ibid.*). Class Counsel believe that no
15 action would likely have been taken by Class Members individually and that Plaintiff’s services
16 on behalf of the Class have advanced California’s public policy goal of enforcing wage-and-hour
17 laws. *See Sav-On*, 34 Cal.4th at 340. (*Ibid.*)

18 The requested Class Representative Enhancement Payments are fair and reasonable
19 compensation for Plaintiffs’ efforts in bringing the action, assisting counsel with the
20 investigation, litigation, and settlement, regularly conferring with Class Counsel on the status of
21 the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to
22 ensure that its terms are fair and that it provides adequate relief to the proposed Class.
23 Accordingly, it is appropriate and just for the Class Representatives to receive reasonable Class
24 Representative Enhancement Payments, in addition to their shares of the Net Settlement Amount,
25 for their services on behalf of the Class Members. (Han Decl. ¶ 76.)

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Dated: June 16, 2021

D. Jan

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is arivera@justicelawcorp.com

On June 16, 21, I served the foregoing document described as

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING
DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

for the following case: **Dorsey v. Kruger Foods, Inc.**
LWDA/Court Case No.: **LWDA-CM-822246-21**
STK-CV-UOE-2020-0002099
San Joaquin 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

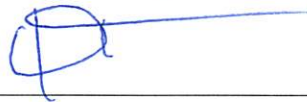
[X] BY ELECTRONIC SUBMISSION

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 June 16, 2021, at Pasadena, California.



Allana Rivera