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

JASMINE JOHNSON, JADE KHODAR-  
FISHER and BRITTNE BORUFF,  
individually, and on behalf of other members  
of the general public similarly situated;

Plaintiffs,

v.

TRUMPET BEHAVIORAL HEALTH, LLC,  
a Delaware limited liability company;  
QUALITY BEHAVIORAL OUTCOMES,  
LLC, a Delaware limited liability company;  
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 21CV-01505

Assigned for All Purposes to:  
Honorable Brian McCabe  
Courtroom 8

**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: January 27, 2023  
Hearing Time: 8:15 a.m.  
Hearing Place: Courtroom 8

Complaint Filed: May 6, 2021  
FAC Filed: October 21, 2022  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that on January 27, 2023 at 8:15 a.m., or as soon as the matter  
2 may be heard, before the Honorable Brian L. McCabe in Courtroom 8 of the Merced County  
3 Superior Court, located at 627 West 21st Street, Merced, California 95340, Plaintiffs Jasmine  
4 Johnson, Jade Khodar-Fisher, Brittanie Boruff, and Angelica Lazo (“Plaintiffs,” “Plaintiff  
5 Johnson,” “Plaintiff Khodar-Fisher,” “Plaintiff Boruff,” and “Plaintiff Lazo”) will and hereby do  
6 move for an order:

- 7           • Granting Preliminary Approval of the proposed class action settlement described  
8           herein and as set forth in the Parties’ Joint Stipulation of Class Action Settlement  
9           (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 3** to  
10          the declaration of Douglas Han, including, the means of allocation and distribution  
11          of funds, the allocations for payments under the Labor Code Private Attorneys  
12          General Act of 2004 (“PAGA”), Attorneys’ Fees and Costs, Class Representatives  
13          Enhancement Payments, and Settlement Administration Costs;
- 14          • Conditionally certifying the Class for settlement purposes only;
- 15          • Appointing Plaintiffs as the class representatives;
- 16          • Appointing Justice Law Corporation as Class Counsel;
- 17          • Approving the Notice of Class Action Settlement (“Class Notice”) attached as  
18          **Exhibit A** to the Agreement;
- 19          • Directing the mailing of the Class with a postage-paid return envelope to the Class;
- 20          • Approving the proposed deadlines for the settlement administration process;
- 21          • Approving ILYM Group, Inc. as the Settlement Administrator; and
- 22          • Scheduling a hearing to consider whether to grant Final Approval of the Settlement  
23          Agreement, at which time the Court will also consider whether to grant Final  
24          Approval of the requests for the Attorneys’ Fees and Costs, Class Representatives  
25          Enhancement Payments, Settlement Administration Costs, and approval of the  
26          allocation of the PAGA Payment.

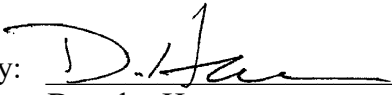
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1 This motion is based upon the following memorandum of points and authorities;  
2 Declaration of Proposed Class Counsel (Douglas Han); [Proposed] Order filed concurrently with  
3 this motion; pleadings and other records on file with the Court in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

5  
6 Dated: December 28, 2022

**JUSTICE LAW CORPORATION**

7  
8 By:   
9 Douglas Han  
Attorneys for Plaintiffs

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1     **I.     INTRODUCTION**

2             This motion seeks preliminary approval of a non-reversionary \$600,000 proposed wage-  
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former  
4 individuals who are or who have been employed as nonexempt employees by Defendants Trumpet  
5 Behavioral Health, LLC and Quality Behavioral Outcomes, LLC (“Defendants”) in California  
6 during the time period from March 1, 2020, through October 7, 2022, as a non-exempt employee  
7 (“Class” and “Class Period”). At the time of this filing, the number of Class Members is estimated  
8 to be seven thousand four hundred fifty-three (7,453), which was confirmed by Defendants.  
9 (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class  
10 Action Settlement (“Han Decl.”), ¶¶ 8-9.)

11     **II.    BACKGROUND**

12             On February 18, 2021, Plaintiff Johnson provided written notice to the California Labor  
13 and Workforce Development Agency (“LWDA”) and Defendants. (Han Decl., *supra*, at ¶ 10.)

14             On March 1, 2021, Plaintiff Johnson, Plaintiff Khodar-Fisher, and Plaintiff Boruff filed a  
15 wage-and-hour class action lawsuit in the Superior Court of California, County of Alameda (Case  
16 No. RG21093211), alleging seven (7) causes of action. (Han Decl., *supra*, at ¶ 11.) On April 30,  
17 2021, Defendants filed a Notice of Removal of Civil Action to United States District Court in the  
18 Northern District of California (Case No. 21-cv-3221). (*Id.* at ¶ 12.)

19             On May 6, 2021, Plaintiff Johnson filed a representative PAGA action in the Superior  
20 Court of California, County of Merced (Case No. 21CV-01505), alleging Labor Code violations  
21 like those alleged in the wage-and-hour class action lawsuit. (Han Decl., *supra*, at ¶ 13.)

22             The Parties remotely attended mediation for both lawsuits with the mediator Jeffrey Ross  
23 on August 8, 2022. (Han Decl., *supra*, at ¶ 14.) Defendants argued they had been experiencing  
24 financial difficulties in recent years and lacked sufficient assets to reach a settlement  
25 commensurate with Defendants’ alleged liability exposure. (*Ibid.*) Under the auspices of the  
26 mediator, the Parties later reached a settlement. (*Ibid.*)

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1 In line with the settlement, the Parties filed a Joint Stipulation of Dismissal as to the class  
2 action in federal court to allow the Parties to seek settlement approval in state court, which was  
3 granted on August 25, 2022. (Han Decl., *supra*, at ¶ 15.) On October 21, 2022, Plaintiff Johnson  
4 filed a First Amended Complaint for her representative PAGA action that added eight (8) causes  
5 of action similar to those asserted in the dismissed federal case. (*Id.* at ¶ 16.) The First Amended  
6 Complaint also added Plaintiff Khodar-Fisher and Plaintiff Boruff as additional plaintiffs. (*Ibid.*)  
7 After filing the First Amended Complaint, the Parties agreed to add Plaintiff Lazo as an additional  
8 representative for settlement purposes only. (*Ibid.*)

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

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

11 After Plaintiffs initiated this lawsuit, both Parties engaged in extensive investigations  
12 and/or discovery. (Han Decl., *supra*, at ¶ 18.) Plaintiffs propounded discovery to Defendants,  
13 including form interrogatories, special interrogatories, requests for admissions, and requests for  
14 production of documents. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage  
15 in an informal exchange of information and then remotely attend mediation. (*Ibid.*)

16 The Parties conducted significant investigation and discovery of the facts and law both  
17 before and after this case was filed. (Han Decl., *supra*, at ¶ 19.) Defendants produced documents  
18 relating to their policies, practices, and procedures. (*Ibid.*) As part of Defendants' production,  
19 Plaintiffs also reviewed personnel files, time records, pay records, and information relating to the  
20 size and scope of the Class. (*Ibid.*) Plaintiffs also interviewed putative class members who worked  
21 for Defendants throughout the Class Period. (*Ibid.*)

22 Based upon the information provided by Defendants and interviews conducted, Plaintiffs  
23 contend – and Defendants deny – Defendants: (1) failed to provide employees with legally  
24 mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to  
25 reimburse employees for necessary business expenses; (4) issued noncompliant wage statements;  
26 and (5) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 21-27.)

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

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

3                   The Parties remotely attended mediation with the mediator on August 8, 2022. (Han Decl.,  
4 *supra*, at ¶ 28.) With the assistance of the mediator, the Parties eventually reached a settlement,  
5 the terms of which were memorialized in the Settlement Agreement of which the Parties now seek  
6 Preliminary Approval. (*Id.* at ¶ 28; Exhibit 3.)

7                   **ii. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

8                   The Settlement Agreement was reached because of arm’s-length negotiations. (Han Decl.,  
9 *supra*, at ¶ 39.) Though cordial and professional, the settlement negotiations have always been  
10 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted  
11 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

12                  Plaintiffs and Class Counsel recognize the expense and length of continued proceedings  
13 necessary to continue the litigation against Defendants. (Han Decl., *supra*, at ¶ 40.) Plaintiffs and  
14 Class Counsel also considered the uncertainty and risk of further litigation, potential outcome, and  
15 difficulties and delays inherent in such litigation as well as Defendants’ financial condition. (*Ibid.*)  
16 Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and  
17 reasonable settlement, and is in the best interests of the Class Members. (*Ibid.*)

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

19                  The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of  
20 the Parties’ claims and defenses before reaching the Settlement and engaged in sufficient  
21 investigation, research, and discovery. (Han Decl., *supra*, at ¶ 41.) The Settlement was only  
22 possible following significant investigation and evaluation of Defendants’ relevant policies and  
23 procedures, as well as the data produced. (*Ibid.*) Furthermore, this case has reached the stage  
24 where “the Parties certainly have a clear view of the strengths and weaknesses of their cases”  
25 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,  
26 at ¶ 41; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2                   **i. Deductions from the Settlement**

3           The Parties agreed (contingent upon the Court’s approval) this action be settled and  
4   compromised for the non-reversionary total sum of \$600,000 (“Maximum Settlement Amount”)   
5   which includes: (1) attorneys’ fees to Class Counsel of \$228,000 (38% of the Maximum Settlement  
6   Amount); (2) attorneys’ costs to Class Counsel not to exceed \$25,000 for reimbursement of  
7   litigation costs and expenses; (3) Class Representatives Enhancement Payments of \$10,000 to each  
8   Plaintiff (totaling \$40,000); (4) Settlement Administration Costs to ILYM Group, Inc., the  
9   Settlement Administrator, not to exceed \$48,800; and (5) PAGA Payment of \$50,000, seventy-  
10   five percent (75%) of which (\$37,500) will be paid to the LWDA and twenty-five percent (25%)  
11   of which (\$12,500) will be included in the Net Settlement Amount and distributed to PAGA  
12   Members. (Han Decl., *supra*, at ¶ 29.)

13                   **ii. Calculating Individual Settlement Payments**

14           After all Court-approved deductions from the Maximum Settlement Amount, it is  
15   estimated \$220,700 (“Net Settlement Amount”) will be distributed to Participating Class  
16   Members. (Han Decl., *supra*, at ¶ 30.)

17           Individual Settlement Payments will be calculated using the formula set forth in the  
18   Settlement Agreement. (Han Decl., *supra*, at ¶ 31.) Individual Settlement Payments will be  
19   apportioned twenty percent (20%) as wages and eighty percent (80%) as penalties and interests.  
20   (*Ibid.*) The PAGA Payment to be paid to each PAGA Member shall be calculated using the formula  
21   set forth in the Settlement Agreement. (*Ibid.*)

22                   **iii. Notice to the Class**

23           Within fifteen (15) calendar days of entry of the Court’s Order Granting Preliminary  
24   Approval, Defendants will provide the Class List to the Settlement Administrator. (Han Decl.,  
25   *supra*, at ¶ 33.) Within fifteen (15) business days after receiving the Class List from Defendants,  
26   the Settlement Administrator will mail a Notice of Class Action Settlement to all Class Members  
27   via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in  
28   the Class List. (*Ibid.*)

1                   **iv. Distribution of Funds**

2           The Settlement will be funded and distributed pursuant to the timeline and manner set forth  
3 in the Settlement. (Han Decl., *supra*, at ¶ 34.) Class Members and PAGA Members will receive  
4 checks for their respective Individual Settlement Payments, which will remain negotiable for one  
5 hundred eighty (180) days. (*Ibid.*) Uncashed settlement checks will be distributed to the State  
6 Controller’s Unclaimed Property Fund. (*Ibid.*)

7                   **v. Release of Claims**

8           Plaintiffs and Participating Class Members, on behalf of himself or herself, his or her heirs,  
9 descendants, dependents, executors, administrators, assigns, and successors, fully and finally  
10 release and discharge the Released Parties from any and all of the Released Claims for the entirety  
11 of the Class Period. (Han Decl., *supra*, at ¶ 35.)

12           Plaintiffs agree upon Defendants fully funding the Settlement Agreement, Plaintiffs and  
13 the PAGA Members will release any and all PAGA Released Claims against Defendants that arose  
14 during the PAGA Period. (Han Decl., *supra*, at ¶ 36.)

15           In exchange for the consideration set forth in the Agreement, Plaintiffs, for themselves,  
16 their heirs, successors, and assigns, provide a general release to the Released Parties. (Han Decl.,  
17 *supra*, at ¶ 37.) Plaintiffs also expressly waives and relinquish any and all claims, rights, or benefits  
18 they may have under Civil Code section 1542. (*Ibid.*)

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

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

2           Both Parties' counsel are experienced in wage-and-hour employment law and class actions.  
3 (Han Decl., *supra*, at ¶¶ 2-7; Exhibits 1-2.) Class Counsel have prosecuted numerous cases on  
4 behalf of employees for Labor Code violations and are experienced and qualified to evaluate the  
5 class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*)  
6 This experience instructed Class Counsel on the risks and uncertainties of further litigation and  
7 guided their determination to endorse the Settlement.<sup>1</sup> (*Ibid.*)

8           **IV. ARGUMENT**

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

10           California Rules of Court, rule 3.769 requires court approval for class action settlements.<sup>2</sup>  
11 “Before final approval, the court must conduct an inquiry into the fairness of the proposed  
12 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for  
13 preliminary approval of class settlements:

- 14                   (a)     A settlement or compromise of an entire class action, or a cause of action in  
15                             a class action, or as to a party, requires the approval of the court after  
16                             hearing.  
17                             ...  
18                   (c)     Any party to a settlement agreement may serve and file a written notice of  
19                             motion for preliminary approval of the settlement. The settlement  
20                             agreement and proposed notice to class members must be filed with the  
21                             motion, and the proposed order must be lodged with the motion.

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25           <sup>1</sup>     The final factor mentioned in *Dunk* – the number of objectors – is not determinable until  
26           the Class Notice has been provided to the Class, and they have had an opportunity to respond. This  
27           information will be provided to the Court in conjunction with the Motion for Final Approval of  
28           Class Action Settlement.

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

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

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

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

13 In weighing the strength of the plaintiff’s case, *Kullar* instructs the court is not to “decide  
14 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of  
15 the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) Finally,  
16 *Kullar* does not require an explicit statement of the maximum amount the class could recover if  
17 the plaintiff prevailed on all his claims, provided there is a record that allows “an understanding  
18 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz*  
19 *v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) Put differently,  
20 “as the court does when it approves a settlement as in good faith under Code of Civil Procedure  
21 § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of  
22 reasonableness.” (*Kullar*, at p. 133.)

23 **i. The Settlement Amount of \$600,000 Is Fair and Reasonable**

24 The Settlement was possible following significant investigation and evaluation of  
25 Defendants’ relevant policies and procedures, as well as the data Defendants produced for the  
26 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive  
27 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 41.)

28 ///

1 Plaintiffs' claims are predicated on Defendants' purported: (1) failure to pay overtime  
2 wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and pay  
3 applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage  
4 statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation  
5 of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 42.) Defendants  
6 deny Plaintiffs' theories of liability. (*Id.* at ¶ 43.)

7 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect  
8 to certification are always present. (Han Decl., *supra*, at ¶ 44.) As the California Supreme Court  
9 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is  
10 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*  
11 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.<sup>3</sup>  
12 (*Ibid.*) This led Plaintiffs to discount the calculations for potential damages.

#### 13 **ii. The PAGA Payment of \$50,000 Is Reasonable**

14 The provisions of the Labor Code potentially triggering PAGA penalties in this case  
15 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,  
16 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*,  
17 at ¶ 52.) Defendants asserted, regardless of the results of the underlying causes of action, PAGA  
18 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintained,  
19 in addition to their strong arguments against the underlying claims, they had a strong argument it  
20 would be unjust to award maximum PAGA penalties given the law's unsettled state. (Han Decl.,  
21 *supra*, at ¶ 52; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing  
22 penalties by 30% under this authority].) Without stacking and limited to the initial violation, the  
23 PAGA penalties would be limited to **\$358,000** (3,580 employees x \$100 initial violations) on the  
24

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

low end and **\$2,148,000** (3,580 employees x \$100 x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 53-56.)

Plaintiffs also recognized the risk any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based on a rate of **\$0.62** per pay period [ $\$50,000 \div 81,198$  pay periods in PAGA date range = **\$0.62**], given Defendants are also paying an additional \$550,000 in the class settlement.<sup>4</sup> (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.<sup>5</sup> (*Ibid.*)

Considering Defendants’ financial constraints, in addition to their defenses, their supporting evidence, and their position the case is not suitable for class treatment, the Settlement of \$600,00 is reasonable, adequate, and fair.

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

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$40,524,398.30** on the low end and **\$40,988,273.30** on the high end. (Han Decl., *supra*, at ¶ 58.)

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<sup>4</sup> (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000].)

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

| Category                                  | Potential Exposure                                                 | Certification Risk | Merits Risk | Realistic Exposure                                               |
|-------------------------------------------|--------------------------------------------------------------------|--------------------|-------------|------------------------------------------------------------------|
| Rest Break Premiums                       | \$2,356,005.04                                                     | 70%                | 60%         | \$282,720.61                                                     |
| Meal Break Premiums                       | \$1,118,223.26                                                     | 60%                | 60%         | \$178,915.72                                                     |
| Overtime/Minimum Wage: Off-the-Clock Work | \$927,750 to \$1,391,625                                           | 50%                | 50%         | \$231,937.50 to \$347,906.25                                     |
| Unreimbursed Business Expenses            | \$190,388                                                          | 40%                | 70%         | \$34,269.84                                                      |
| Wage Statement Penalty                    | \$8,055,000                                                        | 70%                | 60%         | \$966,600                                                        |
| Waiting Time Penalty                      | \$27,877,032                                                       | 70%                | 60%         | \$3,345,243.84                                                   |
| <b>MAXIMUM TOTAL EXPOSURE</b>             | <b>\$40,524,398.30</b><br>to<br><b>\$40,988,273.30<sup>6</sup></b> |                    |             | <b>\$5,039,687.51</b><br>to<br><b>\$5,155,656.26<sup>7</sup></b> |

Based on this analysis, the realistic recovery for this case is **\$5,039,687.51** on the low end and **\$5,155,656.26** on the high end. (Han Decl., *supra*, at ¶ 65.) The Maximum Settlement Amount of \$600,000 is about eleven percent (11.64%) of the maximum realistic exposure at trial, which is a reasonable settlement given Defendants’ financial constraints. (*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 Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Here, given Defendants’ financial state and inability to pay a higher settlement amount, in addition to the risks associated with litigating Plaintiffs’ claims, the settlement is reasonable and in the best interests of Class Members.

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<sup>6</sup> (Han Decl., *supra*, at ¶¶ 45-51.)

<sup>7</sup> (*Id.* at ¶¶ 59-64.)

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

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

8           The Class is ascertainable and numerous as to make it impracticable to join all Class  
9 Members, and there are common questions of law and fact that predominate over any questions  
10 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 66.) Plaintiffs contend as former  
11 non-exempt employees of Defendants, their claims are typical of the claims of the Class, and Class  
12 Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert  
13 the prosecution of separate actions by individual Class Members would create the risk of  
14 inconsistent or varying adjudications. (*Ibid.*)

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

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

23           This case involves about seven thousand four hundred fifty-three (7,453) putative class  
24 members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 67; *Ghazaryan v.*  
25 *Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as  
26 many as 190 current and former employees” is sufficiently numerous].)

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

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

11                                    **1. Common Issues Predominate**

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

23            Plaintiffs assert common issues of fact and law that predominate as to each of the claims  
24 alleged. (Han Decl., *supra*, at ¶ 68.) Plaintiffs contend all Class Members were subject to the  
25 same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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## 2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former employees of Defendants and allege they and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 69.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

## 3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 70.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of their work environments and requirements. (*Ibid.*)

## 4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

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

### e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached

1 settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow  
2 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
3 percentage of objectors is small. (*Dunk*, at p. 1802.) All these elements are present here.

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

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

6 If the court has certified the action as a class action, notice of the final approval  
7 hearing must be given to class members in the manner specified by the court. The  
8 notice must contain an explanation of the proposed settlement and procedures for  
9 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.

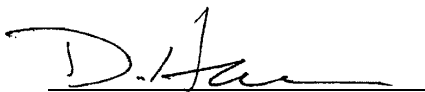
10 The Class Notice meets all these requirements. The Class Notice advises the Class  
11 Members of their right to participate in the Settlement, how and when to object to or request  
12 exclusion from the Settlement, and the date, time, and location of the Final Approval Hearing.  
13 (See Han Decl., *supra*; Exhibit A to Exhibit 3.)

14 **V. CONCLUSION**

15 Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class  
16 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class  
17 should be conditionally certified for settlement purposes, and Class Notice should be approved.

18  
19 Dated: December 28, 2022

**JUSTICE LAW CORPORATION**

20  
21 

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 and my electronic service address is aokada@justicelawcorp.com

On December 28, 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: **Johnson, et al. v. Trumpet Behavioral Health, LLC et al.**  
LWDA/Court Case No.: **LWDA Case No.: CM-822151-21**  
**Court Case No.: 21CV-01505**  
**Merced 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 December 28, 2022, at Pasadena, California.



Anna Okada