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

NICHOLAS CARLTON, RICHARD
FLORES, ROBERT LARKIN, LENNY
MARTINEZ, GUILIAN MORENO, and
JUAN CARLOS PINEDA, individually, on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act of 2004 ("PAGA");

Plaintiffs,

v.

WAXIE'S ENTERPRISES, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 37-2021-00026158-CU-OE-CTL

Assigned for All Purposes to:
Honorable Eddie C. Sturgeon
Department C-67

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: June 30, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department C-67

Complaint Filed: June 16, 2021
FAC Filed: August 30, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 30, 2023, at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Eddie C. Sturgeon in Department C-67 of the San Diego
3 County Superior Court located at 330 West Broadway, San Diego, California 92101, Plaintiffs
4 Nicholas Carlton, Richard Flores, Robert Larkin, Lenny Martinez, Guilian Moreno, and Juan
5 Carlos Pineda (“Plaintiffs”) move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Class Action and PAGA Settlement Agreement (“Agreement” or
8 “Settlement”), attached as **Exhibit 2** to the declaration of Douglas Han, including,
9 and not limited to, the means of allocation and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiffs as the Class Representatives;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action Settlement and Hearing
14 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
15 Agreement;
- 16 • Directing the mailing of the Class Notice via first-class U.S. Mail to the Class;
- 17 • Approving the proposed deadlines for the settlement administration process;
- 18 • Approving Simpluris, Inc. as the Administrator; and
- 19 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement,
20 at which time the Court will also consider whether to grant Final Approval of the
21 requests for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
22 Payment, Class Representative Service Payments, and Administration Expenses
23 Payment, and approval of the allocation of the PAGA Penalties.

24 ///

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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: January 17, 2023

JUSTICE LAW CORPORATION

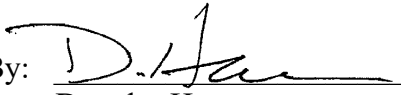
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8 By: 
9 Douglas Han
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$995,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 hourly-paid or non-exempt employees of Defendant Waxie’s Enterprises, LLC (“Defendant”) in
5 the State of California at any time during the period from June 16, 2017 to July 1, 2022 (“Class,”
6 “Class Members” or “Settlement Class Members,” and “Class Period”). (Declaration of Douglas
7 Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han
8 Decl.”), ¶ 9.) At the time of this filing, the number of Class Members is estimated to be six hundred
9 seventy-seven (677), which was confirmed by Defendant. (*Id.* at ¶ 9.)

10 **II. BACKGROUND**

11 On April 9, 2021, Plaintiff Nicholas Carlton (“Plaintiff Carlton”), a former hourly-paid,
12 non-exempt employee of Defendant, provided written notice to the California Labor and
13 Workforce Development Agency (“LWDA”) and Waxie Way, LLC of the specific provisions of
14 the Labor Code he contends were violated and the theories supporting his contentions. (Han Decl.,
15 *supra*, at ¶ 10.)

16 On June 16, 2021, Plaintiff Carlton filed a representative PAGA action, pursuant to Labor
17 Code section 2698, *et seq.*, against Defendant and Waxie Way, LLC in the Superior Court of
18 California, County of San Diego (the “Action”). (Han Decl., *supra*, at ¶ 11.)

19 On July 2, 2021, Plaintiff Carlton submitted an amended written notice to the LWDA to
20 reflect the correct name of the employer, Waxie’s Enterprises, LLC (previously erroneously named
21 “Waxie Way, LLC”). (Han Decl., *supra*, at ¶ 12.)

22 On May 4, 2022, the Parties attended mediation with the mediator Lisa Klerman. (Han
23 Decl., *supra*, at ¶ 13.) Though the Parties did not settle at mediation, on June 16, 2022, the Parties
24 reached an agreement on settlement via a mediator’s proposal. (*Ibid.*)

25 In line with the settlement, on August 30, 2022, Plaintiff Carlton filed a First Amended
26 Complaint removing Waxie Way, LLC as a named defendant; adding Richard Flores, Robert
27 Larkin, Lenny Martinez, Guilian Moreno, and Juan Carlos Pineda as additional named plaintiffs;
28 and adding eight causes of action for class allegations. (Han Decl., *supra*, at ¶ 14.)

1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.)
4 Plaintiff Carlton propounded one set of form interrogatories – general, one set of special
5 interrogatories, one set of requests for admission, and one set of requests for production of
6 documents on each of Defendant and Waxie Way, LLC. (*Ibid.*) Defendant thereby responded to
7 Plaintiff Carlton’s discovery. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage
8 in an informal exchange of information and attend mediation. (*Ibid.*)

9 Prior to mediation, the Parties conducted significant investigation and discovery of the
10 relevant facts and law. (Han Decl., *supra*, at ¶ 17.) Specifically, Defendant produced documents
11 relating to its wage-and-hour policies, practices, and procedures. (*Ibid.*) As part of Defendant’s
12 production, Plaintiff Carlton also reviewed time records, pay records, Class Members’ personnel
13 files, and information relating to the size and scope of the Class. (*Ibid.*) Several putative class
14 members were also reviewed to attain a better understanding of the alleged violations. (*Ibid.*)

15 Based on the information provided by Defendant and interviews with putative class
16 members, Plaintiffs contend – and Defendant denies – that Defendant: (a) failed to provide
17 employees with legally mandated meal and rest breaks; (b) failed to pay employees for all hours
18 worked; (c) failed to properly calculate and pay overtime, premium wages, and sick pay; (d) failed
19 to reimburse employees for necessary business expenses; (e) issued noncompliant wage
20 statements; and (f) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

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

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

23 The Parties attended mediation with the mediator Lisa Klerman on May 4, 2022. (Han
24 Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, on June 16, 2022, the Parties reached
25 an agreement on settlement via a mediator’s proposal, the terms of which were memorialized in
26 the Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

27 ///

28 ///

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

2 At the mediation, the Parties’ counsel engaged in extensive arm’s-length settlement
3 negotiations, which ultimately resulted in an agreement to settle the Action. (Han Decl., *supra*, at
4 ¶ 38.) Though cordial and professional, the settlement negotiations have always been adversarial
5 and non-collusive in nature. (*Ibid.*)

6 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense and
7 length of additional proceedings necessary to continue the litigation through trial and any possible
8 appeals. (Han Decl., *supra*, at ¶ 39.) Plaintiffs and Class Counsel have also considered the
9 uncertainty and risks, potential outcome, and difficulties and delays inherent in further litigation.
10 (*Ibid.*) Plaintiffs and Class Counsel conducted extensive settlement negotiations, including formal
11 mediation. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is
12 fair, adequate, and reasonable, and is in the best interests of the Class Members. (*Ibid.*)

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

14 The Parties investigated and evaluated the strengths and weaknesses of Plaintiffs’ claims
15 and Defendant’s defenses before reaching the Settlement and engaged in sufficient research and
16 discovery to support the Settlement. (Han Decl., *supra*, at ¶ 40.) The Settlement was possible only
17 following significant investigation and evaluation of Defendant’s relevant policies and practices,
18 which permitted Class Counsel to engage in a comprehensive analysis of liability and potential
19 damages. (*Ibid.*) This case has reached the stage where “the Parties certainly have a clear view of
20 the strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness,
21 adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

23 **i. Deductions from the Settlement**

24 The Parties agreed (contingent upon the Court’s approval) that the Action be settled and
25 compromised for the non-reversionary total sum of \$995,000 (“Gross Settlement Amount”), which
26 includes the: (a) Class Counsel Fees Payment of \$348,250; (b) Class Counsel Litigation Expenses
27 Payment of up to \$20,000; (c) Class Representative Service Payments totaling \$50,000; (d)
28 Administration Expenses Payment not to exceed \$12,500; and (e) PAGA Penalties of \$100,000.

1 (Han Decl., *supra*, at ¶ 28.)

2 **ii. Calculating Individual Class Payments and Individual PAGA**
3 **Payments**

4 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
5 that \$464,250 (“Net Settlement Amount”) will be distributed to Participating Class Members –
6 with an *average* gross Individual Class Payment estimated at \$685.75. (Han Decl., *supra*, at ¶ 29.)

7 The Administrator will calculate and disburse the Individual Class Payments and
8 Individual PAGA Payments using the formulas set forth in the Agreement. (Han Decl., *supra*, at
9 ¶¶ 30-31.) Twenty percent (20%) of each Participating Class Member’s Individual Class Payment
10 will be allocated to settlement of wage claims (the “Wage Portion”). (*Id.* at ¶ 30.) The remaining
11 eighty percent (80%) will be allocated to settlement of claims for interest and penalties (the “Non-
12 Wage Portion”). (*Ibid.*) Each Aggrieved Employee’s Individual PAGA Payment will be
13 apportioned as one hundred percent (100%) penalties. (*Id.* at ¶ 31.)

14 **iii. Notice to the Class**

15 Not later than 15 days after the Court grants Preliminary Approval of the Settlement,
16 Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 32.) Using best
17 efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class
18 Data, the Administrator will send to all Class Members identified in the Class Data, via First Class
19 U.S. Mail, the Class Notice in English and Spanish. (*Ibid.*) The Administrator will disburse the
20 entire Gross Settlement Amount without asking or requiring Participating Class Members or
21 Aggrieved Employees to submit any claim as a condition of payment. (*Ibid.*)

22 **iv. Distribution of Funds**

23 Defendant shall fully fund the Gross Settlement Amount as well as the amount necessary
24 to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Administrator no
25 later than 14 days after the Effective Date. (Han Decl., *supra*, at ¶ 33.) Participating Class Members
26 and Aggrieved Employees must cash or deposit their settlement checks within 180 days after the
27 date of mailing. (*Ibid.*) The Administrator shall transmit the funds represented by any uncashed
28 and canceled checks to the California Controller’s Unclaimed Property Fund in the name of the

1 Class Member. (Han Decl., *supra*, at ¶ 33.)

2 **v. Release of Claims**

3 Effective on the date when Defendant funds the entire Gross Settlement Amount and all
4 employer payroll taxes owed on the Wage Portions of the Individual Class Payments, all
5 Participating Class Members will release the Released Parties from the Released Class Claims.
6 (Han Decl., *supra*, at ¶ 34.)

7 Effective on the date when Defendant funds the entire Gross Settlement Amount and all
8 employer payroll taxes owed on the Wage Portions of the Individual Class Payments, all
9 Aggrieved Employees will release the Released Parties from the Released PAGA Claims. (Han
10 Decl., *supra*, at ¶ 35.)

11 Effective on the date when Defendant funds the entire Gross Settlement Amount and all
12 employer payroll taxes owed on the Wage Portions of the Individual Class Payments, Plaintiffs
13 and their respective former and present spouses, representatives, agents, attorneys, heirs,
14 administrators, successors, and assigns will generally release and discharge the Released Parties
15 from all claims, transactions, or occurrences that occurred during the Class Period, including, but
16 not limited to: (a) all claims that were or reasonably could have been alleged based on the facts
17 contained in the operative complaint, and (b) all PAGA claims that were or reasonably could have
18 been alleged based on the facts contained in the operative complaint, Plaintiff Carlton’s PAGA
19 Notice, or ascertained during the Action and released under Paragraph 5.2 of the Agreement
20 (“Plaintiffs’ Release”). (Han Decl., *supra*, at ¶ 36.)

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

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; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
4 of employees for Labor Code violations and are experienced and qualified to evaluate the class
5 claims, the advantages and disadvantages of settlement versus trial, and the viability of the
6 defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further
7 litigation and guided their determination to endorse the Settlement.¹ (*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.²
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.

16 ...
17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
19 agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion.

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

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

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

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

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

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

19 **i. The Settlement Amount of \$995,000 Is Fair and Reasonable**

20 The Settlement was possible only following significant investigation and evaluation of
21 Defendant’s relevant policies and practices, as well as the data Defendant produced for the Class,
22 which permitted Class Counsel to engage in a comprehensive analysis of liability and potential
23 damages. (Han Decl., *supra*, at ¶ 40.)

24 Plaintiffs’ claims are predicated on Defendant’s purported: (a) failure to properly calculate
25 and pay overtime wages; (b) failure to provide meal and rest breaks and pay applicable premium
26 wages; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
27 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor Code
28 section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code section 17200, *et*

1 *seq.* (Han Decl., *supra*, at ¶ 41.) Defendant vehemently denies Plaintiffs’ theories of liability. (*Id.*
2 at ¶ 42.)

3 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
4 to certification are always present. (Han Decl., *supra*, at ¶ 43.) As the California Supreme Court
5 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
6 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
7 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
8 (*Ibid.*) Thus, the calculations for potential damages were discounted.

9 **ii. The PAGA Penalties of \$100,000 Are Reasonable**

10 The provisions of the Labor Code potentially triggering PAGA penalties in this case
11 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
12 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl.,
13 *supra*, at ¶ 52.) Defendant asserted that, regardless of the results of the underlying causes of action,
14 PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also
15 maintained that it had a strong argument that it would be unjust to award maximum PAGA
16 penalties given the law’s unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203
17 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued without
18 stacking and limited to the initial violation, the PAGA penalties would be approximately **\$53,600**
19 (536 employees x \$100 initial violation) on the low end and **\$321,600** (536 employees x \$100
20 initial violation x 6 theories of recovery) on the high end. (Han Decl., at ¶ 55.)

21 Plaintiffs also recognized the risk that any PAGA award could be reduced. (Han Decl.,
22 *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory claims, such
23 as violations of Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800,

24 _____
25 ³ (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].)

1 and 2802. (Han Decl., *supra*, at ¶ 57.) Thus, allocating \$100,000 to PAGA civil penalties was
2 reasonable based on a rate of **\$6.05** per pay period [$\$100,000 \div 16,522$ pay periods in PAGA date
3 range], given Defendant is also paying an additional \$895,000 in the class settlement.⁴ (*Ibid.*)
4 When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount
5 was the result of self-interest at the expense of other Class Members,” such amounts are generally
6 considered reasonable.⁵ (*Ibid.*)

7 Considering Defendant’s defenses, supporting evidence, and position that the case is not
8 suitable for class treatment, the Settlement is reasonable, adequate, and fair.

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

10 Excluding the civil penalties, which could be completely discretionary, the total estimated
11 potential exposure, assuming certification and prevailing at trial, would be about **\$10,543,352.86**
12 on the low end and around **\$12,494,383.59** on the high end. (Han Decl., *supra*, at ¶ 58.)

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15 ///

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

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

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,910,988.08	60%	60%	\$305,758.09
Meal Break Premiums	\$126,252.12	50%	50%	\$31,563.03
Overtime/Minimum Wage: Off-the-Clock Work	\$3,146,823.75 to \$4,720,235.63	70%	60%	\$377,618.85 to \$566,428.28
Overtime/Minimum Wage: Regular Rate	\$214,190.00	30%	50%	\$74,966.50
Unreimbursed Business Expenses	\$177,814.00	50%	70%	\$26,672.10
Wage Statement Penalty	\$1,634,800.00	60%	60%	\$261,568.00
Waiting Time Penalty	\$2,195,049.60	60%	60%	\$351,207.94
MAXIMUM TOTAL EXPOSURE	\$10,543,352.86 to \$12,494,383.59⁶			\$1,429,354.51 to \$1,618,163.94⁷

Based on this analysis, the realistic recovery for this case is **\$1,429,354.51** on the low end and **\$1,618,163.94** on the high end. (Han Decl., *supra*, at ¶ 66.) The Gross Settlement Amount of \$995,000 is about eight percent (7.96%) of the maximum potential exposure and around sixty-one percent (61.49%) of the maximum realistic exposure at trial. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the realistic exposure if Plaintiffs prevailed at trial and provides a significant recovery for the Class Members.

⁶ (Han Decl., *supra*, at ¶¶ 44-51.)

⁷ (*Id.* at ¶¶ 59-65.)

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 certify class actions if plaintiff identifies “both [1]
6 an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

7 The Class is ascertainable and numerous as to make it impracticable to join all Class
8 Members, and there are common questions of law and fact that predominate over any questions
9 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 67.) Plaintiffs contend that their
10 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
11 the interests of the Class. (*Ibid.*) Plaintiffs assert that the prosecution of separate actions by
12 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

21 This case involves approximately six hundred seventy-seven (677) Class Members. (Han
22 Decl., *supra*, at ¶ 68.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva*
23 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as
24 190 current and former employees” is sufficiently numerous].)

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

26 The community of interest requirement “embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
28 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*

1 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
2 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
3 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis
4 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . .
5 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
6 certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

7 **1. Common Issues Predominate**

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

19 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
20 alleged. (Han Decl., *supra*, at ¶ 69.) Plaintiffs contend that all Class Members were subject to the
21 same or similar employment practices, policies, and procedures, described in detail above. (*Ibid.*)

22 **2. Plaintiffs’ Claims Are Typical of the Class Claims**

23 Typical claims rely on legal theories and facts that are substantially like those of other class
24 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

25 Plaintiffs are former employees of Defendant and allege that they and the Class Members
26 were employed by the same company and injured by Defendant’s common policies and practices
27 related to the claims described above. (Han Decl., *supra*, at ¶ 70.) Plaintiffs seek relief for these
28 claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiffs’ claims arise from the

1 same employment practices and are based on the same legal theories applicable to the Class. (Han
2 Decl., *supra*, at ¶ 70.)

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

4 Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 71.)
5 Plaintiffs conducted themselves diligently and responsibly in representing the Class in this
6 litigation, understand their fiduciary obligations, and actively participated in the prosecution of
7 this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide
8 them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs
9 have no interest averse to the interests of the other Class Members. (*Ibid.*)

10 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 11 **of this Controversy**

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

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

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

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

2 California Rules of Court, rule 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
7 at the settlement hearing and state any objections to the proposed settlement.

8 The Class Notice meets all these requirements. The Class Notice advises the Class Members
9 of their right to participate in the Settlement, how and when to object to or request exclusion from
10 the Settlement, and date, time, and location of the Final Approval Hearing. (Exhibit A to Exhibit
11 2.)

12 **V. CONCLUSION**

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

17 Dated: January 17, 2023

JUSTICE LAW CORPORATION

18
19 By: 
20 Douglas Han
21 Attorneys for Plaintiffs
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23
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On January 17, 2023, I served the foregoing document described as

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

for the following case: **Nicholas Carlton, et al. v. Waxie's Enterprises, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-828848-21**
Court Case No.: 37-2021-00026158-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

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

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on January 17, 2023, at Pasadena, California.



Anna Okada