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

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

Plaintiff,

v.

GOLDEN SPECIALTY FOODS, LLC, a
Colorado limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No. 22CV-00393

Assigned for All Purposes to:
Honorable Brian McCabe
Department 8

CLASS ACTION

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

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

Hearing Date: April 25, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Department 8

Complaint Filed: February 9, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 25, 2022 and at 8:15 a.m., or as soon as the
2 matter may be heard before the Honorable Brian McCabe of the Merced County Superior Court
3 – Department 8, located at 627 W. 21st Street, Merced, CA 95340, Plaintiff Alfredo Salas
4 (“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,” “Settlement,” or “Agreement”), attached as
8 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
9 the means of allocation and distribution of funds, and the allocations for penalties
10 under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorneys’ Fees and Costs, the Class Representative Enhancement
12 Payments, and approval of the allocation for the PAGA Payment and the Claims
13 Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiff as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement attached as “Exhibit
18 A” to the Settlement Agreement;
- 19 • Approving the proposed Claim Form attached as “Exhibit B” to the Settlement
20 Agreement;
- 21 • Directing the mailing of the proposed Notice of Class Action Settlement and
22 Claim Form (collectively, known as the “Notice Packet”) with a postage-paid
23 return envelope to the proposed Class Members;
- 24 • Approving the proposed deadlines for the notice and claims administration
25 process;
- 26 • Approving Simpluris, Inc. (“Simpluris”) as the Claims Administrator; and
- 27 • Scheduling a hearing to consider whether to grant Final Approval of the
28 Settlement, at which time the Court will also consider whether to grant Final

1 Approval of the requests for the Attorneys' Fees and Costs, the Class
2 Representative Enhancement Payments, and approval of the allocation for the
3 PAGA Payment and the Claims Administration Costs.

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

9
10 Dated: March 21, 2022

JUSTICE LAW CORPORATION

11
12 By:



13 Douglas Han
14 Shunt Tatavos-Gharajeh
15 Chancellor D. Nobles
16 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 Plaintiff seeks preliminary approval of the Settlement Agreement entered into by and
3 between Plaintiff, individually and on behalf of the proposed Class, and Defendant Golden
4 Specialty Foods, LLC (“Defendant”). Subject to Court approval, Plaintiff and Defendant
5 (“Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of up to
6 \$450,000. A copy of the Settlement Agreement is attached as “**EXHIBIT 2**” to the Declaration
7 of Douglas Han (“Han Decl.”).

8 The Maximum Settlement Amount includes the following: (a) the attorneys’ fees of up to
9 \$171,000 (38% of the Maximum Settlement Amount) to compensate Class Counsel for work
10 already performed and all work remaining to be performed in documenting the settlement,
11 administering the settlement and securing Court approval; (b) the reimbursement of attorneys’
12 litigation costs and expenses of up to \$18,000 for serving as Class Counsel¹; (c) the Class
13 Representative Enhancement Payments to the Plaintiff in a sum not to exceed \$10,000 his efforts
14 and service leading to this Settlement; (d) the allocation of Claims Administration Costs to
15 Simpluris currently estimated not to exceed \$10,000; and (e) payment for \$10,000 in civil
16 penalties under PAGA, as amended, California Labor Code sections 2698, *et seq.*, of which
17 seventy-five (75%) of which (\$7,500) will be paid to the California Labor and Workforce
18 Development Agency (“LWDA”) (“LWDA Payment”) and the remaining twenty-five (25%) of
19 which (\$2,500) will be part of the Net Settlement Amount for distribution in conformity with the
20 Settlement Agreement. (*See* Settlement Agreement ¶¶ 29-30 and 33-34.)

21 Plaintiffs seek to certify the following Class for settlement purposes, consisting of
22 approximately three hundred and ninety-two (392) Class Members:

23 ///

24 ///

25 ///

26 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 \$18,000, Plaintiff will only seek reimbursement in the amount of \$18,000. To the extent that the Court
approves less than the amount of attorney’s fees and/or costs that Class Counsel requests, the difference between the
requested and awarded amounts will be reallocated to the Net Settlement Amount.

1 all individuals who are or previously were employed by Defendant in the State of
2 California, whether employed directly by Defendant or through a
3 staffing/temporary agency, and classified as non-exempt at any time during the
4 period from June 14, 2017, to March 12, 2022 (“Class,” “Class Period,” and
“Class Members”). (Han Decl. ¶¶ 9-10.)

5 All Class Members who submit timely and valid Claim Forms (“Claimants”) will receive
6 their share of the Net Settlement Amount (“Individual Settlement Payment”). (Settlement
7 Agreement ¶¶ 11, 27, 67.) Individual Settlement Payments will be calculated and apportioned
8 from the Net Settlement Amount based on the number of Workweeks a Class Member worked
9 during the Class Period. (Settlement Agreement ¶ 58.)

10 The Net Settlement Amount refers to the Maximum Settlement Amount, less Court-
11 approved Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, the
12 Claims Administration Costs, employer’s share of payroll taxes, and the LWDA Payment.
13 (Settlement Agreement ¶ 27.) This proposed Settlement Agreement resolves all of Plaintiff’s and
14 the Class Members’ Released Claims against Defendant.

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

22 **II. BACKGROUND**

23 Defendant is an international production, packing, and product development company
24 specializing in production; quality assurance; processing and packaging; and research and
25 development of sauces, soup bases, salsas, and dressings. (Han Decl. ¶ 10.) This case involves all
26 individuals who are or previously were employed by Defendant in the State of California,
27 whether employed directly by Defendant or through a staffing/temporary agency, and classified
28 as non-exempt at any time during the period from June 14, 2017, to March 12, 2022 (“Class,”

1 “Class Period,” and “Class Members”). (Han Decl. ¶ 10.) Plaintiff alleges that employees
2 worked for Defendant on an hourly basis. (*Ibid.*)

3 On March 9, 2021, Plaintiff provided written notice to the LWDA and Defendant of the
4 specific provisions of the Labor Code he contends were violated and the theories supporting his
5 contentions. Plaintiff believes that on or about May 30, 2021, the sixty-five (65) day notice
6 period expired and the LWDA did not take any action to investigate or prosecute this matter.
7 Therefore, Plaintiff exhausted the statutory time period to bring this action. (Han Decl. ¶ 11.)

8 On January 12, 2022, the Parties participated in mediation before Eve Wagner (the
9 “Mediator”), a respected mediator of wage and hour class actions. After a full day of
10 negotiations and considering the Mediator’s proposal, the Parties agreed to settle and stipulated
11 to the material terms of this Stipulation of Settlement now before this Court. The Mediator’s
12 supervision of the mediation and negotiations was critical in managing the expectations of the
13 Parties and providing valuable and neutral analysis of the issues and risks to both sides. (Han
14 Decl. ¶ 12.)

15 On February 9, 2022, Plaintiff filed a Class and Representative PAGA action in the
16 Superior Court of the State of California, County of Merced, entitled *Salas v. Golden Specialty*
17 *Foods, LLC*, Case No. 22CV-00393. The Action included class allegations against Defendant for
18 (1) violation of California Labor Code §§ section 510 and 1198 (unpaid overtime); (2) violation
19 of California Labor §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of
20 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor
21 Code §§ 1194 and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201
22 and 202 (final wages not timely paid); (6) violation of California Labor Code § 204 (Wage Not
23 Timely Paid During Employment); (7) violation of California Labor Code § 226(a) (non-
24 compliant wage statements); (8) violation of California Labor Code §§ 2800 and 2802; (9)
25 violation of California Labor Code §§ 2698, *et seq.*, (Private Attorneys General Act of 2004);
26 and (10) violation of California Business & Professions Code § 17200, *et seq.* (Han Decl. ¶ 13.)

27 ///

28 ///

1 Defendant denies the allegations of the class action in their entirety, denies any liability
2 or wrongdoing of any kind associated with the claims alleged in this Action, and further denies
3 that, for any purpose other than settling this Action, this matter is appropriate for class treatment.
4 (Han Decl. ¶ 14.) Defendant further contends that it has always complied with all applicable
5 California laws, the Labor Code, the applicable California Wage Order(s), and the Unfair
6 Competition Law. (*Ibid.*) Notwithstanding, in the interest of avoiding further litigation,
7 Defendant desires to settle all actual or potential claims fully and finally by the Class. (*Ibid.*)
8 Defendant finally contends that if this matter were to be litigated further, it would have strong
9 defenses to class certification and on the merits.

10 **III. INVESTIGATION/ LITIGATION HISTORY**

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

12 After Plaintiff's letter to the LWDA, the Parties engaged in informal discovery seeking
13 information related to both PAGA and potential class claims. (Han Decl. ¶ 15.) As the result of
14 discovery conducted by Plaintiff, Defendant produced a large volume of documents, including
15 employee handbooks, meal and rest break policies, meal and rest break waivers, reimbursement
16 policies, Plaintiff's personnel files, and a sampling of time and payroll records for thirty-one
17 employees. (*Ibid.*) Plaintiff was in constant communication with several current and former non-
18 exempt employees of Defendant. (*Ibid.*) These employees apprised Plaintiff of their experiences
19 working for Defendant. (*Ibid.*)

20 Based upon the informal exchange of information and Defendant's document production,
21 as well as interviews Class Counsel had with non-exempt employees, Plaintiff contends – and
22 Defendant denies – that Defendant did not allow full compliant breaks due to the doffing and
23 doffing time that cut rest breaks short. (Han Decl. ¶ 16.) For example, Plaintiffs assert that
24 Defendant discouraged rest breaks because employees would need to don and doff their personal
25 protective gear every time they would exit the food manufacturing facility, and the don and
26 doffing of the protective equipment would cut rest breaks short. (*Ibid.*) Moreover, Plaintiff
27 alleges that heavy workloads coupled with the expectation that employees promptly complete
28 their assignments forced employees to work through or take short rest breaks. (*Ibid.*) This issue

1 was purportedly exacerbated by the expectation that employees be at their workstations and
2 ready to work immediately at the end of their rest breaks to avoid disciplinary Action. (Han Decl.
3 ¶ 16.) By extension, this allegedly forced employees to work through their second and third rest
4 breaks. (*Ibid.*) Finally, Plaintiff contends that despite these rest break violations, Defendant has
5 not paid premium wages for non-compliant rest breaks. (Han Decl. ¶ 16.)

6 Furthermore, Plaintiff alleges – and Defendant denies – that Defendant failed to allow
7 employees to take complaint meal breaks. (Han Decl. ¶ 17.) Similar to Defendant’s practices
8 resulting in rest break violations above, Plaintiff asserts that the donning and doffing of the
9 protective gear forced employees to cut their meal breaks short of having sufficient time to don
10 and doff or the donning and doffing forced employees to take late meal breaks. (*Ibid.*)
11 Additionally, Defendant’s practices supposedly became even more stringent partly due to the
12 additional Covid safety procedures, which left employees with no room for error when
13 attempting to return timely from their meal breaks. (*Ibid.*) Consequently, employees were
14 purportedly left with no choice but to work through, cut short, or take late meal breaks to adhere
15 to Defendant’s onerous policies and procedures. (*Ibid.*) Finally, Plaintiff contends Defendant
16 failed to pay premium wages for non-compliant meal breaks despite these meal break violations.
17 (*Ibid.*)

18 Next, Plaintiff contends – and Defendant denies – that Defendant maintained a rounding
19 policy that resulted in employees being underpaid. (Han Decl. ¶ 18.) Specifically, Defendant’s
20 rounding policy was neither fair nor neutral on its face. (*Ibid.*) This is because a review of
21 employees’ time records purportedly demonstrates that Defendant purportedly rounded up
22 employees’ clock-ins and rounded down their clock-outs, resulting in a significant number of
23 hours being underpaid. (*Ibid.*)

24 Plaintiff also asserts – and Defendant denies – that Defendant failed to compensate
25 employees for all hours worked. (Han Decl. ¶ 19.) Firstly, Defendant’s donning and doffing
26 policy allegedly pressured employees to work off-the-clock by arriving earlier than their
27 scheduled shifts to gear up. (*Ibid.*) Next, Defendant’s overtime policies purportedly pressured
28 off-the-clock as well because they discouraged overtime work (i.e., required preapproval with

1 the threat of termination). (Han Decl. ¶ 19.) Yet, the volume of work employees was regularly
2 expected to undertake supposedly deterred them from recording their additional hours of work.
3 (*Ibid.*) Collectively, this allegedly resulted in many hours of off-the-clock work pre-shift and
4 post-shift (i.e., setting up workstations, donning and doffing personal protective equipment
5 (“PPE”), cleaning their work areas, etc.). (Han Decl. ¶ 19.)

6 Additionally, Plaintiff asserts – and Defendant denies – that Defendant failed to
7 reimburse employees for incurred business expenses. (Han Decl. ¶ 20.) For instance, employees
8 were expected to wear safety shoes to perform their duties, but Defendant supposedly did not
9 reimburse the employees. (*Ibid.*) Moreover, Plaintiff also alleges that employees were expected
10 to use their cell phones for work-related purposes (i.e., speak to their supervisors and managers)
11 for which they were not reimbursed. (*Ibid.*)

12 Plaintiff also alleges – and Defendant denies – that Defendant is liable for wage statement
13 penalties. (Han Decl. ¶ 21.) Specifically, Defendant issued wage statements in violation of Labor
14 Code section 226(a) because of the underlying violations discussed above. (*Ibid.*) Thus,
15 Defendant’s wage statements would necessarily be inaccurate. (*Ibid.*) Even if Defendant asserts
16 that its violation of section 226(a) is trivial, the California courts have held that strict compliance
17 of section 226(a) is exactly what is intended. (*Ibid.*)

18 Finally, Plaintiff contends – and Defendant denies – that Defendant is liable for waiting
19 time penalties. (Han Decl. ¶ 22.) Defendant’s hourly-paid or non-exempt employees are entitled
20 to back underpaid overtime and compensation for time worked off-the-clock, missed meal and
21 rest breaks, thereby triggering waiting time penalties under Labor Code section 203. (*Ibid.*)
22 Therefore, Defendant owes compensation for off-the-clock work and missed meal and rest
23 breaks as a matter of fact and law. (*Ibid.*) But Defendant intentionally failed or refused to
24 perform an act, which was required to be done, constituting “willful” conduct and justifying
25 “waiting-time” penalties under section 203 to former employees. (*Ibid.*)

26 Defendant denies Plaintiff’s contentions in their entirety. (Han Decl. ¶ 23.) Among other
27 things, Defendant denies Plaintiff’s rest and meal break contentions on the grounds that it
28 provided breaks within compliant times and that non-exempt employees were given discretion as

1 to when to take their breaks. (Han Decl. ¶ 23.) Defendant also contends that both its meal and
2 rest break policies complied with California law, and those non-exempt employees were allowed
3 to use their meal and rest break time for their own purposes. (*Ibid.*) By extension, Defendant
4 adds that its meal and rest break policies were not intended to deter employees from receiving
5 compliant and duty-free breaks. (*Ibid.*) Defendant also counters that it did not regularly expect
6 employees to complete heavy, time-sensitive workloads that frequently forced them to skip, cut
7 short, or take short meal and rest breaks. (*Ibid.*) Defendant further contends that whether non-
8 exempt employees took meal and rest breaks during compliant time frames and were relieved of
9 all duties are questions that could only be resolved by resorting to individualized inquiries to
10 each non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*)
11 Defendant also asserts that it paid its employees for all times and all hours worked, including
12 overtime, minimum, and premium wages. (*Ibid.*) Defendant counters that it did not have in place
13 stringent policies that pressured employees to work off-the-clock without reporting additional
14 hours of work. (*Ibid.*) Further, Defendant contends that Plaintiff's claims regarding off-the-clock
15 work and unpaid overtime are disputed as donning and doffing was always done on-the-clock
16 and paid. (*Ibid.*) By extension, Defendant also counters that its rounding policy was both fair and
17 neutral because it resulted in an equal amount of underpayment and overpayment. (Han Decl. ¶
18 28.) Defendant also asserts that it maintained a reimbursement policy and any could have
19 submitted any out-of-pocket costs incurred in performing their work. (*Ibid.*)

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

21 Under the auspices of the Mediator Eve Wagner, the Parties were able to reach an
22 agreement on a settlement, the terms of which were memorialized in the Settlement Agreement
23 that the Parties seek preliminary approval of in the instant motion. (Han Decl. ¶ 24.) Attached
24 hereto as **Exhibit 2** is a true and correct copy of the Settlement Agreement. (*Ibid.*)

25 **c. Terms of Proposed Settlement**

26 **i. Deductions from the Settlement**

27 Under the terms of the Settlement Agreement, Defendant will pay a Maximum
28 Settlement Amount of up to \$450,000 to all Class Members on a claims-made basis. Subject to

1 Court approval, the Net Settlement Amount, which is the maximum amount that will be made
2 available to pay the Class Members, will be calculated by deducting the following amounts from
3 the Maximum Settlement Amount: (a) the attorneys' fees of up to \$171,000 (38% of the
4 Maximum Settlement Amount) to compensate Class Counsel for work already performed and all
5 work remaining to be performed in documenting the settlement, administrating the settlement
6 and securing Court approval; (b) the reimbursement of attorneys' litigation costs and expenses
7 associated with Class Counsel's litigation and settlement of the Action in amount not to exceed
8 \$18,000; (c) the Class Representative Enhancement Payments in a sum of \$10,000 to Plaintiff for
9 his efforts and service leading to the Settlement; (d) the allocation of Claims Administration
10 Costs to Simpluris, Inc. ("Simpluris"), the Claims Administrator, currently estimated not to
11 exceed \$10,000; and (e) the PAGA Payment in an amount not to exceed \$10,000, seventy-five
12 percent (75%) of which (\$7,500) will be paid to the LWDA ("LWDA Payment") and twenty-five
13 percent (25%) of which (\$2,500) will be distributed, pro rata, based on weeks worked to all
14 PAGA Aggrieved Employees. (Han Decl. ¶ 25.)

15 The actual amount of litigation costs will be provided to the Court in conjunction with
16 Plaintiff's motion for final approval. (Han Decl. ¶ 26.) At that time, Plaintiff will ask the Court to
17 approve the amount of these costs. (*Ibid.*) If Plaintiff's actual costs exceed \$18,000, Plaintiff will
18 only seek reimbursement in the amount of \$18,000. (*Ibid.*) To the extent that the Court approves
19 less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference
20 between the requested and awarded amounts will be reallocated to the Net Settlement Amount.
21 (*Ibid.*)

22 **ii. Calculation of the Individual Settlement Payments to Class Members**

23 To receive Individual Settlement Payments, all Class Members will be required to submit
24 a timely Claim Form within forty-five (45) calendar days of the initial mailing of the Notice of
25 Class Action Settlement and Claim Form ("Notice Packet") by the Claims Administrator
26 ("Response Deadline"). (Han Decl. ¶ 27.) All Claim Forms must be signed and returned to the
27 Claims Administrator via first class mail or fax and postmarked or faxed by the Response
28 Deadline. (*Ibid.*) The date of the postmark on the return mailing envelope will be the exclusive

1 means to determine whether a Claim Form has been timely submitted. (Han Decl. ¶ 27.)

2 Individual Settlement Payments will be calculated and apportioned from the Net
3 Settlement Amount based on the number of Workweeks a Class Member worked during the
4 Class Period. Specific calculations of Individual Settlement Payments will be made as follows
5 and as described in paragraph 58 of the Settlement Agreement:

6 (a) The Claims Administrator will calculate the total number of Workweeks worked by
7 each individual Class Member ("Individual Workweeks") to determine the total
8 number of Workweeks worked by all Class Members ("Class Workweeks") during
9 the Class Period.

10 (b) To determine each Class Member's estimated Individual Settlement Payment, the
11 Claims Administrator will use the following formula: Estimated Individual
12 Settlement Payment = (Net Settlement Amount / Class Workweeks) x Individual
13 Workweeks for each individual Class Member. (Han Decl. ¶ 28.)

14 The Claims Administrator will also calculate the total number of Workweeks worked by
15 each individual PAGA Aggrieved Employee to determine the total number of Workweeks
16 worked by all PAGA Aggrieved Employees ("Total PAGA Workweeks") between September
17 12, 2020, and March 12, 2022. Defendant shall provide the Claims Administrator such
18 information as is necessary to calculate the individual PAGA Aggrieved Employee's Workweeks
19 and Total PAGA Workweeks. To determine each PAGA Aggrieved Employee's estimated
20 PAGA Payment, the Claims Administrator will use the following formula: Estimated individual
21 PAGA Payment = (\$2,500 ÷ Total PAGA Workweeks) x individual Workweeks for each
22 individual PAGA Aggrieved Employee. (Han Decl. ¶ 29.)

23 The amount distributed to the Class Members who submit timely and valid Claim Forms
24 for participation in the Class Action Settlement ("Claimants") will equal at least fifty percent
25 (50%) of the Net Settlement Amount. If the total Individual Settlement Payments to the
26 Claimants would equal less than fifty percent (50%) of the Net Settlement Amount, the Claims
27 Administrator will proportionately increase the Individual Settlement Payment for each Claimant
28 to ensure that total Individual Settlement Payments equal to fifty percent (50%) of the Net

1 Settlement Amount. After all Individual Settlement Payments have been made, any remaining or
2 unclaimed funds from the Net Settlement Amount above fifty percent (50%) shall remain
3 Defendant's property. (Han Decl. ¶ 30.)

4 All Individual Settlement Payments will be allocated as follows: Twenty-Five Percent
5 (25%) of each Individual Settlement Payment will be allocated as wages, and Seventy-Five
6 percent (75%) will be allocated as interest and penalties. The amounts paid as wages shall be
7 subject to all tax withholdings customarily made from an employee's wages and all other
8 authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as
9 penalties and interest shall be subject to all authorized and required withholdings other than the
10 tax withholdings customarily made from employees' wages and shall be reported by IRS 1099
11 forms. Any and all applicable employer-side payroll taxes relating to the portion of the
12 Individual Settlement Payments paid as wages shall be paid separately and apart from the
13 Maximum Settlement Amount. (Han Decl. ¶ 31.)

14 Any Class Member wishing to opt-out from the Settlement must sign and postmark a
15 written Request for Exclusion to the Claims Administrator within the Response Deadline. The
16 Request for Exclusion must: (a) be signed by the Class Member; (b) contain the name, address,
17 telephone number, and the last four digits of the Social Security Number of the Class Member
18 requesting exclusion; (c) clearly state the name of this case, the case number, and that the Class
19 Member does not wish to be included in the Settlement; (d) be returned by mail to the Claims
20 Administrator at the specified address and/or facsimile number; and (e) be postmarked on or
21 before the Response Deadline. The date of the postmark on the return mailing envelope will be
22 the exclusive means to determine whether a Request for Exclusion has been timely submitted. A
23 Class Member who does not request exclusion from the Settlement ("Settlement Class Member")
24 will be bound by all terms of the Settlement if the Settlement is granted final approval by the
25 Court. (Han Decl. ¶ 32.)

26 To object to the Settlement, a Class Member must file a valid Notice of Objection with
27 the Court and serve copies of the Notice of Objection on the Parties before the Response
28 Deadline For the Notice of Objection to be valid, it must include: (a) the objector's full name,

signature, address, and telephone number, (b) a written statement of all grounds for the objection accompanied by any legal support for such objection, (c) a clear reference to the title of this case and case number, and (d) copies of any papers, briefs, or other documents upon which the objection is based. The postmark date of the filing and service will be deemed the exclusive means for determining that the Notice of Objection is timely. Class Members who fail to object in the specific and technical manner specified above will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections and seeking any adjudication or review, whether by appeal or otherwise, to the Settlement. (Han Decl. ¶ 33.)

Within three (3) business days after the Final Approval of the Settlement, the Claims Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement. Defendant will deposit all Court-approved costs, fees, and payments, and claim amounts from the Maximum Settlement Amount into a Qualified Settlement Fund (“QSF”) account to be established by the Claims Administrator within twenty (20) business days of the Effective Date. Within three (3) business days of the Court granting final approval, the Claims Administrator will calculate all payments due. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to the respective Claimant’s last known mailing address within fourteen (14) calendar days after Defendant deposits all Court-approved and claim amounts from the Maximum Settlement Amount into a QSF. (Han Decl. ¶ 34.)

Any checks issued by the Claims Administrator to Claimants will be negotiable for at least one hundred twenty (120) calendar days. Those funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be sent to California State Controller’s Unclaimed Property Fund (Han Decl. ¶ 35.)

iii. Release of Claims

The Released Claims as it pertains to Class Members include, all claims based on the factual or legal theories that were alleged in the operative Complaint filed by Plaintiff and in Plaintiff’s letter to the Labor Workforce & Development Agency (“LWDA”), or reasonably

1 could have been alleged based on the facts, legal theories, Labor Code sections, and primary
2 rights at issue in the Complaint or letters to the LWDA, including the: failure to pay wages,
3 failure to pay overtime and double-time wages; failure to pay minimum wages; failure to provide
4 and record meal periods and provide meal period premium payments; failure to provide rest
5 periods and provide rest period premium payments; failure to provide and maintain compliant
6 wage statements; failure to timely pay wages during employment; failure to timely pay wages
7 upon termination; failure to reimburse necessary business expenses; rounding; off-the-clock
8 work; calculation of the regular rate of pay; failure to maintain payroll records; violations of the
9 unfair competition law, and any other claims or penalties under the wage and hour laws pleaded
10 in the Action, including but not limited to all claims arising under California Labor Code
11 Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 203, 204, 205.5, 210, 218.5, 221, 226,
12 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 et seq. and 2699
13 et seq., as well as any and all claims under California Business and Professions Code
14 Section 17200, *et seq.* The period of the Release shall extend to the limits of the Class Period.
15 The *res judicata* effect of the Judgment will be the same as that of the Release (“Released
16 Claims”). *See* Settlement Agreement ¶ 36.

17 Upon the Effective Date, Plaintiff, and all Class Members who have not submitted valid
18 and timely Requests for Exclusion, will be deemed to have fully, finally, and forever released,
19 settled, compromised, relinquished, and discharged with respect to all of the Released Parties any
20 and all Released Claims. *See* Settlement Agreement ¶ 85.

21 The Released Parties, Defendant and each of its past, present and future agents,
22 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
23 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
24 and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint
25 venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its
26 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
27 fiduciaries, parents, subsidiaries, and assigns, and each of them (“Released Parties”). *See*
28 Settlement Agreement ¶ 38.

Furthermore, pursuant to the terms of the Settlement, Plaintiff expressly waives and relinquishes any rights or benefits available to them under the provisions of section 1542 of the California Civil Code. *See* Settlement Agreement ¶ 53.

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

Class Members who submit claims to the Claims Administrator will be issued payments based on the total number of Individual Workweeks they worked as Class Members during the Class Period. As discussed *supra*, the Individual Settlement Payments 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 Payment. For example, some ranges of Individual Settlement Payments to Class Members, based on various potential lengths of employment during the Class Period, are listed below:

Approximately 1 year: $((\$231,000 / 10,185) \times 52) = \$1,179.38$

Approximately 2 years: $((\$231,000 / 10,185) \times 104) = \$2,358.76$

Approximately 3 years: $((\$231,000 / 10,185) \times 156) = \$3,538.14$

Approximately 4 years: $((\$231,000 / 10,185) \times 208) = \$4,717.52^2$

(Han Decl. ¶ 36.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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² These calculations assume a 100% claims rate.

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

4 . . .

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

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

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

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

1 may conduct any necessary hearing in court or in chambers, at the court’s discretion. *Newberg*, at
2 § 11.25.

3 **b. Preliminary Approval of the Proposed Settlement is Appropriate**

4 To grant preliminary approval of a class action settlement, the trial court must
5 preliminarily determine whether the settlement is fundamentally fair, adequate, and reasonable.
6 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800. The court has broad powers to
7 determine whether a proposed settlement is fair under the circumstances of the case. *Id.* at p.
8 1801. To make this fairness determination, courts must consider several relevant factors,
9 including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration
10 of further litigation, the risk of maintaining class action status through trial, the amount offered
11 in settlement, the extent of discovery completed and the stage of the proceedings, [and] the
12 experience and views of counsel [.]” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors
13 is not exclusive and the court is free to engage in a balancing and weighing of the factors
14 depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91
15 Cal.App.4th 224, 245. Furthermore, courts give “proper deference to the private consensual
16 decision of the parties[.]” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027
17 (citation omitted).

18 The burden is on the proponent of the settlement to show that it is fair and reasonable.
19 *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of fairness exists where: (1)
20 the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
21 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at p.
23 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
24 1151.

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

26 The Settlement was reached because of arms-length negotiations. Though cordial and
27 professional, the settlement negotiations have always been adversarial and non-collusive in
28 nature. At the mediation, Counsel for the Parties conducted extensive arm’s length settlement

1 negotiations until the Parties finally reached an agreement on settlement. The terms of the
2 Settlement are memorialized in the Settlement Agreement, attached hereto as Exhibit 2. (Han
3 Decl. ¶ 37.)

4 Plaintiff believes in the merits of his case but also recognize the inherent risks of
5 litigation and understands the benefit of the Class receiving settlement funds immediately, as
6 opposed to risking continued litigation, the merits of the case before and after trial, damages
7 awarded, and an appeal that could take years to litigate. (Han Decl. ¶ 38.)

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

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

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1 Here, a Maximum Settlement Amount of up to \$450,000 represents a fair, adequate, and
2 reasonable resolution of the case. The proposed Settlement was calculated using information and
3 data uncovered through informal discovery, case investigation, and the informal exchange of
4 information in the context of mediation. The proposed Settlement considers the potential risks
5 and rewards inherent in any case and with this case. Considering all the facts in this case, the
6 proposed Settlement amount represents a substantial global recovery for all Class Members.
7 (Han Decl. ¶ 39.)

8 Assuming that all the requested payments, fees, and costs are approved and paid in the
9 full amounts requested, the Net Settlement Amount is currently estimated to be approximately
10 \$231,000. No less than fifty percent (50%) of this sum will be paid out to the Class Members.
11 Each Individual Settlement Payment will be calculated based upon the number of Workweeks
12 attributable to the Class Member during the Class Period. There is no reason to doubt the fairness
13 of the proposed plan of allocation of the Settlement funds for purposes of preliminary approval.
14 Even at the final approval stage, “[a]n allocation formula need only have a reasonable, rational
15 basis [to warrant approval], particularly if recommended by experienced and competent
16 counsel.” *In re American Bank note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001)
17 127 F.Supp.2d 418, 429-30. (Han Decl. ¶ 40.)

18 Considering the above, Class Counsel believes that the proposed Settlement is fair,
19 reasonable, and adequate and is in the best interest of the Class Members. Although the
20 recommendations of Class Counsel are not conclusive, the Court can properly take the
21 recommendations into account, particularly if Class Counsel appears to be competent, have
22 experience with this type of litigation, and significant investigation has been completed.
23 Newberg § 11.47. Accordingly, the Court should grant preliminary approval of the proposed
24 Settlement. (Han Decl. ¶ 41.)

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1 **e. Value of Settlement**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, Plaintiff has
3 conducted a significant amount of investigation in order to evaluate the potential value and merit
4 of all of the claims. (Han Decl. ¶ 42.) The discovery and information obtained in this case
5 allowed Plaintiff to develop a damages model and complete evaluation of the defenses that
6 Defendant has asserted. (*Ibid.*) As outlined in the Declaration of Douglas Han, Class Counsel
7 performed an extensive analysis of each claim pursuant to *Kullar* prior to entering the proposed
8 Settlement. (*Id.* ¶ 15, Exhibit 1.)

9 In addition to being able to discover the strengths and vulnerabilities associated with
10 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
11 time and pay records and information regarding the estimated number of pay periods and
12 workweeks worked by putative class members and the hourly rates for Class Members.
13 Plaintiff's expert extrapolated that, as of April 12, 2022, based on 392 Class Members, the Class
14 Period includes approximately 10,185 workweeks. Plaintiff also determined that the average
15 hourly rate for Class Members was \$18.03. (Han Decl. ¶ 43.)

16 **1. PAGA Allocation is Fair and Reasonable**

17 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties, in
18 this case, include but are not limited to Labor Code sections 201-204, 226(a), 226.7, 246, 510,
19 512(a), 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl. ¶ 51.) Defendant asserted
20 that, regardless of the results of the underlying causes of action, PAGA penalties are not
21 mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that, in addition to its
22 strong arguments against the underlying claims, it had a strong argument that it would be unjust
23 to award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

24 Class Counsel calculated penalties under this cause of action by multiplying the number
25 of active Class Members (because of the shortened statutory period for this claim), by the civil
26 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
27 section 2699.5 that were applicable in this case. (Han Decl. ¶ 52.) Class Counsel then applied
28 discounts in light of the countervailing arguments concerning the other causes of action, as well

as the Court’s power to award “a lesser amount than the maximum civil liability.” (Lab. Code § 2699(e)(2).) (*Ibid.*)

Given the state of the law and the range of PAGA penalties requested and actually awarded in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA penalties. (Han Decl. ¶ 53.) However, if PAGA penalties are granted on any one of the violations alleged in Plaintiff’s operative complaint, the total penalties exposure for the eligible pay periods could be approximately **\$480,000** (([24 x \$100] x 200 employees).⁴ (*Ibid.*) Plaintiff calculated Defendant’s PAGA exposure using one hundred percent (100%) violation rate based on the average number of pay periods (24) during the one-year statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the PAGA theories of recovery (7) gives potential civil penalties of **\$3,360,000**. (*Ibid.*)

Although Plaintiff argued he could obtain over \$3 million for PAGA penalties, it seemed highly unlikely that the Court would award such a large amount. (Han Decl. ¶ 54.) As noted above, courts have reduced PAGA penalties by about 90% where there are mitigating circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s award of less than 10% of maximum PAGA penalty for meal break violations where company sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. On the one hand, Labor Code section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the civil penalty described in subdivision (f)...on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed” (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino v.*

⁴ Recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a violation by a Labor Commissioner or court. (*Bernstein v. Virgin America, Inc.* (9th Cir. Feb. 23, 2021) 2021 WL 867583, at *11-12.) As a result, Plaintiff estimated the amount of PAGA penalties using the “initial” penalty amount of \$100 under PAGA.

1 *Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir.
2 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of
3 removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial
4 violation, the PAGA penalties would be limited to \$20,000 (200 employees x \$100 initial
5 violation) on the low end and \$140,000 on the high end based on six (7) major theories of
6 recovery.

7 To the extent Defendant’s exposure remains in the millions of dollars, the civil penalties
8 could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken
9 liberties to dramatically reduce the civil penalties. (*See e.g. Visceral v. Mistras Grp., Inc.* (N.D.
10 Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that
11 included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where
12 “Plaintiff face[d] a substantial risk of recovering nothing on either class or PAGA claims”];
13 *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class
14 action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential
15 value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the
16 defendant acted deliberately or negligently failed to learn about its obligations].) Thus, under a
17 more conservative approach, Class Counsel considered the possibility that the Court could assess
18 only the initial violation rate, bringing the basic PAGA penalty to **\$755,300** [1,079 employees x
19 \$100 x 7 theories of recovery]. (Han Decl. ¶ 54.)

20 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
21 Many of the causes of action brought were duplicative of the statutory claims such as violations
22 of Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. (Han Decl. ¶
23 55.) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed
24 arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus,
25 allocating \$10,000 to PAGA civil penalties was reasonable based on a rate of \$1.42 per pay
26 period [$\$10,000 / 4,725 \text{ Pay Periods in PAGA Date Range} = \2.11] given the fact that Defendant
27 is also paying an additional \$440,000 in the class settlement. (*Ibid.*) (citing *Carrington, supra*, 30
28 Cal.App.5th at 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).)) Where 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. (Han Decl. ¶ 55.) (citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.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.”).)

i. Discount Analysis Justifies the Class Action 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 \$2,516,915.33 on the low end and \$2,608,715.10 on the high end. (Han Decl. ¶ 55.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$173,253.87	70%	50%	\$25,988.08
Meal Break Premiums	\$315,470.91	60%	40%	\$75,712.80
Overtime/Minimum Wage: Off-the-Clock Work	\$183,653.55 to \$275,453.32	50%	40%	\$55,096.06 to \$82,635.99
Overtime/Minimum Wage: Rounding	\$10,268.00	30%	25%	\$5,390.70
Unreimbursed Business Expenses	\$96,400.00	30%	70%	\$20,244.00
Wage Statement Penalty	\$470,000	50%	50%	\$269,750.00
Waiting Time Penalty	\$1,267,869	50%	50%	\$316,967.25
MAXIMUM TOTAL EXPOSURE	\$2,516,915.33 to \$2,608,715.10⁵			\$769,148.89 to \$796,688.82⁶

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⁵ Han Decl. ¶¶ 44-50.

⁶ *Id.*, ¶¶ 56-63.

1 Based on this analysis, the realistic recovery for this case is \$796,148.89 on the low end
2 and \$796,688.82 on the high end. (Han Decl. ¶ 63.) The Maximum Settlement Amount of
3 \$450,000 is approximately nine percent (9.92%) of the maximum potential exposure and is
4 approximately forty-three percent (43.51%) of the maximum realistic exposure at trial, which is
5 an excellent settlement. (*Ibid.*)

6 The only question at preliminary approval is whether the settlement is within the range of
7 possible approval. (*In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal.
8 2007).) “The fact that a proposed settlement may only amount to a fraction of the potential
9 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
10 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
11 455, see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,1242 (“[I]t is
12 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
13 that induce consensual settlements. The proposed settlement is not to be judged against a
14 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)

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

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

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

24 “Ascertainability is required in order to give notice to putative class members as to whom
25 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
26 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed Plaintiff
27 by describing a set of common characteristics sufficient to allow a member of that group to
28 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*

1 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
2 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

3 This action involves three hundred ninety-two (392) Class Members. (Han Decl. ¶ 64.)
4 This Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
5 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
6 former employees” is sufficiently numerous).) (*Ibid.*) Further, all Class Members can and will
7 be identified by Defendant to the Claims Administrator through a review of Defendant’s
8 employment records concerning non-exempt or hourly employees who worked for Defendant in
9 the State of California during the Class Period. (*Ibid.*)

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

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

20 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
21 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
22 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)
23 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor
24 policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

25 Specifically, Plaintiff asserts that common issues of fact and law predominate as to each
26 of the claims alleged by Plaintiff. (Han Decl. ¶ 65.) All hourly-paid and non-exempt employees
27 who worked for Defendant during the Class Period were subject to the same or similar
28 employment practices, policies, and procedures. (*Ibid.*) All Plaintiff’s claims surround

1 Defendant's common practice and scheme of failing to maintain compliant meal and rest break
2 policies and practices, and failing to fully and properly compensate employees, *inter alia*, for
3 non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage
4 statement, and waiting time penalties. (Han Decl. ¶ 65.) Based on these facts, Plaintiff concludes
5 that the proposed Class is readily certifiable in this case. (*Ibid.*) Thus, the Court should
6 provisionally certify the Class for settlement purposes only. (*Ibid.*)

7 Furthermore, Plaintiff was a non-exempt employee and alleged he and the Class
8 Members were employed by the same company and injured by Defendant's common policies
9 and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid
10 overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business
11 expenses. (Han Decl. ¶ 66.) Plaintiff seeks relief for these claims and derivative claims on behalf
12 of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices
13 and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

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

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
17 discovery to support the settlement. (Han Decl. ¶ 15.) The proposed settlement was only possible
18 following discovery and evaluation of Defendant's policies and procedures, as well as the data
19 produced for the putative class, which permitted Class Counsel to engage in a comprehensive
20 analysis of liability and potential damages. (*Ibid.*) The case is at the stage where "the Parties
21 certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support
22 the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

23 **h. Request for Attorneys' Fees and Costs**

24 Class Counsel have efficiently managed this case to bring this case to conclusion within a
25 relatively short time. (Han Decl. ¶ 68.) Nevertheless, Class Counsel investigated this case for
26 months and analyzed the strengths and weaknesses of the case. (*Ibid.*) The ongoing work has
27 been extensive, demanding, and ultimately successfully achieving a substantial settlement
28 resolution. (*Ibid.*) Class Counsel conducted informal investigations and discovery into the facts

1 of the case, including interviewing Plaintiff and several other putative class members and
2 reviewing and analyzing a volume of documents and data produced by Defendant and obtained
3 through other sources. (Han Decl. ¶ 68.) These documents and data included, and were not
4 limited to, personnel records for Plaintiff and other putative class members (including detailed
5 time and pay records), payroll and pay history data for Class Members, and Defendant's
6 operations and employment policies, procedures, and practices. (*Ibid.*) Class Counsel will
7 provide evidence as to the time worked, litigation efforts, and further argument at the time of
8 filing its memorandum in connection with the Final Fairness hearing and in support of its request
9 for Attorneys' Fees and Costs. (*Ibid.*)

10 The proposed Settlement establishes a Maximum Settlement Amount of up to \$450,000.
11 (Han Decl. ¶ 69.) The proposed Settlement provides for Class Counsel to apply to the Court for
12 an award of attorneys' fees in an amount not to exceed thirty-five percent (38%) of the
13 Maximum Settlement Amount (or \$171,000) and reimbursement of litigation costs and expenses
14 in an amount not to exceed \$18,000. (*Ibid.*) The requested attorneys' fee award is commensurate
15 with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the extensive
16 time, effort and expense dedicated to the case, (3) the skill and determination it have shown, (4)
17 the results they have achieved throughout the litigation, (5) the value of the Settlement they have
18 achieved for Class Members, and (6) the other cases they turned down in order to devote their
19 time and efforts to this matter. (*Ibid.*) The proposed Notice Packet will provide the Class
20 Members with information as to the amounts allocated toward Attorneys' Fees and Costs under
21 the Settlement Agreement, and that Class Counsel will apply for Attorneys' Fees and Costs, as
22 provided for by the Settlement Agreement. (*Ibid.*)

23 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
24 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
25 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
26 trial judge is the best judge of the value of professional services rendered in his court[.]"
27 *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee
28 awards should be equivalent to fees paid in the legal marketplace to compensate for the result

1 achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47. In *Lealao*, the court held
2 that when an action leads to a recovery that can be “monetized” with a reasonable degree of
3 certainty, the trial court should “ensure that the fee awarded is within the range of fees freely
4 negotiated in the legal marketplace in comparable litigation.” *Id.* at p. 50. In cases where class
5 members present claims against a maximum settlement fund and the settlement agreement
6 provides that the defendant agrees to paying the attorneys a percentage of the same, use of the
7 percentage method is appropriate. *Id.* at p. 32.

8 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
9 surrounding the case is well within the range of reasonableness. Historically, courts have
10 awarded fees as high as fifty percent (50%) of the settlement fund, depending on the
11 circumstances of the case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D.
12 D.C. 1981) 526 F. Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million
13 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480
14 F. Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees). California
15 Courts routinely approve attorneys’ fees “averag[ing] around one-third of the recovery.” *Chavez*
16 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
17 contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr.*
18 *Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage
19 and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage
20 and hour). In the present case, Class Counsel have borne all the risks and costs of litigation and
21 will not receive any compensation until recovery is obtained. (Han Decl. ¶ 70.) Considering the
22 amount of the fees requested, the work performed, and the risks incurred, the requested fees and
23 costs are reasonable and should be awarded. (Han Decl. ¶ 70.)

24 **i. Counsel for Both Parties Are Experienced in Similar Litigation**

25 Both Class Counsel and Defendant’s counsel are particularly experienced in wage and
26 hour employment law and class actions. Class Counsel has significant experience in litigating
27 unpaid wages, non-compliant meal periods, non-compliant rest periods, and unfair business
28 practices class actions. (Han Decl. ¶¶ 2-8; Exhibit 1.)

1 Class Counsel have prosecuted numerous cases on behalf of employees for California
2 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to
3 evaluate settlement versus trial on a fully informed basis and to evaluate the viability of the
4 defenses. (Han Decl. ¶¶ 2-8 Exhibit 1.) This experience instructed Class Counsel on the risks and
5 uncertainties of further litigation and guided their determination to endorse the proposed
6 settlement.⁷ (*Ibid.*)

7 **j. Appointment of Simpluris as the Claims Administrator**

8 The Parties have agreed to select Simpluris as the Claims Administrator to administer the
9 proposed Settlement. (Han Decl. ¶ 71.) The Claims Administrator will mail the Notice Packet to
10 Class Members. (*Ibid.*) The Claims Administrator will receive, review, and process Claim
11 Forms, any written Requests for Exclusion, or Notice of Objections to the proposed Settlement
12 (including distribution to counsel for the Parties), and any written disputes and supporting
13 documentation as to the validity of the information regarding the number of each Class
14 Member's Workweeks preprinted on the Claim Form. (*Ibid.*) The Claims Administrator will also
15 calculate each Class Member's Individual Settlement Payment, withhold applicable employment
16 taxes, prepare and deliver necessary tax documentation, transmit the appropriate payroll taxes
17 and informational and other tax return filings on behalf of Defendant, transmit the payments
18 provided by the Settlement, prepare weekly reports for the Parties, and perform any other usual
19 and customary duties for administering a class action settlement. (*Ibid.*)

20 The Claims Administration Costs are set not to exceed \$10,000, which will be paid out of
21 the Maximum Settlement Amount in accordance with the payment schedule provided for by the
22 Settlement Agreement. (Han Decl. ¶ 72.) Considering the number of Class Members, the
23 estimated costs are reasonable. (*Ibid.*) Accordingly, the Court should appoint Simpluris as the
24 Claims Administrator and direct the mailing of the Notice Packet to the Class Members in the
25 manner requested and based on the proposed deadlines as set forth in the Settlement Agreement.
26 (*Ibid.*)

27 ⁷The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice Packet has been
28 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 **k. Notice to Class Members Complies with California Rule of Court 3.769(f)**

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

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

7 The proposed Notice Packet will provide: (a) information regarding the nature of the
8 Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total
9 number of Workweeks each respective Class Member worked for Defendant during the Class
10 Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for
11 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g)
12 instructions on how to submit valid Claim Forms, disputes regarding Workweeks, Requests for
13 Exclusion, or objections; (h) the requirements relating to, and deadlines by which the Class
14 Member must submit Claim Forms, disputes regarding Workweeks, Requests for Exclusions,
15 and objections to the Settlement; (i) the claims to be released, as set forth herein; and (j) the date
16 for the Final Approval Hearing. *See Settlement Agreement* ¶ 53.

17 The proposed Notice Packet will include the Claim Form, which will provide pertinent
18 employment information for each Class Member, including the number of his or her Workweeks.
19 *See Settlement Agreement* ¶ 67. The proposed Claim Form will state the estimated gross amount
20 of each Class Member's Individual Settlement Payment and provide detailed instructions on how
21 to properly complete the Claim Form and timely submit it to the Claims Administrator, as well
22 as the procedure and deadline for challenging the number of Workweeks provided on the Claim
23 Form. (*Ibid.*)

24 The proposed notice procedure provided by the proposed Settlement fulfills the
25 requirement of neutrality in class notices. *Newberg*, at § 8.39. "Sufficient information about the
26 case should be provided to enable class members to make an informed decision about their
27 participation." *Manual for Complex Litigation* (4th ed. 2004) § 21.311. The proposed Notice
28 Packet summarizes the proceedings to date and the terms and conditions of the proposed

1 Settlement in an informative and coherent manner. The proposed Notice Packet recognizes that
2 the Court has not yet granted final approval and apprises the Class Members of how to object to
3 the proposed Settlement. The proposed Notice Packet satisfies all due process requirements and
4 complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2)
5 and 23(e); *Newberg*, at §§ 8.21, 8.39; *Manual*, at §§ 21.311, 21.312; *See Cartt, supra*, 50 Cal.
6 App. 3d at 960. Accordingly, the Court should approve the proposed Notice Packet (composed
7 of the Notice of Class Action Settlement and Claim Form.)

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

9 At this preliminary approval stage, Plaintiff also seeks approval of the proposed deadlines
10 for the notice and claims administration process. *Newberg*, at § 11.26. The notice process entails
11 the mailing of the Notice Packet to all Class Members based on the Class List provided by
12 Defendant. *See* Settlement Agreement ¶¶ 63-64. Within twenty (20) business days of Preliminary
13 Approval, Defendant will provide the Class List to the Claims Administrator. *See* Settlement
14 Agreement ¶ 62. The Class List will be formatted in a readable Microsoft Office Excel
15 spreadsheet and will include each Class Member's: (a) full name; (b) most recent mailing
16 address; (c) Social Security number; (d) dates of employment as hourly-paid or non-exempt
17 employee in California; and (e) any other relevant information needed to calculate settlement
18 payments ("Class List"). *See* Settlement Agreement ¶ 16.

19 Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator
20 will perform a search based on the National Change of Address Database ("NCOA"), or any
21 other similar services available, and mail a Notice Packet to all Class Members via regular First-
22 Class U.S. Mail, using the most current, known mailing addresses available. *See* Settlement
23 Agreement ¶ 63. Prior to mailing, the Claims Administrator will perform a NCOA check, such as
24 provided by Experian or any other similar services available, for information to update and
25 correct for any known or identifiable address changes. *See* Settlement Agreement ¶ 64. Any
26 Notice Packets returned to the Claims Administrator as non-deliverable on or before the
27 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
28 address affixed thereto, and the Claims Administrator will indicate the date of such re-mailing on

1 the Notice Packet. *See* Settlement Agreement ¶ 64. If no forwarding address is provided, the
2 Claims Administrator will promptly attempt to determine the correct address using a skip-trace
3 and will then perform a single re-mailing within five (5) days after return of the Notice Packet.
4 (*Ibid.*) Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by
5 request, will have between the later of (a) an additional fifteen (15) days or (b) the Response
6 Deadline to postmark a Claim Form, Request for Exclusion, or file and serve an objection to the
7 Settlement (*Ibid.*)

8 Class Members will have forty-five (45) calendar days from the initial mailing of the
9 Notice Packet to submit their Claim Forms, Requests for Exclusion, or Notice of Objection to
10 Simpluris, as measured by the postmark date or facsimile-stamped date. *See* Settlement
11 Agreement ¶ 40.

12 **m. Appointment of the Class Representatives and Approval of the Class**
13 **Representative Enhancement Payments**

14 A named plaintiff is eligible for payment that reasonably compensates him for
15 undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone*
16 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange*
17 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named Plaintiff for their
18 efforts in bringing the case); *Stevens v. Safeway, Inc.* (C.D. Cal. Feb. 25, 2008) Case No. 05-
19 01988, 2008 U.S. Dist. LEXIS 17119 (\$20,000 and \$10,000 to two class representatives); *In Re*
20 *Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D. Pa. July 16, 2009) Case No.
21 06-3202, 2009 U.S. Dist. LEXIS 60790 (\$20,000 each to three class representatives.)

22 Plaintiff has proven to be adequate Class Representatives. (Han Decl. ¶ 73.) Plaintiff has
23 conducted himself diligently and responsibly in representing the Class in this litigation,
24 understands his fiduciary obligations, and has actively participated in the prosecution of this
25 case. (*Ibid.*) Plaintiff has also spent time in meetings and conferences with counsel to provide
26 counsel with a complete understanding of his work environment and requirements. (*Ibid.*)
27 Furthermore, Plaintiff does not have any interest that is adverse to the interest of other Class
28 Members. *See Sav-On*, 34 Cal.4th at 340.

1 The requested Class Representative Enhancement Payment is fair and reasonable
2 compensation for Plaintiff's efforts in bringing the Action, assisting counsel with the
3 investigation and settlement, regularly conferring with Class Counsel on the status of the case
4 and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure
5 that its terms are fair and that it provides adequate relief to the proposed Class. (Han Decl. ¶ 74.)
6 Accordingly, it is appropriate and just for Plaintiff serving as the Class Representative to receive
7 a reasonable Class Representative Enhancement Payment, in addition to his shares of the Net
8 Settlement Amount, for his services on behalf of the Class Members. (*Ibid.*)

9 **V. CONCLUSION**

10 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
11 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
12 guidelines, the proposed settlement should be preliminarily approved by the Court, the Class
13 should be conditionally certified, and the Notice Packet should be approved.

14
15 Dated: March 21, 2022

JUSTICE LAW CORPORATION

16
17 

18 _____
19 Douglas Han
20 Shunt Tatavos-Gharajeh
21 Chancellor D. Nobles
22 *Attorneys for Plaintiff*
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On March 21, 2022, I served the foregoing document described as

for the following case:	Salas v. Golden Specialty Foods, LLC
LWDA/Court Case No.:	LWDA Case No.: CM-824868-21
	Court Case No.: 22CV-00393
	Merced County Superior Court

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Maitland Andrews

PROOF OF SERVICE