

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHANCELLOR NOBLES (SBN 330081)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

ANTONIO GONZALES, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

KEECO, LLC, a California limited liability
company; and DOES 1 through 100, inclusive;

Defendants.

Case No.: CVRI2104851

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 10

CLASS ACTION

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR AN
ORDER (1) PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING
NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

[Reservation ID: 248998031362]

*[filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Jodey Lawrence, Samuel
Knecht, and Kristine Igoe; [Proposed]
Order; and Compliance Chart]*

Hearing Date: December 9, 2022
Hearing Time: 10:30 a.m.
Hearing Place: Department 10

Complaint Filed: October 22, 2021
Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE on December 9, 2022 at 10:30 a.m., or as soon thereafter
3 as this matter may be heard, at Department 10, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiff Antonio Gonzales (“Plaintiff”), on behalf of himself and all
5 persons similarly situated, will and hereby does move this Court pursuant to Code of Civil
6 Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Plaintiff and Keeco, LLC (“Defendant”), including granting preliminary
9 approval of the following Class: “all current and former hourly-paid or non-
10 exempt employees employed by Defendant within the State of California at
11 any time between April 26, 2017 and November 8, 2022” (“Class,” “Class
12 Members,” and “Class Period”). “Class Members” shall not include any
13 person who submits a timely and valid Request for Exclusion;
- 14 (2) Approving the form of notice of class action settlement and procedure for
15 notice to the Class; and
- 16 (3) Setting the Final Approval Hearing.

17 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
18 proposed settlement’s allocation of funds to claims made under the Labor Code section
19 2698, *et seq.*, Private Attorneys General Act of 2004 (“PAGA”).

20 Pursuant to the Joint Stipulation and Settlement Agreement (“Settlement
21 Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of
22 Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval of Class Action
23 Settlement, Defendant does not oppose the preliminary approval of the settlement.

24 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
25 of the Class shall be fully and finally resolved for the total sum of \$2,500,000 (“Maximum
26 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
27 Maximum Settlement Amount after the following deductions are made (“Net Settlement
28

Amount”) shall be available for distribution to Class Members who do not submit timely and valid Requests for Exclusion:

- up to \$875,000 to Class Counsel as the attorneys’ fees;
- up to \$25,000 to Class Counsel as the attorneys’ costs for reimbursement of attorneys’ costs and expenses incurred;
- up to \$10,000 to Plaintiff as Class Representative Enhancement Payment;
- up to \$20,000 to the Settlement Administrator, Phoenix Class Action Administration Solutions, as the Settlement Administration Costs; and
- \$100,000 as the PAGA Payment, seventy-five percent (75%) of which (\$75,000) will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%) of which (\$25,000) will be distributed to all current and former hourly-paid or non-exempt employees employed by Defendant within the State of California at any time between August 17, 2020 and November 8, 2022, on a pro rata basis, as their Individual PAGA Payments in accordance with the Settlement Agreement.

This Notice of Motion is based on the fact this is a fair and reasonable settlement that benefits the Class and was the product of informed, non-collusive negotiations by the Parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44. The Settlement Agreement meets the legal standard for preliminary approval and is in the best interests of the Class. The proposed form of notice explains the Settlement Agreement terms in a clear and straightforward manner. The proposed procedures for notice provide the best practical notice to the Class. Finally, Class Members will have an opportunity to participate in, object to, and/or opt-out of the Settlement Agreement.

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1 This Notice of Motion is based on this Notice, and the exhibits thereto (including the
2 Notice of Class Action Settlement, Objection Form, and Request for Exclusion),
3 Memorandum of Points and Authorities, Declaration of Douglas Han, Declaration of
4 Samuel Knecht, Declaration of Kristine Igoe, Declaration of Jodey Lawrence, pleadings,
5 records and files in the case, and such other oral and documentary evidence which may be
6 submitted at or before the hearing on this Motion.

7
8 Dated: November 10, 2022

JUSTICE LAW CORPORATION

9
10 By 
11 Douglas Han
12 *Attorneys for Plaintiff*

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHANCELLOR NOBLES (SBN 330081)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
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Facsimile: (818) 230-7259

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Motion; Declarations of Douglas Han, Jodey
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Antonio Gonzalez (“Plaintiff”) filed a wage-and-hour class action lawsuit and
4 representative action against Defendant Keeco, LLC (“Defendant”) in the Superior Court of
5 California, County of Riverside, Case Number CVRI2104851 (“Action”).

6 The proposed settlement reflected in the Joint Stipulation and Settlement Agreement
7 (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the best
8 interests of the Class. Consequently, Plaintiff, with the consent of Defendant, moves this Court
9 for an order: (1) granting preliminary approval of the proposed class action settlement, as
10 embodied in the Agreement; (2) approving the Notice of Class Action Settlement, Objection
11 Form, and Request for Exclusion (collectively, the “Notice Packet”) to be sent to Class
12 Members, and the notification schedule as set forth in the Agreement and Proposed Order; and
13 (3) setting a hearing for final approval of the class action settlement.

14 **II. STATUS OF THE LITIGATION**

15 **A. Procedural History**

16 On August 17, 2021, Plaintiff provided written notice to the California Labor and
17 Workforce Development Agency (“LWDA”) and Defendant. (Declaration of Douglas Han In
18 Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement (“Han
19 Decl.”), ¶ 12.) On October 22, 2021, Plaintiff filed a wage-and-hour class action lawsuit in the
20 Superior Court of California, County of Riverside, alleging nine (9) causes of action. (*Ibid.*)

21 After engaging in discovery, investigation, and negotiations, the Parties remotely
22 attended mediation on May 31, 2022 with the mediator Judge Carl West. (Han Decl., *supra*, at
23 ¶ 13.) Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

24 **B. Investigation and Discovery**

25 Class Counsel investigated and researched the facts and circumstances underlying the
26 pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 14.) This required thorough
27 discussions and interviews, as well as preliminary research into various legal issues. (*Ibid.*)
28 After conducting an initial investigation, Class Counsel determined the claims were suited for

1 class and representative action adjudication. (Han Decl., *supra*, at ¶ 14.)

2 Class Counsel conducted a thorough investigation of the facts and claims giving rise to
3 this Action. (Han Decl., *supra*, at ¶ 15.) This included:

4 • conducting discovery and meeting and conferring with Defendant's counsel
5 several times throughout this litigation, which produced the following:

6 ○ Several of Defendant's Team Member Handbooks, California Meal Period
7 Waiver Forms, and arbitration agreement;

8 ○ A sampling of putative class members' time records (*i.e.*, clock ins, clock
9 outs, earned hours, frequency of pay, earning codes, etc.);

10 ○ Information concerning the number of current and former employees during
11 the putative class period, number workweeks and pay periods within the
12 putative class period, and the average hourly rate of pay;

13 ○ A sampling of putative class members' payroll records within several
14 Microsoft Excel Worksheets. These payroll records contained putative class
15 members' job titles, location of work, and hire and termination dates;

16 • reviewing and analyzing the sampling of time and payroll records, information
17 concerning the putative class, Defendant's Team Member Handbooks, California Meal Period
18 Waiver Forms, arbitration agreement, relevant policies, and other documentation;

19 • researching the applicable law and potential defenses;

20 • locating and interviewing several putative class members;

21 • constructing damage models based on interpretations of California law; and

22 • reviewing information provided by Defendant. (Han Decl., *supra*, at ¶ 15.)

23 The Class is ascertainable because the Class Members may be readily identified by
24 reference to Defendant's records. (Han Decl., *supra*, at ¶ 16.) Class Counsel's investigation
25 revealed there are about eight hundred forty-two (842) Class Members, which was confirmed
26 by Defendant. (*Ibid.*) Class Counsel's investigation also revealed there are approximately six
27 hundred six (606) Eligible Aggrieved Employees. (*Ibid.*)

28 ///

1 **C. Settlement Efforts**

2 Defendant contested liability, amount of damages, and propriety of class certification.
3 (Han Decl., *supra*, at ¶ 17.) Given the high level of risk present, the Parties elected to mediate
4 the claims and explore the possibility of settlement. (*Ibid.*)

5 On May 31, 2022, the Parties remotely participated in full day mediation with Judge
6 Carl West. (Han Decl., *supra*, at ¶ 18.) During mediation, the Parties discussed all aspects of
7 the case. (*Ibid.*) From Class Counsel’s review of the facts, strengths and weaknesses of the
8 case, risks and delays posed by further litigation, and Class Counsel’s prior litigation
9 experience, Class Counsel believe the recovery for each Class Member is fair and reasonable.
10 (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive
11 settlement process. (*Ibid.*) This process forced the Parties to make significant compromises in
12 the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

13 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

14 The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han’s declaration.
15 Defendant agreed to pay \$2,500,000 (“Maximum Settlement Amount”) on a non-reversionary
16 basis to settle and release all claims asserted in the operative complaint on behalf of the
17 proposed Class. (Han Decl., *supra*, at ¶ 20.) The Settlement Agreement defines the Class as
18 “all current and former hourly-paid or nonexempt employees employed by Defendant within
19 the State of California at any time between April 26, 2017 and November 8, 2022” (“Class,”
20 “Class Members,” and “Class Period”). (*Ibid.*) “Class Members” shall not include any person
21 who submits a timely and valid Request for Exclusion. (*Ibid.*) The amount remaining in the
22 Maximum Settlement Amount after the following deductions have been made shall be
23 available for distribution to Class Members who do not opt out (“Net Settlement Amount”):

- 24 • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class
25 Counsel as the attorneys’ fees (\$875,000);
- 26 • up to \$25,000 to Class Counsel as the attorneys’ costs for the reimbursement of
27 actual costs and expenses incurred;
- 28 • up to \$10,000 to Plaintiff as the Class Representative Enhancement Payment;

1 • up to \$20,000 as the Settlement Administration Costs to the Settlement
2 Administrator, Phoenix Class Action Administration Solutions (“Phoenix”); and

3 • up to \$100,000 as the PAGA Payment, seventy-five percent (75%) of which
4 (\$75,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$25,000) will be
5 paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment
6 even if they submit valid and timely Requests for Exclusion (“PAGA Payment” and
7 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 20.)

8 After the above-mentioned deductions, the Net Settlement Amount (approximately
9 \$1,470,000) will be distributed to the Class Members. (Han Decl., *supra*, at ¶ 21.)

10 The Agreement amount was a compromise figure, factoring in the inherent risks related
11 to certification, liability, and damages. (Han Decl., *supra*, at ¶ 24.) Considering all the
12 circumstances of the Action and the defenses raised by Defendant against certification, liability
13 and damages, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

14 **A. Number of Class Members**

15 There are around eight hundred forty-two (842) Class Members and six hundred six
16 (606) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 16, 89(a).)

17 **B. Estimate of the Recovery by the Average Class Member if the Settlement**
18 **Agreement Were Approved**

19 Plaintiff estimates the gross *average* Individual Settlement Payment will be about
20 \$1,745.84. (Han Decl., *supra*, at ¶ 21.) Individual Settlement Payments will be calculated and
21 apportioned from the Net Settlement Amount based on the number of Workweeks a Class
22 Member worked during the Class Period as an hourly-paid or non-exempt employee in
23 California. (*Id.* at ¶ 22.) Furthermore, Individual PAGA Payments will be calculated and
24 apportioned from the twenty-five percent (25%) of the PAGA Payment (\$25,000) based on the
25 number of Workweeks an Eligible Aggrieved Employee worked during the PAGA Period as an
26 hourly-paid or non-exempt employee in California. (*Ibid.*)

27 ///

28 ///

1 **C. Discovery Exchanged**

2 Section II.B. The description of Class Counsel’s investigation above provides a detailed
3 description regarding the discovery that was exchanged.

4 **D. Other Pending Litigation**

5 After making reasonable inquiries, Class Counsel are not aware of any class,
6 representative, or other collective action in any other court in this or any other jurisdiction that
7 asserts claims similar to those asserted in this case on behalf of a class or group of individuals
8 some or all of whom would also be members of the Class. (Han Decl., *supra*, at ¶ 19.)

9 **E. Defendant’s Counsel’s Declaration**

10 Defendant’s counsel’s declaration is being submitted concurrently with this Motion.

11 **F. Settlement Administrator**

12 The Settlement Agreement provides up to \$20,000 will be paid to the Settlement
13 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 85.) The bid is
14 comprised of Not-To-Exceed Total, per hour/unit rates, and per line-item rates. (*Ibid.*)

15 Class Counsel obtained bids from Phoenix, CPT Group, Inc. (“CPT Group”), and ILYM
16 Group, Inc. (“ILYM Group”) for the administration of this Action. (Han Decl., *supra*, at ¶ 86.)
17 Phoenix had the most competitive (lowest) bid at \$13,500 when compared to the bids from CPT
18 Group and ILYM Group that were \$13,750 and \$14,500 respectively. (*Ibid.*)

19 Phoenix has extensive experience in administering employment class action settlements.
20 (Declaration of Jodey Lawrence, ¶¶ 5-15; Exhibit A.)

21 **G. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

22 Class Members and Eligible Aggrieved Employees will receive checks for their
23 Individual Settlement Payments and Individual PAGA Payments. (Han Decl., *supra*, at ¶ 87.)
24 Checks will remain negotiable for one hundred twenty (120) calendar days. (*Ibid.*) Any check
25 not cashed within one hundred twenty (120) calendar days will be void. (*Ibid.*) The funds from
26 the uncashed checks shall be distributed by the Settlement Administrator to the State
27 Controller’s Unclaimed Property Fund. (*Ibid.*)

28 ///

1 **H. Release by Class Members is Limited**

2 Pursuant to the terms set forth in the Settlement Agreement, the Class Released Claims
3 include the following:

4 [A]ll claims stated in the operative complaint and those based solely upon
5 the facts alleged in the operative complaint. This includes all of the
6 following claims for relief: (a) failure to properly calculate and pay all
7 regular wages, minimum wages, overtime wages, and sick leave due
8 (Labor Code sections 246, 510, 1194, 1194.2, 1197, and 1198); (b) failure
9 to provide proper meal and rest breaks and to properly provide premium
10 pay in lieu thereof (Labor Code sections 226.7 and 512); (c) failure to
11 provide complete, accurate, or properly formatted wage statements and
12 payroll records (Labor Code sections 226, 1174, and 1776); (d) failure to
13 reimburse necessary business expenditures (Labor Code sections 2800 and
14 2802); (e) failure to pay waiting time penalties (Labor Code sections 201,
15 202, 203, and 204); (f) failure to timely pay wages during employment and
16 after employment (Labor Code section 204); (g) engaging in unfair
business practices that could have been premised on the claims, causes of
action, or legal theories of relief described above or any of the claims,
causes of action, or legal theories of relief pleaded in the operative
complaint (Business & Professions Code section 17200, *et seq.*); and (h)
all damages, penalties, interest, attorneys' fees and costs, and other
amounts recoverable under said claims, causes of action or legal theories
of relief (collectively, the "Class Released Claims"). The period of the
Class Released Claims shall extend to the limits of the Class Period.

17 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 26.)

18 In addition, the PAGA Released Claims include the following:

19 [A]ll claims for statutory penalties that could have been sought by the
20 Labor Commissioner for the violations identified in Plaintiff's notice letter
21 sent to the LWDA on August 17, 2021 and only to the extent such claims
22 were alleged in the operative complaint. This includes claims for civil
23 penalties for violations of Labor Code 201, 202, 203, 204, 218.5, 221,
24 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1,
25 1198, 2800, and 2802, applicable Industrial Welfare Commission Wage
26 Orders (collectively, the "PAGA Released Claims"). The PAGA Released
Claims shall only bind Plaintiff and the State of California. Plaintiff does
not release Eligible Aggrieved Employees' claim for wages or damages.
The period of the PAGA Released Claims shall extend to the limits of the
PAGA Period

27 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 27.)

28 ///

Pursuant to the terms set forth in the Settlement Agreement, Released Parties include Defendant together with its officers, directors, employees, and agents (“Released Parties”). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 28.)

I. The Proposed Notice Packet Provides Adequate Notice to the Class Members

Within twenty-one (21) calendar days of entry of the Court’s Order Granting Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 72.) Prior to mailing the Notice Packets, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (*Id.* at ¶ 73.) Within ten (10) calendar days after the Settlement Administrator receives the Class List and updates the addresses, it will mail the Notice Packets via regular First-Class U.S. Mail. (*Ibid.*)

The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims involved, material terms of the Agreement, Class Members’ options thereunder, and how Class Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 74.) The Notice Packet also provides for a specific procedure to seek exclusion from the Class and for lodging objections to the Agreement. (*Ibid.*)

J. Settlement Does Not Require Any Class Members to Submit Claim Forms

Class Members are not required to submit claim forms to receive their share of the Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 13.)

K. Settlement Does Not Provide Any Reversion to Defendant

Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert to Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 14(b).)

L. Employer’s Share of Payroll Taxes and the Allocation of Settlement Payments

All Individual Settlement Payments will be allocated as follows: (1) twenty percent (20%) as wages; and (2) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶ 23.) All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. (*Ibid.*) Finally, Defendant shall pay the employer’s share of applicable payroll taxes due on the portion of Individual Settlement Payments allocated as wages separate from and in addition to

1 the Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 23.)

2 **M. Notice of Class Action Settlement, Objection Form, and Request for Exclusion**

3 The Notice of Class Action Settlement, Objection Form, and Request for Exclusion are
4 attached as **Exhibits A-C** respectively in the Agreement and Proposed Order, filed
5 concurrently herewith, and were drafted to be reasonably understood by the Class Members.

6 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

7 Express judicial policy favors maintaining wage-and-hour actions as class actions.
8 *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries,*
9 *Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be
10 resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29
11 Cal. 3d at 473-75. The decision to certify a class is a procedural one and should be based on the
12 allegations in the operative complaint and not in the perceived factual or legal merit of the
13 class claims. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

14 To certify a settlement class, the Court must find the two (2) primary requirements for
15 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a
16 well-defined community of interest in the questions of law and fact involving the parties to be
17 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
18 *Company* (1967) 67 Cal. 2d 695, 704. The criteria are met here for the reasons set forth below.

19 **A. There Is A Numerous and Ascertainable Class**

20 Ascertainability is determined by examining class definition, class size, and means to
21 identify class members. *See Vasquez, supra*, 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors*
22 *of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are “ascertainable”
23 where they may be readily identified without unreasonable expense or time.

24 Plaintiff contends, and Defendant does not dispute, the requirement of numerosity is
25 met. The documents and information exchanged reflect a Class of approximately eight hundred
26 forty-two (842) Class Members. (Han Decl., *supra*, at ¶ 89(a).) The Class Members were
27 identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 89(b).)

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1 **B. There Is A Well-Defined Community of Interest**

2 A community of interest is established by the predominance of common issues of law
3 and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

4 [D]oes not depend upon an identical recovery, and the fact that
5 each member of the class must prove his separate claim to a
6 portion of any recovery by the class is only one factor to be
7 considered ... The mere fact that separate transactions are involved
8 does not of itself preclude a finding of the requisite community of
9 interest so long as every member of the alleged class would not be
required to litigate numerous and substantial questions to
determine his individual right to recover subsequent to the
rendering of any class judgment which determined in plaintiffs’
favor whatever questions were common to the class.

10 *Vasquez*, 4 Cal. 3d. at p. 809.

11 Plaintiff contends, and Defendant does not dispute, common issues of fact and law
12 predominate as to each of the claims alleged, and the Class is united in its proof. Because
13 Plaintiff alleged a single scheme, “the relevant proof [does] not vary among class members”
14 and “clearly presents a common question fundamental to all class members.” *See In Re*
15 *NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re*
16 *NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California
17 courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide
18 damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal.
19 App. 3d at 1350. This inference ““eliminates the need for each class member to prove
20 individually the consequences of the defendants’ actions to him or her.”” *Id.* at 1351 (quoting
21 *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

22 This Action involves, *inter alia*, a determination about Defendant’s alleged: (1) failure
23 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
24 business expenses; (3) failure to pay minimum wages; (4) failure to properly calculate and pay
25 overtime wages, sick leave pay, and premium wages; (5) failure to pay final wages when
26 required; (6) failure to provide accurate wage statements; and (7) largely derivative claims
27 under the Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶ 89(e).) Plaintiff
28 contends these practices affected Class Members in the same way. (*Ibid.*) While Defendant

maintained otherwise, these issues will not be decided based on facts peculiar to each Class Member but based on facts common to the Class. Finally, these issues of liability can be determined on a class-wide basis.

C. The Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary the class representative should have personally incurred all the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

Plaintiff contends, and Defendant does not dispute, the claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 89(c).) Plaintiff was employed by Defendant during the Class Period and subject to the allegedly unlawful break policies and pay practices at issue. (*Ibid.*) The central issues of this litigation (whether Defendant failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages, etc.), which would arise if this were an individual action brought by Plaintiff, apply to the other Class Members. (*Ibid.*) Consequently, the answer to these questions would determine Defendant's liability. (*Ibid.*)

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-10, 89(d); Exhibit 2.) Moreover, Plaintiff's interests are aligned with those of the Class Members, he suffered the same injuries as the Class Members, and has no conflicts of interest. (*Id.* at ¶ 89(d).)

1 **E. Predominance and Superiority**

2 Individual issues do not predominate over those common to the Class. (Han Decl.,
3 *supra*, at ¶ 89(f).) Furthermore, the class action mechanism is superior to individualized actions
4 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 89(g).)

5 **V. THE TWO-STEP APPROVAL PROCESS**

6 Any settlement of class litigation must be reviewed and approved by the Court. This is
7 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review
8 after notice has been distributed to the class members for their comment or objections. The
9 Manual for Complex Litigation (Third) states:

10 “Approval of class action settlements involves a two-step process. First,
11 counsel submits the proposed terms of settlement and the court makes a
12 preliminary fairness evaluation. If the preliminary evaluation of the
13 proposed settlement does not disclose grounds to doubt its fairness or
14 other obvious deficiencies, such as unduly preferential treatment of class
15 representatives or of segments of the class, or excessive compensation for
16 attorneys, and appears to fall within the range of possible approval, the
17 court should direct that notice ... be given to the class members of a
18 formal fairness hearing, at which arguments and evidence may be
19 presented in support of and in opposition to the settlement.” § 30.41.

20 Preliminary approval by the trial court is a conditional finding the settlement appears to
21 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
22 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
23 settlement proposal may vary. The court may find the settlement proposal contains some merit,
24 is within the range of reasonableness required for a settlement offer, or is presumptively valid
25 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert
26 B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

27 The procedures for the Parties’ submission of a proposed settlement for preliminary
28 approval by the court also are discussed in 4 Newberg on Class Actions:

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1 When the parties to an action reach a monetary settlement, they will
2 usually prepare and execute a joint stipulation of settlement, which is
3 submitted to the court for preliminary approval. The stipulation should
4 set forth the central terms of the agreement, including but not limited to,
5 the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause, Newberg on Class
Actions, at § 11.24.

6 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

7 As a matter of public policy, the courts encourage the use of the class action device and
8 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
9 429, 434 (“Courts have long acknowledged the importance of class actions as a means to
10 prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992)
11 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where
12 complex class action litigation is concerned.”)

13 The courts presume the absence of fraud or collusion in the negotiation of a settlement
14 unless evidence to the contrary is offered. There is a presumption the negotiations were
15 conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
16 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
17 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when
18 settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
19 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

20 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid
21 out several factors that should be analyzed in determining if a class action settlement should be
22 approved. These factors include: (1) strength of plaintiff’s case; (2) risk, expense, complexity,
23 and likely duration of further litigation; (3) risk of maintaining class action status through trial;
24 (4) amount offered in settlement; (5) extent of discovery completed and stage of the
25 proceedings; (6) experience and views of counsel; (7) presence of a governmental participant;
26 and (8) class members’ reaction to the proposed settlement.

27 The Agreement satisfies these factors. Specifically, Class Counsel conducted extensive
28 discovery before entering meaningful settlement negotiations, including a detailed analysis of

1 Defendant's policies and a considerable sample of Defendant's time and pay records. (Han
2 Decl., *supra*, at ¶¶ 14-15.) This discovery permitted Class Counsel to evaluate the strengths
3 and weaknesses of the case and the risks associated with ongoing litigation. (*Id.* at ¶¶ 17-18.)
4 In addition, Class Counsel are experienced in the handling of wage-and-hour class actions and
5 support the Settlement. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)

6 **A. The Strength of Plaintiff's Case.**

7 The claims in this Action include: (1) failure to provide employees with compliant meal
8 and rest breaks or pay associated premium wages; (2) failure to compensate employees fully
9 and properly for all hours worked; (3) failure to reimburse business expenses; (4) failure to
10 issue compliant wage statements; and (5) failure to timely pay all wages. (Han Decl., *supra*, at
11 ¶ 26.) Plaintiff also seeks related violations of the Business & Professions Code sections
12 17200, *et seq.*, and penalties pursuant to Labor Code section 2699, *et seq.* (*Ibid.*)

13 Class Counsel felt confident the claims would be certified given Defendant's policies
14 and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 27-65.)

15 **B. The Risks Associated with the Merits.**

16 Plaintiff contends compliant meal and rest breaks were not provided due to Defendant
17 failing to maintain proper policies, prioritizing completion of tasks, permitting supervisory
18 interference, failing to have multiple timeclocks in place, and not authorizing the receipt of
19 multiple breaks. (Han Decl., *supra*, at ¶¶ 28, 31-32.) Defendant countered it properly advised
20 employees of their rights concerning meal and rest breaks, never pressured employees to
21 continue working at the expense of taking breaks, did not instruct supervisors to interfere with
22 the receipt of breaks, and was not aware of there being a line of employees trying to clock in
23 and out. (*Id.* at ¶¶ 29, 33.) In other words, employees were choosing to forgo receiving proper
24 meal and rest breaks as opposed to being pressured to do so. (*Ibid.*) By extension, if
25 employees were not paid premium wages, it is because Defendant was never made aware of
26 employees not receiving proper meal and rest breaks. (*Ibid.*) Finally, Defendant contends
27 Class Counsel will have to gather declarations from putative class members. (*Ibid.*)

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1 As the consideration concerning meal and rest breaks would likely depress the damages
2 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
3 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 30, 34.) If Defendant’s contentions are
4 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
5 would be little to no recovery for the Class Members.

6 Plaintiff also alleged Defendant failed to properly calculate and pay all applicable
7 wages owed, including minimum wages, overtime wages, sick leave pay, and premium wages.
8 (Han Decl., *supra*, at ¶¶ 35, 38.) Specifically, Defendant purportedly expected employees to
9 perform their work-related tasks prior to clocking in (*i.e.*, receiving tasks from supervisors,
10 retrieving work equipment, checking the bulletin board, waiting in line to clock in). (*Id.* at ¶
11 35.) This was apparently made worse by Defendant paying employees non-discretionary
12 bonuses but failing to factor them into employees’ regular rate of pay for purposes of overtime
13 compensation, sick leave pay, and premium wages. (*Id.* at ¶ 38.) Defendant countered these
14 claims are not suitable for class treatment. (*Id.* at ¶¶ 36, 38.) Instead, Defendant argued it
15 expressly prohibited off-the-clock work, always required employees to clock in before
16 working, never instructed supervisors to speak to employees prior to clocking in and was not
17 made aware of employees working off-the-clock. (*Id.* at ¶ 36.) In addition, Defendant asserted
18 any unrecorded hours would likely be subject to individual inquiries and unlikely to be
19 certified. (*Ibid.*) Finally, Defendant contended any payment of bonuses was discretionary,
20 meaning the bonuses did not need to be factored into employees’ regular rates of pay. (*Id.* at ¶
21 38.) Given the difficulty in certifying this claim, Class Counsel applied a discount to damages
22 based on this theory. (*Id.* at ¶¶ 37, 39.) If Defendant’s contentions held true, the outcome of
23 this claim would be little to no recovery for employees.

24 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties**

25 To establish liability for wage statement violations and waiting time penalties, Plaintiff
26 would first have to establish liability for the underlying claims. But Defendant argued the claim
27 for further Labor Code section 226(e) penalties would depend on the underlying rest break,
28 meal break, and wage claims, meaning it would be subject to the same defenses listed above.

1 (Han Decl., *supra*, at ¶ 42.) In addition, Defendant added the above-mentioned violations did
2 not occur every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Thus,
3 Defendant concluded employees need to show they suffered injury because of Defendant’s
4 noncompliance and that such noncompliance was knowing and intentional. (*Ibid.*)

5 As discussed above, Plaintiff alleges Defendant failed to pay for all hours worked and
6 premium wages for noncompliant meal and rest breaks. (Han Decl., *supra*, at ¶¶ 28, 31-32, 35,
7 38.) By extension, Plaintiff contends employees are entitled to minimum wages, overtime
8 wages, and premium wages, which were allegedly not paid at the time of their termination or
9 resignation. (*Id.* at ¶¶ 44-45.) Defendant counters it provided employees with reasonable
10 opportunities to take breaks, asked employees to confirm the accuracy of their time records,
11 and had good-faith defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 46-47.) Similarly,
12 Defendant also countered the claim for Labor Code section 203 penalties is dependent on the
13 underlying meal break, rest break, and wage claims, meaning it would be subject to the same
14 defenses listed above. (*Ibid.*) With these penalties, there is always the risk the trier of fact
15 would not have held Defendant’s actions were done “willfully.” A good faith belief in a legal
16 defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215
17 Cal.App.4th 36, 54; 8 C.C.R. § 13520.)

18 **D. The Risks Associated with the PAGA Penalties.**

19 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
20 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a
21 penalty amount of \$100 for each aggrieved employee per pay period for the initial violation
22 and \$200 for each aggrieved employee per pay period for each subsequent violation. (Lab.
23 Code § 2699, subd. (e)(2).) If a civil penalty is provided in a specified amount by the Labor
24 Code section relating to the underlying alleged Labor Code violation, that amount shall apply.
25 (*Ibid.*) PAGA also gives the Court discretion to award any lesser amount than the maximum
26 civil penalty. (*Id.* [“... a court may award a lesser amount than the maximum civil penalty
27 amount specified by this part if, based on the facts and circumstances of the particular case, to
28 do otherwise would result in an award that is unjust, arbitrary and oppressive, or

confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

The provisions of the Labor Code potentially triggering PAGA penalties 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 ¶ 53.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments against the underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*; *See Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Thus, without stacking and limited to the initial violation, PAGA penalties would be limited to **\$60,600** (606 employees x \$100 initial violation) on low end and **\$424,200** (606 employees x \$100 initial violation x 7 theories of recovery) on high end. (Han Decl., *supra*, at ¶¶ 54-57.)

Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 58.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) The maximum penalties for each pay period are not justified, and it was 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 **\$5.21** per pay period [$\$100,000 \div 19,208$ pay periods in the PAGA Period = **\$5.21**], given Defendant is paying an additional \$2,400,000 in the class settlement.¹ (*Ibid.*) If 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 considered reasonable.² (*Ibid.*)

¹ (See *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).)

² (*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

1 Finally, Class Counsel are confident they would successfully prove Defendant's alleged
2 wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 59.) Plaintiff
3 contends Defendant intentionally did not have meal and rest break policies in place, prioritized
4 the completion of assignments, and allowed supervisors to interfere with the receipt of breaks.
5 (*Ibid.*) This was purportedly made worse by Defendant knowingly allowing a line of
6 employees attempting to clock in and out to and from meal breaks to form. (*Ibid.*) Plaintiff
7 asserts Defendant knowingly and intentionally failed to properly calculate and pay premium
8 wages for noncompliant meal and rest breaks. (*Ibid.*) Next, Plaintiff alleges Defendant would
9 intentionally pressure employees to begin working prior to clocking in, thereby knowingly
10 failing to pay employees for all hours worked. (*Ibid.*) Plaintiff also contends Defendant
11 intentionally did not pay employees overtime wages despite working the requisite hours.
12 (*Ibid.*) Finally, Plaintiff contends Defendant paid employees bonuses that were non-
13 discretionary in nature but intentionally failed to factor such payments into employees' regular
14 rate of pay. (*Ibid.*) Thus, Plaintiff asserts Defendant knowingly and intentionally implemented
15 its improper, uniform policies and practices, resulting in the alleged violations. (*Ibid.*)

16 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

17 Given the risks outlined above, the issues in this case were complex and the risk for
18 Plaintiff and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
19 66-70.) A class trial would have required extensive preparations, thereby requiring the Parties
20 to expend a substantial amount of time. (*Id.* at ¶ 70.) Given the complexity and unsettled
21 nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and
22 costly appeal. (*Id.* at ¶¶ 67-70.) Finally, an appeal would result in further delay for the Class
23 Members who have already waited years for resolution in this matter. (*Id.* at ¶¶ 67, 70.)

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

F. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk a trial of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class actions, decertification is a real risk Class Counsel must consider.

G. The Amount Offered in Settlement.

There is no doubt the Agreement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations. To determine the approximate potential damages owed to each Class Member, Class Counsel analyzed a sampling of time and pay records. Using this information, Class Counsel estimated the full value of the case if Plaintiff prevailed at trial.

Excluding civil penalties, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$6,790,418.99** on the low end and **\$7,324,434.67** on the high end. (Han Decl., *supra*, at ¶ 61.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,516,906.01	60%	60%	\$242,704.96
Meal Break Premiums	\$70,896	60%	50%	\$14,179.20
Overtime/Minimum Wage: Off-the-Clock	\$1,068,031.36 to \$1,602,047.04	50%	50%	\$267,007.84 to \$400,511.76
Overtime/Minimum Wage: Regular Rate	\$120,415.22	30%	30%	\$59,003.46
Unreimbursed Business Expenses	\$233,616	30%	80%	\$32,706.24
Wage Statement Penalty	\$1,908,900	70%	60%	\$229,068
Waiting Time Penalty	\$1,871,654.40	70%	60%	\$224,598.53
MAXIMUM TOTAL EXPOSURE	\$6,790,418.99 to \$7,324,434.67			\$1,069,268.23 to \$1,202,772.15

Based on this analysis, the realistic recovery for this case is about **\$1,069,268.23** on the low end and **\$1,202,772.15** on the high end. (Han Decl., *supra*, at ¶ 62.) The Maximum Settlement Amount of \$2,500,000 is about thirty-four percent (34.13%) of the high end total potential exposure at trial and well above the high end total realistic exposure at trial. (*Ibid.*) This is illustrative the Settlement Agreement is an excellent settlement. (*Ibid.*)

1 The allocation of wages, penalties, and interest indicated above was based on the
2 realistic exposure Plaintiff could expect to receive for meal and rest break premiums and
3 unpaid wages. (Han Decl., *supra*, at ¶ 63.) Specifically, Plaintiff added the realistic exposure
4 for rest break premiums and meal break premiums ($\$242,704.96 + \$14,179.20 = \$256,884.16$).
5 (*Ibid.*) Plaintiff then added the $\$256,884.16$ to the low end realistic exposure for unpaid wages
6 due to off-the-clock work and underpaid overtime wages, sick leave pay, and premium wages
7 ($\$256,884.16 + \$267,007.84 + \$59,003.46 = \$582,895.46$). (Han Decl., *supra*, at ¶ 63.) The
8 realistic exposure of $\$582,895.46$ Plaintiff can expect to receive if he were to prevail at trial for
9 meal and rest break premiums, low end unpaid wages due to off-the-clock work, and underpaid
10 overtime wages, sick leave, and premium wages represents about ninety percent (19.38%) of
11 the low end total realistic exposure and PAGA penalties ($\$582,895.46 \div \$3,008,468.23 =$
12 $0.19375 \times 100 = 19.38\%$). (*Ibid.*) Because this represents nearly twenty percent (20%) of
13 wages, allocating twenty percent (20%) as wages and eighty percent (80%) as interest and
14 penalties pursuant to the Agreement is appropriate. (*Ibid.*)

15 Once Class Counsel determined the total potential damages, they established a fair and
16 reasonable settlement for the Class after analyzing the likelihood of success on the merits.
17 (Han Decl., *supra*, at ¶ 67.) After reviewing the facts and circumstances of this matter, Class
18 Counsel concluded the Class had a reasonable likelihood of success on the core claims. (*Id.* at
19 ¶¶ 61-70.) Defendant disputes this contention, denies all wrongdoing in this matter, and is
20 confident it has strong legal and factual defenses to the claims. (*Id.* at ¶¶ 67, 69.) Class
21 Counsel determined the likelihood of success for the claims was not as strong because of
22 various defenses, including Defendant's arguments the issues were not suitable for class
23 treatment due to their individualized nature. (*Ibid.*) After considering the likelihood of success
24 on each claim and the challenges faced with certifying these claims, Class Counsel determined
25 the Settlement Agreement amount was fair and reasonable.

26 The Agreement is the result of extensive settlement negotiations between the Parties,
27 conducted at arm's length, and informed by substantial factual and legal investigations. (Han
28 Decl., *supra*, *passim*.) Class Members have been represented by experienced counsel with

1 many years of experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10;
2 Exhibit 2.) Specifically, Class Counsel devoted a considerable time to the prosecution of this
3 case. (*Id.* at ¶¶ 14-18.) This included, among other things: (1) interviewing Plaintiff at length
4 on repeated occasions; (2) drafting pleadings, conducting discovery, and meeting and
5 conferring with Defendant's counsel; (3) reviewing and analyzing time and pay records,
6 employee handbook, break schedules, and personnel records; (4) researching California law;
7 (5) interviewing putative class members; (6) preparing for and attending mediation; and (7)
8 negotiating and finalizing the Agreement. (Han Decl., *supra*, *passim*.) These above-mentioned
9 factors indicate the interests of the Class are best served by a settlement of this Action.

10 Finally, Class Counsel believe the Agreement serves the best interests of the Class. The
11 court can consider counsel's recommendations if counsel have been involved in litigation for
12 some period, appear to be competent, and have experience with this type of litigation, and
13 significant discovery has been completed. *See Newberg*, § 11.47.

14 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND**
15 **REASONABLE**

16 It is appropriate to provide a modest incentive payment to the class representatives. See
17 *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294.

18 Plaintiff is entitled to reasonable service payment for his efforts in this matter. (Han
19 Decl., *supra*, at ¶ 80.) Plaintiff spent significant time better apprising himself of his rights,
20 deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)
21 Plaintiff ultimately decided to vindicate not only his rights but also those of co-workers by
22 filing a wage-and-hour class action lawsuit. (*Ibid.*)

23 By suing Defendant, Plaintiff increased the risk of retaliation by future employers.
24 (Han Decl., *supra*, at ¶ 81.) The lawsuit has cost Defendant considerable resources and such
25 conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment
26 opportunities is real in the information age that contains quick background checks. (*Ibid.*)

27 But Plaintiff did not allow the fears of the potential repercussions of being the class
28 representative deter him from acting for the benefit of Class Members. (Han Decl., *supra*, at ¶

82.) Instead, Plaintiff has been intimately involved in this case since its inception. (Han Decl., *supra*, at ¶ 82.) Specifically, Plaintiff devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this Action at every stage of the litigation. (*Ibid.*)

Plaintiff spent several hours with Class Counsel detailing his knowledge of Defendant's practices. (Han Decl., *supra*, at ¶ 83.) Plaintiff diligently, adequately, and fairly represented Class Members and did not place his interests above the Class. (*Ibid.*) The Class Representative Enhancement Payment is intended to recognize Plaintiff's time and effort, and the amount requested is fair and appropriate based on his contributions. (*Ibid.*)

Therefore, Class Counsel believe the Class Representative Enhancement Payment of \$10,000 is fair and reasonable. (Han Decl., *supra*, at ¶ 84.)

VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED

Under the Settlement Agreement, Class Counsel request, without opposition from Defendant, an award of Attorneys' Fees and Costs consisting of: (1) up to \$875,000 as the attorneys' fees; and (2) up to \$25,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 77.) The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 77-78.) Class Counsel's request for Attorneys' Fees and Costs will not be opposed by Defendant.

California courts look to the federal courts on class action approvals. The Ninth Circuit recognized an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769. Courts have discretion to choose either the percentage-of-the-fund method or the lodestar method. *In re Wash. Pub. Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

Several courts expressed frustration with the "lodestar" approach for deciding fee awards, which usually involves wading through voluminous time records. In other words, the

percentage approach can be preferable to the lodestar in certain situations because it: (1) aligns the interests of class counsel and absent class members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).

When considering the facts and circumstances of this case, the request for attorneys' fees is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of twenty percent (20%) to fifty percent (50%) of the common fund, depending on the circumstances of the case. *Newberg*, at § 14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at 1378. *Newberg* further notes: "[A]chievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed." *Id.* at §§ 14-10:14-11.

The attorneys' fees request provided for in the Settlement Agreement is commensurate with judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater than the percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F. Supp. 494 (awarding 45% of \$7.3 million settlement fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of recovery achieved).

In similar lawsuits, California courts approved attorney's fees consistent with or greater than the percentage of the common fund requested herein. *See Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004) (Hon. Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003)

1 Orange County Superior Court, Case No. 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v.*
2 *Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359
3 (Sept. 2006) (Hon. Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*, Orange
4 County Superior Court, Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).

5 Class Counsel have borne the entire risk and costs of litigation and will not receive any
6 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 77-78.) The Court should
7 also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the
8 requested attorneys' fees award for Class Counsel is reasonable.

9 **A. Fee Splitting Agreement**

10 Class Counsel is not splitting the costs associated with the settlement with any other
11 individuals or firms. (Han Decl., *supra*, at ¶ 88.)

12 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
13 **APPROVAL**

14 The Parties respectfully request this Court, as part of the preliminary approval process,
15 to grant the following relief and make the following orders:

16 1. Review and approve the Settlement Agreement attached to Douglas Han's
17 declaration as **Exhibit 1**;

18 2. Review and approve the Notice of Class Action Settlement, Objection Form,
19 and Request for Exclusion attached to the Settlement Agreement and Proposed Order as
20 **Exhibits A-C** respectively;

21 3. Consider and determine the proposed class action settlement as set forth in the
22 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

23 4. Conditionally certify the action as a class action for settlement purposes only
24 and preliminarily approving the proposed class action settlement and Settlement Agreement;

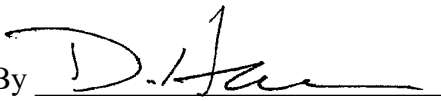
25 5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Chancellor
26 Nobles of Justice Law Corporation to serve as Class Counsel for settlement purposes;

27 6. Approve and appoint Phoenix as the Settlement Administrator to handle the
28 notice procedures as set forth in the Settlement Agreement;

7. Approve the proposed allocation of funds to the claims made under PAGA;
8. Order Defendant to disclose the Class List to Phoenix in accordance with the manner set forth in the Settlement Agreement;
9. Order Phoenix to mail the Notice Packet to Class Members; and
10. Set a date for the Final Approval Hearing.

Dated: November 10, 2022

JUSTICE LAW CORPORATION

By 
Douglas Han
Attorneys for Plaintiff

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On November 11, 2022, I served the foregoing document described as

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL

for the following case: **Gonzales v. Keeco, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-841748-21**
Court Case No.: CVRI2104851
Riverside County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on November 11, 2022, at Pasadena, California.



Mariah Anderson