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

EILEEN VELASQUEZ, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiffs,

v.

HI-TEMP INSULATION, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No. 21CV-02505

Honorable Brian McCabe
Department 8

CLASS ACTION

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

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

Hearing Date: October 29, 2021
Hearing Time: 8:15 a.m.
Hearing Place: Department 8

Complaint Filed: August 2, 2021
FAC Filed: August 26, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 29, 2021 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, Plaintiffs Eileen Velasquez
4 and Juan Salinas (“Plaintiffs,” “Plaintiff Velasquez,” and “Plaintiff Salians”) will and hereby
5 moves for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Joint Stipulation of Class Action Settlement and
8 Release (“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 Attorneys’ Fees and Costs, the Class Representative Enhancement
13 Payments, and approval of the allocation for the PAGA Payment and the Claims
14 Administration Costs;
- 15 • Conditionally certifying the proposed Class for settlement purposes only;
- 16 • Appointing Plaintiffs as the Class Representatives;
- 17 • Appointing Justice Law Corporation as Class Counsel;
- 18 • Approving the proposed Notice of Class Action Settlement attached as “Exhibit
19 A” to the Settlement Agreement;
- 20 • Approving the proposed Claim Form attached as “Exhibit B” to the Settlement
21 Agreement;
- 22 • Directing the mailing of the proposed Notice of Class Action Settlement and
23 Claim Form (collectively, known as the “Notice Packet”) with a postage-paid
24 return envelope to the proposed Class Members;
- 25 • Approving the proposed deadlines for the notice and claims administration
26 process;
- 27 • Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the
28 Claims Administrator; and

- Scheduling a hearing to consider whether to grant Final Approval of the Settlement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorneys' Fees and Costs, the Class Representative Enhancement Payments, and approval of the allocation for the PAGA Payment and the Claims Administration Costs.

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

Dated: September 30, 2021

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiffs seek preliminary approval of the Settlement Agreement entered into by and
3 between Plaintiffs, individually and on behalf of the proposed Class, and Defendant Hi-Temp
4 Insulation, Inc. (“Defendant”). Subject to Court approval, Plaintiffs and Defendant (“Parties”)
5 have agreed to settle this lawsuit for a Maximum Settlement Amount of up to \$1,945,000. A
6 copy of the Settlement Agreement is attached as “**EXHIBIT 2**” to the Declaration of Douglas
7 Han (“Han Decl.”).

8 The Maximum Settlement Amount includes the following: (a) the attorneys’ fees of up to
9 \$680,750 (35% 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 \$30,000 for serving as Class Counsel¹; (c) the Class
13 Representative Enhancement Payments to each of the Plaintiffs in a sum not to exceed \$10,000
14 each for their efforts and service leading to this Settlement; (d) the allocation of Claims
15 Administration Costs to Phoenix currently estimated not to exceed \$20,000; and (e) payment for
16 \$100,000 in civil penalties under PAGA, as amended, California Labor Code sections 2698, *et*
17 *seq.*, of which seventy-five (75%) of which (\$75,000) will be paid to the California Labor and
18 Workforce Development Agency (“LWDA”) (“LWDA Payment”) and the remaining twenty-
19 five (25%) of which (\$25,000) will be part of the Net Settlement Amount for distribution in
20 conformity with the Settlement Agreement. (Settlement Agreement ¶¶ 29-30 and 33-34.)

21 Plaintiffs seek to certify the following Class for settlement purposes, consisting of
22 approximately one-thousand four-hundred and ten (1,410) Class Members:

23 ///

24 ///

25 ///

26 ¹ The actual amount of litigation costs will be provided to the Court in conjunction with Plaintiffs’ motion for final
27 approval. At that time, Plaintiff will ask the Court to approve the amount of these costs. If Plaintiffs’ actual costs
28 exceed \$30,000, Plaintiff will only seek reimbursement in the amount of \$30,000. 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 current and former hourly-paid or non-exempt employees of Defendant within
2 the State of California at any time during the period from August 31, 2016, to
3 June 10, 2021, or the date the Court grants preliminary approval of the Settlement,
4 whichever occurs earlier (“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 ¶¶ 14, 28, 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 ¶ 59.)

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 ¶ 30.) This proposed Settlement Agreement resolves all of Plaintiffs’ 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 in the business of manufacturing thermal insulation products for aerospace
24 and commercial aircraft industries. (Han Decl. ¶ 10.) This case involves all current and former
25 hourly-paid or non-exempt employees of Defendant within the State of California at any time
26 during the period from August 31, 2016, to June 10, 2021 (“Class,” “Class Period,” and “Class
27 Members”). (*Ibid.*) Plaintiffs always allege that employees worked for Defendant on an hourly
28 basis. (*Ibid.*)

1 On September 2, 2020, Emily Pacheco, an individual who had previously been placed at
2 Defendant through a staffing agency, filed a Class Action Complaint against Defendant in the
3 Superior Court for the State of California, County of Ventura, Case No. 56-2020-00545031-CU-
4 OE-VTA. Emily Pacheco's Class Action Complaint alleged violation of: (1) Labor Code section
5 510 and 1198 (unpaid overtime); (2) Labor sections 226.7 and 512(a) (unpaid meal period
6 premiums); (3) Labor Code section 226.7 (unpaid rest period premiums); (4) Labor Code
7 sections 1194 and 1197 (unpaid minimum wages); (5) Labor Code sections 201 and 202 (final
8 wages not timely paid); (6) Labor Code section 226(a) (non-compliant wage statements); (7)
9 Labor Code sections 2800 and 2802; and (8) Business & Professions Code sections 17200, et
10 seq. (Han Decl. ¶ 11.)

11 On May 10, 2021, Plaintiff Velasquez provided written notice to the California Labor and
12 Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the
13 Labor Code she contends were violated, and the theories supporting her contentions. Plaintiff
14 Velasquez believes that on or about July 14, 2021, the sixty-five (65) day notice period expired
15 and the LWDA did not take any action to investigate or prosecute this matter. (Han Decl. ¶ 12.)
16 Therefore, Plaintiff Velasquez exhausted the statutory time period to bring this action. (*Ibid.*)

17 On June 10, 2021, the Parties, and Emily Pacheco, participated in mediation before
18 Jeffrey Krivis, a respected mediator of wage and hour class actions. (Han Decl. ¶ 13.) After a full
19 day of negotiations and considering the Mr. Krivis' proposal, the Parties agreed to settle and
20 stipulated to the material terms of the Joint Stipulation of Class Action Settlement and Release
21 ("Settlement Agreement," "Settlement," or "Agreement"). (*Ibid.*) Mr. Krivis' supervision of the
22 mediation and negotiations was critical in managing the expectations of the Parties and providing
23 a useful and neutral analysis of the issues and risks to both sides. (*Ibid.*)

24 During mediation, the Parties discovered that Emily Pacheco does not have standing to
25 serve as a class representative. Specifically, Emily Pacheco participated in another class action
26 settlement involving the staffing agency that placed her in Defendant's employment that is in the
27 process of getting final court approval. Pursuant to this other class action settlement,
28

1 approximately one hundred fifty (150) employees of Defendant, including Emily Pacheco,
2 released their claims against Defendant. (Han Decl. ¶ 14.)

3 Following the mediation and the above-mentioned discovery, for purposes of settlement,
4 the Parties agreed to dismiss Emily Pacheco's individual case against Defendant with prejudice
5 and her class allegations against Defendant without prejudice. (Han Decl. ¶ 15.) The Parties also
6 agreed that Plaintiff Velasquez and Plaintiff Salinas would file a class and Private Attorneys
7 General Act of 2004 ("PAGA") action against Defendant. (*Ibid.*)

8 On August 2, 2021, Plaintiff Velasquez filed a representative PAGA action in the
9 Superior Court of the State of California, County of Merced, Case No. 21CV-02505. (Han Decl.
10 ¶ 16.) Plaintiff Velasquez later filed a First Amended Complaint on August 26, 2021 to include
11 Plaintiff Salinas as an additional Class Representative and included class allegations against
12 Defendant for violation of: (1) Labor Code sections section 510 and 1198 (unpaid overtime); (2)
13 Labor sections 226.7 and 512(a) (unpaid meal period premiums); (3) Labor Code section 226.7
14 (unpaid rest period premiums); (4) Labor Code sections 1194 and 1197 (unpaid minimum
15 wages); (5) Labor Code sections 201 and 202 (final wages not timely paid); (6) Labor Code
16 section 226(a) (non-compliant wage statements); (7) Labor Code sections 2800 and 2802; (8)
17 Labor Code sections 2698, et seq., (PAGA); and (9) Business & Professions Code sections
18 17200, et seq. (*Ibid.*)

19 Defendant denies the allegations of the class action in their entirety, denies any liability
20 or wrongdoing of any kind associated with the claims alleged in this action, and further denies
21 that, for any purpose other than settling this action, this matter is appropriate for class treatment.
22 (Han Decl. ¶ 17.) Defendant further contends that it has always complied with all applicable
23 California laws, the Labor Code, the applicable California Wage Order(s), and the Unfair
24 Competition Law. (*Ibid.*) Defendant finally contends that, if this matter were to be litigated
25 further, it would have strong defenses to class certification and on the merits. Notwithstanding,
26 in the interest of avoiding further litigation, Defendant desires to settle all actual or potential
27 claims fully and finally by the Class. (*Ibid.*)

28 ///

III. INVESTIGATION/ LITIGATION HISTORY

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

After Emily Pacheco filed her complaint, the Parties engaged in discovery. Specifically, Class Counsel propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production on Defendant. (Han Decl. ¶ 18.) Defendant responded to these discovery requests. (*Ibid.*) On December 16, 2020, Class Counsel sent Defendant correspondence informally requesting class-wide data needed to prepare for the mediation, upon which the Parties began to informally meet and confer on discovery. (*Ibid.*)

As the result of discovery conducted by Plaintiffs, Defendant produced a large volume of documents, including employee handbooks, meal and rest break policies, bonus and incentive payment policies, Plaintiffs' personnel files, and a sampling of time and payroll records. (Han Decl. ¶ 19.) Plaintiffs were in constant communication with numerous current and former non-exempt employees of Defendant. (*Ibid.*) These employees apprised Plaintiffs of their experiences working for Defendant. (*Ibid.*)

Based upon the informal exchange of information and Defendant's document production, as well as interviews Class Counsel had with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant did not allow employees to take compliant rest breaks. (Han Decl. ¶ 20.) For example, Plaintiffs assert that Defendant's rest break policies were not code-compliant because they failed to authorize and permit employees to take duty-free rest breaks by leaving the work premises. (*Ibid.*) These rest break policies supposedly became even more stringent throughout the years (i.e., not permitting employees to move their vehicles during their rest breaks). (*Ibid.*) Moreover, Plaintiffs allege that heavy workloads coupled with the expectation that employees promptly complete their assignments forced employees to work through or take short rest breaks. (*Ibid.*) This issue was purportedly exacerbated by the expectation that employees be at their workstations and ready to work immediately at the end of their rest breaks to avoid disciplinary action. (*Ibid.*) By extension, this allegedly forced employees to work through their second and third rest breaks. (*Ibid.*) Finally, Plaintiffs contend

1 that despite these rest break violations, Defendant has not paid premium wages for noncompliant
2 rest breaks. (Han Decl. ¶ 20.)

3 Furthermore, Plaintiffs allege – and Defendant denies – that Defendant failed to allow
4 employees to take complaint meal breaks. (Han Decl. ¶ 21.) Firstly, Plaintiffs assert that
5 Defendant purportedly stringent attendance and punctuality policies pressured employees to cut
6 their meal breaks short to avoid disciplinary action, including termination. (*Ibid.*) Additionally,
7 Defendant’s policies supposedly became even more stringent throughout the Class Period, which
8 left employees with no room for error when attempting to timely return from their meal breaks.
9 (*Ibid.*) Consequently, employees were purportedly left with no choice but to work through, cut
10 short, or take late meal breaks to adhere to Defendant’s onerous policies. (*Ibid.*) Next, Plaintiffs
11 assert Defendant maintained a rounding policy that exacerbated its alleged meal break violations.
12 (*Ibid.*) Finally, Plaintiffs contend Defendant failed to pay premium wages for noncompliant meal
13 breaks despite these meal break violations. (*Ibid.*)

14 Next, Plaintiffs contend – and Defendant denies – that Defendant maintained a rounding
15 policy that resulted in employees being underpaid. (Han Decl. ¶ 22.) Specifically, Defendant’s
16 rounding policy was apparently neither fair nor neutral on its face. (*Ibid.*) This is because a
17 review of employees’ time records purportedly demonstrate that Defendant purportedly rounded
18 up employees’ clock ins and rounded down their clock outs, resulting in a significant number of
19 hours being underpaid. (*Ibid.*)

20 Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate
21 employees for all hours worked. (Han Decl. ¶ 23.) Firstly, Defendant’s stringent policy regarding
22 tardiness allegedly pressured employees to work off-the-clock by arriving to work earlier than
23 their scheduled shifts to avoid giving the appearance of tardiness. (*Ibid.*) This issue was
24 apparently worsened by their being a line of employees at the timeclocks simultaneously
25 attempting to clock in and out. (*Ibid.*) Next, Defendant’s Overtime policies purportedly pressured
26 off-the-clock as well because they discouraged overtime work (i.e., required preapproval with
27 the threat of termination). (*Ibid.*) Yet, the volume of work employees were regularly expected to
28 undertake supposedly deterred them from recording their additional hours of work. (*Ibid.*)

1 Collectively, this allegedly result in many hours of off-the-clock work pre-shift and post-shift
2 (i.e., setting up workstations, donning and doffing personal protective equipment (“PPE”),
3 cleaning their work areas, etc.). (Han Decl. ¶ 23.)

4 Next, Plaintiffs contend – and Defendant denies – that Defendant failed to factor annual
5 non-discretionary Attendance Award and quarterly bonuses into employees’ regular rates for
6 overtime purposes. (Han Decl. ¶ 24.) The Attendance Award were non-discretionary because
7 their receipt was based on “outstanding attendance records.” (*Ibid.*) Defendant’s Counsel also
8 failed to establish how its quarterly bonuses (i.e., QB Supplemental) was discretionary despite
9 multiple inquiries by Class Counsel. (*Ibid.*) Therefore, despite the payment of these annual
10 Attendance Award and quarterly bonuses, Defendant failed to pay, Defendant failed to pay a
11 true-up or adjustment for the overtime worked by employees during the pay periods these
12 bonuses were earned. (*Ibid.*)

13 Additionally, Plaintiffs assert – and Defendant denies – that Defendant failed to
14 reimburse employees for incurring business expenses. (Han Decl. ¶ 25.) For instance, employees
15 were expected to wear safety shoes to perform their duties, but Defendant supposedly only
16 reimbursed up to \$20.00. (*Ibid.*) Defendant also placed several obstacles to limit the amount of
17 reimbursement owed, such as requiring employees to submit receipts to the Human Resources
18 Department. (*Ibid.*) Moreover, Plaintiffs also allege that employees were expected to use their
19 personal cell phones for work-related purposes (i.e., speak to their supervisors and managers) for
20 which they were not reimbursed. (*Ibid.*) Finally, Plaintiffs allege that despite employees being
21 required to use their personal vehicles to perform their duties (i.e., drive to eye tests, drive to
22 UPS stores to deliver packages), they were not reimbursed for the gas or mileage. (*Ibid.*)

23 Plaintiffs also allege – and Defendant denies – that Defendant is liable for wage statement
24 penalties. (Han Decl. ¶ 26.) Specifically, Defendant issued wage statements in violation of Labor
25 Code section 226(a) because of the underlying violations discussed above. (*Ibid.*) Thus,
26 Defendant’s wage statements would necessarily be inaccurate. (*Ibid.*) Even if Defendant asserts
27 that its violation of section 226(a) is trivial, the California courts have held that strict compliance
28 of section 226(a) is exactly what is intended. (*Ibid.*)

1 Finally, Plaintiffs contend – and Defendant denies – that Defendant is liable for waiting
2 time penalties. (Han Decl. ¶ 27.) Defendant’s hourly-paid or non-exempt employees are entitled
3 to back underpaid overtime and compensation for time worked off-the-clock, missed meal and
4 rest breaks, and bonuses not being factored into employees’ regular rate of pay, thereby
5 triggering waiting time penalties under Labor Code section 203. (*Ibid.*) Therefore, Defendant
6 owes compensation for underpaid work and missed meal and rest breaks as a matter of fact and
7 law. (*Ibid.*) But Defendant intentionally failed or refused to perform an act, which was required
8 to be done, constituting “willful” conduct and justifying “waiting-time” penalties under section
9 203 to former employees. (*Ibid.*)

10 Defendant denies Plaintiffs’ contentions in their entirety. (Han Decl. ¶ 28.) Among other
11 things, Defendant denies Plaintiffs’ rest and meal break contentions, on the grounds that it
12 provided breaks within compliant times and that non-exempt employees were given discretion as
13 to when to take their breaks. (*Ibid.*) Defendant also contends that both its meal and rest break
14 policies complied with California law and that non-exempt employees were allowed to use their
15 meal and rest break time for their own purposes. (*Ibid.*) By extension, Defendant adds that its
16 meal and rest break policies were not intended to deter employees from receiving compliant and
17 duty-free breaks. (*Ibid.*) Defendant also counters that it did not regularly expect employees to
18 complete heavy, time-sensitive workloads that frequently forced them to skip, cut short, or take
19 short meal and rest breaks. (*Ibid.*) Defendant further contends that whether non-exempt
20 employees took meal and rest breaks during compliant time frames and were relieved of all
21 duties are questions that could only be resolved by resorting to individualized inquiries to each
22 non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*)
23 Defendant also asserts that it paid its employees for all times and all hours worked, including
24 overtime, minimum, and premium wages. (*Ibid.*) Defendant counters that it did not have in place
25 stringent policies that pressured employees to work off-the-clock without reporting additional
26 hours of work. (*Ibid.*) Further, Defendant contends that Plaintiffs’ claims regarding off-the-clock
27 work and unpaid overtime are trivial as it was never made aware that employees were working
28 off-the-clock nor did Defendant pressure off-the-clock work. (*Ibid.*) By extension, Defendant

1 also counters that its rounding policy was both fair and neutral because it resulted in an equal
2 amount of underpayment and overpayment. (Han Decl. ¶ 28.) Moreover, Defendant contends
3 that it did factor non-discretionary bonuses into eligible employees' regular rates for overtime
4 purposes, and only a small fraction of employees was eligible for such payments. (*Ibid.*)
5 Defendant also asserts that it reimbursed employees for all business expenses, including using
6 their personal cell phones and personal vehicles. (*Ibid.*) Finally, Defendant argues that its failure
7 to comply with California labor laws (which it denies) was an honest mistake made in good faith.
8 (*Ibid.*) Thus, Defendant's conduct could not be deemed "willful" under Labor Code section 203.

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

10 Under the auspices of the mediator Jeffrey Krivis, the Parties were able to reach an
11 agreement on settlement, the terms of which were memorialized in the Settlement Agreement
12 that the Parties seek preliminary approval of in the instant motion. (Han Decl. ¶ 29.) Attached
13 hereto as Exhibit 2 is a true and correct copy of the Settlement Agreement. (*Ibid.*)

14 **c. Terms of Proposed Settlement**

15 **i. Deductions from the Settlement**

16 Under the terms of the Settlement Agreement, Defendant will pay a Maximum
17 Settlement Amount of up to \$1,945,000 to all Class Members on a claims-made basis. Subject to
18 Court approval, the Net Settlement Amount, which is the maximum amount that will be made
19 available to pay the Class Members, will be calculated by deducting the following amounts from
20 the Maximum Settlement Amount: (a) the attorneys' fees of up to \$680,750 (35% of the
21 Maximum Settlement Amount) to compensate Class Counsel for work already performed and all
22 work remaining to be performed in documenting the settlement, administering the settlement
23 and securing Court approval; (b) the reimbursement of attorneys' litigation costs and expenses
24 associated with Class Counsel's litigation and settlement of the Action in amount not to exceed
25 \$30,000; (c) the Class Representative Enhancement Payments in a sum of \$10,000 to each
26 Plaintiff for their efforts and service leading to the Settlement; (d) the allocation of Claims
27 Administration Costs to Phoenix Class Action Administration Solutions ("Phoenix"), the Claims
28 Administrator, currently estimated not to exceed \$20,000; and (e) the PAGA Payment in an

1 amount not to exceed \$100,000, seventy-five percent (75%) of which (\$75,000) will be paid to
2 the LWDA ("LWDA Payment") and twenty-five percent (25%) of which (\$25,000) will be
3 distributed, pro rata, based on weeks worked to all PAGA Aggrieved Employees. (Han Decl. ¶
4 30.)

5 The actual amount of litigation costs will be provided to the Court in conjunction with
6 Plaintiffs' motion for final approval. (Han Decl. ¶ 31.) At that time, Plaintiffs will ask the Court
7 to approve the amount of these costs. (*Ibid.*) If Plaintiffs' actual costs exceed \$30,000, Plaintiffs
8 will only seek reimbursement in the amount of \$30,000. (*Ibid.*) To the extent that the Court
9 approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the
10 difference between the requested and awarded amounts will be reallocated to the Net Settlement
11 Amount. (*Ibid.*)

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

13 To receive Individual Settlement Payments, all Class Members will be required to submit
14 a timely Claim Form within forty-five (45) calendar days of the initial mailing of the Notice of
15 Class Action Settlement and Claim Form ("Notice Packet") by the Claims Administrator
16 ("Response Deadline"). (Han Decl. ¶ 32.) All Claim Forms must be signed and returned to the
17 Claims Administrator via first class mail or fax and postmarked or faxed by the Response
18 Deadline. (*Ibid.*) The date of the postmark on the return mailing envelope will be the exclusive
19 means to determine whether a Claim Form has been timely submitted. (*Ibid.*)

20 Individual Settlement Payments will be calculated and apportioned from the Net
21 Settlement Amount based on the number of Workweeks a Class Member worked during the
22 Class Period. Specific calculations of Individual Settlement Payments will be made as follows
23 and as described in paragraph 59 of the Settlement Agreement:

- 24 (a) The Claims Administrator will calculate the total number of Workweeks worked by
25 each individual Class Member ("Individual Workweeks") to determine the total
26 number of Workweeks worked by all Class Members ("Class Workweeks") during
27 the Class Period.

28 ///

1 (b) To determine each Class Member's estimated Individual Settlement Payment, the
2 Claims Administrator will use the following formula: Estimated Individual
3 Settlement Payment = (Net Settlement Amount / Class Workweeks) x Individual
4 Workweeks for each individual Class Member. (Han Decl. ¶ 33.)

5 The Claims Administrator will also calculate the total number of Workweeks worked by
6 each individual PAGA Aggrieved Employee to determine the total number of Workweeks
7 worked by all PAGA Aggrieved Employees ("Total PAGA Workweeks") between May 29, 2020
8 and June 10, 2021. Defendant shall provide the Claims Administrator such information as is
9 necessary to calculate the individual PAGA Aggrieved Employee's Workweeks and Total
10 PAGA Workweeks. To determine each PAGA Aggrieved Employee's estimated PAGA
11 Payment, the Claims Administrator will use the following formula: Estimated individual PAGA
12 Payment = (\$25,000 ÷ Total PAGA Workweeks) x individual Workweeks for each individual
13 PAGA Aggrieved Employee. (Han Decl. ¶ 34.)

14 The amount distributed to the Class Members who submit timely and valid Claim Forms
15 for participation in the Class Action Settlement ("Claimants") will equal at least fifty percent
16 (50%) of the Net Settlement Amount. If the total Individual Settlement Payments to the
17 Claimants would equal less than fifty percent (50%) of the Net Settlement Amount, the Claims
18 Administrator will proportionately increase the Individual Settlement Payment for each Claimant
19 to ensure that total Individual Settlement Payments equal to fifty percent (50%) of the Net
20 Settlement Amount. After all Individual Settlement Payments have been made, any remaining or
21 unclaimed funds from the Net Settlement Amount above fifty percent (50%) shall remain
22 Defendant's property. (Han Decl. ¶ 35.)

23 All Individual Settlement Payments will be allocated as follows: one-Third (1/3) of each
24 Individual Settlement Payment will be allocated as wages, one-Third (1/3) will be allocated as
25 interest, and one-Third (1/3) will be allocated as penalties. The amounts paid as wages shall be
26 subject to all tax withholdings customarily made from an employee's wages and all other
27 authorized and required withholdings and shall be reported by W-2 forms. The amounts paid as
28 penalties and interest shall be subject to all authorized and required withholdings other than the

1 tax withholdings customarily made from employees' wages and shall be reported by IRS 1099
2 forms. Any and all applicable employer-side payroll taxes relating to the portion of the
3 Individual Settlement Payments paid as wages shall be paid separate and apart from the
4 Maximum Settlement Amount. (Han Decl. ¶ 36.)

5 Any Class Member wishing to opt-out from the Settlement must sign and postmark a
6 written Request for Exclusion to the Claims Administrator within the Response Deadline. The
7 Request for Exclusion must: (a) be signed by the Class Member; (b) contain the name, address,
8 telephone number, and the last four digits of the Social Security Number of the Class Member
9 requesting exclusion; (c) clearly state the name of this case, the case number, and that the Class
10 Member does not wish to be included in the Settlement; (d) be returned by mail to the Claims
11 Administrator at the specified address and/or facsimile number; and (e) be postmarked on or
12 before the Response Deadline. The date of the postmark on the return mailing envelope will be
13 the exclusive means to determine whether a Request for Exclusion has been timely submitted. A
14 Class Member who does not request exclusion from the Settlement ("Settlement Class Member")
15 will be bound by all terms of the Settlement if the Settlement is granted final approval by the
16 Court. (Han Decl. ¶ 37.)

17 To object to the Settlement, a Class Member must file a valid Notice of Objection with
18 the Court and serve copies of the Notice of Objection on the Parties before the Response
19 Deadline. For the Notice of Objection to be valid, it must include: (a) the objector's full name,
20 signature, address, and telephone number, (b) a written statement of all grounds for the objection
21 accompanied by any legal support for such objection, (c) a clear reference to the title of this case
22 and case number, and (d) copies of any papers, briefs, or other documents upon which the
23 objection is based. The postmark date of the filing and service will be deemed the exclusive
24 means for determining that the Notice of Objection is timely. Class Members who fail to object
25 in the specific and technical manner specified above will be deemed to have waived all
26 objections to the Settlement and will be foreclosed from making any objections and seeking any
27 adjudication or review, whether by appeal or otherwise, to the Settlement. (Han Decl. ¶ 38.)

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1 Within three (3) business days after the Final Approval of the Settlement, the Claims
2 Administrator will provide the Parties with an accounting of the amounts to be paid by
3 Defendant pursuant to the terms of the Settlement. Defendant will deposit all Court-approved
4 costs, fees, and payments, and claim amounts from the Maximum Settlement Amount into a
5 Qualified Settlement Fund (“QSF”) account to be established by the Claims Administrator within
6 fifteen (15) business days of the Effective Date. Within three (3) business days of the Court
7 granting final approval, the Claims Administrator will calculate all payments due. Individual
8 Settlement Payments shall be mailed by regular First-Class U.S. Mail to the respective
9 Claimant’s last known mailing address within fourteen (14) calendar days after Defendant
10 deposits all Court-approved and claim amounts from the Maximum Settlement Amount into a
11 QSF. (Han Decl. ¶ 39.)

12 Any checks issued by the Claims Administrator to Claimants will be negotiable for at
13 least one hundred twenty (120) calendar days. Those funds represented by settlement checks
14 returned as undeliverable and those settlement checks remaining un-cashed for more than one
15 hundred twenty (120) calendar days after issuance will be sent to RAIN Communities, Inc. (Han
16 Decl. ¶ 40.)

17 **iii. Release of Claims**

18 The Released Claims encompasses the Claims and Obligations the Releasing Parties ever
19 had or now have against the Released Parties arising out of or relating to all wage-and-hour
20 matters, that Releasing Parties through the Settlement Agreement are releasing, acquitting and
21 forever discharging, including, without limitation the following: (a) Claims and Obligations
22 (including but not limited to those under federal, state, or local statute, rule or regulation) that the
23 Releasing Parties allege or could have alleged or pled based on the factual allegations or
24 predicate in the Lawsuits; (b) Claims and Obligations relating to wages and benefits including,
25 without limitation, compensation, salary, commissions, incentive pay, overtime, regular rate of
26 pay, meal and rest breaks, paychecks, wage statements, wait time, expense reimbursement,
27 payroll periods, pay cycles, pay dates, final paychecks, use of personal cell phones for business
28 purposes, time reporting, rounding of time clock entries, off-the-clock work, wage recapture,

1 classification as exempt or non-exempt employees, health and welfare benefits, relocation,
2 separation pay, severance pay, notice pay, paid time off, sick pay, bonuses, and/or compensation
3 and benefits of any kind; and (c) Claims and Obligations based on: (i) California Labor Code
4 sections 510 and 1198 (unpaid overtime); (ii) California Labor Code sections 226.7 and 512(a)
5 (unpaid meal premiums); (iii) California Labor Code section 226.7 (unpaid rest premiums); (iv)
6 California Labor Code sections 1194, 1197, and 1197.1 (unpaid minimum wages); (v) California
7 Labor Code sections 201 and 202 (final wages not timely paid); (vi) California Labor Code
8 section 226(a) (non-compliant wage statements); (vii) California Labor Code sections 2800 and
9 2802 (unreimbursed business expenses); (viii) California Business & Professions Code section
10 17200, et seq.; (ix) California Labor Code § 2698 et seq.; (x) the California Labor Code, Wage
11 Orders of the California Industrial Welfare Commission, the California Private Attorney General
12 Act, and all other state and local wage-and-hour statutes, regulation, and rules. The Plaintiffs
13 and Settlement Class will release Defendant and the Released Parties from all remedies that
14 could be claimed in connection with the Released Claims including, but not limited to, statutory,
15 constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest,
16 attorneys' fees, litigation costs, restitution, and equitable relief. This does not prohibit Releasing
17 Parties from participating in an Equal Employment Opportunity Commission, the state
18 Department of Fair Employment and Housing, or any other federal, state or local administrative
19 agency investigation or proceeding. It also does not preclude Releasing Parties from filing claims
20 for workers' compensation or unemployment benefits, or from any other claims or rights that are
21 not waivable as a matter of law ("Released Claims"). See Exhibit 2 ¶¶ 54, 85, 86.

22 Upon the Effective Date, Plaintiffs and all Class Members who have not submitted valid
23 and timely Requests for Exclusion, will be deemed to have fully, finally, and forever released,
24 settled, compromised, relinquished, and discharged with respect to all of the Released Parties any
25 and all Released Claims for any period during the Released Claims Period ("Released Claims").
26 (See Exhibit 2 ¶¶ 39-40, 85; Han Decl. ¶ 41.)

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1 The Released Parties, Defendant, and its former and present parents, subsidiaries, and
2 affiliates, and their current and former officers, directors, owners, employees, partners,
3 shareholders and agents, and the predecessors and successors, assigns, and legal representatives
4 of all such entities and individuals, as well as any entities with whom Defendant could share a
5 Joint Employer relationship under any legal theory, including but not limited to Accountemps,
6 Craig H. Johnson & Associates Placement Services, Expert Staffing West, Express Services,
7 Inc., DBA Express Employment Professionals, OnDemand Employment Group, Palo Verde
8 Consulting, and Search Solutions, LLC (“Releasing Parties”). (See Exhibit 2 ¶ 41; Han Decl. ¶
9 42.)

10 Furthermore, pursuant to the terms of the Settlement, and solely with respect to the
11 Released Claims, Plaintiffs expressly waive and relinquish any rights or benefits available to
12 them under the provisions of section 1542 of the California Civil Code. (See Exhibit 2 ¶ 86; Han
13 Decl. ¶ 43.)

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

16 Class Members who submit claims to the Claims Administrator (Phoenix) will be issued
17 payments based on the total number of Individual Workweeks they worked as Class Members
18 during the Class Period. As discussed supra, the Individual Settlement Payments will be
19 calculated by dividing the Net Settlement Amount by the Class Workweeks worked by the entire
20 Class Period and multiplying that sum by the Individual Workweeks for each individual Class
21 Member resulting in the estimated Individual Settlement Payment. For example, some ranges of
22 Individual Settlement Payments to Class Members, based on various potential lengths of
23 employment during the Class Period, are listed below:

24 Approximately 1 year: $((\$1,094,250 / 156,924) \times 52) = \362.60

25 Approximately 2 years: $((\$1,094,250 / 156,924) \times 104) = \725.20

26 Approximately 3 years: $((\$1,094,250 / 156,924) \times 156) = \$1,087.81$

27 Approximately 4 years: $((\$1,094,250 / 156,924) \times 208) = \$1,450.41$

28 (Han Decl. ¶ 44.)

1 **IV. ARGUMENT**

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

3 California Rule of Court 3.769 requires court approval for class action settlements.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
6 motion for preliminary approval of class settlements:

- 7 (a) A settlement or compromise of an entire class action, or a cause of action
8 in a class action, or as to a party, requires the approval of the court after
9 hearing.
10 . . .
11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

15 Courts act within their discretion in approving settlements that are fair, not collusive, and
16 take into account “all the normal perils of litigation as well as the additional uncertainties
17 inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607
18 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*
19 (1981) 452 U.S. 905.)

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

27 ///

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

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

15 To grant preliminary approval of a class action settlement, the trial court must
16 preliminarily determine whether the settlement is fundamentally fair, adequate, and reasonable.
17 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800. The court has broad powers to
18 determine whether a proposed settlement is fair under the circumstances of the case. *Id.* at p.
19 1801. To make this fairness determination, courts must consider several relevant factors,
20 including “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the amount offered in
22 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
23 experience and views of counsel [.]” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors
24 is not exclusive and the court is free to engage in a balancing and weighing of the factors
25 depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91
26 Cal.App.4th 224, 245. Furthermore, courts give “proper deference to the private consensual
27 decision of the parties[.]” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027
28 (citation omitted).

1 The burden is on the proponent of the settlement to show that it is fair and reasonable.
2 *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of fairness exists where: (1)
3 the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
4 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at p.
6 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
7 1151.

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

9 The Settlement was reached because of arms-length negotiations. Though cordial and
10 professional, the settlement negotiations have been, always, adversarial, and non-collusive in
11 nature. At the mediation, Counsel for the Parties conducted extensive arm's length settlement
12 negotiations until the Parties finally reached an agreement on settlement. The terms of the
13 Settlement are memorialized in the Settlement Agreement, attached hereto as Exhibit 2. (Han
14 Decl. ¶ 45.)

15 Plaintiffs believe in the merits of his case, but also recognize the inherent risks of
16 litigation and understands the benefit of the Class receiving settlement funds immediately, as
17 opposed to risking continued litigation, the merits of the case before and after trial, damages
18 awarded, and an appeal that could take years to litigate. (Han Decl. ¶ 46.)

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

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

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1 Here, a Maximum Settlement Amount of up to \$1,945,000 represents a fair, adequate,
2 and reasonable resolution of the case. The proposed Settlement was calculated using information
3 and data uncovered through litigation, formal and informal discovery, case investigation, and the
4 informal exchange of information in the context of mediation. The proposed Settlement
5 considers the potential risks and rewards inherent in any case and with this case. Considering all
6 the facts in this case, the amount of the proposed Settlement represents a substantial global
7 recovery for all Class Members. (Han Decl. ¶ 47.)

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 \$1,094,250. 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
13 fairness of the proposed plan of allocation of the Settlement funds for purposes of preliminary
14 approval. Even at the final approval stage, “[a]n allocation formula need only have a reasonable,
15 rational 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. ¶ 48.)

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 appear to be competent, have
22 experience with this type of litigation, and significant discovery and investigation have been
23 completed. Newberg § 11.47. Accordingly, the Court should grant preliminary approval of the
24 proposed Settlement. (Han Decl. ¶ 49.)

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1 **e. Value of Settlement**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, Plaintiffs
3 have conducted a significant amount of discovery and investigation in order to evaluate the
4 potential value and merit of all of the claims. (Han Decl. ¶ 50.) The discovery and information
5 obtained in this case allowed Plaintiffs to develop a damages model and complete evaluation of
6 the defenses that Defendant has asserted. (*Ibid.*) As outlined in the Declaration of Douglas Han,
7 Class Counsel performed an extensive analysis of each claim pursuant to *Kullar* prior to entering
8 the proposed Settlement. (*Id.* ¶¶ 2-8, Exhibit 1.)

9 In addition to being able to discover the strengths and vulnerabilities associated with
10 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs 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 Plaintiffs' expert extrapolated that, as of September 10, 2021, based on 1,410 Class Members,
14 the Class Period includes approximately 156,924 workweeks. Plaintiff also determined that the
15 average hourly rate for Class Members was \$18.67. (Han Decl. ¶ 51.)

16 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties, in
17 this case, include but are not limited to Labor Code sections 201-204, 226(a), 226.7, 246, 510,
18 512(a), 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl. ¶ 55.) Defendant asserted
19 that, regardless of the results of the underlying causes of action, PAGA penalties are not
20 mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that, in addition to its
21 strong arguments against the underlying claims, it had a strong argument that it would be unjust
22 to award maximum PAGA penalties given the current unsettled state of law. (*Thurman v.*
23 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this
24 authority).) (Han Decl. ¶ 59.)

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1 Class Counsel calculated penalties under this cause of action by multiplying the number
2 of active Class Members (because of the shortened statutory period for this claim), by the civil
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
4 section 2699.5 that were applicable in this case. (Han Decl. ¶ 60.) Class Counsel then applied
5 discounts in light of the countervailing arguments concerning the other causes of action, as well
6 as the Court’s power to award “a lesser amount than the maximum civil liability.” (Lab. Code §
7 2699(e)(2).) (*Ibid.*)

8 Given the state of the law and the range of PAGA penalties requested and actually
9 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
10 for PAGA penalties. (Han Decl. ¶ 61.) However, if PAGA penalties are granted on any one of
11 the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure for the
12 eligible pay periods could be approximately **\$7,013,500** (([65 x \$100] x 1,079 employees).³
13 (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent (100%)
14 violation rate based on the average number of pay periods (65) during the one-year statutory
15 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
16 PAGA theories of recovery (7) gives potential civil penalties of **\$49,094,500**. (*Ibid.*)

17 Although Plaintiffs argued he could obtain over \$49 million for PAGA penalties, it
18 seemed highly unlikely that the Court would award such a large amount. (Han Decl. ¶ 62.) As
19 noted above, courts have reduced PAGA penalties by about 90% where there are mitigating
20 circumstances. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
21 trial court’s award of less than 10% of maximum PAGA penalty for meal break violations where
22 company sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as
23 to whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be
24 recovered in the same pay period for different Labor Code violations. On one hand, Labor Code
25 section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added),
26

27 ³ Recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a violation
28 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, Plaintiffs estimated the amount of PAGA penalties using the “initial” penalty amount of \$100
under PAGA.

1 implying a separate civil penalty for each violation. On the other hand, employers cite Labor
2 Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover the
3 civil penalty described in subdivision (f)...on behalf of himself or herself and other current or
4 former employees against whom one or more of the alleged violations was committed”
5 (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino v.*
6 *Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir.
7 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of
8 removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial
9 violation, the PAGA penalties would be limited to \$107,900 (1,079 employees x \$100 initial
10 violation) on the low end and \$755,300 on the high end based on six (7) major theories of
11 recovery.

12 To the extent Defendant’s exposure remains in the millions of dollars, the civil penalties
13 could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many courts have taken
14 liberties to dramatically reduce the civil penalties. (See e.g. *Viceral v. Mistras Grp., Inc.* (N.D.
15 Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that
16 included a PAGA set-aside of just 0.15 percent of the PAGA claims’ full potential value, where
17 “Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims”];
18 *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class
19 action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims’ potential
20 value, where the defendant’s obligations were “genuinely unclear” and there was no evidence the
21 defendant acted deliberately or negligently failed to learn about its obligations].) Thus, under a
22 more conservative approach, Class Counsel considered the possibility that the Court could assess
23 only the initial violation rate, bringing the basic PAGA penalty to **\$755,300** [1,079 employees x
24 \$100 x 7 theories of recovery]. (Han Decl. ¶ 62.)

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1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
2 Many of the causes of action brought were duplicative of the statutory claims such as violations
3 of Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. (Han Decl. ¶
4 59.) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed
5 arguable whether the Court would award the maximum penalties under the law. (Han Decl. ¶
6 59.) Thus, allocating \$100,000 to PAGA civil penalties was reasonable based on a rate of \$1.42
7 per pay period [$\$100,000 / 70,272 \text{ Pay Periods in PAGA Date Range} = \1.42] given the fact that
8 Defendant is also paying an additional \$1,845,000 in the class settlement. (Han Decl. ¶ 63.)
9 (citing *Carrington, supra*, 30 Cal.App.5th at 529 (affirming a rate of \$5 per violation and a total
10 PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a
11 total PAGA penalty of \$70,000,000).) Where PAGA penalties are negotiated in good faith and
12 “there is no indication that [the] amount was the result of self-interest at the expense of other
13 Class Members,” such amounts are generally considered reasonable. (Han Decl. ¶ 63.) (citing
14 *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist.
15 LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579
16 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
17 damages to the PAGA claims.”).)

18 **i. Discount Analysis Justifies the Settlement**

19 Excluding the civil penalties, which could be completely discretionary, for the reasons
20 stated the total estimated potential exposure, assuming certification and prevailing at trial, would
21 be approximately \$18,132,099.85 on the low end and \$19,597,770.01 on the high end. (Han
22 Decl. ¶ 64.)

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Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$2,575,380.87	70%	60%	\$309,045.70
Meal Break Premiums	\$2,504,188.43	60%	50%	\$500,837.69
Overtime/Minimum Wage: Off-the-Clock Work	\$2,929,771.08 to \$4,395,441.24	50%	60%	\$585,954.22 to \$879,088.25
Overtime/Minimum Wage: Rounding	\$390,968.47	40%	50%	\$177,290.54
Overtime/Minimum Wage: Non-Discretionary Bonuses	\$1,243,789	30%	40%	\$522,391.38
Unreimbursed Business Expenses	\$1,013,038	30%	70%	\$212,737.98
Wage Statement Penalty	\$4,316,000	50%	50%	\$1,079,000
Waiting Time Penalty	\$3,158,964	50%	50%	\$789,741
MAXIMUM TOTAL EXPOSURE	\$18,132,099.85 to \$19,597,770.01⁴			\$4,176,998.51 to \$4,470,132.54⁵

Based on this analysis, the realistic recovery for this case is \$4,176,998.51 on the low end and \$4,470,132.54 on the high end. (Han Decl. ¶ 73.) The Maximum Settlement Amount of \$1,945,000 is approximately nine percent (9.92%) of the maximum potential exposure and is approximately forty-three percent (43.51%) 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.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007).) “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.”).)

⁴ Han Decl. ¶¶ 52-58.

⁵ *Id.*, ¶¶ 65-72.

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

2 For settlement purposes only, the requisites for establishing conditional class certification
3 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
4 of a common or general interest, of many persons, or when the parties are numerous, and it is
5 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
6 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
7 “both [1] an ascertainable class and [2] a well-defined community of interest among class
8 members.” (*Ibid.*)

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

10 “Ascertainability is required in order to give notice to putative class members as to whom
11 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
12 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
13 by describing a set of common characteristics sufficient to allow a member of that group to
14 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
15 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
16 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

17 This action involves one thousand four hundred ten (1410) Class Members. (Han Decl. ¶
18 9.) This Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
19 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and
20 former employees” is sufficiently numerous).) (*Ibid.*) Further, all Class Members can and will
21 be identified by Defendant to the Claims Administrator through a review of Defendant’s
22 employment records concerning non-exempt or hourly employees who worked for Defendant in
23 the State of California during the Class Period. (*Ibid.*)

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

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

11 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
12 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
13 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)
14 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor
15 policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

16 Here, Plaintiffs assertsthat common issues of fact and law predominate as to each of the
17 claims alleged by Plaintiffs. (Han Decl. ¶ 75.) All hourly-paid or non-exempt employees who
18 worked for Defendant during the Class Period were subject to the same or similar employment
19 practices, policies, and procedures. (Han Decl. ¶¶ 21-27.) All of the claims surround
20 Defendant’s common practice and scheme of failing to properly account for all hours worked by
21 non-exempt employees, and failing to pay them, *inter alia*, for overtime work, and non-
22 compliant meal and rest breaks, and associated inaccurate wage statements and waiting time
23 penalties. (*Ibid.*)

24 Specifically, Plaintiffs assert that common issues of fact and law predominate as to each
25 of the claims alleged by Plaintiffs. (Han Decl. ¶ 76.) All hourly-paid and non-exempt employees
26 who worked for Defendant during the Class Period were subject to the same or similar
27 employment practices, policies, and procedures. (*Ibid.*) All Plaintiffs’ claims surround
28 Defendant’s common practice and scheme of failing to maintain compliant meal and rest break

1 policies and practices, and failing to fully and properly compensate employees, *inter alia*, for
2 non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage
3 statement, and waiting time penalties. (Han Decl. ¶ 76.) Based on these facts, Plaintiffs conclude
4 that the proposed Class is readily certifiable in this case. (*Ibid.*) Thus, the Court should
5 provisionally certify the Class for settlement purposes only. (*Ibid.*)

6 Furthermore, Plaintiffs were non-exempt employees and alleges they and the Class
7 Members were employed by the same company and injured by Defendant's common policies
8 and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid
9 overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business
10 expenses. (Han Decl. ¶ 76.) Plaintiffs seek relief for these claims and derivative claims on behalf
11 of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices
12 and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

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

14 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
15 before reaching the proposed settlement, and engaged in sufficient investigation, research and
16 discovery to support the settlement. (Han Decl. ¶¶ 18-20.) The proposed settlement was only
17 possible following discovery and evaluation of Defendant's policies and procedures, as well as
18 the data produced for the putative class, which permitted Class Counsel to engage in a
19 comprehensive analysis of liability and potential damages. (Han Decl. ¶ 73.) The case is at the
20 stage where "the Parties certainly have a clear view of the strengths and weaknesses of their
21 cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp.
22 610, 617.) (*Ibid.*)

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

24 Class Counsel have actively investigated and litigated this case for months and were
25 actively preparing for class certification. (Han Decl. ¶ 77.) The ongoing work has been
26 extensive, demanding, and ultimately successful in achieving a substantial settlement resolution.
27 (*Ibid.*) Class Counsel conducted formal and informal investigations and discovery into the facts
28 of the case, including obtaining the class contact list, interviewing Plaintiff and dozens of other

1 putative class members, and reviewing and analyzing a volume of documents and data produced
2 by Defendant and obtained through other sources. (Han Decl. ¶ 77.) These documents and data
3 included, and were not limited to, personnel records for Plaintiffs and other putative class
4 members (including detailed time and pay records), payroll and pay history data for Class
5 Members, and Defendant's operations and employment policies, procedures, and practices.
6 (*Ibid.*) Class Counsel also prepared multiple forms of written discovery requests and met and
7 conferred with defense counsel on numerous occasions regarding issues relating to the pleadings,
8 discovery, proper jurisdiction and venue, among other issues. (*Ibid.*) Class Counsel will provide
9 evidence as to the time worked, litigation efforts, and further argument at the time of filing its
10 memorandum in connection with the Final Fairness hearing and in support of its request for
11 Attorneys' Fees and Costs. (*Ibid.*)

12 The proposed Settlement establishes a Maximum Settlement Amount of up to
13 \$1,945,000. (Han Decl. ¶ 79.) The proposed Settlement provides for Class Counsel to apply to
14 the Court for an award of attorneys' fees in an amount not to exceed thirty-five percent (35%) of
15 the Maximum Settlement Amount (or \$680,750) and reimbursement of litigation costs and
16 expenses in an amount not to exceed \$30,000. (*Ibid.*) The requested attorneys' fee award is
17 commensurate with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the
18 extensive time, effort and expense dedicated to the case, (3) the skill and determination it have
19 shown, (4) the results they have achieved throughout the litigation, (5) the value of the
20 Settlement they have achieved for Class Members, and (6) the other cases they turned down in
21 order to devote their time and efforts to this matter. (*Ibid.*) The proposed Notice Packet will
22 provide the Class Members with information as to the amounts allocated toward Attorneys' Fees
23 and Costs under the Settlement Agreement, and that Class Counsel will apply for Attorneys'
24 Fees and Costs, as provided for by the Settlement Agreement. (*Ibid.*)

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

14 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
15 surrounding the case is well within the range of reasonableness. Historically, courts have
16 awarded fees as high as fifty percent (50%) of the settlement fund, depending on the
17 circumstances of the case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D.
18 D.C. 1981) 526 F. Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million
19 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480
20 F. Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees). California
21 Courts routinely approve attorneys’ fees “averag[ing] around one-third of the recovery.” *Chavez*
22 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
23 contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr.*
24 *Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage
25 and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage
26 and hour). In the present case, Class Counsel have borne all the risks and costs of litigation and
27 will not receive any compensation until recovery is obtained. (Han Decl. ¶ 76.) Considering the
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1 amount of the fees requested, the work performed, and the risks incurred, the requested fees and
2 costs are reasonable and should be awarded. (Han Decl. ¶ 76.)

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

4 Both Plaintiffs' counsel and Defendant's counsel are particularly experienced in wage
5 and hour employment law and class actions. Plaintiffs' counsel has significant experience in
6 litigating unpaid wages, non-compliant meal period, and non-compliant rest period, and unfair
7 business practices class actions. (Han Decl. ¶¶ 2-8; Exhibit 1.)

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

14 **j. Appointment of Phoenix as the Claims Administrator**

15 The Parties have agreed to select Phoenix as the Claims Administrator to administer the
16 proposed Settlement. (Han Decl. ¶ 81.) The Claims Administrator will mail the mail the Notice
17 Packet to Class Members. (*Ibid.*) The Claims Administrator will receive, review, and process
18 Claim Forms, any written Requests for Exclusion, or Notice of Objections to the proposed
19 Settlement (including distribution to counsel for the Parties), and any written disputes and
20 supporting documentation as to the validity of the information regarding the number of each
21 Class Member's Workweeks preprinted on the Claim Form. (*Ibid.*) The Claims Administrator
22 will also calculate each Class Member's Individual Settlement Payment, withhold applicable
23 employment taxes, prepare and deliver necessary tax documentation, transmit the appropriate
24 payroll taxes and informational and other tax return filings on behalf of Defendant, transmit the
25 payments provided by the Settlement, prepare weekly reports for the Parties, and perform any
26 other usual and customary duties for administering a class action settlement. (*Ibid.*)

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28 ⁶The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice Packet has been
provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in
conjunction with the Motion for Final Approval of Class Action Settlement.

1 The Claims Administration Costs are set not to exceed \$20,000, which will be paid out of
2 the Maximum Settlement Amount in accordance with the payment schedule provided for by the
3 Settlement Agreement. (Han Decl. ¶ 78.) Considering the number of Class Members, the
4 estimated costs are reasonable. (*Ibid.*) Accordingly, the Court should appoint CPT Group as the
5 Claims Administrator and direct the mailing of the Notice Packet to the Class Members in the
6 manner requested and based on the proposed deadlines as set forth in the Settlement Agreement.
7 (*Ibid.*)

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

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

10 If the court has certified the action as a class action, notice of the final approval
11 hearing must be given to class members in the manner specified by the court. The
12 notice must contain an explanation of the proposed settlement and procedures for
13 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.

14 The proposed Notice Packet will provide: (a) information regarding the nature of the
15 Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total
16 number of Workweeks each respective Class Member worked for Defendant during the Class
17 Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for
18 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g)
19 instructions on how to submit valid Claim Forms, disputes regarding Workweeks, Requests for
20 Exclusion, or objections; (h) the requirements relating to, and deadlines by which the Class
21 Member must submit Claim Forms, disputes regarding Workweeks, Requests for Exclusions,
22 and objections to the Settlement; (i) the claims to be released; and (j) the date for the Final
23 Approval Hearing. (*See* Han Decl. ¶ 83; Exhibit A to Exhibit 2.).

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1 The proposed Notice Packet will include the Claim Form⁷, which will provide pertinent
2 employment information for each Class Member, including the number of his or her Workweeks.
3 (Han Decl. ¶ 84.) The proposed Claim Form will state the estimated gross amount of each Class
4 Member's Individual Settlement Payment and provide detailed instructions on how to properly
5 complete the Claim Form and timely submit it to the Claims Administrator, as well as the
6 procedure and deadline for challenging the number of Workweeks provided on the Claim Form.
7 (*Ibid.*)

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

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

21 At this preliminary approval stage, Plaintiffs also seeks approval of the proposed
22 deadlines for the notice and claims administration process. *Newberg*, at § 11.26. (Han Decl. ¶
23 85.) The notice process entails the mailing of the Notice Packet to all known and reasonably
24 ascertainable Class Members based on Defendant's payroll records. (*Ibid.*) Within twenty (20)
25 business days of Preliminary Approval, Defendant will provide the Class List(s) to the Claims
26 Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet
27 and will include each Class Member's: (a) full name; (b) most recent mailing address and

28 ⁷ Settlement Agreement, Exhibit B.

1 telephone number known to Defendant; (c) Social Security number; dates of employment as
2 hourly-paid or non-exempt employee in California; and (d) any other relevant information
3 needed to calculate settlement payments (“Class List”). (Han Decl. ¶ 85.)

4 Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator
5 will perform a search based on the National Change of Address Database (“NCOA”), or any
6 other similar services available, and mail a Notice Packet to all Class Members via regular First-
7 Class U.S. Mail, using the most current, known mailing addresses available. (Han Decl. ¶ 86.)
8 Any Notice Packets returned to the Claims Administrator as non-deliverable on or before the
9 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
10 address affixed thereto and the Claims Administrator will indicate the date of such re-mailing on
11 the Notice Packet. (*Ibid.*) If no forwarding address is provided, the Claims Administrator will
12 promptly attempt to determine the correct address using a skip-trace and will then perform a
13 single re-mailing within five (5) days after return of the Notice Packet. (*Ibid.*)

14 Class Members will have forty-five (45) calendar days from the initial mailing of the
15 Notice Packet to submit their Claim Forms, Requests for Exclusion, or Notice of Objection to
16 CPT Group, as measured by the postmark date or facsimile-stamped date. (Han Decl. ¶ 87.).

17 Within three (3) business days after the Final Approval of the Settlement, the Claims
18 Administrator will provide the Parties with an accounting of the amounts to be paid by
19 Defendant pursuant to the terms of the Settlement. Defendant will deposit all Court-approved
20 costs, fees, and payments, and claim amounts from the Maximum Settlement Amount into a
21 Qualified Settlement Fund (“QSF”) account to be established by the Claims Administrator within
22 fifteen (15) business days of the Effective Date. Within three (3) business days of the Court
23 granting final approval, the Claims Administrator will calculate all payments due. Individual
24 Settlement Payments shall be mailed by regular First-Class U.S. Mail to the respective
25 Claimant’s last known mailing address within fourteen (14) calendar days after Defendant
26 deposits all Court-approved and claim amounts from the Maximum Settlement Amount into a
27 QSF. (Han Decl. ¶ 39.) Any checks issued by the Claims Administrator to Claimants will be
28 negotiable for at least one hundred twenty (120) calendar days. Those funds represented by

1 settlement checks returned as undeliverable and those settlement checks remaining un-cashed for
2 more than one hundred twenty (120) calendar days after issuance will be sent to RAIN
3 Communities, Inc. (Han Decl. ¶ 40.)

4 **m. Appointment of the Class Representatives and Approval of the Class**
5 **Representative Enhancement Payments**

6 A named plaintiff is eligible for payment that reasonably compensates him for
7 undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone*
8 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange*
9 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their
10 efforts in bringing the case); *Stevens v. Safeway, Inc.* (C.D. Cal. Feb. 25, 2008) Case No. 05-
11 01988, 2008 U.S. Dist. LEXIS 17119 (\$20,000 and \$10,000 to two class representatives); *In Re*
12 *Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D. Pa. July 16, 2009) Case No.
13 06-3202, 2009 U.S. Dist. LEXIS 60790 (\$20,000 each to three class representatives.)

14 Plaintiffs have proven to be adequate Class Representatives. (Han Decl. ¶ 88.) Plaintiffs
15 have conducted themselves diligently and responsibly in representing the Class in this litigation,
16 understand their fiduciary obligations, and have actively participated in the prosecution of this
17 case. (*Ibid.*) Plaintiffs have also spent time in meetings and conferences with counsel to provide
18 counsel with a complete understanding of their work environment and requirements. (*Ibid.*)
19 Furthermore, Plaintiffs do not have any interest that is averse to the interest of other Class
20 Members. *See Sav-On*, 34 Cal.4th at 340.

21 The requested Class Representative Enhancement Payments are fair and reasonable
22 compensation for Plaintiffs’ efforts in bringing the action, assisting counsel with the
23 investigation, litigation, and settlement, regularly conferring with Class Counsel on the status of
24 the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to
25 ensure that its terms are fair and that it provides adequate relief to the proposed Class. (Han
26 Decl. ¶ 89.) Accordingly, it is appropriate and just for Plaintiffs serving as the Class
27 Representatives to receive reasonable Class Representative Enhancement Payments, in addition
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1 to their shares of the Net Settlement Amount, for their services on behalf of the Class Members.
2 (Han Decl. ¶ 89.)

3 **V. CONCLUSION**

4 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the
5 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
6 guidelines, the proposed settlement should be preliminarily approved by the Court, the Class
7 should be conditionally certified for purposes of settlement only, and the Notice Packet should
8 be approved.

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10 Dated: September 30, 2021

JUSTICE LAW CORPORATION

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Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 30, 2021, 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: **Velasquez v. Hi-Temp Insulation, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-831769-21**
Court Case No.: 21CV-02505
Merced County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on September 30, 2021, at Pasadena, California.



Anna Okada