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Attorneys for Plaintiffs

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

JAMES CATO, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

HUNTINGTON INGALLS
INCORPORATED, a Virginia corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 21STCV00441

Assigned for All Purposes to:
Honorable Kenneth R. Freeman
Department 14

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); Declarations of Proposed Class
Representatives (James Cato and Richard
Thorne); Declaration of Proposed Administrator
(Jodey Lawrence); Declaration of Ryan J.
Krueger; and [Proposed] Order filed
concurrently herewith]

Hearing Date: June 8, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department 14

Complaint Filed: January 7, 2021
FAC Filed: September 21, 2021
SAC Filed: January 31, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 8, 2023 at 10:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Kenneth R. Freeman in Department 14 of the Los Angeles
3 County Superior Court (Spring Street Courthouse) located at 312 North Spring Street Los Angeles,
4 California 90012, Plaintiffs James Cato and Richard Thorne (“Plaintiffs,” “Plaintiff Cato,” and
5 “Plaintiff Thorne) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Class, Collective and PAGA Action Settlement Agreement and
8 Class Notice (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **Exhibit 2** to the declaration of Douglas Han, including, and not limited to, the
10 means of allocation and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class, Collective and PAGA Action
15 Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached
16 as **Exhibit A** to the Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the proposed deadlines for the settlement administration process;
- 20 • Approving Phoenix Class Action Administration Solutions as the Administrator;
21 and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payments, and
26 Administration Expenses Payment, and approval of the allocation of the Private
27 Attorney General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declarations of Proposed Class
3 Representatives (James Cato and Richard Thorne); Declaration of Proposed Administrator (Jodey
4 Lawrence); Declaration of Ryan J. Krueger; [Proposed] Order filed concurrently with this motion;
5 pleadings and other records on file with the Court in this matter; and such documentary evidence
6 and oral argument as may be presented at the hearing on this motion.

7
8 Dated: April 18, 2023

JUSTICE LAW CORPORATION

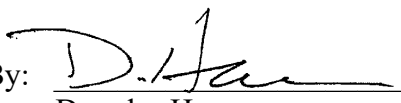
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10 By: 
11 Douglas Han
12 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$450,000 wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and all current and former non-exempt
4 employees of HII Fleet Support Group, LLC employed in California at any time during the period
5 from January 7, 2017 through December 31, 2022 (“Class,” “Class Members,” and “Class
6 Period”). At the time of this filing, the number of Class Members is estimated to be four hundred
7 fifty-one (451), which was which was confirmed by Defendants Huntington Ingalls Incorporated
8 and HII Fleet Support Group, LLC (“Defendants”). (Declaration of Douglas Han In Support of
9 Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

10 **II. BACKGROUND**

11 On January 7, 2021, Plaintiff Cato, a former employee of Defendants, filed a wage-and-
12 hour class action lawsuit in the Superior Court of California, County of Los Angeles, alleging eight
13 (8) causes of action. (Han Decl., *supra*, at ¶ 9.)

14 On June 25, 2021, Plaintiff Thorne, another former employee of Defendants, provided
15 written notice to the California Labor and Workforce Development Agency (“LWDA”). (Han
16 Decl., *supra*, at ¶ 10; Exhibit 3.) On September 21, 2021, Plaintiff Cato filed a First Amended
17 Complaint updating the class definition set forth in the complaint. (*Id.* at ¶ 11.)

18 After engaging in discovery, investigations, and negotiations, the Parties attended
19 mediation with the mediator Jeffrey Krivis, Esq., on August 23, 2022. (Han Decl., *supra*, at ¶ 12.)
20 Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

21 In line with the settlement, Plaintiff Cato filed a Second Amended Complaint on January
22 31, 2023 adding Plaintiff Thorne as a named plaintiff, adding HII Fleet Support Group, LLC as a
23 named defendant, adding a PAGA cause of action, and adding a Fair Labor Standards Act cause
24 of action. (Han Decl., *supra*, at ¶ 13.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of documents. (Han Decl., *supra*, at ¶ 15.) Defendants responded to Plaintiffs' formal discovery requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in the informal exchange of information and then eventually attended mediation. (*Ibid.*)

Prior to the mediation, Defendants produced documents relating to their policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) As part of Defendants' production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Several putative class members were also interviewed to attain a better understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

Based on the information provided by Defendants and interviews with putative class members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) (4) failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage statements; and (5) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties attended mediation with an experienced mediator. (Han Decl., *supra*, at ¶ 25.) During the mediation, the Parties discussed the risks of continued litigation, certification, and merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties reached a settlement, memorialized in the Agreement. (*Id.* at ¶ 25; Exhibits 2, 5.)

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

Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (Han Decl., *supra*, at ¶ 36.) At mediation, the Parties conducted extensive arm's-length settlement negotiations, evaluated the strengths and weaknesses of the Parties' claims and defenses, and exchanged information until an agreement was reached. (*Ibid.*)

1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and possible appeals. (Han Decl., *supra*, at ¶ 37.)
3 Plaintiffs and Class Counsel considered the uncertainty and risk of further litigation, potential
4 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel
5 also understood even if they negotiated a similar settlement after further litigation, it would be
6 undercut by additional costs and expenses, thereby reducing the benefits to the Class. (*Ibid.*) Based
7 on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
8 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

10 The Parties investigated and evaluated the strengths and weaknesses of the Parties' claims
11 and defenses before reaching the Settlement and engaged in research and discovery to support the
12 Settlement. (Han Decl., *supra*, at ¶ 38.) The Settlement was only possible following significant
13 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
14 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
15 reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses
16 of their cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han
17 Decl., *supra*, at ¶ 38; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

19 **i. Deductions from the Settlement**

20 The Parties agreed (subject to the Court's approval) this action be settled and compromised
21 for the non-reversionary total sum of \$450,000 ("Gross Settlement Amount") which includes: (1)
22 Class Counsel Fees Payment not to exceed \$157,500; (2) Class Counsel Litigation Expenses
23 Payment not to exceed \$20,000; (3) Class Representative Service Payments totaling \$10,000; (4)
24 Administration Expenses Payment not to exceed \$20,000; and (5) PAGA Penalties not to exceed
25 \$50,000. (Han Decl., *supra*, at ¶ 26.)

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1 **ii. Calculating Settlement Payments**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$192,500 (“Net Settlement Amount”) will be distributed to all Class Members who do not submit
4 valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”) –
5 with a gross *average* Individual Class Payment estimated at \$426.83. (Han Decl., *supra*, at ¶ 27.)

6 Participating Class Members will receive a proportionate share of the Net Settlement
7 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28.)
8 Individual Class Payments will be allocated one-third (1/3) to the settlement of wage claims and
9 two-third (2/3) to the settlement of claims for interest and penalties. (*Ibid.*)

10 Aggrieved Employees’ Individual PAGA Payments shall be calculated using the formula
11 set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29.) Individual PAGA Payments
12 will be allocated as one hundred percent (100%) penalties. (*Ibid.*)

13 **iii. Notice to the Class**

14 Not later than fifteen (15) calendar days after the Court grants Preliminary Approval of the
15 Settlement, Defendants will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶
16 30.) No later than fourteen (14) calendar days after receiving the Class Data, the Administrator
17 will send to all Class Members identified in the Class Data, via first-class United States Postal
18 Service mail, the Class Notice. (*Ibid.*)

19 **iv. Distribution of Funds**

20 The Gross Settlement Amount will be funded and disbursed pursuant to the timeline and
21 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 31.) Uncashed settlement checks will
22 be transmitted the funds represented by such checks to the California Controller’s Unclaimed
23 Property Fund in the name of the Class Member. (*Ibid.*)

24 **v. Release of Claims**

25 Effective on the date when Defendants fully funds the entire Gross Settlement Amount and
26 fund Employer Paid Taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs
27 and Participating Class Members, on behalf of themselves and their respective former and present
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released

Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 32.)

Effective on the date when Defendants fully funds the entire Gross Settlement Amount and fund Employer Paid Taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and all Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, and the LWDA, shall release the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 33.)

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund Employer Paid Taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns shall fully and finally release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. (Han Decl., *supra*, at ¶ 34.) Plaintiffs expressly waive and relinquish the provisions, rights, and benefits of section 1542 of the Civil Code. (*Ibid.*)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties’ counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*). This

1 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
2 their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.)

3 **IV. ARGUMENT**

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

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

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

11 . . .

12 (c) Any party to a settlement agreement may serve and file a written notice of
13 motion for preliminary approval of the settlement. The settlement
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 have discretion to approve settlements that are fair, not collusive, and consider “all
16 the normal perils of litigation as well as the additional uncertainties inherent in complex class
17 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n (1981) 452 U.S. 905.)

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

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
21 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
22 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

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

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

Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

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

i. The Settlement Amount of \$450,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the information Defendants produced for the Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 38.)

The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and consistently pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 39.) Defendants vehemently deny the theories of liability. (*Id.* at ¶ 40.)

While Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 41.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*

Stores, Inc. have reached different conclusions concerning certification of wage-and-hour claims.³ (Han Decl., *supra*, at ¶ 41.) Thus, the calculations for potential damages were discounted.

ii. The PAGA Penalties of \$50,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 48.) Defendants assert, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain they had a strong argument it would be unjust to award maximum PAGA penalties given the law’s current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 48; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendants argued without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$22,500** (225 employees x \$100 penalty for initial violation) on the low end and **\$180,000** (225 employees x \$100 penalty for initial violation x 8 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 49-51.)

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 52.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$50,000 to PAGA civil penalties was reasonable given the fact Defendants are paying an additional \$400,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141 Cal.App.4th 1422 [affirming denial of certification].)

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,

Considering Defendants’ defenses, supporting evidence, and position the case is not suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$13,357,820.46** on the low end and around **\$13,825,342.62** on the high end. (Han Decl., *supra*, at ¶ 53.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$5,608,134.36	75%	80%	\$280,406.72
Meal Break Premiums	\$3,738,756.24	75%	75%	\$233,672.27
Overtime/Minimum Wage: Off-the-Clock Work	\$934,689.06 to \$1,402,211.22	70%	70%	\$84,122.02 to \$126,199.01
Unreimbursed Business Expenses	\$553,440	45%	80%	\$60,878.40
Wage Statement Penalty	\$900,000	70%	75%	\$67,500
Waiting Time Penalty	\$1,622,800.80	70%	75%	\$121,710.06
MAXIMUM TOTAL EXPOSURE	\$13,357,820.46 to \$13,825,342.62⁵			\$848,289.47 to \$890,366.46⁶

Thus, the realistic recovery for this case is **\$848,289.47** on the low end and **\$890,366.46** on the high end. (Han Decl., *supra*, at ¶ 60.) The Gross Settlement Amount is about three percent (3.25%) of the maximum potential exposure and around fifty percent (50.54%) of the maximum realistic exposure at trial, which is a fair 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 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be

579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

⁵ (Han Decl., *supra*, at ¶¶ 42-47.)

⁶ (*Id.* at ¶¶ 54-59.)

disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the realistic exposure if Plaintiffs prevailed at trial and provides a significant recovery for Class Members.

d. Conditional Certification of the Class Is Appropriate

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*, *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The 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 Decl., *supra*, at ¶ 61.) Plaintiffs contend the claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

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1 This case involves approximately four hundred fifty-one (451) Class Members, meaning
2 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 62; *Ghazaryan v. Diva Limousine, Ltd.*
3 (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and
4 former employees” is sufficiently numerous].)

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

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

15 **1. Common Issues Predominate**

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

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1 Plaintiffs assert common issues of fact and law predominate as to each of the claims
2 alleged. (Han Decl., *supra*, at ¶ 63.) Plaintiffs contend all Class Members were subject to the same
3 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

4 **2. Plaintiffs' Claims Are Typical of the Class Claims**

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

7 Plaintiffs are former employees of Defendants and allege they and Class Members were
8 employed by the same company and injured by the common policies and practices related to the
9 claims described above. (Han Decl., *supra*, at ¶ 64; Declaration of James Cato Re Adequacy
10 ("Cato Decl."), ¶¶ 2-8, 12-15; Declaration of Richard Thorne Re Adequacy ("Thorne Decl."), ¶¶
11 2-8, 12-15.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class
12 Members. (Han Decl., *supra*, at ¶ 64; Cato Decl., *supra*, at ¶¶ 2-8, 12-15; Thorne Decl., *supra*, at
13 ¶¶ 2-8, 12-15.) Thus, the claims arise from the same employment practices and are based on the
14 same legal theories applicable to the Class. (Han Decl., *supra*, at ¶ 64; Cato Decl., *supra*, at ¶¶ 2-
15 8, 12-15; Thorne Decl., *supra*, at ¶¶ 2-8, 12-15.)

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

17 Plaintiffs contend they have proven to be adequate class representatives. (Han Decl.,
18 *supra*, at ¶ 65; Cato Decl., *supra*, at ¶¶ 9-11, 16-19; Thorne Decl., *supra*, at ¶¶ 9-11, 16-19.)
19 Plaintiffs contend they conducted themselves diligently and responsibly in representing the Class
20 in this litigation, understand the fiduciary obligations, and actively participated in the prosecution
21 of this case. (Han Decl., *supra*, at ¶ 65; Cato Decl., *supra*, at ¶¶ 9-11, 16-19; Thorne Decl., *supra*,
22 at ¶¶ 9-11, 16-19.) Plaintiffs spent time in meetings and conferences with Class Counsel to provide
23 them with a complete understanding of the work experience and environment. (Han Decl., *supra*,
24 at ¶ 65; Cato Decl., *supra*, at ¶¶ 9-11, 16-19; Thorne Decl., *supra*, at ¶¶ 9-11, 16-19.) Plaintiffs
25 have no interest averse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 65;
26 Cato Decl., *supra*, at ¶¶ 9-11, 16-19; Thorne Decl., *supra*, at ¶¶ 9-11, 16-19.)

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

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

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

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

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

19 California Rules of Court, rule 3.769(f), provides:

20 If the court has certified the action as a class action, notice of the final approval
21 hearing must be given to class members in the manner specified by the court. The
22 notice must contain an explanation of the proposed settlement and procedures for
23 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.

24 The Class Notice meets all these requirements. The Class Notice advises Class Members
25 of their right to participate in the Settlement, how and when to object to or request exclusion from
26 the Settlement, and date, time, and location of the Final Approval Hearing.

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1 **V. CONCLUSION**

2 Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class
3 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
4 should be conditionally certified for settlement purposes, and Class Notice should be approved.
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6 Dated: April 18, 2023

JUSTICE LAW CORPORATION

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8 By: 
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10 *Attorneys for Plaintiffs*
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