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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDGAR MATA and ELVIS OLIVARES,
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 ("PAGA");

Plaintiffs,

v.

DAY-LEE FOODS INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV21664

Honorable Kenneth R. Freeman
Department 14

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); Declarations of Proposed
Class Representatives (Edgar Mata and Elvis
Olivares); and [Proposed] Order filed
concurrently herewith]

Hearing Date: March 15, 2022
Hearing Time: 11:00 a.m.
Hearing Place: Department 14

Complaint Filed: June 4, 2020
FAC Filed: December 6, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 15, 2022 at 11:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Kenneth R. Freeman in Department 14 of the Los
3 Angeles County Superior Court (Spring Street Courthouse), located at 312 North Spring Street,
4 Los Angeles, California 90012, Plaintiffs Edgar Mata and Elvis Olivares (“Plaintiffs,” “Plaintiff
5 Mata,” and “Plaintiff Olivares”) will and hereby moves for an order:

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

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

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

Dated: January 24, 2022

JUSTICE LAW CORPORATION

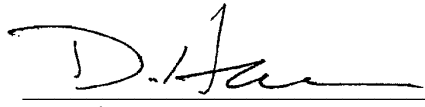
By: 
Douglas Han
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	BACKGROUND	9
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action.....	12
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	12
ii.	The Settlement Was Because of Result of Arm's-Length Negotiations ..	12
iii.	The Settlement Is the Result of Thorough Investigation and Discovery..	12
c.	Terms of the Proposed Settlement.....	13
i.	Deductions from the Settlement	13
ii.	Calculation of the Settlement Payments to Class Members	13
iii.	Notice to the Class	14
iv.	Distribution of Funds.....	14
v.	Release of Claims	15
d.	Counsel for Both Parties Are Experienced in Similar Litigation	16
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review	16
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	17
i.	The Settlement Amount of \$1,900,000 is Fair and Reasonable	18
ii.	The PAGA Payment of \$100,000 is Reasonable.....	19
c.	Discount Analysis Justifies the Settlement.....	20
d.	Conditional Certification of the Class Is Appropriate	21
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous	22
ii.	The Class Members Share a Well-Defined Community of Interest.....	22
1.	Common Issues Predominate	22
2.	Plaintiffs' Claims Are Typical of the Class Claims	23

3.	Plaintiffs are Adequate to Represent the Class.....	24
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	24
e.	The Settlement Is Fair, Reasonable, and Adequate	24
f.	Notice to Class Members Complies with California Rule of Court 3.769(f).....	25
V.	CONCLUSION	25

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	18
<i>Amaro v. Anaheim Arena Management, LLC</i>	
69 Cal. App. 5 th 521 (2021)	16
<i>Bartold v. Glendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	22
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	17
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979)	13
<i>Brinker Restaurant Corporation v. Superior Court,</i>	
53 Cal. 4 th 1024 (2012)	23
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	22
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	19
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2d Cir. 1974)	21
<i>Classen v. Weller,</i>	
145 Cal. App. 3d 27 (1983)	23
<i>Dunbar v. Albertson's Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	18
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	16, 24
<i>Espinoza v. Galardi South Enterprises Inc.,</i>	
Case No. 1:14-cv-21244 (S.D. Fla. 2016)	23

1	<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
2	169 Cal. App. 4 th 1524 (2008).....	22
3	<i>Green v. Obledo,</i>	
4	29 Cal. 3d 126 (1981).....	16
5	<i>Harris v. Superior Court,</i>	
6	154 Cal. App. 4 th 164 (2007).....	18
7	<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
8	89 Cal. App. 4 th 908 (2001).....	22
9	<i>Hopson v. Hanesbrands Inc.,</i>	
10	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009).....	19
11	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
12	452 U.S. 905 (1981)	17
13	<i>Jones v. JGC Dallas LLC,</i>	
14	Case No. 3:11-cv-02743 (N.D. Tex. 2014)	23
15	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
16	168 Cal. App. 4 th 116 (2008).....	17
17	<i>Linder v. Thrifty Oil Co.,</i>	
18	23 Cal. 4 th 429 (2000).....	22
19	<i>Linney v. Cellular Alaska Partnership,</i>	
20	151 F. 3d 1234 (9 th Cir. 1998).....	21
21	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
22	186 Cal. App. 4 th 399 (2010).....	17
23	<i>Nordstrom Com. Cases,</i>	
24	186 Cal. App. 4 th 576 (2010).....	19
25	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
26	34 Cal. 4 th 319 (2004).....	18, 21, 22
27	<i>In re Tableware Antitrust Litig.,</i>	
28	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	20

1	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
2	38 Cal. 3d 488 (1985).....	17
3	<i>Thurman v. Bayshore Transit Mgmt.</i>	
4	203 Cal. App. 4th 1112 (2012).....	19
5	<i>Vasquez v. Superior Court,</i>	
6	4 Cal. 3d 800 (1971).....	16
7	<i>Walsh v. IKON Solutions, Inc.,</i>	
8	148 Cal. App. 4 th 1440 (2007).....	18
9	<u>Statutes</u>	
10	Business and Professions Code §§ 17200	18
11	Code of Civil Procedure § 382	21, 24
12	Code of Civil Procedure § 877.6	17
13	Federal Rule 23.....	16
14	Labor Code § 201	19
15	Labor Code § 202	19
16	Labor Code § 226	19
17	Labor Code § 226.7	19
18	Labor Code § 510	19
19	Labor Code § 512	19
20	Labor Code § 1194	19
21	Labor Code § 1197	19
22	Labor Code § 1197.1	19
23	Labor Code § 1198	19
24	Labor Code § 2800	19
25	Labor Code § 2802	19
26	Rule 3.769	16, 25

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,900,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and any and all persons
4 who have been employed by Defendant as non-exempt employees in California at any time from
5 June 4, 2016, to September 15, 2021 (“Class” and “Class Period”). At the time of this filing, the
6 number of Class Members confirmed by Defendants is estimated to be five hundred seventy-two
7 (572). (Declaration of Douglas Han (“Han Dec.”), at ¶ 8.)

8 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
9 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
10 proposed settlement of \$1,900,000 – with an average Individual Settlement Share estimated at
11 \$1,881.11¹ – is well within the “ballpark” of reasonableness.

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

19 **II. BACKGROUND**

20 Founded in 1977, Defendant is a meat processing facility that has become involved with
21 other types of processed foods over the years since its inception. (Han Dec., *supra*, at ¶ 9.) This
22 case involves any and all persons who have been employed by Defendant as non-exempt
23 employees in California at any time from June 4, 2016, to September 15, 2021. (*Ibid.*) Plaintiffs
24 allege that during the Class Period, Defendant’s non-exempt employees work and/or worked on
25 an hourly basis. (*Ibid.*)

26 ///

27 ///

28

¹ \$1,080,000 (Net Settlement Amount) / 572 (Class Members) = \$1,888.11.

1 On June 4, 2020, Masako Fujiya, the former named-plaintiff and a former employee of
2 Defendant, filed a wage-and-hour class action lawsuit in the Superior Court of California,
3 County of Los Angeles. (Han Dec., *supra*, at ¶ 10.)

4 On May 12, 2021, Plaintiff Mata provided written notice to the California Labor and
5 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
6 Labor Code he contends were violated, and the theories supporting his contentions. (Han Dec.,
7 *supra*, at ¶ 11.)

8 The Parties attended mediation on Plaintiffs’ claims on August 26, 2021. (Han Dec.,
9 *supra*, at ¶ 12.) While the case did not settle at mediation, under the auspices of the mediator
10 Steven J. Rottman, the Parties were able to reach an agreement on the settlement of the action on
11 September 14, 2021. (*Ibid.*)

12 Pursuant to the Settlement Agreement, Plaintiffs filed a First Amended Complaint
13 (“FAC”) in the Superior Court of California, County of Los Angeles on December 6, 2021.
14 (Han Dec., *supra*, at ¶ 13.) The FAC withdrew Masako Fujiya as the named plaintiff, added
15 Plaintiff Mata and Plaintiff Olivares as the named plaintiffs and class representatives; and added
16 the several wage-and-hour class action causes of action. (*Ibid.*)

17 Defendant generally and specifically denies any and all liability or wrongdoing of any
18 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
19 any sort, and contends that for any purpose other than settlement, the Class Action is not
20 appropriate for PAGA or class treatment. (Han Dec., *supra*, at ¶ 14.) Defendant also asserts
21 several defenses to the claims and has denied any wrongdoing or liability arising out of any of
22 the alleged facts or conduct in the Class Action. (*Ibid.*)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

25 After the initial filing of the wage-and-hour class action lawsuit, both Parties engaged in
26 discovery. (Han Dec., *supra*, at ¶ 15.) Specifically, Plaintiffs propounded one (1) set of form
27 interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions; and
28 one (1) set of requests for production of documents. (*Ibid.*) Defendant responded to the

discovery. (Han Dec., *supra*, at ¶ 15.) Afterwards, the Parties met and conferred regarding this discovery. (*Ibid.*)

Prior to mediation on August 26, 2021, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class Action was filed. (Han Dec., *supra*, at ¶ 16.) Specifically, Defendant produced hundreds of documents relating to its policies, practices, and procedures. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiffs also interviewed Class Members who worked for Defendant. (*Ibid.*)

Based upon Defendant's discovery responses and document production coupled with interviews Class Counsel had with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to provide employees with legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.) Specifically, Defendant allegedly assigning a high volume of time-sensitive workloads coupled with being understaffed prevented employees from receiving compliant meal and rest breaks. (*Ibid.*)

Plaintiffs also assert – and Defendant denies – that Defendant failed to pay employees for all hours worked. (Han Dec., *supra*, at ¶ 19.) Specifically, Defendant maintained stringent policies that pressured off-the-clock work that was exacerbated by the volume of time-sensitive work that forced employees to work additional hours. (*Ibid.*) Furthermore, Plaintiffs allege – and Defendant denies – Defendant had in place an illegal rounding policy that undercompensated employees because it was neither fair nor neutral. (*Id.* at ¶ 20.)

Additionally, Plaintiffs contend – and Defendant denies – that Defendant failed to reimburse employees for incurring business expenses. (Han Dec., *supra*, at ¶ 21.) Specifically, despite employees purchasing steel-toed boots and slip-resistant shoes along with using their personal cell phones for work-related purposes, Defendant allegedly did not reimburse. (*Ibid.*)

Finally, Plaintiffs allege – and Defendant denies – that Defendant is liable for waiting time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 22-23.)

///

1 Defendant has denied Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 24.)
2 As demonstrated above, the Parties took staunchly conflicting positions concerning Defendant's
3 policies and procedures and their effect on hourly-paid and non-exempt employees.

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

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

7 The Parties agreed to go to mediation with experienced wage-and-hour mediator, Steven
8 Rottman that took place on August 26, 2021. (Han Dec., *supra*, at ¶ 25.) Despite not settling at
9 mediation, under the auspices of the mediator, the Parties were able to reach an agreement on a
10 settlement of the Class Action, the terms of which were memorialized in an Agreement, the
11 Parties now seek Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

12 **ii. The Settlement Was Because of Result of Arm's-Length Negotiations**

13 The Settlement Agreement was reached because of arm's-length negotiations. (Han
14 Dec., *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have always
15 been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel
16 conducted extensive arm's-length settlement negotiations until an agreement was ultimately
17 reached by all Parties on September 14, 2021. (*Ibid.*)

18 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
19 expense and length of continued proceedings necessary to continue the litigation against
20 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
21 *supra*, at ¶ 43.) Based on the foregoing, Plaintiffs and Class Counsel believe the settlement is a
22 fair, adequate, and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

24 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
25 before reaching the proposed settlement and engaged in sufficient investigation, research, and
26 discovery to support the settlement. (Han Dec., *supra*, at ¶ 44.) The proposed settlement was
27 only possible following significant discovery and evaluation of Defendant's relevant policies and
28 procedures, as well as the data they produced for the Class. (*Ibid.*) Furthermore, this case has

1 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
2 of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485
3 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 44.)

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

5 **i. Deductions from the Settlement**

6 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
7 action be settled and compromised for the non-reversionary total sum of \$1,900,000 (“Gross
8 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award in
9 an amount not to exceed \$665,000 (35% of the Gross Settlement Amount) to Class Counsel; (b)
10 the Cost Award for actual litigation costs not to exceed \$20,000 to Class Counsel; (c) the Class
11 Representative Enhancement Payments in the sum of \$10,000 to each Class Representative; (d)
12 the Administration Costs to Phoenix, the Settlement Administrator, in the sum not to exceed
13 \$15,000; and (e) the PAGA Payment of \$100,000, seventy-five percent (75%) of which
14 (\$75,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$25,000) shall be
15 distributed to Eligible Aggrieved Employees, on a pro rata basis. (Han Dec., *supra*, at ¶ 26.)

16 **ii. Calculation of the Settlement Payments to Class Members**

17 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
18 that \$1,080,000 (“Net Settlement Amount”) will be distributed to Class Members – with an
19 average Individual Settlement Share estimated at \$1,888.11. (Han Dec., *supra*, at ¶ 28.)

20 29. Each Participating Class Member’s Individual Settlement Share will be
21 apportioned as follows: twenty percent (20%) wages and eighty percent (80%) penalties and
22 interests. (Han Dec., *supra*, at ¶ 29.)

23 Each Participating Class Member will receive a proportionate share of the Net Settlement
24 Amount that is equal to:

25 (i) the number of weeks he or she worked during the Class Period based on the
26 Class List provided by Defendant, divided by (ii) the total number of weeks
27 worked by any and all Participating Class Members collectively, during the Class
28 Period based on the same Class List, which is then multiplied by the Net
Settlement Amount. (Han Dec., *supra*, at ¶ 30.)

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1 The individual share to each Eligible Aggrieve Employee will be calculated as follow:

2 determining the total number of pay periods the Eligible Aggrieved Employees were
3 employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment
4 for each eligible aggrieved employee) and dividing that number into the \$25,000 amount
5 allocated to Eligible Aggrieved Employees to determine the monetary value assigned to
6 each pay period. That number will then be multiplied by the individual eligible aggrieved
employee's total number of pay periods employed during the PAGA Timeframe to
determine his or her proportional share. (Han Dec., *supra*, at ¶ 31.)

7 **iii. Notice to the Class**

8 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
9 Defendant will deliver the Class List to the Settlement Administrator. (Han Dec., *supra*, at ¶ 33.)

10 The Settlement Administrator shall mail the Notice Packets to the Class Members via
11 first-class regular U.S. Mail using the most current mailing address information available within
12 fourteen (14) calendar days after the receipt of the Class List from Defendant. (Han Dec., *supra*,
13 at ¶ 34.) The submission of claims form are not necessary in this settlement. (*Ibid.*) The
14 proposed Class Notice and Exclusion Form are attached as Exhibits A and B to the Settlement
15 Agreement respectively, which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

16 **iv. Distribution of Funds**

17 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
18 Defendant shall deposit the Gross Settlement Amount of \$1,900,000 needed to pay the entire
19 Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec.,
20 *supra*, at ¶ 35.) Within fourteen (14) calendar days after the funding of the Settlement, the
21 Settlement Administrator shall calculate and pay all payments due, including all Individual
22 Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative
23 Enhancement Payments, the PAGA Payment, and the Administration Costs. (*Id.* at ¶ 36.)

24 Participating Class Members must cash or deposit their Individual Settlement Share
25 checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han
26 Dec., *supra*, at ¶ 37.) If any checks are not redeemed or deposited within ninety (90) calendar
27 days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any
28 checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the

1 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after
2 the checks are mailed, cancel the checks, and pay the amount of the Individual Settlement Share
3 to the California State Controller: Unpaid Wage Fund. (Han Dec., *supra*, at ¶ 37.) Similarly, any
4 uncashed Settlement checks issued to Eligible Aggrieved Employees after one hundred eighty
5 (180) days shall be turned over to the California State Controller: Unpaid Wage Fund. (*Ibid.*)

6 **v. Release of Claims**

7 Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of the
8 Agreement, Participating Class Members waive, release, promise never to assert in any forum,
9 remise and forever discharge the Released Parties from the Released Claims for the time frame
10 from June 4, 2016, to September 15, 2021 ("Released Claims"). (Han Dec., *supra*, at ¶ 37;
11 Exhibit 2 §§ I.GG. & III.K.)

12 Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a) of the
13 Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not
14 limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, from
15 pursuing any action for civil penalties under PAGA, Labor Code §§ 2698, *et seq.*, against, the
16 Released Parties based on or arising out of alleged violations of Labor Code sections alleged in
17 Plaintiff Mata's letter to the LWDA and the operative complaint. (Han Dec., *supra*, at ¶ 38;
18 Exhibits 2 § III.L.)

19 Upon Defendant's fulfillment of its payment obligations under Section III (J)(9) of the
20 Agreement, Plaintiffs will release in exchange for the consideration provided for by the
21 Agreement a comprehensive release of all known and unknown claims by Plaintiffs, including a
22 California Civil Code section 1542 waiver arising out of the operative allegations in the Class
23 Action ("Comprehensive Release"). (Han Dec., *supra*, at ¶ 39; Exhibit 2 §§ I.M. & III.M.)

24 The Released Parties include Defendant and any and all of its affiliated companies and its
25 respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including,
26 without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any
27 past, present or future officers, directors and employees) predecessors, successors, and assigns
28 ("Released Parties"). (Han Dec., *supra*, at ¶ 40; Exhibit 2 § I.HH.)

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

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

10 Both Class Counsel and Counsel for Defendant are particularly experienced in wage and
11 hour employment law and class actions. Class Counsel has significant experience in litigating
12 unpaid wages, noncompliant meal breaks, and noncompliant rest break class actions. (Han Dec.,
13 *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel has prosecuted numerous cases on behalf of
14 employees for Labor Code violations and thus are experienced and qualified to evaluate the class
15 claims, to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability
16 of the defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties
17 of further litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

18 **IV. ARGUMENT**

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

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

24 ///

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

27 ³ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases
28 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 take
10 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
11 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
12 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
13 U.S. 905.)

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

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

21 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
22 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
23 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not
24 require an explicit statement of the maximum amount the class could recover if the plaintiff
25 prevailed on all his claims, provided there is a record that allows “an understanding of the
26 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
27 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
28 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
499-500.).)

As the following subsections show, the Parties' investigation and discovery revealed numerous reasons to discount claims and agree to the Settlement.

i. The Settlement Amount of \$1,900,000 Is Fair and Reasonable

The proposed Settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures and the data Defendant produced for the putative class as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 44.)

This discovery informed Plaintiffs' central theories of liability, which are predicated on Plaintiffs' claims that Defendant failed to pay overtime wages, failed to pay minimum wages, failed to provide meal and rest breaks and pay applicable premiums, failed to pay final wages in a timely manner, failed to issue compliant wage statements, failed to reimburse business expenses, violated Labor Code section 2698, *et seq.* (PAGA), and violated the Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 45.) Defendant has vehemently denied Plaintiffs' theories of liability. (*Id.* at ¶ 46.)

Although Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Dec., *supra*, at ¶ 47.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On* have reached different conclusions concerning certification of wage-and-hour claims.⁴ (*Ibid.*)

Although remaining confident in the strengths of his claims, all these factors led Plaintiffs to discount the following calculations of potential damage claims.

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⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 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 **ii. The PAGA Payment of \$100,000 is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include, but are not limited to, Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
4 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 55.) Defendant asserted that
5 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
6 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong
7 arguments against the underlying claims, it had a strong argument that it would be unjust to
8 award maximum PAGA penalties given the law’s unsettled state. (*Thurman v. Bayshore Transit*
9 *Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) (Han
10 Dec., *supra*, at ¶ 54.) Defendant argued that without stacking and limited to the initial violation,
11 the PAGA penalties would be limited to \$32,100 (321 employees x \$100 initial violation) on the
12 low end and \$192,600 (321 employees x \$100 x 6 theories of recovery) on the high end based on
13 six (6) major theories of recovery. (Han Dec., *supra*, at ¶¶ 55-59.)

14 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
15 (Han Dec., *supra*, at ¶ 60.) Many of the causes of action brought were duplicative of the statutory
16 claims, such as violations of Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198,
17 2800, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified.
18 (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties under the
19 law. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable based on a rate of
20 \$9.84 per pay period [$\$100,000 / 10,158 \text{ Pay Periods in PAGA Date Range} = \9.84], given that
21 Defendant is also paying an additional \$1,800,000 in the class settlement.⁵ (*Ibid.*) Where PAGA
22 penalties are negotiated in good faith and “there is no indication that [the] amount was the result
23 of self-interest at the expense of other Class Members,” such amounts are generally considered
24 reasonable.⁶ (*Ibid.*)

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

⁶ (*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.”).)

Accordingly, taking into consideration Defendant’s defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$1,900,000 is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$5,323,452.93 on the low end and \$6,140,491.63 on the high end. (Han Dec., *supra*, at ¶ 61.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,174,062.02	60%	50%	\$234,812.40
Meal Break Premiums	\$113,787.46	40%	50%	\$34,136.24
Overtime/Minimum Wage: Off-the-Clock Work	\$1,634,077.40 to \$2,451,116.10	50%	50%	\$408,519.35 to \$612,779.03
Overtime/Minimum Wage: Rounding	\$83,651.25	30%	40%	\$35,133.53
Unreimbursed Business Expenses	\$320,752	30%	70%	\$67,357.92
Wage Statement Penalty	\$1,011,150	30%	40%	\$424,683
Waiting Time Penalty	\$985,972.80	30%	40%	\$414,108.58
MAXIMUM TOTAL EXPOSURE	\$5,323,452.93 to \$6,140,491.63⁷			\$1,618,751.02 to \$1,823,010.70⁸

Based on this analysis, the realistic recovery for this case is \$1,618,751.02 on the low end and \$1,823,010.70 on the high end. (Han Dec., *supra*, at ¶ 69.) The Gross Settlement Amount of \$1,900,000 is approximately thirty-one percent (30.94%) of the maximum potential exposure and about one hundred four (104.22%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*) The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078, 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

⁷ Han Dec., *supra*, at ¶¶ 48-54.

⁸ *Id.* at ¶¶ 62-68.

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 had Plaintiffs prevailed at trial and provides a significant recovery for the Class Members. Thus, there can be no doubt that this settlement is fair and reasonable.

d. Conditional Certification of the Class Is Appropriate

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

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 70.) Plaintiffs contend that as hourly-paid employees of Defendant, their claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed below, this case is amenable to class certification. (*Ibid.*)

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

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

9 The Class Action involves five hundred seventy-two (572) Class Members, confirmed by
10 Defendant. (Han Dec., *supra*, at ¶ 71.) Thus, the Class is sufficiently numerous.⁹ (*Ibid.*)

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

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

22 **1. Common Issues Predominate**

23 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
24 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
25 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
26 other words, courts determine whether the elements necessary to establish liability are

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28 ⁹ (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of
“as many as 190 current and former employees” is sufficiently numerous).)

1 susceptible to common proof, even if the class members must individually prove their damages.
2 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
3 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v.*
4 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving
5 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-
6 21244 (court certified class of dancers on state law claims).)

7 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
8 alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 72; Declaration of Edgar Mata (“Mata Dec.”), at ¶¶
9 6-7, 11-14; Declaration of Elvis Olivares (“Olivares Dec.”), at ¶¶ 7-8, 12-15.) Specifically,
10 Plaintiffs contend all hourly-paid and non-exempt employees who worked for Defendant during
11 the Class Period were subject to the same or similar employment practices, policies, and
12 procedures. (Han Dec., *supra*, at ¶ 72; Mata Dec., *supra*, at ¶¶ 6-7, 11-14; Olivares Dec., *supra*,
13 at ¶¶ 7-8, 12-15.) All Plaintiffs’ claims surround Defendant’s alleged common practice and
14 scheme of maintaining improper, uniform meal and rest break practices, failing to reimburse
15 business expenses, and failing to fully and properly compensate employees, *inter alia*, for
16 noncompliant meal and rest breaks, off-the-clock work, overtime work, inaccurate wage
17 statements, and untimely paid final wages. (Han Dec., *supra*, at ¶ 72; Mata Dec., *supra*, at ¶¶ 6-
18 7, 11-14; Olivares Dec., *supra*, at ¶¶ 7-8, 12-15.)

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

20 Typical claims rely on legal theories and facts that are substantially similar to other class
21 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt
22 employees of Defendant and allege that they and Class Members were employed by the same
23 company and injured by Defendant’s common policies and practices related to meal and rest
24 breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages,
25 inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 73;
26 Mata Dec., *supra*, at ¶¶ 5-7, 11-14; Olivares Dec., *supra*, at ¶¶ 6-8, 12-15.) Plaintiffs seek relief
27 for these claims and derivative claims on behalf of all Class Members. (Han Dec., *supra*, at ¶ 73;
28 Mata Dec., *supra*, at ¶ 15; Olivares Dec., *supra*, at ¶ 16.) Thus, Plaintiffs’ claims as alleged arise

1 from the same employment practices and are based on the same legal theories as those applicable
2 to the other Class Members. (Han Dec., *supra*, at ¶ 73; Mata Dec., *supra*, at ¶ 15; Olivares Dec.,
3 *supra*, at ¶ 16.)

4 **3. Plaintiffs are Adequate to Represent the Class**

5 Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 74;
6 Mata Dec., *supra*, at ¶¶ 8-10, 16; Olivares Dec., *supra*, at ¶¶ 9-11, 17.) They have conducted
7 themselves diligently and responsibly in representing the Class in this litigation, understand their
8 fiduciary obligations, and have actively participated in the prosecution of this case. (Han Dec.,
9 *supra*, at ¶ 74; Mata Dec., *supra*, at ¶¶ 8-10, 16; Olivares Dec., *supra*, at ¶¶ 9-11, 17.) Plaintiffs
10 have spent time in meetings and conferences with counsel to provide counsel with a complete
11 understanding of their work environment and requirements. (Han Dec., *supra*, at ¶ 74; Mata
12 Dec., *supra*, at ¶¶ 8-10, 16; Olivares Dec., *supra*, at ¶¶ 9-11, 17.) Furthermore, Plaintiffs do not
13 have any interest that is adverse to the interest of other Class Members. (Han Dec., *supra*, at ¶
14 74; Mata Dec., *supra*, at ¶¶ 15, 17-18; Olivares Dec., *supra*, at ¶¶ 16, 18-19.) The proposed Class
15 Counsel is also adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.)

16 **4. Class Action is Superior for the Fair and Efficient**

17 **Adjudication of this Controversy**

18 A class action is superior to other available means for the fair and efficient adjudication
19 of this controversy. Plaintiffs contend the joinder of all members of the proposed class is
20 impractical and that class treatment will permit many similarly-situation persons to prosecute
21 their common claims in a single forum simultaneously for settlement purposes without the
22 necessary duplication of effort and expense that numerous individual actions would engender.
23 Moreover, the fear of retaliation has deterred current employees from filing individual cases.

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

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

1 settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to
2 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
3 and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,
4 all these elements are present here. Thus, Plaintiffs request that this Court grant their motion for
5 Preliminary Approval.

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

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

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

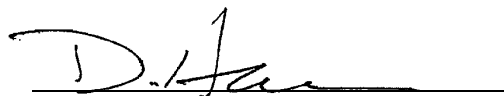
13 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
14 advises the Class Members of their right to participate in the Settlement; how and when to object
15 to or request exclusion from the Settlement; and the date, time, and location of the Final
16 Approval hearing.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

17 **V. CONCLUSION**

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

22
23 Dated: January 24, 2022

JUSTICE LAW CORPORATION

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25 _____
26 Douglas Han
27 Attorneys for Plaintiffs
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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 mking@justicelawcorp.com

On January 24, 2022, I served the foregoing document described as

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

for the following case: **Mata, et al. v. Day-Lee Foods Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 832069-21**
Court Case No.: 20STCV21664
Los Angeles 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

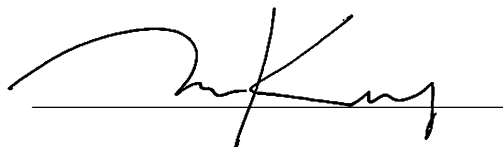
[X] BY ELECTRONIC SUBMISSION

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 24, 2022, at Pasadena, California.


Madeline King