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

EARL RHODES and SALVADOR
RODRIGUEZ, individually, and on behalf of
other members of the general public
similarly situated;

Plaintiffs,

v.

CAVOTEC DABICO US INC., a Delaware
corporation; CAVOTEC INET US INC., a
Delaware corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 30-2021-01177305-CU-OE-CXC

Assigned for All Purposes to:
Honorable Kirk H. Nakamura
Department CX103

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND UNOPPOSED 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**

[Reservation ID: 73592455]

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

Hearing Date: September 16, 2021
Hearing Time: 2:00 p.m.
Hearing Place: Department CX103

Complaint Filed: January 5, 2021
FAC Filed: July 20, 2021
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on September 16, 2021, and at 2:00 p.m., or as soon as
2 the matter may be heard before the Honorable Kirk H. Nakamura in Department CX103 of the
3 Orange County Superior Court, located at 751 W. Santa Ana Boulevard, Santa Ana, CA 92701,
4 Plaintiffs Earl Rhodes and Salvador Rodriguez (“Plaintiffs”) will and hereby move for an order:

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

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- 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 Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, and approval of the allocation for PAGA penalties and the Administration Costs.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); 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: August 20, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Talía Lux
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$750,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all persons who
4 worked for Defendants Cavotec Inet US Inc. and Cavotec Dabico US Inc. (“Defendants”) in
5 California as an hourly-paid or non-exempt employee during the Class Period (“Class”). The
6 Class Period is the time period from July 11, 2016, to the date the Court issues an order granting
7 preliminary approval of the Settlement, or September 6, 2021, whichever occurs earlier (“Class
8 Period”). At the time of this filing, the number of Class Members is currently estimated to be one
9 hundred twenty-one (121). Defendants have provided Plaintiffs with the one-hundred twenty-
10 one (121) number of Class Members and Plaintiffs have confirmed the accuracy of this number
11 through their own investigation.

12 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
13 and vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this
14 proposed settlement of \$750,000 – with an average settlement share amount estimated at
15 \$3,235.54¹ – is well within the “ballpark” of reasonableness.

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

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27 ¹ \$391,500 (Net Settlement Amount) / 121 (Class Members) = \$3,235.54. Plaintiffs will provide the lowest and
28 highest estimated class member payments under the settlement in support of their final approval motion when the
data has been analyzed by the Settlement Administrator.

II. BACKGROUND

Founded about five decades ago, Defendants are a global engineering group that delivers power transmission, distribution and control technologies that form the link between fixed and mobile equipment in multiple industries, including in the ports and maritime, airports, mining and tunneling, and general industry sectors. Defendants provide innovative connection and electrification to enable the decarbonization of ports and industrial applications. Defendants also have sales companies in 35 countries around the globe which provide Defendants' customers with local support. (Declaration of Douglas Han ("Han Dec.") at ¶ 9.) This case involves all persons who worked for Defendants in California as a non-exempt employee during the Class Period ("Class"). (*Ibid.*) The Class Period is the time period from July 11, 2016, to the date the Court issues an order granting preliminary approval of the Settlement, or September 6, 2021, whichever occurs earlier ("Class Period"). (*Ibid.*) Plaintiffs allege that at all times during the Class Period, Defendants' non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

Plaintiff Rhodes is a former employee of Defendants who filed a class action on behalf of all current and former California-based (i.e., currently "residing" in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from July 11, 2016 to the present. Plaintiff Rodriguez is a former employee of Defendants who filed a Private Attorneys General Act of 2004 ("PAGA") action on behalf of all current and former California-based (i.e., currently "residing" in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees of Defendants within the relevant time period. (Han Dec., *supra*, at ¶ 10.) On June 29, 2021, Plaintiff Rodriguez provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the Labor Code he contends were violated and the theories supporting his contention (*Ibid.*)

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1 The PAGA claim alleges that Defendants violated the Labor Code by failing to pay
2 minimum and overtime wages, failing to provide meal periods and rest breaks, failing to timely
3 pay wages during employment and upon termination, failing to provide complete and accurate
4 wage statements, and failing to reimburse business expenses. (Han Dec., *supra*, at ¶ 11.)

5 The Parties attended mediation on Plaintiffs' claims on June 11, 2021. (Han Dec., *supra*,
6 at ¶ 12.) Under the auspices of the mediator, Lisa Klerman, the Parties were eventually able to
7 reach an agreement on the settlement of the action. (*Ibid.*)

8 On July 20, 2021, in line with the settlement reached between the Parties at mediation, Plaintiffs
9 filed their First Amended Class Action Complaint in the Superior Court of California, County of
10 Orange on behalf of themselves and the putative class, which consists of all persons who worked
11 for Defendants in California as an hourly-paid or non-exempt employee during the period from
12 July 11, 2016, to the present. (Han Dec., *supra*, at ¶ 13.) Plaintiffs' First Amended Class Action
13 Complaint alleges causes of action for (1) violation of California Labor Code §§ 510 and 1198
14 (unpaid overtime); (2) violation of Labor Code §§ 226.7 and 512(a) (unpaid meal period
15 premiums); (3) violation of Labor Code § 226.7 (unpaid rest period premiums); (4) violation of
16 California Labor Code § 1194 and 1197 (unpaid minimum wages); (5) violation of California
17 Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California Labor Code
18 § 226(a) (non-compliant wage statements); (7) violation of Labor Code § 2800 and 2802
19 (unreimbursed business expenses); (8) violation of PAGA; and (9) violation of Business &
20 Professions Code §§ 17200, et seq. (*Ibid.*)

21 Defendants generally and specifically deny any and all liability or wrongdoing of any sort
22 with regard to any of the claims alleged, make no concessions or admissions of liability of any
23 sort, and contend that for any purpose other than settlement, the Class Action is not appropriate
24 for class or representative treatment. (Han Dec., *supra*, at ¶ 14.) Furthermore, Defendants assert
25 a number of defenses to the claims, and have denied any wrongdoing or liability arising out of
26 any of the alleged facts or conduct in the Class Action. (*Ibid.*)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Prior to the mediation and both before and after the Class Action was filed, the Parties conducted significant investigation and discovery of the facts and law. (Han Dec., *supra*, at ¶ 15.) Prior to mediation, Defendants produced hundreds of documents relating to their policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, overtime, meal and rest periods, and payroll and operational policies. (*Ibid.*) As part of Defendants' 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.*) Defendants produced representative time and pay data for 41 individuals, or roughly thirty-three percent (33%) of the total Class Members. (*Ibid.*) The Parties continued to meet and confer regarding the sufficiency of the sample of time and payroll records and to ensure that the sampling was selected randomly and represented the range of job titles included within the class definition. (*Ibid.*)

Furthermore, Plaintiffs also interviewed several Class Members who worked for Defendants throughout the Class Period. (Han Dec., *supra*, at ¶ 16.) The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. (Han Dec., *supra*, at ¶ 15.)

Based upon the Parties' discovery, and interviews Plaintiffs' Counsel had with non-exempt employees, Plaintiffs contend – and Defendants deny – that Defendants failed to provide employees legally mandated rest breaks. Interviews with putative class members confirm that Defendants' arguably compliant policies were not enforced as part of Defendants' actual practice. (Han Dec., *supra*, at ¶ 16.) Further, since Defendants' general policy discouraged overtime hours by disciplining or terminating workers for unauthorized overtime, employees were often unable to take their rest breaks because their supervisors would constantly pressure employees to finish their tasks and avoid falling behind on their schedules. (*Ibid.*) For example,

1 drivers missed all of their rest breaks due to delivery deadlines. (Han Dec., *supra*, at ¶ 16.)
2 Further, mechanical assemblers and electrical technicians missed nearly all of their rest breaks
3 due to the heavy workload and lack of oversight. (*Ibid.*) As to other employees, when there was
4 an urgent task, the employee was expected to tend to this urgent task and take their rest break
5 late to resolve the issue immediately. (*Ibid.*) Finally, Plaintiffs also assert that Defendants failed
6 to pay employees premium wages in spite of several instances of failing to provide compliant
7 rest breaks. (*Ibid.*)

8 Moreover, Plaintiffs assert – and Defendants deny – that Defendants failed to provide
9 employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 17.) Defendants’ meal
10 period policies were not compliant as they stated employees are provided with a meal period
11 before the end of the fifth hour of work. (*Ibid.*) Additionally, Defendants maintained uniform,
12 improper practices that prevented employees from receiving compliant meal breaks. (*Ibid.*)
13 Specifically, employees often had late, missed, short, or interrupted meal breaks because of their
14 workload, understaffing, and pressure to complete time-sensitive tasks. (*Ibid.*) For example,
15 electrical technicians and mechanical assemblers were often forced to miss their meal breaks due
16 to the understaffing and to ensure any units they were assembling were finished. (*Ibid.*)
17 Similarly, for drivers, if they took breaks, they communicated being required to take late meal
18 breaks due to delivery deadlines. (*Ibid.*) Finally, Plaintiffs contend that Defendants did not pay
19 employees all of the premium wages they were entitled to in spite of these many instances of
20 non-compliant meal breaks. (*Ibid.*)

21 Plaintiffs also asserts – and Defendants deny – that Defendants failed to compensate
22 employees for all hours worked. (Han Dec., *supra*, at ¶ 18.) Specifically, Defendants’ uniform,
23 improper practices frequently pressured employees into working off-the-clock for which they
24 were not compensated. (*Ibid.*) Due to the workload and understaffing, employees were told to
25 continue working after they had clocked-out by assisting other employees or to clean-up their
26 workstations. (*Ibid.*) Further, employees were directed by their supervisors to handle any minor
27 technical issues with equipment off-the-clock at the end of their shift. (*Ibid.*) Similarly, due to
28 Defendants’ strict clock-in time policy, employees were instructed to prepare orders or set-up

1 their workstations prior to clocking-in. (Han Dec., *supra*, at ¶ 18.) Since Defendants prohibited
2 working unauthorized overtime, employees were regularly required and instructed to clock out
3 for the workday and complete their remaining tasks off-the-clock. (*Ibid.*)

4 Furthermore, Plaintiffs contend – and Defendants deny – that employees were not
5 compensated at their regular rate of pay for non-discretionary bonus payments. (Han Dec.,
6 *supra*, at ¶ 19.) Specifically, Defendants would periodically pay employees non-discretionary
7 bonus payments that were not factored into employees’ regular rates of pay for purposes of
8 overtime compensation. (*Ibid.*) Employees would receive a percentage of their gross income as a
9 periodic bonus. (*Ibid.*) Despite paying its employees these bonuses, Defendants failed to include
10 them into employees’ regular rates to change their overtime rates. (*Ibid.*)

11 Additionally, Plaintiffs asserts – and Defendants deny – that Defendants failed to
12 reimburse employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 20). For
13 example, employees were required to use their personal cell phones to communicate with other
14 employees and their supervisors. (*Ibid.*) They were not reimbursed for such usage. (*Ibid.*)
15 Moreover, many employees were required to purchase boots for which a voucher was given, but
16 the voucher did not cover the entirety of the cost. (*Ibid.*) Further, many employees had to use
17 their personal vehicles to pick-up necessary items and orders, but they were not reimbursed for
18 gas or mileage. (*Ibid.*)

19 Furthermore, Plaintiffs contend – and Defendants deny – that Defendants are liable for
20 issuing non-compliant wage statements. (Han Dec., *supra*, at ¶ 21). Specifically, Defendants
21 issued wage statements in violation of Labor Code section 226(a) because of the underlying
22 violations that are discussed above. (*Ibid.*) Consequently, Defendants’ wage statements would
23 necessarily be inaccurate. (*Ibid.*) Even if Defendants assert that their violation of section 226(a)
24 is trivial, California courts have held that strict compliance of section 226(a) is exactly what is
25 intended. (*Ibid.*)

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1 Finally, Plaintiffs contend – and Defendants deny – that Defendants are liable for waiting
2 time penalties. (Han Dec., *supra*, at ¶ 22). Specifically, Defendants’ hourly-paid or non-exempt
3 employees are entitled to back underpaid overtime and compensation for time worked off-the-
4 clock as well as missed meal and rest breaks, thereby triggering waiting time penalties under
5 Labor Code section 203. (*Ibid.*) Thus, Defendants owe compensation for underpaid work and
6 missed meal and rest breaks as a matter of fact and law but intentionally failed or refused to
7 perform an act, which was required to be done, constituting “willful” conduct and justifying
8 “waiting-time” penalties under section 203 to former employees. (*Ibid.*)

9 Defendants deny Plaintiffs’ contentions in their entirety. (Han Dec., *supra*, at ¶ 23.)
10 Among other things, Defendants deny Plaintiffs’ rest and meal break contentions, on the grounds
11 that it provided rest and meal periods within compliant times and that non-exempt employees
12 were given discretion as to when to take their rest and meal periods. (*Ibid.*) Defendants also
13 contend that non-exempt employees were allowed to use their rest period and meal period time
14 for their own purposes. (*Ibid.*) Defendants further contend that whether non-exempt employees
15 took meal and rest breaks during compliant time frames and were relieved of all duties are
16 questions that could only be resolved by resorting to individualized inquiries to each non-exempt
17 employee and, therefore, class certification would not be appropriate. (*Ibid.*) Defendants also
18 assert that it paid its employees for all times worked, including overtime, minimum, and
19 premium wages. (*Ibid.*) Moreover, Defendants contend that they did factor non-discretionary
20 bonus payments into eligible employees’ regular rates for overtime purposes. (*Ibid.*) Further,
21 Defendants contend that Plaintiffs’ claims regarding off-the-clock work and unpaid overtime are
22 trivial as only a small number of employees actually worked off-the-clock. (*Ibid.*) Defendants
23 also assert that they reimbursed employees for all business expenses, including the purchase of
24 boots. (*Ibid.*) Finally, Defendants argue that their failure to comply with California labor laws
25 was an honest mistake made in good faith. (*Ibid.*) Thus, Defendants’ conduct could not be
26 deemed “willful” under Labor Code section 203. (*Ibid.*)

27 As demonstrated above, the Parties took staunchly conflicting positions concerning
28 Defendants’ policies and procedures and their effect on hourly-paid and non-exempt employees.

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

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

4 The Parties agreed to go to mediation with experienced wage and hour mediator, Lisa
5 Klerman. The mediation took place on June 11, 2021. (Han Dec., *supra*, at ¶ 24.) During the
6 mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
7 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the
8 mediator, the Parties were able to reach an agreement on a settlement of the Class Action, the
9 terms of which were memorialized in a Settlement Agreement, that the Parties now seek
10 Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

11 **ii. The Settlement Was Reached as a Result of Arm's-Length**
12 **Negotiations**

13 The Settlement Agreement was reached as a result of arm's-length negotiations. (Han
14 Dec., *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have been, at
15 all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediations, Counsel for the
16 Parties conducted extensive arm's length settlement negotiations until an agreement was
17 ultimately reached by all Parties. (*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 Defendants through class certification and trial and through any possible appeals. (Han Dec.,
21 *supra*, at ¶ 41.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of
22 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
23 (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including
24 formal mediation on June 11, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel
25 believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable
26 settlement, and is in the best interests of the Class. (*Ibid.*) Additionally, Plaintiffs did their due
27 diligence in determining no other representative lawsuits were filed against Defendants. (*Ibid.*)

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
4 discovery to support the settlement. (Han Dec., *supra*, at ¶ 42.) The proposed settlement was
5 only possible following significant discovery and evaluation of Defendants’ relevant policies and
6 procedures, as well as the data they produced for the putative Class, which permitted Class
7 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
8 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
9 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
10 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$750,000 (“Gross
15 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
16 amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$262,500 to
17 compensate Class Counsel for work already performed and all work remaining to be performed
18 in documenting the settlement, administrating the settlement and securing Court approval; (b)
19 Cost Award for actual litigation costs not to exceed \$20,000; (c) Class Representative
20 Enhancement Payments in the amount of \$10,000 to each Class Representative in recognition of
21 Plaintiffs’ work and efforts in obtaining the benefits for the Class and undertaking the risk for the
22 payment of costs in the event this matter had not successfully resolved²; (d) Administration Costs
23 to Phoenix Class Action Settlement Administrators (“Phoenix”), the Settlement Administrator,
24 not to exceed \$6,000; and (e) PAGA Payment of \$50,000, seventy-five percent (75%) of which
25 (\$37,500) shall be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) shall be
26 distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all
27 hourly-paid or non-exempt employees of Defendants in California during the period from June
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² Plaintiffs’ class member recovery will be outlined in the motion for final approval of settlement.

29, 2020 through the date the Court signs an order granting preliminary approval of this Settlement, or September 6, 2021, whichever occurs earlier (“Eligible Aggrieved Employees,” “PAGA Period,” and “Individual PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 25.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$391,500 (“Net Settlement Amount”) will be distributed to Class Members – with an average settlement share estimated at \$3,235.54. (Han Dec., *supra*, at ¶ 27.) The Settlement Administrator will withhold the amount of the Participating Class Members’ portion of normal payroll withholding taxes out of each person’s Individual Settlement Share. (*Ibid.*) The Settlement Administrator will calculate the amounts of the Participating Class Members’ and Defendants’ portions of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator will submit Defendants’ portion of payroll withholding tax calculation to Defendants for additional funding and forward those amounts along with each person’s Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*) The Individual Settlement Share is calculated based on each Participating Class Member’s pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows:

(i) the number of weeks he or she worked as a hourly-paid or non-exempt employee during the Class Period, divided by (ii) the total number of weeks worked by all Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Class Member based on their dates of employment for purposes of this calculation. (Han Dec., *supra*, at ¶ 28.)

Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee according to his or her proportional share, which will be based upon the total number of work weeks he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 29.) Each Class Member’s settlement share will be treated as 1/3 wages and 2/3 non-wages. (*Ibid.*) The portion paid as wages will be subject to all tax withholdings customarily made from an employee’s wages and all other authorized and required withholdings shall be reported by W-2 forms. (*Ibid.*) The amounts paid as non-wages shall be subject to all authorized and required withholdings

other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. (Han Dec., *supra*, at ¶ 29.) The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to Eligible Aggrieved Employees based on work weeks during the PAGA Period as follows:

(i) the number of work weeks he or she worked as a hourly-paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of work weeks worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of periods worked by each Eligible Aggrieved Employee based on their dates of employment for purposes of this calculation. (*Ibid.*)

Each Eligible Aggrieved Employee's PAGA Payment will be apportioned as 100% penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. (*Ibid.*) The precise number of compensable weeks worked per Class Member will not be known until Defendants have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 30.) No portion of the Gross Settlement Amount will revert to Defendants for any reason. (*Ibid.*) The allocation of thirty-three percent (33%) of the Class Member's settlement share as wages and the remainder as non-wages, including Eligible Aggrieved Employee's PAGA Payment, is justified as the majority of the claims encompassed by this Settlement act as penalties. (*Ibid.*)

iii. Notice to the Class

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 31.) The Class Data will be formatted as a Microsoft Excel spreadsheet and will include: (i) each Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class Member's Social Security and Employee ID number, if any; (iv) the Class Member's relevant dates of employment; (v) number of workweeks worked by the Class Member during the Class Period (excluding weeks where the Class Member performed no work for Defendant) ("Class Data"). (*Ibid.*)

1 Within fourteen (14) calendar days after Defendants' deadline to provide the Class Data
2 to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
3 identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 32.) The Notice
4 Packets will be provided in Spanish as well as English. (*Ibid.*) Class Members are not required to
5 submit a claim form to receive their Individual Settlement Payments pursuant to the Settlement.
6 (*Ibid.*) Eligible Aggrieved Employees are not required to submit a claim form to receive their
7 Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and Exclusion Form are attached
8 as Exhibits A and B to the Settlement Agreement respectively, which is Exhibit 2 to the
9 Declaration of Douglas Han. (*Ibid.*)

10 **iv. Distribution of Funds**

11 No later than ten (10) calendar days after the date the Final Approval of the Settlement
12 can no longer be appealed or, if there are no objectors and no plaintiffs in intervention at the time
13 the Court grants Final Approval of the Settlement, the date the Court enters judgment granting
14 Final Approval of the Settlement, Defendants shall deposit the Gross Settlement Amount of
15 \$750,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
16 Settlement Administrator. (Han Dec., *supra*, at ¶ 33.) Defendants shall also at this time provide
17 any tax information that the Settlement Administrator may need to calculate each Participating
18 Class Members' Individual Settlement Shares. (*Ibid.*)

19 After sixty-one (61) calendar days after the deadline to fund the Settlement, the
20 Settlement Administrator shall calculate and disburse all payments due under the Settlement
21 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
22 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the
23 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 34.) The Settlement
24 Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the
25 LWDA for settlement of the PAGA claim. (*Ibid.*)

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1 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
2 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
3 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 35.) If any
4 checks are returned as undeliverable and without a forwarding address, the Settlement
5 Administrator will conduct a skip trace search to find the most up-to-date mailing addresses and
6 re-mail the checks promptly. (*Ibid.*) If any checks are not redeemed or deposited within ninety
7 (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard.
8 (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period
9 after mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
10 calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or
11 Individual PAGA Payment (as applicable) to the California State Controller’s Office in
12 accordance with California Unclaimed Property Law so that the Participating Class Member
13 and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or
14 Individual PAGA Payment available to him or her per the applicable claim procedure to request
15 that money from the State of California. (*Ibid.*)

16 **v. Release of Claims**

17 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
18 the Settlement, Plaintiffs and the Participating Class Members release the Released Parties from
19 the Released Claims for the Class Period (“Released Claims”). See Exhibit 2 §§ (I)(JJ), (III)(J).
20 (Han Dec., *supra*, at ¶ 36.)

21 As of the Effective Final Settlement Date and upon Defendants’ fully funding of the
22 Settlement, all Eligible Aggrieved Employees and the State of California shall be deemed to
23 have fully, finally, and forever released, relinquished and will release all claims for civil
24 penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period (“PAGA
25 Released Claims”). See Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 37.)

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1 The Released Parties include Defendants and their past or present officers, directors,
2 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
3 consultants, insurers and reinsurers, and their respective successors and predecessors in interest,
4 subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint
5 employers (“Released Parties”). See Exhibit 2 § (I)(KK). (Han Dec., *supra*, at ¶ 38.)

6 As of the Effective Final Settlement Date, and in exchange for the Class Representative
7 Enhancement Payments to Plaintiffs in an amount not to exceed \$10,000, in recognition of their
8 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
9 of costs in the event this matter had not successfully resolved, Plaintiffs provide a general release
10 of claims for themselves and their spouses, heirs, successors and assigns. See Exhibit 2 §§
11 (III)(L). (Han Dec., *supra*, at ¶ 39.)

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

13 Both Plaintiffs’ Counsel and Defendants’ Counsel are particularly experienced in wage
14 and hour employment law and class actions. Plaintiffs’ Counsel has significant experience in
15 litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions.
16 (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

17 Plaintiffs’ counsel has prosecuted numerous cases on behalf of employees for California
18 Labor Code violations and thus are experienced and qualified to evaluate the class claims, to
19 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
20 defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.) This experience instructed Plaintiffs’ counsel
21 on the risks and uncertainties of further litigation and guided their determination to endorse the
22 proposed Settlement.³ (*Ibid.*)

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28 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class 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.

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.⁴
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 (c) Any party to a settlement agreement may serve and file a written notice of
11 motion for preliminary approval of the settlement. The settlement
12 agreement and proposed notice to class members must be filed with the
13 motion, and the proposed order must be lodged with the motion.

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

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

20 An understanding of the amount in controversy is an important factor in whether the
21 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
22 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
24 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
25 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

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

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

13 **i. The Settlement Is Fair and Reasonable**

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 Dec., *supra*, at ¶ 42.) The proposed settlement was
17 only possible following significant discovery and evaluation of Defendants’ relevant policies and
18 procedures, as well as the data they produced for the putative Class, which permitted Class
19 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
20 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
21 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
22 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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1 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendants failed to pay overtime wages, failed to provide meal breaks
3 and pay applicable premiums, failed to provide rest periods and pay applicable premiums, failed
4 to pay minimum wages, failed to pay final wages in a timely manner, failed to issue compliant
5 wage statements, failed to reimburse business expenses, violated PAGA, and violated the
6 Business & Professions Code sections 17200, et seq. (Han Dec., *supra*, at ¶ 43.)

7 Defendants vehemently deny Plaintiffs' theories of liability and contend, as stated above,
8 that all meal and rest periods were provided in compliance with California law, that all wages
9 were properly paid to Class Members, that they provided final wages in a timely manner, that
10 they provided wage statements in compliance with Labor Code section 226, and that they
11 reimbursed all business expenses. (Han Dec., *supra*, at ¶ 44.) Defendants further contend that
12 any mistakes made were honest rather than willful. (*Ibid.*) Finally, Defendants argue that if
13 litigation were to continue, they feel confident that they would prevail. (*Ibid.*)

14 Although Plaintiffs believe the case is suitable for certification on the basis that there are
15 company-wide policies that Plaintiffs contend violate California law and uniformly affect the
16 putative Class Members, uncertainties with respect to certification are always present. (Han Dec.,
17 *supra*, at ¶ 45.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34
18 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
19 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
20 and hour claims.⁵ (*Ibid.*)

21 Although remaining confident in the strengths of her claims, all of these factors led
22 Plaintiffs to discount the following calculations of potential damage claims:

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26 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 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 Settlement Amount of \$750,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendants provided Plaintiffs with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 putative class members and the average hourly rate for class members. (Han Dec., *supra*, at ¶
6 46.) Defendants and Plaintiffs' analysis also confirmed that there were approximately 15,906
7 workweeks worked by Class Members through April 10, 2021. (*Ibid.*) Given that the Class
8 Period covers the time through to the date the Court issues an order granting preliminary
9 approval of the Settlement, or September 6, 2021, whichever occurs earlier, Plaintiffs expert
10 extrapolated the number of workweeks out to September 6, 2021, confirming there are
11 approximately 17,014 workweeks. (*Ibid.*) Plaintiffs were also able to determine that the average
12 hourly rate for Class Members was \$20.98, confirmed by Defendants (*Ibid.*)

13 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
14 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
15 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 54.) Defendants asserted that,
16 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
17 but permissive and discretionary. (*Ibid.*) Defendants also maintained that, in addition to their
18 strong arguments against the underlying claims, they had a strong argument that they would be
19 unjust to award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*; see
20 also *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by
21 30% under this authority).)

22 Class Counsel calculated penalties under this cause of action by multiplying the number
23 of active Class Members (because of the shortened statutory period for this claim), by the civil
24 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
25 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 55.) Class Counsel then
26 applied discounts in light of the countervailing arguments with regard to the other causes of
27 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
28 Lab. Code § 2699(e)(2). (*Ibid.*)

1 Given the state of the law and the range of PAGA penalties requested and actually
2 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
3 for PAGA penalties. (Han Dec., *supra*, at ¶ 56.) However, if PAGA penalties are granted on
4 any one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure
5 for the eligible pay periods could be approximately \$255,000 (([30 x \$100] x 85) employees).⁶
6 (*Ibid.*) Plaintiffs calculated Defendants’ PAGA exposure using one hundred percent (100%)
7 violation rate based on the average number of pay periods (30) during the one-year statutory
8 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
9 PAGA theories of recovery (6) gives potential civil penalties of \$1,530,000. (*Ibid.*)

10 Although Plaintiffs argued they could obtain over \$1.5 million for PAGA penalties, it
11 seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶
12 57.) In fact, courts have reduced PAGA penalties by about ninety percent (90%) where there are
13 mitigating circumstances. *See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-29
14 (affirming trial court’s award of less than 10% of maximum PAGA penalty for meal break
15 violations where company sought to comply with the law). PAGA’s plain language indicates that
16 an employer will be assessed a lower, “initial” penalty for each initial pay period in which a
17 violation occurs, and a higher, “subsequent” penalty for each subsequent pay period in which a
18 violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163
19 Cal.App.4th 1157; however, the court held, “Until the employer has been notified that it is
20 violating a Labor Code provision (whether or not the commissioner or court chooses to impose
21 penalties), the employer cannot be presumed to be aware that its continuing underpayment of
22 employees is a ‘violation’ subject to penalties [and will be assessed only the ‘initial’ violation
23 rate].” (*Amaral*, *supra*, 163 Cal.App.4th at 1209.) This language could be interpreted as
24 indicating that until the Labor Commissioner or a court informs an employer that it has violated
25 the Labor Code, the employer can only be assessed the “initial” violation rate.

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27 ⁶ A recent Ninth Circuit opinion suggests there may be no “subsequent” violation until there is an actual finding of a
28 violation by a Labor Commissioner or court. *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 2021 WL 867583, at *11-
*12. Thus, Plaintiff estimated the amount of PAGA penalties using only the “initial” penalty amount of \$100 under
the PAGA.

1 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may
2 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period
3 for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
4 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
5 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
6 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in
7 subdivision (f)...on behalf of himself or herself and other current or former employees against
8 whom one or more of the alleged violations was committed” (emphasis added). However,
9 Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*
10 (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057,
11 which preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking”
12 of PAGA penalties.

13 To the extent Defendants’ exposure remains in the hundreds of thousands of dollars, the
14 civil penalties would certainly be “unjust, arbitrary and oppressive, or confiscatory.” In fact,
15 many courts have taken liberties to dramatically reduce the civil penalties. (See e.g. *Viceral v.*
16 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at *9 [preliminarily approving
17 class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’
18 full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either
19 class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
20 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
21 the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear”
22 and there was no evidence the defendant acted deliberately or negligently failed to learn about its
23 obligations].).

24 Under a more conservative approach, Plaintiffs’ counsel considered the possibility that
25 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$51,000
26 [85 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 57.)

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1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Dec., *supra*, at ¶ 58.) Many of the causes of action brought were duplicative of the
3 statutory claims such as violations of California Labor Code §§ 226(a), 226.7, 510, 512(a), 1194,
4 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
5 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
6 under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based
7 on a rate of \$19.33 per pay period [$\$50,000 \div 2,587$ Pay Periods in PAGA Date Range =
8 \$19.33], given the fact that Defendants are also paying an additional \$700,000 in the class
9 settlement. (*Id.* (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
10 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff
11 requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where
12 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
13 result of self-interest at the expense of other Class Members,” such amounts are generally
14 considered reasonable. (Han Dec., *supra*, at ¶ 58.) (citing *Hopson v. Hanesbrands Inc.* (N.D.
15 Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g.,
16 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
17 discretion in approving a settlement which does not allocate any damages to the PAGA
18 claims.”).)

19 Accordingly, taking into consideration Defendants’ defenses, their supporting evidence,
20 and their position that the Class Action is not suitable for class treatment, the settlement amount
21 of \$750,000— with an average settlement share estimated at \$3,235.54—is reasonable and fair.

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

23 Excluding the civil penalties, which could be completely discretionary, for the reasons
24 stated the total estimated potential exposure, assuming certification and prevailing at trial, would
25 be approximately \$2,393,478.97 on the low end and \$2,571,955.83 on the high end. (Han Dec.,
26 *supra*, at ¶ 59.)

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Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$491,806.87	60%	50%	\$98,361.37
Meal Break Premiums	\$951,254.18	40%	30%	\$399,526.76
Overtime/Minimum Wage: Off-the-Clock	\$356,953.72 to \$535,430.58	40%	50%	\$107,086.12 to \$160,629.17
Overtime/Minimum Wage: Non-Discretionary Bonuses	\$51,668.00	30%	40%	\$21,700.56
Waiting Time Penalty	\$281,971.20	50%	50%	\$70,492.80
Wage Statement Penalty	\$250,750.00	50%	50%	\$62,687.50
Unreimbursed Business Expenses	\$9,075.00	30%	70%	\$1,905.75
MAXIMUM TOTAL EXPOSURE⁷	\$2,393,478.97 to \$2,571,955.83			\$761,760.86 to \$815,303.91

Based on this analysis, the realistic recovery for this case is \$761,760.86 on the low end and \$815,303.91 on the high end. (Han Dec., *supra*, at ¶ 67.) The Gross Settlement Amount of \$750,000 is approximately twenty-nine percent (29.2%) of the maximum potential exposure and is approximately ninety two percent (91.99%) 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 inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,

⁷ The Business and Professions Code § 17200 *et seq.* claim in the original Complaint was used to extend out the Labor Code violations claims out to the four year period. When Plaintiffs calculated the workweeks, Plaintiffs’ calculations were based on the four year period so the claim is built into the analysis.

455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”) Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have 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 ¶ 68.) Plaintiffs contend that as hourly employees of Defendants, 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, 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 one hundred twenty-one (121) Class Members. (Han Dec.,
10 *supra*, at ¶ 69.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
11 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
12 many as 190 current and former employees” is sufficiently numerous.) Further, all Class
13 Members can and will be identified by Defendants to the Settlement Administrator through a
14 review of Defendants’ employment records concerning hourly-paid and non-exempt employees
15 employed by Defendants within the State of California during the Class Period. (*Ibid.*)

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

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

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Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 70.) All hourly-paid and non-exempt employees who worked for Defendants during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All of Plaintiffs' claims surround Defendants' common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

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PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

1 same legal theories as those applicable to the other Class Members. (Han Dec., *supra*, at ¶ 71.)

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

3 Plaintiffs have proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶
4 72.) They have conducted themselves diligently and responsibly in representing the Class in this
5 litigation, understand their fiduciary obligations, and have actively participated in the
6 prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with
7 counsel to provide counsel with a complete understanding of their work environment and
8 requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interests that are averse to the
9 interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to
10 represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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

12 **Adjudication of this Controversy**

13 A class action is superior to other available means for the fair and efficient adjudication
14 of this controversy. Joinder of all members of the proposed class is impractical. Class treatment
15 will permit a large number of similarly-situation persons to prosecute their common claims in a
16 single forum simultaneously for settlement purposes without the necessary duplication of effort
17 and expense that numerous individual actions would engender. Moreover, because a number of
18 the class members are current employees, the fear of retaliation further support superiority of
19 class-wide relief because that fear of retaliation often discourages victims from seeking legal
20 redress while currently employed by the same employer.

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

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

1 all of these elements are present here. Thus, Plaintiffs request that this Court grant their Motion
2 for Preliminary Approval.

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

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

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

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

15 **V. CONCLUSION**

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

21 Dated: August 20, 2021

JUSTICE LAW CORPORATION

22 
23 _____

24 Douglas Han
25 Shunt Tatavos-Gharajeh
26 Talia Lux
27 *Attorneys for Plaintiffs*
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On August 20, 21, I served the foregoing document described as

**PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED 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: **Rhodes, et al. v. Cavotec Dabico US Inc., et al.**
LWDA/Court Case No.: **LWDA-CM-836474-21**
30-2021-01177305-CU-OE-CXC
Orange 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 August 20, 2021, at Pasadena, California.



Anna Okada