

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 319517)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

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

DARIA REGESTER and HEATHER
SALAS-KEEN, on behalf of other
members of the general public similarly
situated, and on behalf of aggrieved
employees pursuant to the Private
Attorneys General Act (“PAGA”);

Plaintiffs,

v.

THE JACKSON LABORATORY d/b/a
THE JACKSON LABORATORY, WEST,
a Maine corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 34-2021-00310014-CU-OE-GDS

Honorable Christopher E. Krueger
Department 54

CLASS ACTION

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

[Reservation ID: 2621206]

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

Hearing Date: March 23, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 54

Complaint Filed: October 20, 2021
FAC Filed: January 19, 2022
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on March 23, 2022 at 9:00 a.m., or as soon as the matter
2 may be heard before the Honorable Christopher E. Krueger in Department 54 of the Sacramento
3 County Superior Court – Law and Motion Department 54, located at 813 6th Street, Sacramento,
4 California 95814, Plaintiffs Daria Regester and Heather Salas-Keen (“Plaintiffs,” “Plaintiff
5 Regester,” and “Plaintiff Salas-Keen”) will and hereby move for an order:

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

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

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); the [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.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: February 18, 2022

JUSTICE LAW CORPORATION

By:



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

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,900,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 non-exempt employees of The Jackson Laboratory d/b/a The Jackson Laboratory, West
5 (“Defendant”) in California during the Class Period (“Class”). The Class Period is the time
6 period from November 5, 2016 to February 16, 2022 (“Class Period”). At the time of this filing,
7 the number of Class Members estimated by Plaintiffs’ analysis provided by Defendants is six
8 hundred twenty-eight (628).

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
11 proposed settlement of \$1,900,000 – with an average settlement share amount estimated at
12 \$1,628.98¹ – is well within the “ballpark” of reasonableness.

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

20 **II. BACKGROUND**

21 Founded in 1929, Defendant is a Maine-based corporation specializing in various areas of
22 biological research, including cancer, immunology/autoimmune diseases,
23 developmental/reproductive biology, and neuroscience/neurobiology. (Declaration of Douglas
24 Han (“Han Dec.”) at ¶ 10.) Defendant is also one of the world’s leading distributors of mice and
25 provides services for over 1,900 organizations in more than 75 countries. (*Ibid.*) This case
26 involves all current and former non-exempt employees of Defendant in California during the
27

28 ¹ \$1,023,005 (Net Settlement Amount) / 628 (Class Members) = \$1,628.98.

time period from November 5, 2016 to February 16, 2022 (“Class”). (Declaration of Douglas Han (“Han Dec.”) at ¶ 10.) Plaintiffs allege that during the Class Period, Defendant’s non-exempt employees work and/or worked on an hourly basis. (*Ibid.*)

Plaintiff Salas-Keen, a former employee of Defendant, filed a wage-and-hour class action complaint against Defendant on May 4, 2021 in the Superior Court of California, County of Sacramento (“Salas-Keen Action”). (Han Dec., *supra*, at ¶ 11.) The Salas-Keen Action was brought 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 Defendant within the State of California at any time during the relevant period. The Salas-Keen Action alleged the following eight (8) causes of action: (1) violation of California Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal break premiums); (3) violation of Labor Code section 226.7 (unpaid rest break premiums); (4) violation of Labor Code section 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of California Business & Professions Code section 17200, *et seq.* (*Ibid.*)

On June 11, 2021, Defendant removed the Salas-Keen Action to the United States District Court, Eastern District of California. (Han Dec., *supra*, at ¶ 12.) Plaintiff Salas-Keen filed a Motion to Remand on July 21, 2021. (*Ibid.*) On or around July 19, 2021, Plaintiff Salas-Keen and Defendant entered into a stipulation to formally stay litigation until the conclusion of the Parties’ mediation. (*Ibid.*)

On July 23, 2021, Plaintiff Regester, also a former employee of Defendant, provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contention. (Han Dec., *supra*, at ¶ 13.) The sixty-five (65) day notice period expired on or about September 26, 2021, and the LWDA did not take any action to investigate or prosecute this matter. (*Ibid.*)

1 On October 20, 2021, Plaintiff Regester filed her Private Attorneys General Act of 2004
2 (“PAGA”) representative action against Defendant in the Superior Court of California, County of
3 Sacramento (“Regester Action” or “Class Action”). (Han Dec., *supra*, at ¶ 14.) The matter was
4 brought on behalf of all current or former hourly-paid or non-exempt employees of Defendant
5 who worked for Defendant at any time during the period from July 23, 2020 to the present.
6 (*Ibid.*) Plaintiff Regester alleged that Defendant: (1) failed to pay minimum and overtime wages;
7 (2) failed to provide meal and rest breaks; (3) failed to timely pay wages during employment; (4)
8 failed to timely pay wages upon termination; (5) failed to provide complete and accurate wage
9 statements; and (6) failed to reimburse all business expenses (*Ibid.*)

10 The Parties attended mediation on Plaintiffs’ claims on November 16, 2021. (Han Dec.,
11 *supra*, at ¶ 15.) Under the auspices of the mediator Paul Grossman, the Parties were eventually
12 able to reach an agreement on the settlement of the action via a mediator’s proposal. (*Ibid.*)

13 On January 19, 2022, in line with the settlement reached between the Parties at
14 mediation, Plaintiff Regester filed a First Amended Complaint (“FAC”) of the Regester Action
15 in the Superior Court of California, County of Sacramento, on behalf of herself and all current
16 and former hourly-paid or non-exempt employees of Defendant within the State of California
17 at any time during the relevant period. (Han Dec., *supra*, at ¶ 16.) The FAC added Plaintiff
18 Salas-Keen as an additional Plaintiff and added the class causes of action. (*Ibid.*)

19 Defendant generally and specifically denies all liability or wrongdoing of any sort
20 regarding any of the claims alleged, makes no concessions or admissions of liability of any sort,
21 and contends that for any purpose other than settlement, the Class Action is not appropriate for
22 class treatment. (Han Dec., *supra*, at ¶ 17.) Furthermore, Defendant asserts several defenses to
23 the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or
24 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 Parties' mediation held on November 16, 2021, the Parties conducted significant investigation and discovery of the facts and law both before and after the initial Class Action was filed. (Han Dec., *supra*, at ¶ 18.) Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying Class Members for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiffs and Defendant also interviewed several of Class Members, and others, who worked for Defendant throughout the Class Period. (*Ibid.*)

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 ¶ 19.)

Based upon the Parties' discovery, and interviews Plaintiffs' counsel had with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to provide employees legally mandated rest breaks. (Han Dec., *supra*, at ¶ 20.) Specifically, Plaintiffs contend Defendant's rest break policy during the relevant time period was improper as it failed to include the major fraction language, as required. (*Ibid.*) Additionally, Plaintiffs also allege that employees were forced to skip most of their rest breaks because of the workload and pressures from Defendant to timely complete their assignments. (*Ibid.*) This meant employees could not take rest breaks if they were in the middle of a study. (*Ibid.*) These pressures to forgo their rest breaks to promptly complete their tasks was exacerbated by the high volume of work employees were regularly assigned. (*Ibid.*) Further, Plaintiffs allege that employees were forced to cut their rest breaks short due to donning their personal protective equipment. (*Ibid.*) Finally, Plaintiffs

1 assert Defendant did not have a policy or practice of consistently paying employees premium
2 wages for noncompliant rest breaks.

3 Moreover, Plaintiffs assert – and Defendant denies – that Defendant failed to provide
4 employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 21.) Plaintiffs contend
5 Defendant maintained uniform, improper practices that prevented employees from receiving
6 compliant meal breaks. (*Ibid.*) Specifically, Defendant regularly assigning employees time-
7 sensitive projects and heavy workloads frequently forced employees to miss their meal breaks.
8 (*Ibid.*) Like rest breaks, Defendant also prohibited employees from leaving if they were in the
9 middle of their study, which resulted in several missed and late meal breaks. (*Ibid.*) Even when
10 employees received meal breaks, they were constantly interrupted by work-related matters and
11 cut short by employees having to don their personal protective equipment. (*Ibid.*) Finally,
12 Plaintiffs allege that Defendant failed to have a policy or practice of properly paying employees
13 premium wages for noncompliant meal breaks. (*Ibid.*)

14 Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate
15 employees for all hours worked. (Han Dec., *supra*, at ¶ 22.) Specifically, Plaintiffs contend
16 Defendant had a policy requiring employees to don their personal protective equipment and go
17 through a sterilization process prior to clocking-in for each shift. (*Ibid.*) Thus, Plaintiffs and
18 other employees were unpaid for the time spent donning their equipment off-the-clock and going
19 through the sterilization process. (*Ibid.*) Moreover, interviews with employees revealed that even
20 after employees completed their shifts and clocked out for the day, Defendant still tasked them
21 with completing more assignments (*i.e.*, cleaning up their workstation or setting up mouse traps).
22 (*Ibid.*) Moreover, Plaintiffs assert that Defendant failed to compensate employees for time spent
23 answering emails and phone calls off-the-clock. (*Ibid.*)

24 Plaintiffs also contend that Defendant failed to incorporate non-discretionary bonuses and
25 incentives into employees' regular rates for overtime compensation purposes, sick pay and
26 premium wage payments. (Han Dec., *supra*, at ¶ 23.) Defendant paid its employees multiple non-
27 discretionary bonuses but failed to factor the bonuses into employees' regular rates for overtime,
28 sick pay, and premium wage payment purposes. (*Ibid.*) Moreover, Plaintiffs allege – and

1 Defendant denies – that Defendant failed to provide its employees with one day of rest during a
2 seven-day workweek. (Han Dec., *supra*, at ¶ 24.) Defendant’s employees often worked seven (7)
3 consecutive shifts without a day’s rest. Defendant failed to provide its employees with any seven
4 day workweek waivers as required by law. (*Ibid.*)

5 Next, Plaintiffs allege – and Defendant denies – that Defendant failed to reimburse
6 employees for necessary business-related expenses incurred. (Han Dec., *supra*, at ¶ 25.)
7 Specifically, employees were required to purchase steel-toe boots for work-related purposes.
8 (*Ibid.*) While Defendant gave its employees a voucher for the steel-toe boots, the voucher failed
9 to cover the cost of the boots. (*Ibid.*) Plaintiffs also contend employees were expected to use their
10 personal cell phones daily for business-related purposes (*i.e.*, communicating with supervisors
11 and co-workers, retrieving work assignments). Despite this, Defendant did not reimburse
12 employees for this usage. (*Ibid.*)

13 Additionally, Plaintiffs contend – and Defendant denies – that Defendant is liable for
14 waiting time penalties. (Han Dec., *supra*, at ¶ 26.) Specifically, Defendant’s hourly-paid or non-
15 exempt employees are entitled to back underpaid overtime and compensation for time worked
16 off-the-clock as well as missed meal and rest breaks discussed in greater detail above, thereby
17 triggering waiting time penalties under Labor Code section 203. (*Ibid.*) Thus, Defendant owes
18 compensation for underpaid work and missed meal and rest breaks as a matter of fact and law.
19 (*Ibid.*) But Defendant intentionally failed or refused to perform an act, which was required to be
20 done, constituting “willful” conduct and justifying “waiting-time” penalties under section 203 to
21 former employees. (*Ibid.*)

22 Finally, Plaintiffs assert – and Defendant denies – that Defendant is liable for issuing
23 noncompliant wage statements. (Han Dec., *supra*, at ¶ 27.) Specifically, Defendant issued wage
24 statements in violation of Labor Code section 226(a) because of the underlying violations
25 discussed above (*i.e.*, missed meal and rest breaks, no premium wages, off-the-clock work).
26 (*Ibid.*) Consequently, Defendant’s wage statements would necessarily be inaccurate. (*Ibid.*) Even
27 if Defendant asserts that its violation of section 226(a) is trivial, the California courts have held
28 that strict compliance of section 226(a) is exactly what is intended. (*Ibid.*)

1 Defendant denies Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 28.)
2 Among other things, Defendant denies Plaintiffs' meal and rest break contentions, on the
3 grounds that it provided breaks within compliant times and that non-exempt employees were
4 given discretion as to when to take their breaks. (*Ibid.*) Defendant also contends that both its
5 meal and rest break policies complied with California law and that non-exempt employees were
6 allowed to use their breaks for their own purposes. (*Ibid.*) Defendant further contends that
7 whether non-exempt employees took meal and rest breaks during compliant time frames and
8 were relieved of all duties are questions that could only be resolved by resorting to
9 individualized inquiries to each non-exempt employee and, therefore, class certification would
10 not be appropriate. (*Ibid.*) Defendant also asserts that it paid its employees for all times worked,
11 including overtime, minimum, and premium wages. (*Ibid.*) Defendant counters that its policies or
12 practices rarely, if ever, forced employees work additional hours off-the-clock without asking for
13 compensation. (*Ibid.*) Defendant also adds that it properly compensated employees for time spent
14 responding to emails or calls while off-the-clock. (*Ibid.*) Further, Defendant contends that
15 Plaintiffs' claims regarding off-the-clock work and unpaid overtime are trivial as only a small
16 number of employees worked off-the-clock. (*Ibid.*) Moreover, Defendant contends it did factor
17 non-discretionary bonuses and incentives into eligible employees' regular rates for overtime, sick
18 pay and premium wage purposes. (*Ibid.*) Additionally, Defendant contends that it provided its
19 employees with one rest day within a seven-day workweek or received waivers from employees
20 working seven days within a given workweek. (*Ibid.*) Defendant also asserts that it reimbursed
21 employees for all business expenses, including their steel-toe boot purchases and their personal
22 cell phone usage. (*Ibid.*) Finally, Defendant argues that its failure to comply with California
23 labor laws was an honest mistake made in good faith. (*Ibid.*) Thus, Defendant's conduct could
24 not be deemed "willful" under Labor Code section 203. (*Ibid.*)

25 As demonstrated above, the Parties took staunchly conflicting positions concerning
26 Defendant's policies and procedures and their effect on hourly-paid and non-exempt employees.

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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, Paul
5 Grossman. (Han Dec., *supra*, at ¶ 29.) The mediation took place on November 16, 2021. (*Ibid.*)
6 During the mediation, the Parties discussed the risks of continued litigation, risks of certification,
7 and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices
8 of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action
9 pursuant to a mediator’s proposal, the terms of which were memorialized in a “Joint Stipulation
10 and Settlement Agreement” (“Settlement Agreement,” “Settlement,” or “Agreement”), that the
11 Parties now seek Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 29.;
12 Exhibit 2.)

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

15 The Settlement Agreement was reached because of arm’s-length negotiations. (Han
16 Dec., *supra*, at ¶ 46.) Though cordial and professional, the settlement negotiations have been,
17 always, adversarial, and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties
18 conducted extensive arm’s length settlement negotiations until an agreement was reached by all
19 Parties via a mediator’s proposal. (*Ibid.*)

20 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the
21 expense and length of continued proceedings necessary to continue the litigation against
22 Defendant through class certification and trial and through any possible appeals. (Han Dec.,
23 *supra*, at ¶ 47.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of
24 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
25 (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including
26 formal mediation on November 16, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class
27 Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and
28 reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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 ¶ 48.) The proposed settlement was
5 only possible following significant discovery and evaluation of Defendant’s 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 \$1,900,000 (“Gross
15 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an
16 amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount or \$722,000 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 \$25,000; (c) Class Representative
20 Enhancement Payment 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 resolved; (d) Administration Costs
23 to Phoenix Class Action Administration Solutions (“Phoenix”), the Settlement Administrator that
24 is currently estimated to be \$9,995, but not to exceed \$15,000; and (e) PAGA Payment of
25 \$100,000, seventy-five percent (75%) of which (\$75,000) shall be paid to the LWDA and
26 twenty-five percent (25%) of which (\$25,000) shall be distributed to the aggrieved employees
27 eligible to recover the PAGA Payment that consist of all current and former non-exempt
28 employees who worked for Defendant within the State of California between May 14, 2020

through February 16, 2022 (“Eligible Aggrieved Employees,” “PAGA Timeframe,” and “PAGA Payment”), on a pro rata basis (Han Dec., *supra*, at ¶ 30.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$1,023,005 (“Net Settlement Amount”) will be distributed to Class Members – with an average Individual Settlement Share estimated at \$1,628.98 (Han Dec., *supra*, at ¶ 32.)

The Settlement Administrator will pay the amount of the Participating Class Members’ portion of normal payroll withholding taxes out of each person’s Individual Settlement Share. (Han Dec., *supra*, at ¶ 33.) The Settlement Administrator will calculate the amount of the Participating Class Members’ and Defendant’s portion of payroll withholding taxes and pay those amounts from the Gross Settlement Amount. (*Ibid.*) Finally, the Settlement Administrator will submit Defendant’s portion of payroll withholding tax and forward those amounts along with each person’s Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*)

The Settlement Administrator will calculate and pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member. (Han Dec., *supra*, at ¶ 34.) Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to:

(i) the number of weeks he or she worked during the Class Period based on the Class List provided by Defendant, divided by (ii) the total number of weeks worked by any and all Participating Class Members collectively, during the Class Period based on the same Class List, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked. (*Ibid.*)

Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be calculated and will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. (Han Dec., *supra*, at ¶ 35.) The individual share will be calculated by:

determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the \$25,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. Settlement checks issued to the Eligible Aggrieved Employees pursuant to this Agreement shall expire one hundred eighty (180) days from the date they are issued by Defendant. Any unclaimed funds after the one hundred eighty (180) days shall be turned over by the Settlement Administrator to the California State Controller: Unpaid Wage Fund (Han Dec., *supra*, at ¶ 35.)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 36.) No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within Twenty-One (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (i) first and last name, (ii) last known addresses, (iii) social security numbers, (iv) hire and termination dates, and (v) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class (collectively, "Class List"). (Han Dec., *supra*, at ¶ 37.)

Within fourteen (14) calendar days after the Settlement Administrator's receipt of the Class List, the Settlement Administrator will mail the Notice of Class Action Settlement ("Class Notice")² to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the National Change of Address database ("NCOA") search performed on all former Defendant employee Class Members. (Han Dec., *supra*, at ¶ 38.) Class Members are not required to submit a claim form to receive their Individual Settlement Shares. (*Ibid.*) The proposed Class Notice is attached as Exhibit A to the Settlement Agreement, which is Exhibit 2 to the Declaration of Douglas Han.

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² The **Class Notice** is attached to the Settlement Agreement (Exhibit 2 attached hereto) as **Exhibit A**.

1 **iv. Distribution of Funds**

2 No later than twenty-one (21) calendar days after the Effective Final Settlement Date,
3 Defendant shall deposit the Gross Settlement Amount of \$1,900,000 needed to pay the entire
4 Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec.,
5 *supra*, at ¶ 39.) Defendant shall also at this time provide any tax information that the Settlement
6 Administrator may need to calculate each Participating Class Members' Individual Settlement
7 Share. (*Ibid.*)

8 Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement
9 Administrator shall calculate and pay all payments due under the Settlement Agreement,
10 including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class
11 Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. (Han
12 Dec., *supra*, at ¶ 40.) The Settlement Administrator will forward a check for seventy-five percent
13 (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. (*Ibid.*)

14 Participating Class Members must cash or deposit their Individual Settlement Share
15 checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han
16 Dec., *supra*, at ¶ 41.) If any checks are not redeemed or deposited within ninety (90) calendar
17 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
18 unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and
19 become non-negotiable, and offer to replace the check if it was lost or misplaced. (*Ibid.*) If any
20 checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the
21 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after
22 the checks are mailed, cancel the checks, and pay the amount of the Individual Settlement Share
23 to the California State Controller: Unpaid Wage Fund. (*Ibid.*)

24 **v. Release of Claims**

25 Upon Defendant's fulfillment of its payment obligations under Section III (J)(9)(a)
26 below, the claims that Plaintiffs and the other Participating Class Members are releasing in
27 exchange for the consideration provided for by this Agreement are any and all claims, debts,
28 liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages,

1 actions or causes of action of whatever kind or nature, direct or indirect, contingent or accrued,
2 that were brought or that reasonably could have been brought based on the facts alleged in the in
3 the Complaints or Plaintiff Daria Regester’s letter to the LWDA, including, but not limited to,
4 any claims under state law for alleged failure to pay wages, including failure to pay overtime
5 wages, meal or rest break claims, claims for meal or rest break penalties, claims for
6 unreimbursed business expenses, sick pay claims, regular rate claims, claims for liquidated
7 damages, claims for unlawful deductions from wages, claims for conversion of wages, claims for
8 record-keeping violations, wage-statement penalties, and “waiting time” penalties, and claims
9 under the applicable Wage Order and Labor Code sections, including, without limitation,
10 sections 201, 201.3, 201.5, 201.6, 202, 203, 204, 218, 218.5, 226, 226(a), 226(g), 226.3, 226.7,
11 510, 512, 512(a), 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, as well as claims
12 under Labor Code section 2698 et seq. based on the PAGA Released Claims and Business and
13 Professions Code section 17200 et seq. based on the released claims set forth above. The Parties
14 further agree the Settlement and Judgment to be entered by the court following approval of this
15 Settlement forever bars Plaintiff Regester and the LWDA, directly or through any other proxy or
16 agent, from any future prosecution of Labor Code section 2698 et seq. claims based on Released
17 Claims during the PAGA Timeframe against any of the Released Parties). *See* Exhibit 2 §§
18 (I)(GG), (III)(K). (Han Dec., *supra*, at ¶ 42.)

19 Upon Defendant’s fulfillment of its payment obligations under Section III (J)(9)(a) of this
20 Agreement, the Eligible Aggrieved Employees hereby release and waive the PAGA Released
21 Claims, and the LWDA, and any other representative, proxy, or agent thereof, including, but not
22 limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are barred
23 from pursuing any action for civil penalties under the California Labor Code Private Attorneys
24 General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, against, the Released Parties based
25 on or arising out of alleged violations of Labor Code sections alleged or that could have been
26 alleged based on the factual allegations alleged in Plaintiff Daria Regester’s letter to the LWDA
27 and her operative complaint. *See* Exhibit 2 § (III)(L). (Han Dec., *supra*, at ¶ 43.)

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1 The Released Parties include Defendant and any and all of its affiliated companies and its
2 respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including,
3 without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any
4 past, present or future officers, directors and employees) predecessors, successors, and assigns
5 (“Released Parties”). *See* Exhibit 2 § (I)(HH). (Han Dec., *supra*, at ¶ 44.)

6 As of the Effective Final Settlement Date, and in exchange for the Class Representative
7 Enhancement Payments to the Plaintiffs in their respective amounts, in recognition of their work
8 and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of
9 costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of
10 claims for themselves and their spouse, heirs, successors and assigns. *See* Exhibit 2 § (III)(M).
11 (Han Dec., *supra*, at ¶ 45.)

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

13 Both Plaintiffs’ counsel and Defendant’s 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 (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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27 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
28 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 ...
11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

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

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

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

27 ///

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 the plaintiff’s case, *Kullar* instructs that the court is not to
2 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
3 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not
4 require an explicit statement of the maximum amount the class could recover if the plaintiff
5 prevailed on all his claims, provided there is a record that allows “an understanding of the
6 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
7 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
8 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
9 itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
10 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
11 499-500.))

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

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

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
17 discovery to support the settlement. (Han Dec., *supra*, at ¶ 48.) The proposed settlement was only
18 possible following significant discovery and evaluation of Defendant’s relevant policies and
19 procedures, as well as the data they produced for the putative Class, which permitted Class
20 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
21 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
22 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
23 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

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26 ///

1 This discovery resulted in Plaintiffs' central theories of liability, which are predicated on
2 Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal and rest
3 breaks and properly pay applicable premiums, failed to pay minimum wages, failed to pay final
4 wages in a timely manner, failed to provide one day of rest within a seven day workweek, failed
5 to issue compliant wage statements, failed to reimburse business expenses, violated PAGA, and
6 violated the Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 49.)

7 Defendant vehemently denies Plaintiffs' theories of liability and contends, as stated
8 above, that all meal and rest breaks were provided in compliance with California law, that all
9 wages were properly paid to Class Members, that it provided final wages in a timely manner, that
10 it provided wage statements in compliance with Labor Code section 226, and that it reimbursed
11 all business expenses. (Han Dec., *supra*, at ¶ 50.) Defendant further contends that any mistakes
12 made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to
13 continue, it feels confident that it 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 contends violate California law and uniformly affect the
16 putative Class Members, uncertainties with respect to certification are always present. (Han
17 Dec., *supra*, at ¶ 51.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
18 34 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 their claims, all of these factors led
22 Plaintiffs to discount the following calculations of potential damage claims.

23 ///

24 ///

25
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 \$1,900,000 Is Reasonable**

2 In addition to being able to discover the strengths and vulnerabilities associated with
3 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
4 time and pay records and information regarding the estimated number of workweeks worked by
5 Class Members and the average hourly rate for Class Members. (Han Dec., *supra*, at ¶ 52.)
6 Defendant confirmed that there were approximately 70,090 workweeks worked by Class
7 Members. (*Ibid.*) Plaintiffs were also able to determine that the average hourly rate for Class
8 Members was \$20.88. (*Ibid.*)

9 The provisions of the Labor Code potentially triggering PAGA penalties in this case
10 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
11 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 60.) Defendant asserted that, regardless of
12 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
13 and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments
14 against the underlying claims, it had a strong argument that it would be unjust to award
15 maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

16 Class Counsel calculated penalties under this cause of action by multiplying the number
17 of active Class Members (because of the shortened statutory period for this claim), by the civil
18 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
19 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 61.) Class Counsel then
20 applied discounts in light of the countervailing arguments with regard to the other causes of
21 action, as well as the Court's power to award "a lesser amount than the maximum civil liability."
22 (Lab. Code § 2699(e)(2).) (*Ibid.*)

23 Given the state of the law and the range of PAGA penalties requested and actually
24 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
25 for PAGA penalties. (Han Dec., *supra*, at ¶ 62.) However, if PAGA penalties are granted on
26 any one of the violations alleged in Plaintiffs' operative complaint, the total penalties exposure
27 for the eligible pay periods could be approximately \$2,784,800 (([1 x \$100] + [29 x \$200]) x 472
28 employees). (*Ibid.*) Plaintiffs calculated Defendant's PAGA exposure using one hundred percent

1 (100%) violation rate based on the average number of pay periods (30) during the one-year
2 statutory period. (Han Dec., *supra*, at ¶ 62.) Multiplying the PAGA exposure by the number of
3 alleged violations under the PAGA theories of recovery (6) gives potential civil penalties of
4 \$16,708,800. (*Ibid.*)

5 Although Plaintiffs argued they could obtain over \$16 million for PAGA penalties, it
6 seems unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 63.)
7 PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty for
8 each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each
9 subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral*
10 *v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the employer has
11 been notified that it is violating a Labor Code provision (whether or not the commissioner or
12 court chooses to impose penalties), the employer cannot be presumed to be aware that its
13 continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed
14 only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.) This language could
15 be interpreted as indicating that until the Labor Commissioner or a court informs an employer
16 that it has violated the Labor Code, the employer can only be assessed the “initial” violation rate.
17 Under this interpretation, the maximum individual civil penalty for one statutory violation is
18 \$47,200 (472 employees x 100 (initial violation)), and for all possible Labor Code violations is
19 \$283,200.

20 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may
21 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period
22 for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
23 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
24 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
25 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in
26 subdivision (f)...on behalf of himself or herself and other current or former employees against
27 whom one or more of the alleged violations was committed” (emphasis added). However,
28 Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*

(9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to \$47,200 on the low end and \$283,200 on the high end based on six (6) major theories of recovery.

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

Under a more conservative approach, Class Counsel considered the possibility that the Court could assess only the initial violation rate, bringing the basic PAGA penalty to \$283,200 [472 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 63.)

Plaintiffs also recognized the risk that any PAGA award could be significantly reduced. (Han Dec., *supra*, at ¶ 64.) Many of the causes of action brought were duplicative of the statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable based on a rate of \$10.34 per pay period [$\$100,000 \div 9,672 \text{ Pay Periods in PAGA Date Range} = \10.34], given the fact that Defendant are also paying an additional \$1,800,000 in the class settlement. (*Id.* (citing *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75

per violation and a total PAGA penalty of \$70,000,000).)) Where 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 generally considered reasonable. (Han Dec., *supra*, at ¶ 64.) (citing *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

Accordingly, taking into consideration Defendants’ defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of \$1,900,000— with an average Individual Settlement Share estimated at \$1,628.98—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$8,463,717.50 on the low end and \$9,195,457.10 on the high end (Han Dec., *supra*, at ¶ 65.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,993,305.02	70%	60%	\$239,196.60
Meal Break Premiums	\$214,771.68	50%	40%	\$64,431.50
Overtime/Minimum Wage: Off-the-Clock	\$1,463,479.20 to \$2,195,218.80	50%	50%	\$365,869.80 to \$548,804.70
Overtime/Minimum Wage: Regular Rate	\$71,864.00	40%	50%	\$21,559.20
Unreimbursed Business Expenses	\$180,864	40%	70%	\$32,555.52
Wage Statement Penalty	\$1,392,400	50%	50%	\$348,100
Waiting Time Penalty	\$3,147,033.60	50%	50%	\$786,758.40

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1 Based on this analysis, the realistic recovery for this case is \$1,858,471.02 on the low end
2 and \$2,041,405.92 on the high end. (Han Dec., *supra*, at ¶ 73.) The Gross Settlement Amount of
3 \$1,900,000 is approximately twenty-one percent (20.66%) of the maximum potential exposure
4 and is approximately ninety-three percent (93.07%) of the maximum realistic exposure at trial,
5 which is an excellent settlement. (*Ibid.*)

6 The only question at preliminary approval is whether the settlement is within the range of
7 possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
8 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
9 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
10 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
11 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
12 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
13 that induce consensual settlements. The proposed settlement is not to be judged against a
14 hypothetical or speculative measure of what might have been achieved by the negotiators.”)
15 Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have prevailed at trial
16 and provides a significant recovery for the Class Members. Thus, there can be no doubt that this
17 settlement is fair and reasonable.

18 **d. Conditional Certification of the Class Is Appropriate**

19 For settlement purposes only, the requisites for establishing conditional class certification
20 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
21 of a common or general interest, of many persons, or when the parties are numerous, and it is
22 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
23 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
24 “both [1] an ascertainable class and [2] a well-defined community of interest among class
25 members.” (*Ibid.*)

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1 The proposed Class is ascertainable and numerous as to make it impracticable to join all
2 Class Members, and there are common questions of law and fact that predominate over any
3 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 74.) Plaintiffs' claims
4 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
5 protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
6 Class Members would create the risk of inconsistent or varying adjudications, and a class action
7 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
8 discussed below, this case is amenable to class certification. (*Ibid.*)

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

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

17 The Class Action involves six hundred twenty-eight (628) Class Members. (Han Dec.,
18 *supra*, at ¶ 75.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
19 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
20 many as 190 current and former employees” is sufficiently numerous.) Further, all Class
21 Members can and will be identified by Defendant to the Settlement Administrator through a
22 review of Defendant’s employment records concerning hourly-paid and non-exempt employees
23 employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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

25 The community of interest requirement “embodies three factors: (1) predominant
26 common questions of law or fact; (2) class representatives with claims or defenses typical of the
27 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drugs,*
28 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*

mandate that class members have uniform or identical claims.” (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The application of each of these factors is discussed below.

1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*, 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (*See, e.g., Jones v. JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244 (court certified class of dancers on state law claims).)

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 76.) They assert that all hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All Plaintiffs’ claims surround Defendant’s 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 noncompliant rest and meal breaks, off-the-clock work, overtime work, sick leave pay, associated wage statement, and waiting time penalties. (*Ibid.*)

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Typical claims rely on legal theories and facts that are substantially similar to other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt employees and allege they and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to meal and rest breaks; uncompensated off-the-clock work; unpaid and improperly calculated overtime wages, premium wages, and sick leave pay; untimely paid final wages; inaccurate wage statements; and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 77.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

3. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 78.) They have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have also spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

4. Class Action is Superior for the Fair and Efficient

Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situation persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Moreover, because a number of the Class Members are current employees, the fear of retaliation further support superiority of

1 class-wide relief because that fear of retaliation often discourages victims from seeking legal
2 redress while currently employed by the same employer.

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

4 In deciding whether to approve a proposed class action settlement under Code of Civil
5 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and
6 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class
7 action settlement is presumed fair under the following circumstances: (1) the parties reached
8 settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to
9 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
10 and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,
11 all of these elements are present here. Thus, Plaintiffs request that this Court grant their motion
12 for Preliminary Approval.

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

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

15 If the court has certified the action as a class action, notice of the final approval
16 hearing must be given to class members in the manner specified by the court. The
17 notice must contain an explanation of the proposed settlement and procedures for
18 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.

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

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1 **V. CONCLUSION**

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

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8 Dated: February 18, 2022

JUSTICE LAW CORPORATION

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

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

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

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

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.

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

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Mariah Anderson